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**EXPLORATIONS IN THE USE OF
CRIMINAL LAW IN CANADA,
1867 - 1892**

by

SUSAN W. S. BINNIE, B.A.(Cantab.), M.A.(Toronto)

**A thesis submitted to the Faculty of Graduate Studies and Research in
partial fulfilment of the requirements for the degree of
Doctor of Philosophy**

Department of Sociology and Anthropology

Carleton University

Ottawa, Ontario

July 29, 1991

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in partial fulfillment of the requirements
for the degree of Doctor of Philosophy

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ABSTRACT

The study explores developments in substantive criminal legislation in post-Confederation Canada within a sociological framework of analysis; its concern is with interrelations between law and society in a newly-formed, nineteenth-century capitalist state and with the role of the state in developing and using criminal law.

Three series of "new" criminal law statutes are selected for detailed analysis, each defining minor federal offences potentially affecting the lives of the working class - relating to work, community life and consumption; the initial statutes in each series are the Peace Preservation Act of 1869, the Blake Act of 1878 and the adulteration legislation within the Inland Revenue Act of 1875.

The theoretical approach to legislative change is structured through a theoretical grid, or set of themes furnishing a sociological orientation to legislative developments, which is used to interrogate the historical evidence and to allow comparisons between different statutory developments. The five central themes of this grid are:

1. The reasons for state intervention in relation to particular social actions and societal contexts.
2. The legislators' legal orientations to the relations between criminal law and "problematic" social actions.
3. The character of the discursive communications associated with specific instances of lawmaking.

4. The specific and general effects of uses of criminal law for the social formation.

5. The bureaucratic and political processes within state apparatuses relating to such lawmaking.

Through these themes, the dissertation examines the modes of legislative creation and application as well as enforcement and their significance for the social formation.

The arguments are that lawmaking and its effects transcend a simple law-society nexus and that law must be examined in terms of questions of its detailed integration with, and significance for, societal processes. While emphasising the societal transformations associated with early capitalism, the research considers not only the practical role of the state and associated processes at the economic and political levels of the formation but also state involvement in ideological processes through ordered patterns of discursive communications. In examining the ways in which legislation in different contexts was shaped by and, in turn, shaped particular social relations, the study argues that the effectivity of nineteenth-century minor Canadian criminal legislation lay in its discursive and symbolic significances as well as in its practical effects.

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CHAPTER ONE: INTRODUCTION

A BRIEF OUTLINE

Despite the rapid expansion of historical-legal writing in Canada in the 1980's, much of the development of Canada's lawmaking in the nineteenth century remains obscure and unstudied. This research attempts to "unwrap" some of the historical processes underlying particular examples of statute lawmaking and it does so from a sociological perspective centred on the role of the state.

The dissertation is an analysis of three series of criminal law statutes drawn from a large amount of substantive legislation enacted by the federal Parliament of Canada between Confederation in 1867 and the codification of criminal law in 1892. The three series analyzed concern the maintenance of peace at public works sites, the carrying of fire-arms in cities and the adulteration of food, drink, drugs and agricultural fertilizers¹.

The goal of the research is to begin a theoretical and historical analysis of statutory criminal lawmaking in nineteenth-century Canada. The practical approach adopted is the analysis of the enactment and implementation of a number of post-Confederation criminal law statutes, seen in the context of major societal transformations in late nineteenth-century Canada and in relation to underlying processes involving the state and civil society.

THE RATIONALE

The basic premise is that general relations between law and the social formation² are potentially decipherable theoretically. The approach assumes that developments in criminal statute law are patterned in relation to the social formation in which they occur, so that legislation is the product of broader and potentially specifiable societal factors. Legislative developments are not seen as immanent within law - although evidently influenced by broader historical legal developments - nor (as in Whig views) are they part of an uninterrupted movement towards progress or modernization, nor are they simply the direct reflection of an economic base (as in marxist derivation theory); lastly they are not viewed as the simple outcome of competing societal interests, as pluralists would argue. What is stressed is the historical and contingent nature of developments in law, with legislative development seen as the outcome of contextualized social processes including the role of state institutions acting in the field of state-civil society relations.

With these precepts in mind, a chapter of the thesis is devoted to setting out a useful theoretical approach to legislative processes, allowing the assumption of decipherability to be applied in practice. In particular the development of a theoretically-refined analytical 'grid' is undertaken for use in examination of the research materials; this analytical grid consists of a set of questions incorporating aspects of the exploratory theoretical themes. The grid is applied in subsequent research chapters to investigate specific processes of legal change in their historical detail as far as possible (Chapters Four to

six). The formulation of a suitable approach for initial analysis of a complex law-society nexus is therefore crucial and is undertaken in Chapter Two.

It should be emphasized that the premise that processes of legal development are susceptible to theoretical explanation does not claim more than this; it does not imply that theorised linkages between lawmaking and the developing Canadian social formation can be read in direct or simple ways from analyses of selected historical instances of lawmaking, including the ones undertaken here. Rather the inference drawn is that a sociological, empirically-grounded study of lawmaking can best be undertaken from the basis of an explicit theoretical orientation designed to encourage comparative analyses of processes, agencies and institutions involved in distinct episodes of nineteenth-century Canadian lawmaking. The analysis aims primarily to order the complexities of specific lawmaking in relation to societal context, rather than attempting to interpret or explain them fully from a formal theoretical perspective. A systematic sociological exploration of the genesis and consequences of specific criminal laws in their societal context requires, in this view, the development of a theoretically-related system of analysis which can both define theoretical interests and delineate and order the historical material.

The most difficult issues concern how to formulate the theoretical position and how to link the results to analysis. Two preliminary suggestions are offered: firstly, the contexts for historical legislative processes can be considered to include both 'organic' and

'conjunctural' factors; in Gramscian usage these are distinguished according to their basis in the mode of production - organic movements being "relatively permanent" while conjunctural movements appear as "occasional, immediate, almost accidental" and are less closely linked to the mode of production (1971:177). This distinction suggests that organic features of the social formation require detailed specification, especially in the light of major structural changes during the period. The Canadian state and its institutions played central parts in the processes of statutory law making examined here and, in parallel with the economic base and other societal institutions, underwent change themselves during the period. As the economic base, the state and civil society experienced wide-ranging and rapid transformations during the later decades of the nineteenth century, so an attempt is made to specify how certain major transformations helped to set contexts within which legislative change occurred. The conceptualization of theoretical and empirical ideas concerning the state, the economic base and civil society are, therefore, discussed at the outset of the thesis - in theoretical terms in the second chapter and in empirical detail in the third.

Secondly, theoretical concerns in the research centred on instances of nineteenth-century criminal lawmaking and law application seen as dynamic and contextualized social processes. Legislative processes involved social actors - termed here "agents" - who ranged from politicians and public servants to entrepreneurs and lawyers; these actors and others active in enforcement processes, participated in events in relation to their roles in larger institutions. Legislation

was, in this view, one set of solutions to perceived societal problems forged by active agents who moved within changing economic and social contexts. The questions to be addressed empirically include identification of the agents involved in legislative processes and the relationship of such processes to contemporary structures.

In the research described in Chapters Four to Six, instances of lawmaking and the application of law during the period are examined drawing on criminal law statutes relating to liquor prohibition on public works, firearms control in Montreal and anti-adulteration measures. These three series were included precisely because of their definition as "lesser" criminal offences as opposed to mainstream crimes, for the writer's interest lay in areas in which the Canadian state possessed relative discretion in enacting innovatory criminal law. The particular series were also selected from a larger number of minor criminal law statutes for their relevance to, and impact on, the working class, a focus which grew out of a theoretical concern with the role of the state in a late nineteenth-century industrializing economy³. In the final dissertation chapter, Chapter Seven, two projects are attempted: firstly, to draw findings together from the research on the nature of legislative processes in late nineteenth-century Canada and the uses of criminal law in relation to the Canadian state and social formation; and, secondly, to comment on the conceptual formulations adopted in this exploratory research.

In sum, then, the concern is with particular historical processes of lawmaking and law enforcement, involving human agents engaging in a

variety of activities at different levels of the social formation. Again, in undertaking this project, the view is not that statutory developments were patterned in such ways that use of a theoretical approach can "unveil" or expose essential or repetitive forms; the intention is rather to uncover systematically and in as much detail as possible the specificities of legislative process in certain instances of law making. The total exercise then counts as a contribution to analyses of processes of legal change - without making claims to comprehensiveness - but a contribution which does attempt to take account of the complexity of the social determination of statutory lawmaking in a nineteenth-century society.

CHAPTER TWO

SOCIOLOGICAL APPROACHES TO LAW AND RESEARCH STRATEGIES

Section One INTRODUCTION

Recent theoretical debates within the neo-marxist sociology of law have been fruitful for research into contemporary areas of law and for historical analyses of legal developments. The influence of theoretical ideas drawn from neo-marxist social and political theory has become relatively commonplace in research on the social history of law, whether the work is produced by lawyers, historians or social theorists. These processes of theoretical infiltration are demonstrated by the inclusion in legal historical analyses in Canada of theoretical terms drawn from neo-marxist theory, ranging from "class analysis" and "legal ideology" to "civil society" and "hegemony" - to name only a few of the terms in recent research¹.

In relation to the present research, interest lies in the contribution these debates and analyses made to new theoretical positions which, while recognizing the primacy of material conditions, focus upon elements of the societal "superstructure" - in particular upon the state and law, rather than on the economic base². The theoretical approach to the present research has been informed by a number of sources within this literature, but principally by approaches drawn from the work of Antonio Gramsci and, to some degree, Nicos Poulantzas. Given that Gramsci and Poulantzas - among the more significant of social and political theorists whose work came to the forefront of theoretical discussion in the late 1970's - were both

concerned with the development and operation of state law in twentieth-century European states and with the methods which capitalist states used to maintain themselves, current interest in selected aspects of their work among legal historians is not surprising. The work of Gramsci and Poulantzas proved of marked interest to this writer for their approaches to concepts of the state, state forms and law and for their seminal analyses of questions of the relations of law and ideology. While admittedly unfinalized and contentious, their distinctive analyses³ succeeded in suggesting an array of possible theoretical formulations and exposing new areas of theoretical concern. For Gramsci, questions such as concepts of the state, class struggle, the role of coercion or consent in state rule, concepts of hegemony and ideology and the position of intellectuals, were all major areas of theoretical development (1971); Poulantzas, basing his analysis on an Althusserian conception of the social formation, was concerned with the role of law in state monopoly capitalism and drew on concepts of class domination and class struggle including struggle within the state (1978, 1980).

The use of sociological conceptual developments deriving from abstract theoretical positions is often beset with practical difficulties and application of the work of these neo-marxist theorists is no exception. The distance between the study of specific conjunctures and the relatively high level theoretical conceptualizations of authors such as Gramsci or Poulantzas remains large and the application of such theoretical approaches to historical analysis is

frequently problematical. The dissertation proposal - to undertake an exploratory investigation of the development of criminal law in a newly-formed capitalist state - raised the major preliminary issue of how to link the empirical concerns of the research for nineteenth-century Canadian criminal legislation with theoretical orientations. The principal questions (given the general orientation suggested above) are what sociological concepts and what methodological selection processes should be relied on for analysis of historical material concerning the role of the Canadian state and criminal law development in the post-Confederation period?

The approach eventually taken was based on the assumption that research into the sociology of nineteenth-century law should include methods of developing theoretical strategies for exploratory analysis of a range of legislative developments and legislative applications. The position reached was that a tentative theoretical perspective should be suggested at the outset and relevant orientations then formulated into a series of practical questions, designed to interrogate the historical materials during the research analysis. Once these questions were addressed, there would be a possibility at the end of the project of reconsidering the utility of the sociological orientations discussed initially. The notion of "theoretical strategies" for research was crucial, for such selection processes were needed in two distinct areas of choice; the first concerned the theoretical problem of how to establish a relatively uniform orientation to the exploration of divergent substantive fields

of criminal law and varying enforcement patterns, without sacrificing broader theoretical perspectives. The second dealt with how to select specific fields of criminal law for study from a broad range of legislative developments, utilizing theoretical selection justifications.

The answer adopted for providing a theoretically-informed approach to detailed historical analysis was the construction of a "theoretical grid", which responded to the problem by establishing a set of theory-informed questions. Two features of this approach - namely basing the format for interrogation on a set of potentially relevant theoretical concepts and using the same format for the three fields of law under study - were thought to assist in avoiding problems of non-comparability of findings or the threat of theoretical irrelevance. In other words, efforts were made to ensure that historical materials were interrogated from a consistent theoretically-informed perspective.

On the second question - namely, which criminal law statutes to include for historical analysis - given the large number of federal "criminal-law-related" statutes enacted between Confederation and 1892 (in excess of two hundred statutes) and the research decision to select a few substantive law statutes for detailed analysis, the demand for a strategy for selecting legislative fields responded to a significant problem. The answer was to develop a distinct research strategy for such decisions based on a combination of practical decisions and theoretical considerations.

The approaches outlined in the following sections of this chapter provide an attempt to develop and apply two such strategies drawing on the work of recent neo-marxist writers. Two provisos are, however, important at the outset: the decision made to undertake an exploratory study of statute law development implied using theoretical conceptualizations in an investigatory mode for particular historical conjunctures as opposed to application of rigid theoretical frameworks. The purpose was not to fit a theoretical "model" of law making and law application to historical conjunctures in late nineteenth-century Canada but to suggest some theoretical orientations relating to fields of central concern at a preliminary stage of the research and then consider, at a final stage, what light the research on law could throw on the utility of such approaches for the Canadian historical context. The aim would be to draw on limited aspects of the work of certain theorists: central theoretical concerns would include references to concepts such as the "state", Canadian "class structure", "coercion", "social control", "hegemony", "ideology", "consensus and conflict" as applied to nineteenth-century Canada, as well as the relations between such theoretical concepts as explicated in the research materials.

Secondly, the approach adopted suggested that theoretical concepts would not necessarily be applied directly to research materials but might be used indirectly in an effort to illuminate and develop the analysis of the archival materials under study. The goal was to avoid an empiricist or narrative account unguided by theoretical perspective. The position reached - of adopting a set of

theoretically-based questions - served to explore specific historical situations involving criminal law relying on the "theoretical grid" as applied to each field of criminal law development. As a result, the research was directed at an informed reading of law which did not attempt to resolve the complexity of historical situations but rather to uncover some of the contradictions surrounding developments in criminal law in a systematic empirical fashion.

The remainder of this chapter is devoted to examining issues around questions of theoretical and practical research strategies - their sources, their forms and their significance in shaping the research. The first section of the chapter concerns the establishment of relevant theoretical grounds for conceptual development; the second deals with the establishment of the theoretical grid as a set of theory-relevant questions; and the third reviews the method of selection of statutory material for research from the largely untapped reservoir of fields of nineteenth-century Canadian criminal law development.

Section Two

SALIENT ISSUES IN THE SOCIOLOGICAL HISTORY OF LAW

The purpose of the research was to analyse the development and application of substantive criminal law statutes in the post-Confederation period concentrating on the role of the newly-formed Canadian state, so from the outset sociological theories of the state were seen as relevant to the research and it was recognized that theoretical orientations to the state would partly condition the

approach taken. In addition, the emphasis on criminal law raised immediate questions in relation to two further theoretical areas: the state's use of coercive power and the utility of class-instrumental analyses of the state's exercise of criminal law powers in the period. These were general issues relevant to a range of examples of criminal legislation.

In contrast, once statute series were selected for research, the attention then given to particular criminal law statutes implied the relevance of further, more specific, theoretical concerns within the sociology of law. In relation to class, for example, the form and content of statutes under analysis suggested - if not clear and unequivocal purposes for introduction of legislation - at least particular societal groups against which statutes might be enforced. In addition, the content of statutes implied areas of social behaviour or specific activities of concern to federal legislators or to Cabinet members (against which state representatives were willing to pass legislation). The initial task was therefore to identify and discuss areas of concern suggested either by broad theoretical considerations or by practical research focuses and to review these areas for use as theoretical "sensitizing" instruments in the empirical research. Preliminary consideration of the legislative fields under study, their content and principal thrusts, and the societal elements (groups, classes or class fractions) likely to be involved either in producing legislation or as objects of enforcement was a major starting point. At the same time, additional theoretical perspectives were introduced deriving either from debates in the theoretical literature or drawn

from existing research into the sociological history of criminal law.

Section 2.1 The Peace Preservation Act of 1869

Turning to consideration of the purposes and impact of the statutes studied, the series of Peace Preservation Acts initiated by the statute of 1869 had one clearly-defined objective, the suppression of drinking among railway construction workers. (As Chapter Four establishes, the goal was not necessarily achieved.) The provisions of the statute were proclaimed in practice for particular construction projects during certain periods of time, by the federal Cabinet. Use of the statute was therefore highly particularistic (in terms of geographic application) and arbitrary (in terms of method of application by Cabinet fiat). The Peace Preservation Act affected a limited element of the working class but an element probably largely unable to participate in political processes or to protest applications of the Act. Prohibition in restricted areas by Order-in-Council suggests a coercive application of criminal law by the central state: at the very least, in imposing prohibition upon some railway labourers, Tory Cabinets appeared to intervene on behalf of local state agents or law enforcement officials or on behalf of contractors responsible for railway construction. Preliminary consideration therefore supported a view of the state acting either directly in the public interest, to contribute to the construction of a national transportation infrastructure, or in the private interests of railway contractors. The question was whether detailed study would support these interpretations or whether more complex approaches were necessary.

Section 2.2 The Blake Act of 1878

The second statute series, the Blake Act of 1878, was broadly directed at inhabitants of major cities - but was less frequently applied than the Peace Preservation Act. The Blake Act aimed at suppressing the carrying of weapons in certain cities, its purpose being to end deaths from shootings occurring during urban disturbances. The statute originated as a central state response to outbreaks of urban violence in Montreal, to "riots" where local authorities were seen to have failed to maintain "social order". It expired after a year but was re-enacted annually until 1883. The death and disorder occurring during Montreal riots of 1877 and 1878 were thought by Canadian parliamentarians to presage increasing conflict which threatened the Canadian social fabric; the riots were seen as the result of continuing and nearly insoluble sectarian tensions. Our research focus in relation to the Blake Act and its operations is therefore also on state responses to societal conflict but conflict in contexts where those involved were not necessarily powerless or disenfranchised members of the working class; in the Montreal setting, political questions - especially the party allegiances of those factions involved in violence - became paramount for the federal state.

Section 2.3 The Adulteration Legislation of 1874

The third series of statutes, legislation criminalizing the adulteration of food, drink and drugs first enacted in 1874, seemed designed to target retailers and increase the protection of consumers against contaminated and impure foodstuffs. Adulteration legislation empowered the central state to intervene between buyer and seller to

regulate markets, settle responsibility for purity and punish those who adulterated food or other substances under the provisions of criminal law. However in practice, given the directions of subsequent legislative developments, the segments of society potentially affected by adulteration legislation constituted a wide range of groups including consumers, food and drug retailers and wholesalers, importers and manufacturers, as well as farmers and farm suppliers. The underlying societal conflicts in instances surrounding adulteration legislation were non-violent and less visible than in the cases of the Peace Preservation Act and the Blake Act, but they were nonetheless substantial and real. In large part the conflicts were economic-based, pitting market users against market suppliers, but they were nevertheless propelled by political and ideological considerations. What was not clear at the outset was which elements initiated adulteration legislation in 1874. For instance, was legislation introduced at the behest of producers or of consumers or of reformers, or did the state perhaps follow an agenda of its own, exercising autonomy in pursuing general improvements in public health?

Before turning to possible sociological implications of the selection of these specific statute series, it is useful to raise two more general issues, the conceptual issue of the distinctions between legislative development and law application and the general empirical question of social transformation in the period under study.

The detailed research into each field of statutory law and associated underlying processes is concerned with the broad functions of both "lawmaking" (in Weber's sense of the "the establishment of general norms which in the lawyers' thought assume the character of rational rules of law" (1968: 653)), and with subsequent law application. Lawmaking is interpreted as an outcome of Canadian state efforts to resolve perceived conflicts within the social formation, conflicts deriving from a multiplicity of sources, requiring historical investigation. Law application represents a partial aspect of the broader field of law enforcement for it refers to methods, agencies, and agents relied on by the state for implementing criminal law. In this writer's view, both lawmaking and law application were processes shaped in particular instances by structural and conjunctural constraints acting within the wider formation: lawmaking is seen as a complex political process potentially affected by a wide range of factors including, for instance, public discourse around particular conflicts and ideological representations of events, and state political agendas as well as the political activities of specific elements in the social formation. Law application depended on factors ranging from the development of state policies to practical local possibilities for criminal law enforcement; the latter included both policing and judicial resources as well as the ideological perspectives of law enforcement agents.

Given the evident asymmetry between the contexts for legislation and subsequent applications, structural constraints were not expected to be parallel for processes of law making and law application. The

research approach assumed structural and conjunctural constraints varied according to the legislation and the time and place of application and attempted to throw light both on any general features of criminal lawmaking and law application and on the impact of different factors in specific settings.

Section 2.4 Social Transformations

An empirical factor, which underlay not only this claim of varying constraints but the nature of the broader society as well, was the degree of social transformation during the period. The evidence for rapid rates of general societal change between 1867 and 1892 is incontrovertible and the view is substantiated in the thesis that the nineteenth-century Canadian social formation underwent fundamental restructuring during this twenty-five year period. The third chapter of the thesis is devoted to examining a range of transformation processes relevant to the three legislative series under study, providing background for statutory developments and applications. The scale of economic development was substantial: it included a transition from four North American colonial dependencies with a combined population of two and one-half million, with economies based on agriculture and primary industries and with exports of products from these industries largely to the imperial power, to a semi-independent Dominion with a population of five million reaching "from sea to sea", whose economy included a manufacturing base and an agricultural economy, both increasingly less reliant on the colonial metropole. Restructuring processes were not limited to areas of the economy but included political and ideological transformations as

well, ranging from the extension of the franchise to the formation of national political parties and the development of new ideological positions.

Section 2.5 The Social Formation

In relation to theoretical approaches to the Canadian "social formation" (defined in Gramscian terms as the state, civil society and the economic base), the range of societal transformations outlined above suggests the theoretical utility of emphasising an approach distinguishing between economic and non-economic fields as distinct levels - termed economic, political and ideological levels - of the formation. The proposal is that an abstract distinction between different levels may help to clarify the well-springs of legislative change and the sources of conflict surrounding legislative application. Such distinctions, drawing as they do on Althusser's differentiation of the economic, political and ideological regions of a social formation⁴, bear on a number of significant theoretical issues including the question of the primacy of the economic base⁵. A major question for investigation in the research is the degree to which economic conflicts underlay instances of innovative criminal legislation, whether there is historical evidence of economic conflict in relation to the statute series studied, and what alternative or additional sources of conflict can be demonstrated?

Section 2.6 The State

The requirement for conceptualizing the notion of the "state" has already been mentioned; examination of the role played by the newly-

formed federal state in enacting and applying legislation raises the question of the theoretical meaning of the term and what to include as its empirical referents? Responding to the empirical question first, in the historical analysis the concept refers to the set of institutions which formed the structure of nineteenth-century federal government. State departments - the Cabinet, the Senate or House of Commons, and government ministries - are termed "state institutions" with federal officials, ranging from members of the central agencies to enforcement agents in distant frontier areas, considered to act as "state agents" within hierarchies of public service officials.

The preliminary theoretical approach adopted here is the view that the state - in the sense of an ensemble of institutions - was a political actor, not merely a neutral arbiter or, at the other extreme, an automatic agent of class forces in legislative processes. A theoretical view of the state as determined by economic class forces alone or as corresponding strictly to one economic class is, therefore, rejected at the outset; class-theoretical or instrumentalist views of the state are discarded in favour of an emphasis on state autonomy⁶. In addition, state institutions are seen as partially autonomous, able at times to act relatively independently of central state direction or control.

In these theoretical terms too, while writers such as Skocpol have emphasized the importance of conceptualizing and analyzing capitalist states in terms of their relative autonomy "the explanatory centrality of states as potent and autonomous actors" (1985: 7), the preference

here is to investigate an institutional approach to the capitalist state - a more differentiated approach which emphasizes the state as a set of diverse, partially integrated institutions - an approach suggested by Jessop in his guidelines for construction of a marxist account of the state (1982). This view identifies the state in theoretical terms as consisting of a set of institutions (an "institutional ensemble") but as a set whose unity is not assured and which, as institutions, cannot exercise power except through political processes. In Jessop's view state power is "a complex social relation that reflects the changing balance of social forces in a determinate conjuncture". Political forces in society only exist through the state, being "shaped in part through its forms of representations, its internal structure, and its forms of intervention" (1982: 221)⁷. Jessop furnishes a theoretical picture of the state which, while less abstract and less economically-determined than many neo-marxist approaches (being neither class-theoretical nor capital-theoretical), provides closer resonance with historical features of the nineteenth-century Canadian state.

Section 2.7 Consent and Coercion

Earlier discussion of the legislation under study raised the question of criminal law as developed or applied coercively by the Canadian state; the Peace Preservation Act, for instance, seemed to correspond to the notion of coercive criminal legislation used historically to control labourers working along the Pacific Railway line. This question of "social control" remains a contentious area in sociological theory: some neo-marxist analysts adopt a view of

necessary state coercion of the working class during periods of industrialization, the state acting on behalf of or at the behest of ruling class elements (Hall and Scraton, 1981: 470). Gramscian insights into the notion of a coercion/consent duality - a reliance on coercive powers by capitalist states in relation to state production of mass consent to state rule - provide a second and alternative theoretical starting point for the concept of coercion; both approaches are relevant to the research.

In Gramsci's work, consent referred to psychological acceptance by the masses in capitalist society of "the socio-political order" (the distribution of economic, political or other rewards). Where this acceptance was strong, then

...it can counteract the division and disruptive forces
arising from conflicting interests

Femia, 1987 : 37

The state's principle task in capitalist states, according to Gramsci, was to maintain conditions of moral and cultural legitimation. In this way states construct what Gramsci termed "hegemony" or intellectual and moral leadership at the political level for the ruling class or ruling class alliances.

The discussion of consent bears directly on coercion; Gramsci's view was that coercive measures were used by states only as a last resort when consent failed. Poulantzas too emphasised the coercive face of state power: citing Weber's well-known dictum that the capitalist state holds a monopoly of legitimate physical violence, he wrote

State monopolization of legitimate violence therefore remains the determining element of power even when such violence is not exercised in a direct and open manner.

1980 : 82

But the significant point for Poulantzas (which he and Althusser took partly from Gramsci) was that "mechanisms of ideological inculcation" masked the state's monopolization of physical force. Some accounts of Gramsci's work leave the notion of "consent" or "failure of consent" unclarified. Femia suggests that in practice consent in Gramsci's approach could cover mass behaviour ranging from "active commitment" at one extreme to "passive dissatisfaction" (1987: 42) at the other and that Gramsci identified three distinct forms of hegemonic order: these the author terms integral hegemony (as in post-revolutionary France), decadent hegemony (as in contemporary capitalist states) and minimal hegemony (as in Italy throughout the second half of the nineteenth century).

Section 2.8 Hegemony

The term hegemony has been used widely in the literature - some would argue too widely; the purpose of introducing it is to ask how useful a concept of hegemony is in relation to the Canadian state's exercise of criminal law powers in the examples studied. Hegemony is taken to refer to the degree to which other classes see societal situations through the "conceptual blinkers" of the ruling classes (i.e. not as a question of "false consciousness" in Marx's sense). While Gramsci saw that some general agreement prevails in capitalist societies about explanations for the distribution of rewards, general acceptance of the existing social order is not always broadly based; the notion of

hegemony in bourgeois states - in the form of "decadent" hegemony - describes a situation of uncertain bourgeois economic dominance "incapable of commanding unequivocal allegiance from the non-elite" and one in which "the potential for social disintegration is ever-present: conflict lurks just below the surface" (Femia, 1987: 47). The approach has relevance for the research for it implies that active signs of disaffection provided evidence of withdrawal of consent and uncertain hegemonic order. In this view disturbances, including strikes, riots and crowd violence, might be symptoms of such withdrawal, at least for particular elements and particular localities. On the other hand, such disturbances occurred in particular conjunctures; they cannot be assessed relying on terms such as "riot" or "strike" but only on the basis of the situated historical events concerned. And this is the perspective adopted here. In the research, incidents of violence occurring among labourers along lines of railway construction and among sectarian elements in Montreal, which may have appeared superficially similar at times to authorities and may have been responded to similarly as examples of social unrest, are treated in historical context; they are seen as emanating from different elements in different settings, generated by different factors, directed at different objects and having different consequences for the central state. Gramsci's concept of "withdrawal of consent" is, in our view, more than a synonym for manifestations of "social tension" or some other underlying phenomenon for it implies some element of protest either directed at, or at least unsettling to, the central state. What seems to be needed in these instances is not an assumption that all unrest is equivalent to withdrawal of consent

or to political protest but an examination of precisely this issue. It may be possible to consider the degree to which, from the perspective of central state authorities, particular instances of unrest threatened the "social order" and an attempt will be made to discuss this question further in the final chapter.

Section 2.9 Social Control

While the Gramscian literature, on the one hand, suggests an approach through coercion/consent leading to the concept of hegemony, the neo-marxist social control perspective offers an alternative emphasis employing the concept of coercion. Some early social control theorists argued that control and discipline of the work force were requirements of industrialization processes in capitalist states, in this way supporting a relatively crude model in which state mechanisms of control (including criminal law, policing and prisons) functioned as means of repression organized by ruling classes to suppress members of the working class (Quinney, 1974). Later theorists have held more refined versions of this position arguing, for instance, that penal institutions defined a "criminal class" and differentiated it from the working poor, thus creating and maintaining social divisions within the working class itself (Foucault, 1979; Ignatieff 1978)⁸.

Given these theoretical perspectives on social order and coercion, what may be useful in practice is to ask the degree to which research evidence supports the view that strife, conflict, unrest or social tensions characterized the origins of state production of criminal

legislation or state enforcement of the legislation, and what the sources of these tensions were. This may in turn throw light on two major questions: Was the state's development of criminal law a class-instrumental exercise of social control? and Was its application of criminal law coercive? It may also be relevant to ask to what degree conflict - and particularly collective violence - could have been diverted into acceptable channels and in what ways it might have been managed or controlled directly or indirectly by the state, without resort to criminal law? While empirical historical studies in the last two decades have succeeded in demystifying an earlier Whiggish view of Canada as "the peaceable kingdom" (Torrance, 1988), in so doing they have tended to erect a vision of a social formation torn by strife and violence - in some cases, violence characteristically used by workers acting in pursuit of collective working class goals (Palmer, 1983). Questions of the kind posed invite specific and detailed responses as opposed to unilateral assertions about the prevalence and purposes of collective violence and state coercion. The intention here is to investigate episodes of violence prior to or directly associated with particular legislative initiatives in order to establish the incidence and forms of violent behaviour and to relate them to evidence of coercive state responses.

Section 2.10 The Political Level

Turning to the "politicization" of conflict, the research concerns events occurring at what is termed the "political level" of society. The political level refers to the realm of political practice

theoretical ways. In fact the opposite goal is stipulated, for the aim is to explicate the social nature of law by detailing relationships between changing criminal laws and practices, on the one hand, and societal context including economic, political and ideological regions on the other. The purpose is not to assume at the outset any particular significance for political or economic transformations in relation to law. The detailing of contextual settings undertaken in this chapter is seen as a useful, even essential preliminary process; it is an attempt to demarcate starting points for the research and to suggest developmental paths which may subsequently interrelate with legislative developments. The focus on law makes the endeavour perhaps more important than it might be in other historical fields, for those studying the history of law start from widely varied interests and different assumptions about the historical contexts of legal processes.

For these reasons, the chapter provides a summary of background materials¹, including economic and political structures, political institutions and ideological perspectives, considered in terms of their changing features and, where possible, in terms of interrelations with other elements. Sections of the chapter describe material seen as contextually relevant to the legislative developments analysed in the ensuing research chapters; together the sections provide historical contexts for subsequent analyses of specific legislative developments relating to railway workers (Chapter Four), to urban riots (Chapter Five), and to food adulteration (Chapter

labour force; and evidence of labour shortages. Furthermore, the state's lack of centrally-controlled policing or a professional army cast considerable doubt on the ability of the Canadian state to resort to effective coercive policies even if legislators or other state agents wished to do so¹⁰.

Section 2.11 Ideology and Public Communications

The Gramscian notion of hegemony or "the universalization of their interests" by a ruling class (Hall, 1978: 203) implies the establishment and acceptance of a set of ideas or "dominant ideology" which entrenches a view of the distribution of resources and rewards within a social formation as just and desirable, in the interests of ruling class fractions. A further related focus for this research was the content of communications relating to criminal legislation, law and social conflicts as reflections of such underlying ideological positions; discursive communications relating to these fields are seen as forms of ideological practice and they bear in turn on questions relating to the construction of hegemony. In other words language, as the medium of intersubjectivity, is seen to serve a hegemonic function by encapsulating ideologies - or particular ways of seeing and interpreting societal relations - a point emphasized by Gramsci when he wrote

To the extent that ideologies are historically necessary they have a validity which is psychological; they "organize" human masses, and create the terrain on which men move, acquire consciousness of their position, struggle etc.

1971: 377

Discourses, seen as ideological practices, are not expected to be necessarily uniform, consistent one with another, or logical. On the one hand unified discourse on a subject might indicate the prevalence of a dominant ideology but, on the other, oppositions or variations in discursive communications on similar legislative subjects, whether between different class fractions, different societal elements or between public and private discourses of individuals, are of interest for demonstrating divergent ideological practices; such discourses indicate perhaps the emergence of a new consensus or the collapse of an old. In the case of exclusionary groups - for example segmented religious or ethnic elements - some discursive formulations must always be oppositional in character, reflecting underlying ideological stances.

One field where discursive communications fit the image of serving hegemonic functions especially clearly is law itself. Discursive communications relying on legal language drew events described into a circle of legal interpretations and legal concepts from which it could be difficult to redefine or reinterpret them. Behaviour in the period defined as "riot", for instance, carried a strong connotation of resistance to authority justifying official intervention. While "riot" had few equals in the legal lexicon for efficacy in prompting responses from authorities, other legal notions also assisted in constraining the range of possibilities contemplated by legislators in their search for legislative solutions to problems of social conflict. In other words, events were interpreted in the light of the

existence of legal solutions. The phrase "legal orientations" is used to describe legal thinking in relation to particular societal problems and it refers particularly to previous solutions in law adopted in the face of problems considered somewhat parallel by legislators. The term therefore relates to an existing range of legislative options thought to be available by legislators for development or application in particular contexts.

2.12 Class Structure

Questions of Canadian class structure have already been raised both directly, in relation to class fractions subject to specific criminal law statutes, and indirectly, with respect to the Gramscian notion of consent and the degree of acceptance of dominant ideologies. Such ideologies prevailed in relation to an existing structure of class relations; ideologies termed "dominant" ideologies were carried by significant segments of the formation. The question therefore also arises, in relation to class structure, of how the class elements promoting specific legislative change were related to the more general class structure.

Issues raised in this context include whether state interventions in developing or applying criminal law reflected a coincidence of state and "ruling class" interests. Did the state effectively pursue stable relations of political and ideological domination favoured by certain ruling class fractions and, if so, which fractions constituted these ruling elites in relation to criminal law measures? Were state goals and those of major political or economic fractions identical or did

criminal law developments depart at certain points from a position of coincidence between the state and powerful class fractions? These are some of the questions relating to class and state which can be pursued further in the final chapter.

As class is a potentially significant factor in all these respects, further consideration of empirical class analysis is necessary. But when class is treated in relation to empirical referents in Canadian society for this period, the historical complexity of class structures becomes apparent. The Canadian social formation was subject not only to the transformations accompanying industrialization - including urbanization and rural depopulation - but also to continuing large-scale immigration and outmigration, as well as internal migration from East to West. Processes of shifting population structures and shifting modes of production point to the inevitability of changing Canadian class composition affecting all levels of the society. Ruling classes or ruling class fractions, for example, appear unlikely to have been unitary in the period; in our view the unity of dominant class fractions underwent frequent negotiation and renegotiation partly in relation to economic conditions, and partly through political and ideological processes involving political parties and institutions of the state. So to speak, say, of a Montreal mercantile class as the dominant class fraction may conceal, firstly, divisions within this fraction itself and, secondly, continuing attempts by other ruling class fractions to establish stable relations of domination through processes involving the state.

Practical relations between dominant economic elements and political parties in power were nonetheless at times so close as to be - in Naylor's terms - symbiotic (1987: 390); at the most basic level, elements of the Montreal mercantile class needed the Tory government's support for their railway schemes and the government needed the merchants' financial contributions to the Party (Young, 1972). But such political linkages almost certainly applied to specific areas of state activity and it is not clear how widely they were generalized and whether mercantile-state relations were significant across broad areas including criminal legislation. It may be that it was possible for the state to pursue initiatives independently of major political elements, for the adulteration laws of 1874 appear to be an instance when the state developed legislation ostensibly against the short-term interests of manufacturers and retailers.

An initial empirical class analysis is offered in Chapter Three, drawing on established research to identify a simplified analysis of principal classes in late nineteenth-century Canada. It is, however, also important to emphasise that class is not the only source of social cleavage identified for the research, for ethnic and religious cleavages are seen as additional sources of social differentiation and societal conflict. Ethnic and religious groups may form exclusionary groupings in ways similar to class groups - a phenomenon which Parkin has termed "social closure" (1979). Giddens makes a similar theoretical point, that ethnicity, religion and economic differentiation are all potential sources of societal cleavage. In

other words, class is not treated as the sole source of societal divisions in this research; in Jessop's phrase, it is not accorded an "a priori privileging" (1982: 181). Strong religious and ethnic cleavages divided the Canadian social formation throughout the period and it has been suggested that ethnicity and religion were more important sources of cleavage than class in practice - at least at certain times and in certain places¹¹, an argument that is relevant to the situation of sectarian conflict in Montreal in 1877 and 1878.

Section 2.13 Ruling-Class Intellectuals

One more theoretical point relating both to hegemony and to class is Gramsci's linkage of these concepts with his analysis of intellectual leadership. Gramsci laid considerable stress on intellectual leaders and their role in creating societal stability as well as in undertaking social reform. Ideologies in his analysis were spread as material practices by means of hegemonic apparatuses (schools, churches etc.) which provided institutional structures for their dissemination and intellectuals acted as the agents of such dissemination (Mouffe, 1979: 185-191). Intellectuals in Gramsci's view were firmly linked to class (hence the phrase "ruling-class intellectual"); and their ideas served the interests of a particular class or classes. Gramsci's conception of intellectuals included "thinkers" but also "civil servants, political leaders, clerics, managers, technocrats, etc." (Femia, 1987: 131)¹².

The potential relevance of the Gramscian concept of the intellectual for studies of law and the state needs clarification. Early 1960's

sociological research into the origins of legislation relied heavily on the concept of "moral entrepreneurship" - a term developed by Becker (1963) based on Gusfield's analysis (1963) of the Prohibition movement in the United States. More recent neo-marxist writers have reconceptualized Gusfield's and Becker's "crusading reformers" in broader Gramscian terms as "ruling class intellectuals" (Gray, 1981) or "urban gentry" (Stedman Jones, 1971). In these analyses, reformers leading nineteenth-century reform movements in England (usually intellectuals and professional men, sometimes independently wealthy) are seen as essentially "concerned with the administrative and ideological organization of society" - effectively with assisting in the organization of long-run hegemony (Gray, 1981: 237-239). (The reformers' activities were frequently directed at segments of the working class and their goals included improved conditions of work, housing, sanitation etc..) The relevance of this approach for the sociological history of Canadian criminal law lies in the origins of the legislative measures studied and whether any were characterized by activities of "ruling-class intellectuals". If so, what precise roles were played by such agents? What means were employed; did they act to "orchestrate public opinion" (Hall, 1978: 205)? Or did they disseminate new forms of communication, new "discourses of truth" (Foucault, 1980: 97)? Or was their role one of operating at the political level to bring together institutional apparatuses and discursive communications? These are the kinds of questions which can be addressed in relation to moral entrepreneurship and Canadian legislative initiatives.

Lastly, two further points from the early "moral crusade" literature are also relevant to this research: Gusfield suggested that moral reform legislation may have "symbolic" as opposed to "instrumental" effects. Gusfield's analysis of Prohibition showed that enforcement of the temperance legislation was "lax" but citizens were satisfied by a symbolic victory (1963: 122). A later study of the origins of U.S. narcotics legislation (Dickson, 1968) demonstrated both that state institutions could undertake moral crusades and that the apparently "symbolic" legislative effects of such crusades could include the strengthening of the state structures involved. In this case the Commissioners of the U.S. Federal Bureau of Narcotics orchestrated a campaign in favour of a Marihuana Tax, which was ineffective as a means of controlling marihuana use but permitted bureaucratic survival and growth. Both these findings could have counterparts in the experience of Canadian "moral reforms"; it is relevant, for instance, to ask whether adulteration legislation can be seen as an example of a reform which, while largely symbolic in its effects on civil society, strengthened the state agency concerned.

Section Three

THE THEORETICAL GRID

Discussion of a variety of theoretical elements relevant to a consideration of nineteenth-century Canadian criminal lawmaking and criminal law practice has been introduced. These theoretical elements were explored and reconsidered during the research processs in order to develop a number of major themes, themes then utilized in the construction of a theoretical grid - or set of questions - for

application to each area of legislative development in the ensuing research chapters¹³.

The theoretical grid approach took five central concerns, selected on the basis of the discussion in this chapter, for application to historical criminal law practice; the concerns are listed below and then examined in more detail:

- I. The reasons for state intervention in the "problem" field, analysed in relation to the state's economic role and/or the state's role in resolving non-economic societal conflict.
- II. The legislators' orientations to criminal law in relation to this or similar fields of social behaviour.
- III. The discursive communications associated with particular lawmaking processes or with legislative applications.
- IV. The question of general linkages and relations between the production of criminal law, its application and the broader social formation during the period.
- V. An examination of bureaucratic and political processes occurring within and between state agencies in relation to lawmaking and legislative applications.

These five areas supply "key" empirical issues in the writer's view - issues seen as both capable of empirical investigation and directly relevant to theoretical concerns. In the subsequent research, each chapter begins with a brief introduction concerning the legislation studied, the social conflicts involved and their definition as "problem areas" in the period. Turning to the five key issues:

I. The initial thematic issue of social conflict addresses the relationship between the role of the Canadian state in the economy and the state's role in resolving societal conflicts and contradictions through particular criminal legislation. In each instance of statutory innovation, this theme poses the question of whether it was important in economic terms for the state to attempt legislative solutions to certain conflicts. The origin of each statute is discussed asking the following kinds of questions:

- a) When the state developed this criminal law statute, was it in response to general or specific problem situations or conflicts?
- b) Were the situations brought to the attention of legislators the results of class conflicts, economic conflicts or other kinds of conflicts?
- c) Were problems the outcome of economic transformations, growing out of wider economic dislocations? Were they localised or more general?
- d) Did they affect more than one economic class, or several fractions within different classes?
- e) Were they an outgrowth of political or ideological changes or conflicts?
- f) When central state action was taken to criminalize behaviour, what linkages existed between the state's coercive or repressive roles, its educational or political ones and its economic goals?
- g) What did the government, legislators or state institutions attempt to achieve by introducing new criminal legislation?

II. The second thematic issue - prevailling orientations to criminal law
 - deals with the form and content of existing criminal law, its

application in relation to the substantive area under study and the legal orientations of legislators and legal professionals in this regard. The relationship between established criminal law and new statutes is investigated by asking the following questions:

- a) Whether existing laws were perceived as legally or practically inadequate and what (if any) legal factors prompted the introduction of new legislation?
- b) What happened in cases where no existing forms of law fitted the perceived problem situation?
- c) Did legislation involving new forms or new content receive, or appear to require, some kind of justification?
- d) If so, was new law always justified with reference to established law or was innovation valued and, if so, by what societal elements?
- e) In all cases, what methods were used to gain legal acceptance for enlarging the terrain of criminal law to include a newly-problematic form of social conflict?

III. A third area for investigation is the medium of communications around social conflicts, legislative change and application of law.

Communications provide a theme for each research chapter, the intention being to examine discursive communications proffered by agents involved in instances of conflict, lawmaking or law application and to consider the sources and content of communications and their relationship to lawmaking. The questions here include the following:

- a) How can discursive communications be characterized?
- b) What relationships did communications bear to societal structures especially to existing ideological perspectives?

- c) Did particular discourses constitute, in Foucauldian terms, "new regimes" of discourse? Or did their proponents claim to offer out "true discourses" thereby maintaining dominant ideologies?¹⁴
- d) Did lawmaking occur without associated regimes of discourse and, if so, what distinguished criminal legislation enacted in relative silence from that surrounded by public communications?
- e) What agents or actors participated in such different instances and can they be characterized as "ruling-class" or "organic intellectuals"?

In sum, the fundamental question is the role of discursive communications in processes of criminal lawmaking and the significance of discourse in relation to underlying ideological structures and to legislative outcomes.

IV The fourth area for examination is the question of ascertainable linkages between the production of, and especially the application of, criminal legislation and the broader social formation. This thematic issue suggests two areas for analysis:

- A) firstly, any specific linkages effected through legal processes involving particular agents and particular actors; and,
- B) secondly, any broader impact of legislation including its implications for the historical conjuncture or perhaps even for structural features of the formation.

At the first level (A), the effects of legislation are investigated in terms of agents or actors by raising the following kinds of questions:

- a) What elements representing what societal fractions participated in the processes of producing legislation?
- b) In comparison, what agents participated in enforcement processes?
- c) Who was prosecuted in practice under the legislation?
- d) Were certain elements within the social formation selected for enforcement and at whose behest?

At the second and more general level (B), an attempt can be made to examine the implications of legislation for the broader formation. The questions here include:

- a) How did the production or application of this legislation affect the balance of forces in the historical conjuncture?
- b) Did the legislation have any ascertainable impact on ideological, political or economic structures?

V. The fifth and final issue focusses on processes within the state itself. Here two theoretical notions discussed earlier are invoked: that the state could act as an autonomous agent in legislative processes and that legislation could have consequences for state apparatuses without necessarily having marked effects on the broader social formation. In each instance of law making, the state's role is examined for evidence of autonomous legislative activity by state institutions asking the following questions:

- a) Which agencies or organizations constituting the state were involved and how and why did such activity occur?
- b) What were the consequences of legislation for state institutions

including changes in the numbers and responsibilities of state agents and their degree of expertise?

c) Further questions include which agents determined enforcement policy and how were they related to those who carried out enforcement procedures?

d) More generally, how were these agents coordinated as part of state enforcement bureaucracies?

The five "theme" areas of the theoretical grid therefore provided a matrix of related concerns leading to empirical questions used to address the historical material studied in the research. Next, before turning to the exploration of historical examples of lawmaking using this approach, the methods adopted for statute selection are outlined in the section below.

Section Four

SELECTION PROCESSES: WARRANT FOR SELECTION OF STATUTES

It was evident before beginning research that numerous criminal law related statutes were enacted by the federal Parliament between Confederation and criminal law codification in 1892. An initial survey was undertaken of all "criminal-law-related" legislation enacted between 1867 and 1892, including procedural criminal law and statutes relating to the administration of justice as well as substantive criminal law statutes. (See Appendix A.) General statutes covering criminal offences were included too (for example, the Post Office Act, 1867 (31V.,c.10) defined the crime of theft of a letter and the Railway Act, 1868 (31V.,c.68), the crime of manslaughter)¹⁵.

The first major decision made was to include only statutes defining substantive criminal offences in the research¹⁶. This was partly a practical question (the large number of statutes made research in more than one field of law impossible, as can be seen from Appendix A), but it was also in part a theoretical one. The theoretical interests outlined above did not suggest a focus on judicial appointments or salaries or on court processes - all frequent subjects of statutory provisions in the fields of administration of justice and procedural law¹⁷.

A second major decision was guided by the preliminary research assumption that the Canadian state exercised some degree of autonomy from the metropolitan power in law making. Although England was the "mother of the common law", it was suggested that Canada - the self-governing Dominion - was not obliged to adopt each and every change in English criminal statute law¹⁸. If evidence of independent law making in the field of criminal law were to be found, logic suggested it would be in areas where discretion in state responses to peculiarly Canadian issues, problems, or conflicts seemed possible and not in relation to major criminal statutes defining long-established offences¹⁹. This implied that direct legislative "borrowing" from the United Kingdom was clearly the case in many important instances; but, as the focus of the research was the Canadian state's role as intervenor in the social formation by means of new criminal legislation, it was not considered helpful to re-examine areas of law where, as Lareau and Taschereau had stated a hundred years ago, most criminal law statutes were known to be borrowed directly from English legislation (1888, 1888).

In the light of a probable common law "borrowing" phenomenon, the emphasis on state legislative innovation suggested that selection should deliberately exclude criminal offences most likely to fall in the "borrowed" category, in favour of those where the Canadian state and Canadian political structures were best situated to exercise relative autonomy. Statutes with a high surface probability of adoption from English statutes were assumed to include those dealing with old common law felony offences - including homicide, robbery, arson, rape, larceny, forgery and burglary (Baker, 1979: 427-435; Beattie 1986: 191-2). They were taken to include as well offences which had been the focus of lengthy reform efforts in England, for example, those dealt with under the English 1861 Criminal Law Revision Acts²⁰, and legislation relating to sexual offences where British reform movements had agitated during the period for significant changes, for instance in relation to prostitution and to rape (McLaren, 1986; Backhouse, 1983). In effect, research policy excluded substantive criminal legislation covering "mainstream" offences (in Beattie's terms (1986: 5-8)) and restricted analysis to relatively minor criminal offences.

The original listing of criminal law related statutes (Appendix A) was reduced to broad subject areas, excluding major or "mainstream" offences (see Appendix B) and reduced further by exclusion of procedural and administrative law areas. About thirty-five broad subject areas remained, ranging from offences against banking legislation to those against immigration provisions and from cruelty to animals to vagrancy. While many statutes defined serious offences and stipulated major penalties, the concern was with statutes which contemporaries regarded

as "criminal law" rather than on penal sanctions for failure to comply with the requirements of more general legislation. For instance, statutes prescribing conduct in relation to broad areas of economic and social life such as Bank Acts, Post Office Acts and Copyright Acts, Immigration, Insurance and Passenger Safety Acts all contained definitions of offences and provided heavy penalties for some offences but could hardly be argued to have been, either in the public's or lawyers' eyes, primarily "criminal law"²¹. The list of penal statutes was radically reduced, to about a dozen possible areas of minor legislation, and then re-examined, specifically, in terms of two "organizing" theoretical considerations.

The first theoretical criterion was whether the area concerned was one where state activity during early stages of industrialization was probable; that is, did state theory suggest that this area was likely to experience state intervention during capitalist industrialization? Gramscian analyses of the state emphasise conjunctural as well as organic structural features, seeing state intervention as the result of specific historical circumstances. A more functional and determinist "structural" approach is useful here to suggest areas for probable state action. For example, Althusserian structuralists see the state as directly implicated in the reproduction of labour power (1971)²² where "reproduction" comprises areas including housing and feeding of the industrial labour force, training in skills, and education of children. Moreover, historians such as Snyder and Hay (who are evidently not committed to structuralist analyses or capital-logic approaches) agree with the structuralists' view that nineteenth-century state concerns

necessarily included the reproduction of the working class for the labour supply and that "reproduction" included not only "penal law and institutions" but also laws concerning "the production, distribution and circulation of food and housing" (1987: 21). If a body of theoretical and empirical propositions implies that states intervene in relation to labour in economic-related²³ areas during capitalist industrialization, this suggests the utility of beginning to investigate whether criminal legislation was introduced in any such areas in Canada and, if so, for what ostensible purposes, and it directs empirical research to fields of criminal law relevant to such claims. Admittedly in the Canadian context (as argued in the following chapter) the urban industrial work force remained relatively small, but urbanization proceeded steadily during the period and the general labour force suffered from the effects of the repeated downturns of the "Great Depression" from 1873 onwards. There are therefore some grounds to expect new state interventions by means of criminal law in ways affecting the working class.

It would be simplistic to assume that criminal legislation was consistently produced by the Canadian state to "criminalize" social behaviour, as the sole coercive public recourse for maintaining an existing social order. Control and discipline of the productive work force has been an integral theme of much recent historical work in Canada (Pentland, 1959; Oliver, 1988; Palmer, 1983) but, in the conceptual terms discussed earlier in this chapter, "social control" is only one facet of the much larger face of "reproduction of labour" and it suffers from the same "functionalist presuppositions" (Stedman Jones, 1977)²⁴. The Gramscian perspective discussed above implies a subtler

use of criminal legislation, suggesting examination of the state's transformative and innovative roles as well as its controlling or coercive roles. It does not assume that self-evident exploitation and domination typify state applications of criminal law and it rejects any instrumentalist notion that such responses were necessarily determined by one economic class (or directly by prevailing relations of production²⁵).

In light of this argument for the complexity of production of criminal legislation, the research concentrates on the examination of several state initiatives in the field of criminal legislation which affected "workingmen" or labour during the period of early Canadian industrialization, but does not restrict selection of criminal legislation to measures which were self-evidently repressive in relation to the working class. Another, more practical, criterion followed both from this conclusion and directly from a rejection of economic reductionism in historical approaches; it was that statutory fields selected for this analysis should relate to diverse aspects of human social activity. There was no justification for focusing on the criminalization of economic-related activity and ignoring other aspects of human social existence or, for that matter, assuming that criminalization of non-economic related activities necessarily served a direct economic purpose. This moved the project towards broader aspects of criminal legislation, for instance towards legislation directed at areas of recreational or political life, and away from a concentration on areas directly necessary to economic reproduction of labour power or directly related to the capitalist economy.

In this way the decision was made to concentrate research on the investigation of legislation which ab initio appeared related either to the maintenance and reproduction of the work force or to aspects of working class life such as political, recreational or community life. The research could in no sense be described as "labour history", but the focus on criminal legislation was narrowed to the development of legislation affecting labour either directly or indirectly. The stipulation that fields of legislation were to be diverse and directed towards a variety of areas of working class life resulted in the delineation of three fields to cover as broad a range of human social life as possible: working life, consumption, and community life were selected, with one series of statutes for analysis drawn from within each field.

From this perspective the legislation referred to as the "Peace Preservation Act" was chosen as legislation directed towards working life, the statute known as the "Blake Act" as relating to community life (due to its status as a response to concerns over religious and ethnic rivalries), and the Adulteration Acts as relating to consumption²⁶. There was, however, no assumption that the three statutory areas examined fully represented or exhausted the possibilities for this historical analysis; other areas might usefully have been explored. The problem was to reduce the statutory fields under study to a manageable number and several interesting possibilities could not be pursued in each field²⁷.

The three statute series eventually selected were produced over several different decades between 1867 and 1892, by different governments. The Tory Party was in power when the Peace Preservation series of statutes was initiated and the Reform Party for the Blake Act and the initial adulteration legislation; each Government carried on legislating in relation to one series of statutes introduced by the previous government. There appears therefore to be no difficulty in recognising at least two out of these three series of enactments as confirmed state policy, considered sufficiently significant to be improved upon by the Opposition party once in power and supported by both national parties. A further point confirming the "criminal" nature of the legislation is that two of the three series studied, namely the Preservation of Peace statutes and the Adulteration statutes, were represented in the Criminal Code enacted in 1892²⁸, the first series of statutes being fully incorporated into the Code. In addition, the carrying of weapons - the effective thrust of the Blake Act (which was not renewed after 1883) - was also prohibited under the Code (by Part VI, s.105). In a certain sense this absorption of the three fields of substantive criminal law included in the research into the 1892 Code supports the contention that each series of statutes studied, whatever its substantive content, was viewed by contemporaries as *bona fide* "criminal law".

Section Five

RESEARCH SOURCES

The three examples of lesser criminal legislation were selected for their potential theoretical significance in relation to the approach set out in this chapter - in effect their surface content suggested their

general relevance to theoretical concerns. This policy was deliberately contrary to the more practical approach of finding historical sources in conjunction with designating the research field and it was adopted recognizing that there was no guarantee that useful historical material would be available on the origins or applications of the statutes selected. (In practice, some evidence was assembled on a number of statute series relying on state records, newspaper reports and manuscript collections.) Lack of direct evidence caused difficulty only in the case of one statute series, that of adulteration legislation, where most relevant internal unpublished state records of the Department of Inland Revenue had been destroyed in the Ottawa parliamentary fire of 1916 and, in addition, none of the individuals prominently involved had left collections of personal papers. Against these lacunae, however, it was possible to set the existence of detailed Annual Reports published by the adulteration division within Inland Revenue, together with parliamentary debates and public discussion, which were sufficient persuasion to continue.

Section Six

CONCLUSIONS

It may be helpful at this point to summarise the explanation offered in this chapter for the strategy adopted in the construction and development of the research. The project involved applying theoretical questions derived from a broad body of existing theoretical ideas - but in particular the work of Gramsci and Poulantzas - to the historical development and application of three series of criminal law statutes in late nineteenth-century Canada. The theoretical material was selected

for its potential relevance to the production of law in a newly-united country, under a capitalist and quasi-colonial state - the perspective being refined as the project progressed. The empirical focus on three series of lesser substantive criminal law statutes was adopted for the possibility it allowed of an analysis of state processes of innovation and application and of the initiatives of identifiable agents or groups of agents in relation to criminal law.

If the theoretical emphases in this analysis of legislative change and legislative applications can be summarized, they consist of seeing the production of legislation as a state process affected by structural and conjunctural factors at the economic, political and ideological levels of society. Structural determinants are seen as relatively constant factors setting external constraints for particular social actions and conjunctural features as subject to change, change brought about by political forces set in motion by actors, who make subjective appraisals of the conjuncture and its possibilities (in this case for political action, legislation and the application of law). In this view, political actors are able to shape communications to historical conjunctures and to draw on legal orientations as well as more general ideologies to validate legislative proposals but, at the same time, they act within the confines of structural constraints. The purpose of the analytical grid was therefore to focus, and set limits for, a theoretically-guided investigation. This thematic approach is used in the research for an intensive investigation of each selected area of legislation to obtain a clearer understanding of the societal forces at work in the production and use of nineteenth-century legislation.

CHAPTER THREE

THE BACKGROUND: TRANSFORMATIONS IN THE NINETEENTH-CENTURY CANADIAN ECONOMY, AND STATE INTERVENTIONS, POLITICS AND STATE FORM

INTRODUCTION

The sociological focus of the research points to an emphasis on setting law making and law application within a societal perspective, to include consideration of institutions and structures and broad economic, political and social developments of the period. Whether legislative innovations affected navvies working on railroad construction, sectarian elements in major cities or sellers adulterating food, statutory developments and applications depended on broader contexts. These contexts necessarily involved institutions of the state, including Parliament and the public service, as well as enforcement agents and agencies. But they also involved broader sets of factors, for legislative developments occurred in societal settings undergoing specific transformations, occasioned by rapid economic development and by political and social changes. The intention of this chapter is to provide details of the settings concerned, what one writer has termed, "the institutional landscape" (Geertz, 1991), in order to offer a sense of the changing historical moment surrounding both legislative initiatives and applications during the late nineteenth century.

One disclaimer is essential at the outset: in an exploratory study no claim can be made to link societal contexts and legal development in

theoretical ways. In fact the opposite goal is stipulated, for the aim is to explicate the social nature of law by detailing relationships between changing criminal laws and practices, on the one hand, and societal context including economic, political and ideological regions on the other. The purpose is not to assume at the outset any particular significance for political or economic transformations in relation to law. The detailing of contextual settings undertaken in this chapter is seen as a useful, even essential preliminary process; it is an attempt to demarcate starting points for the research and to suggest developmental paths which may subsequently interrelate with legislative developments. The focus on law makes the endeavour perhaps more important than it might be in other historical fields, for those studying the history of law start from widely varied interests and different assumptions about the historical contexts of legal processes.

For these reasons, the chapter provides a summary of background materials¹, including economic and political structures, political institutions and ideological perspectives, considered in terms of their changing features and, where possible, in terms of interrelations with other elements. Sections of the chapter describe material seen as contextually relevant to the legislative developments analysed in the ensuing research chapters; together the sections provide historical contexts for subsequent analyses of specific legislative developments relating to railway workers (Chapter Four), to urban riots (Chapter Five), and to food adulteration (Chapter

Six). The thrust of this chapter evidently requires the unravelling of selected parts of a complex and interrelated whole - the matrix of nineteenth-century societal developments and transformations.

Conceding the complexity of the task, our approach necessarily relies on breaking down developments into specific areas considered likely to relate to the criminal legislation under study and examining those parts which are thought to provide contextual background for processes of criminal law development and application.

The chapter begins with a description of major economic changes in Canada between the early pre-Confederation period of mercantile trade and the relatively industrialized era of the 1890's but it emphasizes too the continuing importance of the agricultural economic base throughout the nineteenth-century (section one). The second section discusses state policy in relation to raising revenue - an important question both with respect to the costs of railway construction (the setting for the Peace Preservation legislation) and in relation to excise duties (adulteration legislation being introduced within Inland Revenue statutes), and then moves to consider state labour policies - relevant for their effects on segments of the labour force affected by the Peace Preservation Act and the Blake Act. The next section discusses the state's role in developing transportation structures and the funding and construction of canals and railways in general and the Canadian Pacific Railway in particular, in preparation for analysis of the Peace Preservation Act. The fourth explores aspects of the broad field of politics and political institutions in nineteenth-century Canada as a preliminary step towards consideration of the political

processes underlying specific legislative initiatives. This section emphasises political parties and religious, ethnic and class cleavages during the period; such cleavages are seen as especially relevant to the sectarian riots preceding the Blake Act of 1878 but they also provide a context for political processes surrounding other instances of legislation and use of laws.

The fifth section moves to a focus on the state and its institutions, considering practices relating specifically to the production or application of legislation. The early histories of two state departments - the Department of Justice and the Department of Inland Revenue - are reviewed briefly, the former department being involved to varying degrees in most criminal legislation and the latter in adulteration legislation. Particular state practices discussed include patronage appointments, ministerial control of departments and the production of new legislation. The section also touches on the significance of Colonial Office interventions for Canadian legislative processes and, on the subject of imperial relations, considers the imperial role in Canada's defence. This was important in relation to military aid to the civil power (a question which was relevant to both the Peace Preservation Act and the Blake Act) and the section provides a brief overview of Canada's military establishment. Finally, in section six, three aspects of prevailing ideologies are reviewed: attitudes to the poor and unemployed, Protestant sentiments towards Catholic and Irish minorities, and developing public health ideologies. Each provides a basis for considering dominant bourgeois sentiments pertinent to criminal legislation under study and each is

seen as directly relevant to at least one of the three series of statutes studied.

The topics for the chapter range over a variety of fields - but all are seen as requirements for approaching the task of setting out basic historical contexts for analysis of criminal law developments.

Section One

THE ECONOMY IN THE YEARS 1867-1892

The post-Confederation Canadian economy defies the application of a simple and definitive label. It underwent a long period of transition between 1867 and 1892, moving from a predominantly agricultural base under a form of colonial mercantilism², to a mixed agricultural, commercial and industrial economy. To summarize only some of the major transformations in the period under study: the four North American colonies before 1867 had a combined population of two and a half million people, with simple capitalist and mercantile economies relying on the export of staple commodities and the import of manufactured goods from the United Kingdom. Capital came principally from the colonial metropole although goods were increasingly imported from the United States. By 1892, after twenty-five years of Confederation, the population had doubled (despite major population losses to the United States), the economy had undergone initial industrialization, trade had shifted away from a concentration on the United Kingdom, the country was settled from coast to coast, a major railway transportation infrastructure had been built and reliance on

United Kingdom capital was lessening in favour of direct United States investment in Canada.

The first two sections of this chapter concentrate on major economic transformations between 1867 and 1892, including the periodization of economic cycles, broad changes occurring in agricultural and industrial sectors of the economy, some of the major constraints on forms of state intervention in the economy and the question of the labour supply for the slowly-industrializing economy.

Section 1.1

The Mercantile Economy

The early nineteenth-century Canadian agricultural economy developed under the influence of colonial mercantile practices. Colonial merchant entrepreneurs imported goods from England to Quebec and Montreal and distributed them along water routes to local centres where local merchants sold to the settler population. In Upper Canada this mercantile system encouraged settlement to follow patterns set by water routes. The settlers in return produced a staple crop for export - principally wheat for the metropole - or worked at occupations producing exportable staples - lumbering, fishing or trapping. As a result, small towns developed to serve large and isolated hinterlands.

Trade was conducted primarily with the United Kingdom, under this mercantile system, until the late 1840's when moves towards free trade in England resulted in the end of imperial preferences for colonial

exports (Careless 1967: 15-17, 109). After the repeal of the English Corn Laws in 1846, trade patterns shifted and trade between the North American Colonies and the United States increased markedly; it quadrupled between 1850 and 1870, growing rapidly during the period of the Civil War from 1861 to 1865 (Masters 1961: 8). The Montreal merchants, who emerged as a wealthy capitalist class in Canada prior to Confederation by building up "a major wholesale forwarding business" earlier in the century, favoured the transportation of goods traded with the United States along the St Lawrence River and its canals in order to maintain Montreal's position as the capital of "the commercial empire of the St Lawrence." Wealthier merchants were able to move into financial areas of the economy, especially banking, through the Bank of Montreal founded in 1817 (Careless, 1978: 14). This same group tried to promote the Bank as a central state bank for Canada (performing similar functions to the Bank of England) and invested heavily in railways from the 1850's onwards. In sum, mercantilism predominated as the early form of Canadian capitalism and provided the economic basis for the the development of the economy in the post-Confederation period.

Section 1:2

Economic Cycles

Fluctuating business cycles were a typical phenomenon of nineteenth-century national economies. The Canadian economy was integrated into a system of international trade and was susceptible to external economic cycles, even before Confederation. Economies experienced "boom" or "bust" cycles which followed each other unpredictably.

Major downturns or "depressions" resulted in the collapse or contraction of businesses, as well as unemployment and serious hardship for the working class - governments being relatively powerless to mitigate the effects of such externally-produced economic cycles. Canada experienced the post-Crimean War recession of 1857 and a manufacturing boom in Central Canada during the American Civil War of 1861-65 (when the flow of goods to Canada from the United States was reduced). In the post-Confederation period, while some evidence has been suggested for depressions in 1869 and 1871, economic historians agree that a major depression occurred between 1873 and 1896. Called the "Great Depression", it was marked by six distinct downswings in investment within those years (Pomfret, 1981: 179-181). The Depression was an international phenomenon causing general economic stagnation, falling prices, reduced international lending and low investment.

In Canada the effects of the Depression were more immediate in certain sectors but over time were felt throughout the economy. Prices of forest products fell first (exports declined by fifty per cent between 1873 and 1879), followed by prices of manufactured goods and then agricultural products (Rowell-Sirois, 1978: 63). However, in the longer run, manufacturers were more adversely affected than agricultural or resource producers as the prices of imported manufactured goods generally fell sharply, increasing competition in the domestic market, while exported products maintained their prices relatively well. The Depression was general in Canada by 1876 and continued to worsen until 1879 (ibid); the volume of total annual

Canadian exports had fallen by twenty per cent at this date. There was a temporary upswing until 1883 (ibid: 68) followed by another downswing. A world-wide improvement in trade in 1888-90 was "offset in Canada by poor crops and bank failures", and the per-capita volume of Canadian exports only reached its 1873 level again in 1897 (ibid: 69).

Section 1.3

The Agricultural Economy

Agriculture was the economic base of the Canadian economy. In the period before 1867 agriculture was characterised by subsistence family farming in Upper Canada, producing a wheat surplus for export in good seasons, and an older, but also cereal-based, farming economy in Lower Canada. Agriculture in 1867 was the single most important economic activity³ in the North American colonies but farming in both Upper and Lower Canada was in practical difficulties. In Quebec rural communities were threatened by land shortages and exhausted soils and land shortages were also experienced in Ontario by the time of Confederation. The result was emigration on a massive scale; farm population was already in decline by the 1840's in Quebec and in Ontario by the 1860's⁴ - one estimate is that almost two million people left Canada between 1871 and 1901 (Rowell-Sirois, [1978]: 69) - and many had left the Quebec farming economy by Confederation; four hundred thousand Quebecois were estimated to be living in the United States by 1873 (Pentland, 1981: 73).

The failure of wheat crops in Quebec (Pentland, 1981: 67-72), and competition from cheaper grain produced in the United States, together with the structural problems relating to land and population outlined above, resulted in increasing moves away from wheat-growing in Ontario and Quebec by the 1860's and 1870's. However, despite agricultural diversification and loss of population, the value of farm production continued to increase, largely due to early forms of mechanization from 1830 onwards, which became widespread by 1850. By the 1870's, agriculture in the two provinces was based on a mixed farming pattern, including dairy farming, rather than solely on cereals.

Technology and farm machinery were welcomed by farmers chronically short of labour - hired labour being scarce and expensive in the North American colonies. Steam engines and threshing machines became standard machinery for crop production and allowed the mixed farming economy to produce more feed for livestock. A dairy industry had begun by Confederation and, as Firestone notes, agricultural productivity increased more rapidly than productivity in manufacturing between 1851 and 1900 (1960: 236). The introduction of fertilizers and increasing recognition among farmers that their use could compensate for soil inadequacies, resulted in their rapid adoption in the 1870's. Increases occurred in crop yields as a result but farmers expressed concerns about the purity of agricultural fertilizers by the early 1880's and federal legislation against adulterating fertilizers (an example of statutory innovation which is discussed in detail in Chapter Six) was introduced during the decade.

In 1879, when the Tory Government introduced a policy of increased tariffs on imported manufactured goods - the National Policy - one result was an increase in farm costs. Tariffs on imported agricultural implements and machinery were raised to twenty-five per cent from 10 per cent and 17.5 per cent. At the same time, to protect farmers, duties were imposed on imported flour (9.5 per cent) and pork for lumber camps (18.7 per cent) (Mackintosh, 1964: 31-2). Farmers remained generally dissatisfied with state tariff policy, considering that it favoured "big business" at their expense and prevented them from relying on cheaper United States farm machinery (Johnson: 1983).

The "opening of the West" became one major theme of Tory government policy under Prime Minister Macdonald after Confederation. The enlargement of Canada to include Manitoba and the Northwest Territories as vast potential agricultural hinterlands was a major political development but did not alter the economic face of agriculture in the short term. Firstly, many of the early Prairie settlers moved on again - often to the United States - so that population in the West grew relatively slowly⁵. Secondly, the rapid development of Prairie wheat production took place in the mid-1880's, after the construction of the Pacific Railway, and the first major wheat boom did not occur until the 1890's (Rowell-Sirois [1978]: 91-92);

Section 1.4

The Industrial Economy

Many writers agree that capitalist industrialization was underway in

Canada by the 1860's but that Canada was not an industrialized state at that period (Pentland, 1959: 457; Firestone, 1960: 218, 230; Pomfret, 1981: 125-6). Laxer has suggested that Canada should be characterized as one of a group of "late-follower" industrializing nations (including Sweden, Japan and Russia) whose initial period of industrialization occurred after industrialization in Britain, the United States and many European countries (1981: Ch1,2)⁶. It is clear that industrialization processes in Canada were both gradual and protracted; there was no sharp or sudden industrial "take-off" of the form outlined for European countries by Rostow and other economic historians (1960). Initial processes of industrialization had begun as early as 1830 in Montreal (Pomfret, 1981: 122) with the first stages being largely completed by the 1890's (and the period of the first wheat boom), for manufacturing by that date provided a similar proportion of the Canadian gross national product (GNP) to its current level. The gross value of manufactured goods in 1900 was six times the value of 1851 output, in real terms, and value added by manufacturing had increased from about 15 per cent of GNP in 1860 to 24 per cent in 1890 (Firestone, 1960: 225). The number of employees in manufacturing industries rose from 84 thousand in 1851 to 309 thousand by 1900 - from 12 per cent to 17 per cent of the labour force; worker productivity doubled in the same period (ibid: 231-2). Initial industrialization in Canada therefore occurred gradually, over at least a sixty-year period, and partly during a major world economic depression between 1873 and 1896. Despite its belated timing, industrialization was a slow process (compared with other "late-follower" states) and one with certain features unique to the Canadian

setting. However, in speaking of "industrialization", it is important to keep in mind that agriculture remained the basis of the economy as it contributed at least 33 per cent as a source of value added throughout the period, compared with 15 to 24 per cent from manufacturing⁷.

The figures cited above are outward measures of fundamental structural shifts in the industrial economy, shifts made possible by varied factors including the introduction of technological innovations (such as new sources of power and new machinery), the spread of knowledge and information, new means of communication (including networks of telegraphs and daily newspapers and, by the 1870's, the telephone), as well as improvements in transportation, and in the forms and supplies of inputs for manufacturing. The resulting transformations in economic structure included entirely new areas of manufacturing, changes in the relative importance of existing areas and the concentration and rationalization of industry, especially through horizontal integration of manufacturing. Although these shifts cannot be spelled out in detail, a brief examination is necessary if we are to recognize any significance such changes held for specific legislative developments under analysis. It is important to consider the potential impact of fundamental industrial restructuring in examination of legislation pertaining to control of labour, to adulteration of foodstuffs and to prevention of deaths during riots.

Firstly, the term "industrialization" requires conceptual refinement. In the Canadian context, as elsewhere, industrialization included a

wide range of economic processes which varied over time. We emphasise a need here to refrain from treating industrialization as a causal "black box" - a conceptual behemoth which in its unspecified generality fails to explain anything in particular. According to several authors, early industrialization in the Canadas, in Montreal and Toronto in the 1830's and 1840's, meant small workshops employing a few workers, producing goods for the local economy including "prepared foodstuffs, lumber and leather products, clothing, and beer and liquor." (Firestone, 1960: 228-230). Even by the 1850's, Palmer reports that the average number of workers in thirteen hundred industrial establishments, ranging from saw mills to distilleries, in South-Central Canada West was 3.3 persons (1983: 11). Kealey refers to 1860-80 as the period when the "modern factory" using machinery instead of hand production developed in Toronto, pointing out that by 1871 seventy per cent of Toronto's industrial work force worked in shops employing more than thirty people (1982: 52, 21). So the period of rapid industrial growth in the 1860's and early 1870's corresponded to an increase in size of productive units, probably the beginning of the bringing together of various trades under one roof to make a given product and the introduction of specialized machinery. Manufacturing industries continued to develop during the 1870's and 1880's despite the Great Depression of 1873 to 1896: rates of growth of manufacturing output were only slightly lower during these decades than during the 1860's (Bertram, 1963: 170-72; Firestone, 1960; 231-2). The introduction of higher tariffs in 1879 under the Tory Government's National Policy, may have been a factor here⁸ but, whatever the scale of effects of the National Policy, rationalization

and concentration processes occurred in manufacturing industry during the Great Depression, as demonstrated by a reduction in the absolute number of manufacturing plants at the same time as an increase in the total number of employees (as shown in the census returns for major cities such as Toronto⁹).

This concentration of manufacturing reflected not only the expansion of industrial enterprise but also its physical relocation and specialization. As Bertram points out, "in the last three decades of the nineteenth century there was a definite tendency towards greater localization of production in larger urban centres." (1963: 183). Regional geographical specialization became more marked as manufacturing became more complex. In the pre-Confederation period, districts had their own flour mills, grist mills and lumber mills; but, by the period between 1870 and 1890, regional specialization in major industries was evident. Quebec had a rapid growth in textile production and Ontario in iron and steel products (ibid), while Ontario's manufacturing output increased generally in relation to other provinces.

The developments underlying Canadian industrialization were closely linked to the nature of the pre-industrial economy, particularly to the basic extractive and productive sectors. Manufacturing activities can be distinguished, in economists' terms, as "primary" manufacturing or "secondary" manufacturing. Primary manufacturing refers to manufacturing "absorbing the outputs of staple industries" and requiring "relatively minor processing", undertaken largely for export

purposes, while secondary manufacturing is "characterized by a higher degree of processing, greater dependence on domestic markets, and reliance on both foreign and domestic inputs." (Bertram, 1963: 168). The linkages between basic productive and extractive industries in Canada and early manufacturing are important. Some economists argue that Canada industrialised only by virtue of growth in its agricultural and "extractive export staple industries". Thus Bertram concluded from his analysis of data derived from the nineteenth-century Census of Manufactures that "the timber trade and lumber industry" were the mainstay of the mid-century economy with "wheat, cheese and meat playing an important but lesser role" (1963: 174). By 1870 to 1890 wood products and food products¹⁰ showed the highest rates of growth in primary manufacturing sectors; primary wood products were valued at 38 per cent of total exports in 1871 (but fell to 17 per cent by 1911). Other primary industries showing significant growth during the period include non-ferrous metals from about 1870, wheat from about 1880 and pulp and paper beginning about 1890. Wheat had been an important industry but a slowly-expanding one until late in the century, while the secondary iron and steel products industry was important to Nova Scotia by 1870¹¹ (Bertram, 1963: 178,182). What these findings suggest is that manufacturing grew largely on a base of growing production of processed staple products. Firestone concludes that, while the manufacturing sector made progress in the second half of the century, the pattern of manufacturing was dissimilar to that in countries industrialised in earlier periods, remaining relatively simple.

...Canadian industry was far from the industrial stage reached in other more advanced countries such as Britain, the United States and Germany. A primary iron and steel industry was lacking, the other metals and the chemical industry were only in the initial stage of development, and advanced manufacturing operations covering final fabrication of both consumer and capital goods were still relatively unimportant.

1960: 239

Nonetheless, as we have seen, sectors of the economy changed fundamentally between 1850 and 1900. As secondary manufacturing developed during the period, its growth appeared rather more even in relation to cyclical variations in the economy. Industries rose and declined but, according to Bertram, "the secondary industries groups generally experienced a much steadier expansion in the period 1870-1957 than the primary groups." (1963: 181). Firestone points to evidence of shifts in the ten leading industries (by value of output) between 1850 and 1900 towards more consumer goods: by 1890, new industries amongst the top ten included "bread, biscuits and confectionary", "refined sugar" and "butter and cheese" as well as previously major industries including "boots and shoes" and "clothing" (1960: 237).

This growth in the large-scale production of consumer goods and especially in foodstuffs is significant for the analysis of adulteration legislation (undertaken in Chapter Six) because it establishes that the manufacture of certain comestibles had been rationalised. The production of foodstuffs such as butter, cheese and bread was no longer purely a domestic or local activity but was carried on outside the home in larger-scale factory settings. Other staples such as sugar were now produced in major industrial operations; by the end of the century, among thirty-nine plants producing over \$1 million output per annum,

four were sugar refineries, three flour mills and eight meat-packing and slaughtering factories (ibid: 239). These outputs were important in economic terms both for supplying the domestic market - especially the increasing urban populations - and as a source of manufactured exports. By 1900, about one-fifth of manufactured goods was exported and some products were significantly geared to the export market; for example, fifty percent of cheese produced in factories was exported (Bertram, 1963: 174).

Industrialization processes therefore included the rationalization of a proportion of production activities relating to foodstuffs; the example of the dairy-industry, one of the industries affected by adulteration legislation, is striking for the rapidity with which manufacturing innovations occurred. Technological advances, beginning in the 1860's, allowed larger-scale methods of cheese-making and effectively transferred production from local farms to local factories, which in turn resulted in large increases in production and in the further development of the dairy industry. In 1873, there were about two hundred cheese factories in Canada and by 1900 there were twenty-three hundred, as well as five hundred and seventy combined cheese and butter factories (Can. Encyc. 1985: 321). This fundamental restructuring of the means of production of some basic foodstuffs was, as discussed later in Chapter Six, a significant factor in relation to attempts to introduce legislative controls over the quality of foodstuffs.

Section Two

STATE INTERVENTIONS IN THE ECONOMY

Section 2.1 State Revenues

Nineteenth-century Canadian government economic policy was essentially interventionist, as opposed to *laissez-faire*. The primary aim of state economic policies was economic expansion and the Tory Government, which governed almost continually from 1867 to 1892, adopted three specific policies to bring about this result:

...settlement of the Northwest, transcontinental transportation through all-Canadian territory and industrialization by protective tariffs.

Rowell-Sirois, 1978: 67

The interest here is in the light that the Government's role in building transportation infrastructures and in encouraging private capitalist involvement in transportation can cast on the development and use of federal criminal legislation against railway construction labourers. Before this question is considered in detail in Chapter Four, it is important to emphasise that state economic intervention in transportation systems implied commitments to large-scale state subventions of capital while, on the other hand, state revenues were constrained by economic factors beyond direct state control.

The Federal Government depended for government income on indirect taxes - principally on customs and revenue duties. This was a continuation of taxation policies used in the colonies before Confederation (and the method relied on until the twentieth century)¹². As a result, government income was closely tied to levels of trade; in times of

reduced trade, and especially during major recessions, the usual means of increasing government income were to raise rates of duty. As the Rowell-Sirois Report stated

...the financial fortunes of the Federal Government were directly and completely linked to the ups and downs of international trade and investment.

1978: 85

Canadian state commitments to the expansionist economic policies introduced by the Tory Government between 1867 and 1873 proved expensive. In the six years after Confederation, the Federal Government became committed to spending one hundred million dollars on capital expenditures¹³, principally for railway development. Such policies were practical between 1867 and 1873, a period when government revenues doubled as imports increased during general economic growth (ibid, 62); but the onset of the Great Depression in 1873 brought a decline in trade and a consequent sharp fall in government revenues. The same phenomenon occurred after the mini-boom of 1879-1883. As the Rowell-Sirois report describes the effects of recession

The moment the inflow of capital ceased imports fell sharply, customs revenue slumped, employment declined, the consumption of liquor, tobacco and other luxuries fell away, excise revenues collapsed and the Dominion suddenly found itself with a heavy deficit. Meanwhile the outlays on development had substantially increased debt charges.....

ibid, 85

As a direct result of Tory expansionist economic policy, Mackenzie's Reform Government of 1873 to 1878 was immediately "forced" by economic circumstances to raise customs duties to 17.5 per cent for items previously at 15 per cent (Mackintosh, 1964).

After the economic downturns of 1873 and 1883, the Government was committed to sustain economic developments agreed on in more prosperous

times and, in particular, railroad construction. In 1871, the Tory Government had undertaken to build a transcontinental railway linking British Columbia to the Eastern Provinces, as a condition of British Columbia's entry to Confederation. With the beginning of the Depression in 1873, the Reform Government of Alexander Mackenzie renegotiated a delayed fulfillment of the commitment, reluctantly agreeing to build the Pacific Railway in the face of falling government revenues. We will consider these and other aspects of the state's economic and political role in relation to public works in more detail shortly (under Section 3.2 "State Entrepreneurship in Railway Construction."

Section 2.2

The Labour Supply: Urbanization and Immigration

The research emphasis on statutes affecting the working class necessarily focuses attention on working class conditions and state-working class relations. The statutes selected concerned in particular two elements of the labour force: firstly the labour force working on construction of transportation infrastructures, which was directly affected by the development and use of the statute concerning Peace or Public Works; and, secondly, the urban working class population whose unsettled and "riotous" behaviour in the 1870's was addressed by the statute for the Prevention of Crime, better known as the "Blake Act". What were the characteristics of these labour forces, what were their economic conditions and what was the central state's approach to questions concerning the labour supply?

While Canada remained a largely rural and agricultural society

throughout the nineteenth century¹⁴, there was a gradual increase in urban populations during the period. Across the country city populations increased slowly to 18 per cent in 1870 and then more sharply to 35 per cent by 1900 (Palmer, 1983: 97). Upper Canada was the least urbanized of the four colonies prior to Confederation but its urban population rose rapidly, from 14 per cent in 1851 to 43 per cent in 1901. This phenomenon of urban growth was partly due to rural depopulation and partly due to immigration. The scale of immigration before mid-century was enormous and remained unparalleled in subsequent periods. One estimate is that 109,000 immigrants arrived in the four colonies in 1847, the worst year of the Irish potato famine¹⁵. But this pattern did not continue and, by the 1870's and 1880's, immigration to Canada had decreased to about 50,000 people per annum¹⁶. In Upper Canada pre-Confederation immigrants were more likely to settle in the towns than in the countryside; the 1851 census showed that 62 per cent of the population of the five major towns was foreign-born. Irish immigrants favoured Upper Canada over Lower Canada and by mid-century the Irish at 37 per cent were the largest ethnic group in Toronto¹⁷, a figure which declined gradually to 9 per cent by 1891 (as the "Canadian-born" group increased to 65 per cent) (Kealey, 1988: 73).

In Lower Canada the French remained a large majority - the ratio of French to English was three to one by the 1840's. However, Montreal had a large working-class Irish population even before the famine migration of the Irish reached its peak in 1847; the city was half French-speaking and half English-speaking at that time. The rural population in Quebec was predominantly French, while the English were more likely to live in

urban centres and to involve themselves in commerce (Johnson, 1983). Montreal remained the largest city in the country with a population which grew from 90,000 in 1861 to 140,000 in 1881 (Palmer, 1983: 64) - although Toronto increased from 45,000 to 85,000 inhabitants over the same period Kealey (1988: 72). While early pre-famine Irish immigration to Montreal provided the city with a large English-speaking working class population, the resultant poverty, poor living conditions and high levels of unemployment discouraged new settlers during the famine migration period from remaining there. The overcrowding of population in Montreal also contributed to the exodus of rural Quebec residents to the United States; Montreal was not a viable destination for unemployed agricultural workers and emigration appeared to be the only alternative to moving west.

In terms of ethnic origins, immigration from Ireland to Canada was enormously significant, especially for Upper Canada. Irish settlement being largely urban and the majority of immigrants poor or destitute, the Irish provided the population for the non-agricultural economy of Upper Canada, i.e. the urban wage labourers (Johnson, 1983). The Irish famine immigrants settling in Upper Canada were predominantly Protestant - the Protestant-Catholic ratio was two to one - and they remained conservative in politics, strongly anti-Catholic and "fiercely loyal to the Crown". Pentland points out that Irish immigration lowered wage rates between 1830 and 1850 (1981: 112) and provided a supply of labour so that, by 1850, the Province of Canada had a mature labour market: "...a body of British artisans, and a swarm of persistent Irish peasants, who provided that sufficient and always available supply..." (1981: 170).

Section 2.3

The Public Works Labourer

The Irish immigrant population provided the basis of an unskilled labour force in Upper Canada, available to the economy as it gradually industrialized from the 1830's onwards. To some extent this was also true in Lower Canada, but here the displaced *Canadien* agricultural worker supplied a reserve of labour as well. We know that an Irish immigrant labour force built the canal system constructed in Upper Canada before Confederation and that the conditions of Irish labourers in the 1840's working on the construction of large-scale public works were so poor that they fitted the label of a "reserve army of labour" in the classical Marxist sense of the phrase¹⁸. Accounts from the period of the 1840's describe the canallers and their families struggling to survive on low wages; conditions were poor whether the work was rebuilding the Welland Canal in Ontario, improving the Lachine Canal or building the Beauharnois Canal (both near Montreal), or working on the construction of the St Lawrence Canals around Brockville. The abundance of labour meant that contractors used labour as a cheap resource, counting on a renewable supply. The same methods used against railway and canal workers in England (Cohn, 1981) were employed by canal entrepreneurs in Canada: poor pay rates, late payment or non-payment of wages, company stores or the "truck system" (selling goods to workers on credit at inflated prices), and lack of provision of shelter, especially for married men¹⁹. When work stopped due to seasonal interruptions, lack of money, or the end of construction, the workers had a choice of migrating and searching for work elsewhere in the colonies, going to the United States, or staying and facing starvation in the absence of other

work (Styran & Taylor 1988; Pentland, 1948; Bleasdale, 1984; Preston 1974). Runnalls, for instance, describes the conditions of the Irish workers on the Welland Canal in 1842: the plight of the laid-off workers and their families in the St Catherines district was so severe that local townspeople raised funds and supplied food to help feed the starving, while local Catholic and Presbyterian clergy petitioned the Governor of the Province for assistance for the workers (1973: 31-32).

In the post-Confederation period, the characteristics of the labour force building the railroads in the east appear to have altered. The work force on railroads constructed in the 1870's, principally the Intercolonial Railway running from the St Lawrence to Halifax, consisted of indigenous or settler elements, as opposed to recent immigrants. The large numbers of labourers required on the Intercolonial - five to ten thousand at times - were largely drawn from rural areas, as a direct reflection of rural migration and depopulation in Ontario and Quebec (Bleasdale, 1984: 21-31; Naylor, 1987: 387). Processes of rural depopulation were exacerbated by the Great Depression beginning in 1873, so that railway entrepreneurs relied on a cheap supply of labour throughout the 1870's, but one drawn less markedly from recent immigrants and more noticeably from indigenous elements²⁰.

The labour forces recruited for construction of the Pacific Railway from 1875 to 1885 were far more immigrant and polyglot in character. The Government began the work of construction but made an agreement in 1880 with the newly-formed Canadian Pacific Railway Company committing the Company to complete the government line across the Prairies to join up

with the line in British Columbia. Shortages of labour were an acute problem in British Columbia where the total population was only 49,000 in 1881, of whom over half were native people. Construction work begun by the Government between Yale and Kamloops relied on thousands of immigrant Chinese labourers by 1880, due to a lack of indigenous labourers in British Columbia willing to work for low pay.

By the mid-1880's, the Globe, writing about the village supply shops for the labourers working on the Lake Superior section of the Pacific Railway, referred to the varied ethnicities represented in the labour force, saying

Here Jack, Pat, Sandy, Pierre, Carl, Zeke and Lo, get their long boots, their soft broad felt hats, their store clothes, and lastly their materials for a grand drunk....

October 20, 1884

The newspaper description captured two essential features of the Pacific Railway work force in the 1880's, its diverse national origins and its consumption of alcohol; heavy drinking had always been characteristic of work forces constructing canals and railroad lines, but the mixture of ethnicities was relatively new²¹.

Section 2.4

Pay Rates

The data available on general wage rates for labourers in this period is limited: Palmer states that the average male wage rate in Ontario in 1884 for a 59-hour week was \$400 per annum - that is, \$1.28 a day - but this figure includes artisans as well as labourers (1983: 116). In

1889, a minimum wage of 15¢ per hour was recommended for Toronto City contracts, in other words, \$1.35 a day for a nine-hour day (or \$420 for six days a week, 52 weeks a year. (Bliss 1972: 150-51)). According to Urquhart and Buckley (1971), hourly rates in Toronto in the same year varied from \$1.24 to \$1.75 per diem for male workers (ranging from cotton mill operatives to plumbers). From the same source, farm labour in Ontario in 1882 earned 80¢ a day without board and 53¢ with board. But costs were also high; by 1914, when unskilled workers in Montreal earned \$550 per annum, rents could be as much as \$10 to \$12 monthly, representing 25% of an unskilled worker's wage (Palmer, 1983: 146).

On the railway, Chinese labourers working on the government sections of the Pacific Railway in British Columbia in 1881-82 were paid between \$1.50 and \$1.75 a day (Berton, 1971: 197) while "ordinary shovel men" along the railroad North of Superior in 1883 received \$1.50 per day (275). However, skilled workers received higher rates, from \$2.00 to \$2.50 per day in British Columbia in 1881 (although this figure was still lower than the rates being paid on the Northern Pacific Railroad in the United States (ibid: 197)). Dangerous work on the Rogers Pass in 1884 produced demands for rates of \$3.50 per day (ibid: 333). Bleasdale has pointed out that by the 1870's railway labourers were more knowledgeable about rates being paid elsewhere and were more likely to strike to try and obtain parity (1984: 161-61, 284, 293); on the other hand contractors also relied on better communication systems, including the telegraph, to forestall strikes and in some cases used railways to bring in strike-breakers to carry on the work or to remove disgruntled strikers.

The supply of unskilled labour for railway construction and the pay rates of labourers remain in need of investigation. But, even relying on limited information, it is clear that pay rates fluctuated depending on the supply of labour, the general economic climate and on contractors' decisions to manipulate rates. Pay rates were so low along the government sections of the line during the depression years of the late 1870's, before the Pacific Railway Company was formed, that the supply of labour was in doubt. A Winnipeg Daily Times reporter visited the line between the Winnipeg River and Roseland in 1879 and reported that labourers were earning \$1.50 a day with \$3.50 a week charged for board. The result was that

...while there is an excess of men looking for employment as foremen, glycerine men, blacksmiths, carpenters etc., for which occupations the wages are from \$2 to \$3 a day, there is everywhere a plentiful scarcity of men who are willing to handle rock and run the wheelbarrows for a rate of pay which is \$2 per week less than has ever been offered to men in this country, until this summer for that kind of work.

November 4, 1879

What is also established is that during the construction of the Pacific Railway, contractors and the CPR consciously manipulated rates to achieve the lowest level for unskilled labour compatible with obtaining an adequate supply. By 1883, when industrial and economic growth had undergone a temporary upswing (Palmer 1983: 96) and the Canadian Pacific Company was running out of funds, the Company was especially eager to ensure a supply of cheap labour. At that time casual labourers on the Lake Superior section of the railway were receiving \$1.50 per day. Deliberate attempts were made by the Company to reduce this to \$1.00 per day, although the attempt failed and rates had to be increased to \$1.75 by the following winter.

This manipulation of wage rates is documented in Company records. Canadian Pacific's General Manager, Cornelius van Horne, conducted both a public and a private correspondence on the subject of the labour supply and wage rates. Publicly, in letters to the Globe and to J. H. Pope, the Minister of Agriculture, he referred to the Company's need for labour and its success in placing hundreds of applicant labourers at wage rates ranging from \$1.50 to \$1.75 per day (C.P.R. Letterbook No.2, July 16, September 10, 1883). Privately, he wrote of the need to keep wages as low as possible, saying "A difference of \$.25 per day on all the work we have before us means one or two million dollars." (Letter to James Ross, Sept.10, 1883).

Van Horne attempted (as part of his attention to every detail of construction) to develop a general and rational wage-rate policy favouring the Company. In June, 1883, he wrote to John Egan, the General Superintendant in Winnipeg, describing the Company's scheme to lower wages:

Referring to yours of the 14th about wages at Port Arthur. Mr Ross (C.P. Construction Manager at Port Arthur) is trying to reach the \$1.00 point without a strike. It may take him some weeks to do it. Can you not protect yourself by graduating prices from Port Arthur westward so that you will strike the \$1.50 before reaching Rat Portage [Kenora]? In view of the abundant supply of labour it does not appear to me that there should be much difficulty.

June 20. C.P.R. Letterbook No.2, 1883.

The tactic used here was evidently to pay lower wage rates in the east where labour was in greater supply and to slowly increase the rates along the line westwards. This kind of manipulation may help explain some of the labour difficulties experienced by the Company along the line.

Section 2.5

The Urban Working Class

The second specific element of the working class population affected by legislation explored in the research was the urban poor, crowded into major cities including Montreal and Toronto and Quebec. By the time of Confederation the effects of agricultural depopulation were becoming evident in the cities and were coupled by the 1870's with the effects of the Great Depression; urban unemployment rose, becoming most severe in the province of Quebec although eventually marked everywhere across the country. One author has described the Quebec situation as follows:

The Province was glutted with cheap labour, as the former employees of the ship-building and timber trade desperately sought new work in the midst of the Great Depression which began in 1873; this situation and the absence of any government control over wages and working conditions made gross exploitation of labour possible for the industrial pioneers.

Wade 1975: 336

As a result, labourers in Quebec City suffered especially harsh unemployment. Quebec had been bypassed by railway construction in the 1860's and it declined as a port; improvements in ship canals along the St Lawrence also encouraged shipping to dock in Montreal. Added to this, as Wade suggests, the effects of the Depression caused the city to stagnate economically after 1873 and the working class population became increasingly dependent on the Provincial Government and the Church for employment; one estimate is that only a thousand manufacturing jobs were available in the city (Wade, 1975: 334).

Although Toronto and Montreal experienced more rapid industrialization than Quebec, the Depression resulted in frequent business failures in Toronto (Kealey, 1982: 48-49) and the Depression appeared to have severe

effects in Montreal. By 1875, Montreal experienced the phenomenon of homeless, destitute men begging for work. Demonstrations by unemployed labourers in Montreal in late 1875 involved an estimated one thousand men; as a result the city hired "hundreds of destitute labourers to work on the roads at sixty cents a day" (Palmer, 1983: 95). Sixty cents a day was well below subsistence level for an urban working class family and at least one Montreal newspaper spoke out in 1877 against such low rates. The *Star* argued against lowering labourers' wages to 80 cents per day, stating that a labouring man and his family could scarcely survive on \$1.00 per day (*Montreal Star*, Aug. 7. Cited Bleasdale, 1984: 161-2). In 1877 demonstrations against unemployment again occurred in Montreal; a gathering of 6,000 working men "of all ethnic origins" took place in August and there were continued protests against unemployment throughout 1878 (Bleasdale, 1984: 259-61).

Section 2.6

State Policies with respect to Immigration and Labour

Not only did state agencies favour immigration but, regardless of the variations in supply and demand for labour, state officials responsible emphasised the opportunities in Canada for immigrants. Mention of working on railway construction was often included in material put out by state officials and, at times, this possibility was treated as though it was a certainty, surpluses of labour in Canada being ignored. For example, a circular signed by the Deputy Minister of the Interior, J.S. Dennis, in 1880 for distribution by the Canadian High Commissioner in the United Kingdom, described free land grants for immigrants settling in Manitoba and the North-West Territories, and added

The prospects of married men who, without means, are placed with their families on Homesteads, are rendered all the better for the fact that for some years the demand for labour in connection with the construction of Railways now progressing, and of others contemplated, will afford them opportunities after the crops are put in, and then again in the autumn after harvest, and through the winter, of supplementing the profit of the farm by earnings which will enable them the sooner to pay off the monies which may have been advanced for their benefit....

N.A. RG 2, Alc Dormants, p.c.#2042, 1880, vol.5121

In 1883 the Minister of Agriculture, dealing with an enquiry from the Lord Lieutenant of Ireland, responded slightly more cautiously and set out specific advice in relation to immigration:-

The persons sent out moreover should belong to the agricultural and simple laboring classes as distinguished from mechanics and artisans and they should be willing to accept employment on farms and public works instead of crowding into the towns where the conditions for such classes are not so favourable particularly in winter time²².

N.A. RG 2, p.c. # 3607, December 13, 1883

The results of these kinds of immigration policies were predictable. Almost 3,800 Irish pauper immigrants arrived in Ontario in the year of 1883. Government policy was to send them across the Province "wherever there was work" but many drifted back to Toronto. According to the Federal Immigration Agent, there were estimated to be 68 Irish immigrant families with an average of eight members newly-settled in Toronto as a result. Forty-two heads of families were working, fourteen were "idle" and

...there are twelve families of which the workers have gone to the works of the Canadian Pacific Railway leaving them destitute.

N.A. RG 2, p.c.# 3607 1(a), December 4, 1883

Only the Irish, out of over twenty-five thousand immigrants arriving in Ontario that year, were complained of and, according to the Toronto Immigration Agent, the difficulties were only in "placing the Irish"; he instanced cases where Irishmen "were offered one dollar and a half per

2

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day in the country on their arrival and refused to take it but rather returned to the city."(ibid).

Arguments around the supply of labour during the decade of railway construction, beginning in the late 1870's, raise a number of unresolved questions. The fact of widespread processes of rural depopulation in Quebec and Ontario suggests an excess of rural labour moving either to the cities or across the country in search of work; this assumption is supported by the findings of historians including Gagan who examined population movement in Peel County (1988) and Michael Katz's work in Hamilton (1975). Both authors reported high frequency of movement of families and life patterns of transiency, which suggest that labour moved repeatedly in search of jobs. However, indigenous labour may not have been as free to move as earlier immigrant labour - held to places of origin by ties of family, friendship and culture. It is probable too that falling wage rates for labouring jobs²³ made it uneconomic for men with families to consider moving elsewhere for low paying jobs unless other family members including wives and children could obtain work, or the family was willing to separate²⁴ and this may have encouraged resettlement in other urban areas. On the other hand, working class family heads without work skills had few options in the urban work force and were most subject to seasonal and cyclical unemployment; the unskilled Irish in Montreal tended to work as labourers or carters in the 1870's (Bradbury, 1979: 77).

As Palmer has pointed out, "basic data (such as the extent of unemployment)" during the Great Depression are missing (1983: 94) and it is therefore difficult to evaluate the conditions of working class life. We can, nonetheless, conjecture that the attraction of urban working class life to new immigrants in particular may have rested partly in the increasing availability of jobs for women and children, as well as the solidarity of living with others sharing the same subsistence conditions, ethnicity and culture. We know that the employment of women and of children increased markedly after about 1860; by 1880 about 15 per cent of the labour force was female (Palmer, 1983: 115). Further support for this contention is offered by evidence that, in Montreal in the 1870's, the number of family workers was directly and strongly related to class position (Bradbury, 1979: 77) as defined by lack of work skills.

This brings us to the end of consideration of state policies with respect to revenues and labour. The section began by describing state dependence on the uncertain economic basis of tariffs and duties on imported goods, a pattern relied on for state revenues during the 1870's and 1880's, a period of expensive, interventionist government activity. The nature of the labour force constructing public works was considered too, as part of an approach to the Peace Preservation Act, and the serious problems of unemployment in the cities of Montreal and Quebec in the 1870's were discussed in preparation for analysis of the Blake Act of 1878. The section ended with a brief discussion of state immigration policies, suggesting a degree of inflexibility in government approaches to immigration which tended to ignore the relative supply of indigenous labour.

Section Three

STATE INTERVENTIONS IN TRANSPORTATION INFRASTRUCTURES

The nature and extent of direct state involvement in construction of transportation infrastructures is a major question in relation to the state's role in both originating and enforcing the Peace Preservation Act. At issue, for instance, is whether governments developed the legislation and applied it in the light of past state experience of public works construction and the problems associated with public works labourers, or whether they responded directly to the political demands of capitalist railway entrepreneurs for legislative controls.

In the period after Confederation, canals and railways constituted the major transportation developments in Canada; both required large amounts of capital funding obtained from public or private sectors or a combination of the two. While the Canadian state played a crucial role in financing the development of a transportation infrastructure and in building railroads and canals itself, state involvement fluctuated unevenly, largely as a result of political considerations and in relation to the state's financial resources as affected by economic cycles. The state's involvement is outlined here, as a background to criminal legislation relating to public works labourers, beginning with the periodization of the state's financial participation in transportation infrastructures. Financial subventions of nineteenth-century canal and railway construction are broken down into five main time periods, from the early boom period of the 1840's to the completion of the Pacific Railway in the 1880's. In the next section

(3.2), the question of the state's practical involvement in construction is addressed.

Section 3.1

The Periodization of Public Works Construction

The first public works construction boom period in Canada began in the 1840's with work on several canals including the Welland Canal at Niagara and the Lachine and Beauharnois Canals near Montreal. The works were completed largely with public capital from the Province of Canada, as costs were too great for them to be undertaken privately, but the Province relied on British bankers, using an imperially guaranteed loan (Careless 1967: 105; Naylor, 1987: 226-8, 254-5). The 1850's were characterised by the first railway boom in Canada which produced such major lines as the St. Lawrence and Atlantic, the Great Western and the Grand Trunk. During this period total railway track in the Province increased from 66 miles to 2,065 miles (Naylor, 1987: 266). Several projects largely financed by private British and American capital, particularly the Grand Trunk Railway, ran into financial difficulties and the Province's public debt went from 18 million dollars in 1850 to 44 million dollars in 1858, largely as a result of assisting insolvent railroads (Careless 1967: 140-5). By 1857 the railway boom had burst - a result of a world trade recession (ibid: 207). External financing had been adversely affected by overseas events including the end of the Crimean War boom and the movement of U.K. railway capital to India (Naylor, 1987: 284).

Construction first halted and then resumed slowly until, by 1867, about 400 more miles of railway track had been laid²⁵ (Studnicki-Gizbert, 1967: 502-3).

Canal building resumed in Canada in the 1870's, after a Royal Commission reported in 1871 recommending the deepening of existing canals and the construction of new ones (Glazebrook, 1964, v.2: 220). Beginning in 1873, improvements were made to both the Lachine and Welland canals using government funds (Bleasdale, 1984: 13)²⁶. Government railway building also restarted, partly as a consequence of improved economic times and partly in order to carry out the commitment made under the British North America Act [1867] to build an Intercolonial Railway "connecting the River St. Lawrence with the City of Halifax in Nova Scotia" (B.N.A.Act s.145 [1867]). The Intercolonial nonetheless took nine years to build, from 1868 to 1876 (Waite, 1971: 54), and it was constructed with state funds (first drawn from British loans backed by an imperial guarantee and later from Canadian taxes) (Stanley, 1967: 54-5). The alternative financing system of private capital was demonstrated in improved economic times soon after Confederation by the construction of the Toronto, Grey and Bruce line between 1868 and 1875; the result here was rapid construction and a cheaply built line.

Waite (1971) has argued persuasively that government and private railways generally took different approaches to railway construction as a direct result of their distinct modes of financing. Private construction meant, in his analysis, a necessity for prompt return on

shareholders' investment and therefore rapid completion with cost-efficient construction. Government funding, on the other hand, deriving from floating bonds drawing interest from current state revenues, meant that construction speed was not necessary - or even desirable when state revenues fell (1971: 54-55). This point is illustrated in relation to the Pacific Railway built during the Great Depression between 1875 and 1885 and constructed in part as a government railway and in part as a private one. Waite contrasts the speed of construction on the privately built sections of the railway with the slowness of construction of the publicly funded sections and states:

The CPR could not afford to be slow; the Government could not afford to be speedy. (1971: 55)

The rate of railway construction in Canada increased rapidly between the periods 1865-1875 and 1875-1885. One estimate is that Canada had 2,240 miles of railway track in 1865, 4,331 miles in 1875 and 10,273 miles in 1885. Capital investment in railways increased from over \$300 million in 1875 to over \$600 million in 1885 and government funding - from all levels of government - represented 38 per cent of this capital. During the years 1875-1885, an average of 25 per cent of total federal expenditure was devoted to railway construction (Studnicki-Gizbert 1967: 504-5).

Section 3.2

State Entrepreneurship in Railway Construction

Given this background to the early development of a railway transportation system in Canada, what can be said about the role of the

Canadian state in railway building? The state was deeply implicated in this form of economic growth but, at the same time, unevenly involved in terms of financing and construction. Financial involvement was an almost continuous state function and included a large number of railways, both public and private. Entrepreneurial activity, on the other hand, was limited to two principal lines between 1867 and 1892, namely the Intercolonial Railway (1868-1876) and the Pacific Railway (1874-1885).

The state's commitment to building both these railways was politically motivated as much as economically-based. The Intercolonial was considered a non-economic transportation venture from its pre-Confederation conception (Naylor, 1987: 294-5, 311-12; Walte 1971: 56). Macdonald undertook the railway largely for political reasons - both to link the Maritimes to Quebec and Ontario and as a major opportunity for political patronage²⁷. Construction of the Pacific Railway was also politically-based. The railway was one of the conditions under which the colony of British Columbia agreed to enter Confederation in 1871 and the Tory Government committed itself to begin constructing an East-West railroad within two years and to complete it within ten (Creighton, 1955: 106). Shortly afterwards this agreement was "clarified" to allow for construction to be undertaken by a private company furnished with government subsidies and land grants. The Reformers came to power in 1873 - after the railway company selected by the Government was revealed to be corruptly channelling election funds to the Tory ministers in the so-called "Pacific Scandal". Mackenzie, who was reluctant to spend state funds on railway construction, eventually succumbed to pressure

from the Imperial Government and agreed in 1875 to a renegotiated contract with British Columbia. The contract set 1890 as a new completion date for the Pacific Railway and committed the Government to certain conditions, including spending two million dollars a year on railway construction in B.C. (Creighton, 1955:197). As Mackenzie had been elected on a platform of government economy and efficiency in economic matters and, in addition, his Reform Party had opposed British Columbia's terms of entry to Confederation in 1871 (Thomson 1960: 105, 135), the commitment to a Pacific Railway was only made by the Reformers under pressure from the Colonial Secretary and the Governor General who were in turn under fire from the premier of British Columbia (Kiewiet and Underhill: 1955).

It has been argued that both Tory and Reform Governments of the post-Confederation period strongly favoured private companies taking responsibility for building railway projects (Waite, 1971:55). Mackenzie's undertaking that his Government would complete the Intercolonial Railway was largely a question of completing unfinished business, in this case an already advanced task begun by the Tories (ibid: 57). The Pacific Railway was a instance again of the Reformers taking over a project undertaken by a Tory government. In 1871, during a period of economic growth, the central state had been intent both on cementing geographical expansion and on precluding annexation by the United States of further West Coast territories²⁸. By 1875, the renegotiated agreement with British Columbia was made grudgingly by a new Reform Government facing falling revenues and politically committed to reductions in public spending. The downturn in the economy from 1873

onwards, marking the start of the "Great Depression", meant that no private companies were interested in building an undertaking on the scale of the Pacific Railway and Mackenzie's Reform government decided to honour the agreement with British Columbia in the least costly way, by building a government line - slowly - and financed out of current revenue.

After the Tories won the election of 1878 and economic times improved briefly between 1879 and 1883, private entrepreneurs became more interested in the Pacific Railway and Macdonald was able to secure the agreement of a group of Canadian capitalists to build the sections of the Pacific Railway along the North Shore of Lake Superior (linking up with Ontario railroads), through Manitoba and large parts of the Northwest Territories, and across Eastern British Columbia. The contract with the Canadian Pacific Railway Company (hereafter "CPR") included the provision of both land and subsidies from the Federal Government and an arrangement for the CPR to take over government-built sections in Western British Columbia, Manitoba and Ontario on their completion and run the entire railroad.

Section 3.3

The State's Entrepreneurial and Construction Roles

We have discussed phases of transportation construction in late nineteenth century Canada in relation to the state's economic and political involvement and we turn next to the question of the state's entrepreneurial and construction roles. How directly were the state and its agents represented in these developments? Was the state involved in

a "hands-on" capacity in building a transportation infrastructure during this period? Did state economic subventions imply direct state control and perhaps criminal legislation too? These are important questions because a state presence on public works could help to explain government readiness to pass and enforce legislation directed against public works labourers soon after Confederation.

In canal construction the state was a direct and active participant. Although the building of sections of canals was tendered out to private contractors, construction was directly government financed and government supervised. Bleasdale describes the Dominion Public Works Department as employing a permanent staff of engineers to supervise canal projects and some staff members as moving from one project to another to ensure continuity in quality of construction work by private contractors (1984: 13-14). State engineers were directly involved in reporting labour unrest on the Lachine Canal in 1877 to the Public Works Department (as discussed in Chapter Four). Supervision of railway construction, however, was a different matter. Railways were both privately and publicly built. State involvement in either form of construction was highly political and political responsibility for railways, as well as questions of patronage and even corruption, superimposed themselves on any direct state supervisory role in construction.

Unlike the continuing role of the Minister of Public Works in relation to canal construction, political responsibility for railway building was handled by different and changing bodies during the period 1867 to

1892. Macdonald appointed a Board of Railway Commissioners - a federal political body with provincial representatives - who favoured patronage and cheap construction²⁹. Mackenzie replaced the Board after 1873 with a General Superintendent of Government Railways within his own Department of Public Works, appointing C.J. Brydges, formerly General Manager of the Grand Trunk Railway (DCB vol.10: 124). Mackenzie ordered Brydges, himself a Tory supporter, to put government lines on a firm financial basis and to hire "good men" not necessarily friends of the Government. But political complications were not reduced by this move. It caused marked anti-government feeling in relation to the Intercolonial Railway (Thomson, 1960: 219). Macdonald fired Brydges in 1879 (DBC vol.10, 124) and appointed Joseph Hickson, another long-time Tory supporter and railway engineer, who later resigned to become General Manager of the Grand Trunk Railway (Creighton, 1955: 373). Machinations of this kind tend to support the views of critics who claim that government political control of railways was in many ways a game of patronage and graft carried on by a highly incestuous group of players. Naylor, for instance, says of the Intercolonial:

As a business proposition the railway line was a complete failure, but as a political tool it was a great success, not least because successive federal ministries could dangle it before the major trunk railway lines as a potential reward for political support. (1987: 380)

It seems reasonable to conclude that government political supervision of railway construction was open to arbitrary intervention throughout the period under study. This suggestion has direct implications for analysis of the Peace Preservation Act: if private railway charters were given according to favouritism and contractors for government lines

were selected, not on merit, but on the basis of Tory government connections, the possibility that proclamations of the Act and appointments of personnel under the Act were dictated to a lesser or greater extent by political considerations, including patronage, graft or bribery, must be kept in mind (again, a question that will be examined in Chapter Four).

In the case of government-built railways, the provision of direct government engineering supervision of public works was a civil service function and more than a nominal activity. According to Bleasdale, supervision of private contractors building government lines was intensive and on "the American model"³⁰ (1984: 43). While direct government involvement in supervision of railway construction occurred on government-contracted sections, the impression is that supervision was principally an engineering function as well as a financial-reporting one; contractors could not claim government funds until work was approved by government engineers. Little evidence was found in the research of state railway engineers' becoming concerned with contractors' labour problems and even less with the working conditions of labour. The only official inquiry, the Royal Commission of 1880 into the Pacific Railway, while recognizing that some contractors assumed all officials were corruptible, concentrated on cost and construction problems; labour was apparently considered the contractor's problem (until or unless the contractor ran into serious problems such as riots or strikes) and there is little evidence of official concern with conditions of labour before 1898 (and the Commission into complaints

respecting the treatment of labourers on the Crow's Nest Pass Railway (61V., Sess. P's (No. 90A))).

Also, against the picture of civil service control of construction, must be set the central state practice of letting tenders for construction of government sections to the lowest bidder and, at times, allowing inexperienced contractors to win bids or to sell out their contracts to other higher bidders³¹. Evidence of prevailing corruption and political favouritism in granting contracts for construction of sections of railways suggests that contractors were not likely to possess scruples with regard to demanding any available means, including prohibition legislation, likely to improve the performances of work forces.

The initial picture relating to patterns of direct state involvement in canal construction and direct state financial support for railway construction is therefore one which suggests the possibility of state introduction and use of criminal law in support of contractors' activities.

Section 3.4

The Pacific Railway

The Pacific Railway - the principal railway to which the Peace Preservation Act was applied in the 1870's and 1880's and the focus for this research into the Act - was built in part as a public line and in part as a private one. Although the politics of building the railway or the details of its construction cannot be dealt with here, the stages of

construction will be outlined briefly as a necessary introduction to an examination of applications of the Peace Preservation Act.

Mackenzie's Government authorized construction of a government Pacific Railway in 1874, designed as a 430 mile line stretching from Winnipeg to Port Arthur on Lake Superior (Waite, 1971: 57). By 1878, when the Tories took office, the railway was not completed. In three years of construction contracts had been let for a total of 225 miles at each end of the line but a gap of 185 miles in between was not yet tendered for (ibid: 59). In 1881 the main line was opened from Selkirk to Rat Portage (now known as Kenora) in one direction and to Portage La Prairie in the other. In 1879 the Tory Government reached an agreement with British Columbia to build a government line from Kamloops to Yale, B.C. and from there to Port Moody on Burrard Inlet (ibid: 109) and this section was completed in 1885. In total the Government built 730 miles of the Pacific Railway³² and it built the line using government methods i.e. slowly, not necessarily using the best qualified contractors, but under the supervision of government engineers³³.

On the private sections of the Pacific Railway built with CPR Company funds, there was - as previously stated - no requirement for government engineering supervision. These sections included the Eastern Section - the 650 miles from Callander near Lake Nipissing in Ontario to Port Arthur - and the section from Winnipeg to Kamloops³⁴. To make a viable east-west national railroad, the Company in the early 1880's bought up three existing eastern railroads connecting Callander to Ottawa and Brockville, Quebec and Montreal, and Toronto (Waite, 1971: 131).

The CPR's methods of construction were highly efficient and rapid compared with government sections of the railroad (Creighton 1955: 357). Work was completed to a high standard³⁵ and costs were correspondingly high; estimates were exceeded even on the relatively flat sections of the Prairies. "A first-class road costs double what a poor road would have cost ..." the CPR President, George Stephen, wrote to Macdonald in 1882 (cited Waite, 1971: 131).

The speed of construction was partly the result of a private company's proclivity to avoid tying up capital unnecessarily, but it was also due to fear of competition from new American lines south of the border (Waite, 1971: 128). The result was a railway line built at the rate of two or three miles a day across the Prairies. As Waite describes the process:

The logistics of the operation were immense: rails from Great Britain and Germany, ties from Lake of the Woods and Rat Portage; the stores branch had checkers strung out between New York and Winnipeg reporting daily on the arrival and movement of CPR supplies. The location engineers were followed by the ploughs and the scrapers, and these by the great construction gangs, working in assembly-line fashion. (1971: 128)

Although the CPR was a private company building a line which (under the 1880 contract with the state) it would eventually own and operate in its entirety and there was no government engineering supervision, the relationships between the state and the Company were close. The interdependence between government and Company demonstrated a high degree of symbiosis. As John Henry Pope³⁶ commented during one of the railway's financial crises:

... the day the Canadian Pacific busts the Conservative party
busts the day after. (cited Berton 1971: 252)

It is no exaggeration either to suggest that the links between the Cabinet and the Pacific Railway Company directors and president were sufficiently strong that they had repercussions for all state-railway relations, whether between representatives at the local level or between Ottawa officials and Company officials at headquarters in Montreal.

What is established is that transportation infrastructures were a field for major state policy commitments during this period, at least under Tory Governments, and that in some instances these commitments betokened a large degree of identity of interests between certain groups of railway entrepreneurs and the state. It would be incorrect to suggest that the state necessarily acted in the interests of railway entrepreneurs or that entrepreneurs constituted a unified class fraction - for instance, studies of railway politics in Montreal after Confederation found "little internal consensus" among entrepreneurs as supporters of one railway scheme battled proponents of rival schemes (Young, 1972). But, in the case of the Pacific Railway, the nexus was closer than in other schemes, for the state and the CPR shared more than a simple identity of interests, buttressed by patronage and possibly corruption. Underlying the construction of the CPR was a vast state financial commitment and an array of state processes instigated by the Tory party which marshalled state resources and mobilized state institutions in pursuit of the goal of a Pacific Railway. Once a scheme such as the Pacific Railway was adopted by the state, and construction begun and then largely given over to private interests, state and Pacific Railway Company concerns necessarily ran closely parallel.

Section Four

POLITICAL PARTIES AND CLASS, RELIGIOUS AND ETHNIC CLEAVAGES

Sociological research into criminal legislation raises repeated questions at the level of political institutions, concerning post-Confederation politics, political processes and political parties. In addition, the structuralist concept of the "political level" of the social formation has already been referred to as, in analytical terms, the level at which a capitalist state attempts to articulate diverse elements to create hegemony, i.e. as the site of hegemonic struggle. In light of the multiple economic, religious and ethnic cleavages dividing the Canadian social formation throughout the period under study, this approach suggests that the creation of hegemony was a continuous and essential undertaking for the new federal state. Two contextual questions are therefore essential background for any consideration of both practical and theoretical issues relating to political institutions (although both can only be addressed briefly here): firstly, the nature and form of Canadian political parties - what was meant by the "Tory party" or the "Reform party" during the period? And, secondly, what classes, groups or elements in the social formation - identified in relation to economic, religious or ethnic cleavages - were represented in political processes? In other words, what voices could be heard at the political level and, in relation to the legislative initiatives under study, how should specific demands for criminal legislation be interpreted?

Section 4.1

Nineteenth-Century Canadian Political Parties

Political parties in pre-democratic eras in western capitalist states consisted essentially of changing groupings of parliamentary representatives - as writers including Brogan (1959) and Duverger (1959) have told us. Parties lacked any "large-scale organization external to Parliament" and linkages between parliamentary groups and permanent external organizations only appeared with the broadening of popular suffrage (Duverger, 1959: xxvii). When we refer to extended Tory government for the period 1867 to 1892 or to the Reform government of 1874 to 1878, these nineteenth-century governments took the form of coalitions of diverse groups and individual representatives. The Tory government between 1867 and 1873 and the Reform government of 1874-78 have been described as "loose coalitions" (Reid, 1932: 199). Although each grouped together certain members of Parliament behind a leader, some sub-groups were loosely attached through their own leaders and would have given encouragement to do so, while other individuals - the so-called "independents" or "ministerialists" - only followed the party leader in hope of the rewards this could bring in the form of patronage for their constituents (ibid: 192-196). In Reid's analysis, the winning party was customarily an alliance of Quebec and Ontario groups which ruled

...with the assistance of the maritime and western groups which remained neutral until the struggle in the central provinces had been resolved and then made as good terms as possible with the victor
 the victor
 ibid: 199

The west in this view voted for the Government because westerners favoured a railway. The 1870's were a period when "all the parliamentary candidates in the west ... were unanimous in their

opposition to the opposition." In practice, there were no opposition candidates in British Columbia until 1891 or Manitoba until 1882 (Reid, 1932: 198).

Until the railway was completed, the west could not afford the luxury of party politics. It had to be ministerialist. And as it always knew which party had been sustained by the east, it could be ministerialist without difficulty³⁷. (ibid: 198)

If the eastern coalition-based parties were formed from Quebec-Ontario alliances, which groupings of legislators constituted these alliances? Post-confederation federal politics were dominated by Macdonald's Tory Party; the Tories included not only Quebec conservatives under Cartier and Ontario conservatives under Macdonald but also Ontario Liberals under McDougall, Howland and Blair, English Quebecers under Galt and "a large group of ministerialists mostly from Eastern Ontario, Quebec and New Brunswick" (Reid, 1932: 192). In the 1870's some Ontario Liberals moved from the Tories to support the Reform Party under Mackenzie. The Quebec Liberal Party or Rouges under Dorion allied with the Ontario Reform Party in 1872 but the alliance remained a loose one, failing to include any maritime or western independents; it gathered ministerialists in 1873 and the Rouges also acquired dissatisfied Quebec conservatives from both the right and left wings of Cartier's party, which allowed them to form the Government after the downfall of the Tories in the Pacific Scandal.

Even by 1878, the parties were still not organized political parties (in Duverger's sense of the term); Reid comments

We must not think of the two parties as being as firmly established in eastern Canada in 1878 as they were by 1896.

The Conservative party in Quebec in 1878 was still made up of a union of groups and it is possible that the only loyalty which a member of one of these groups owed was to his own sectorial leader. 1932: 197

Reid (1932) and Underhill (1935) are in agreement in dating the emergence of national political parties in Canada, in the sense outlined above, as late as the 1890's. Reid also emphasises the significance of early electoral practices (such as open balloting and staggered election dates) and patronage practices in increasing government control over the results of elections, thereby engendering public hostility to political parties and, in the longer run, delaying their formation (1932: 187).

The second question posed here is whom these parliamentary groups represented, whom they spoke for in debates? This is not always easy to answer, in part because of the breadth of political interests contained within each party at any one time. Sources of political support provide one form of evidence but voting support did not exclusively or necessarily determine policy positions.

The Reform party was composed of the Rouges in Quebec - in part the old radical party of Papineau and the Patriotes as reconstituted in 1848 (Wade, 1968: 262) - combined with the Grits in Ontario. The Rouges were the radical French-Catholics opposed to Church/State unity. According to Underhill, the Rouges spoke for francophone elements in Quebec which were opposed to the Catholic Church, to the continuation of the declining seigneurial system and also to Montreal business elements. Their main political support came from "the pioneer agricultural districts south of the St Lawrence" (1935: 377). The Grits in Ontario ("a characteristic expression of frontier agrarian democracy") also

spoke for pioneer farming constituencies in western Ontario but the leadership and "their intellectual centre" belonged to George Brown and the *Globe* in Toronto (ibid: 375). However it was Edward Blake who helped to bring the disparate Grit and Rouge elements together politically.

As for the Tories, in Underhill's analysis they consisted of four groups drawing on distinct electoral support: firstly Cartier's group based in Montreal which spoke for *Canadien* business interests. Cartier is described as representing

...the break with the long previous French-Canadian tradition of opposition to the commercial ambitions and policy of English elements in Montreal.

1935: 371

Cartier was deeply involved in railway politics as solicitor and spokesman for the Grand Trunk Railway Company, and he strongly favoured the Catholic Church. His party, the *Bleus*, had succeeded, after the Rebellion of 1837, in uniting Montreal mercantile interests with "the great mass of the French-Canadian voters who accepted the leadership of the church" (ibid: 371). Next there was the party of Macdonald's Ontario conservatives, largely "Orange loyalists", "important for the voting power which it contributed and for the intensification of anti-American feeling...., but for little else" (ibid: 371, 375). Then there were the moderate reformers from Upper Canada led by John Ross - known also as the "Hincksites" after Francis Hincks - and Ross too had direct connections with the Grand Trunk Railway Company. Lastly there was the Montreal anglophone business element which also had a certain voting

strength from anglophone farmers in the Eastern Townships. Galt led these Eastern Townships farmers into Confederation and allied them with English commercial interests from Montreal (ibid: 374).

Section 4.2

Class and Politics

The elements and fractions referred to as sources of political support represent only a part of the economic class picture of nineteenth-century Canada. Political processes were closed to most of those without property (although Bliss has suggested that "the franchise covered most skilled artisans after 1867" (1972: 194 fn.1). The federal franchise depended on provincial suffrage provisions (and was only "marginally" increased by the federal Electoral Franchise Act of 1885 (48-49V.,c.40)); and provincial criteria were property ones, varying between provinces. Waite suggests that, while the franchise was "virtually a manhood franchise" in Prince Edward Island and British Columbia, elsewhere suffrage was more limited, the property conditions being restrictive.

...in New Brunswick and Manitoba, ownership of real property worth \$100; in Nova Scotia, property worth \$150; in Quebec, property of \$300 in cities, \$200 elsewhere; in Ontario, the property was \$400 in cities, \$300 in towns, \$200 elsewhere, with the addition that farmers' sons could be assessed for their share of a farm and thus be entitled to vote.

1971: 140

So the Montreal mercantile interests, both francophone and anglophone, the agrarian democrats in Quebec and South-western Ontario, the francophone Rouges intellectuals, Macdonald's Orange loyalists and the anglophone Tory farmers in Quebec were some of the most visible class

fractions participating in political processes by virtue of their possession of the franchise. Government policy was essentially oriented to economic expansion and Tory Governments were responsive to Montreal mercantile interests in this respect. But we suggest that governments also necessarily attended to the concerns of other elements, that the loose coalitions were led by politicians who attempted to be responsive to legislators in order to maintain their respective parties in power and that, overall, there were attempts at the state level to sustain a delicate political balance between groups. There is evidence from the research that governments listened to demands from the agricultural sector, that the Reform Party on occasion showed sensitivity to the concerns of social reformers, and that both Tories and Reformers appeared to pursue labour support in this period. It is therefore important to take into account the ways in which particular class fractions obtained access to political institutions and succeeded in inserting themselves as elements in state efforts to carry out policies.

If stable class rule depended on the formation of power blocs in the Gramscian sense, what Gray has termed "the construction of a power bloc of allied dominant classes and fractions" (1977, 238), then Macdonald's Tory party maintained its long-term stability through a delicate orchestration of state initiatives, legislators' priorities and supporters' demands, all balanced within an evaluation of longer-term economic and political possibilities. It is useful to look next at the political role of specific class elements within the class structure.

Section 4.3

Merchants and Industrialists

For mercantile interests, there is little difficulty in identifying the coincidence of personnel and ties of class and business between Montreal entrepreneurs and the Tory party throughout the period. As an obvious example, it was the closeness of this connection at the political level and the direct evidence of corruption linking Montreal railway entrepreneurs and Tory cabinet ministers in the 1872 election campaign, which brought about the downfall of the Government in the Pacific Scandal of 1873.

One thesis concerning the political strength of the mercantile class, advanced by Naylor, is that the pre-Confederation Montreal mercantile element continued to dominate politically in post-Confederation Canada, rising to a position of political hegemony in the post-Confederation era. Furthermore Naylor has argued that this class effectively slowed the rise of industrial capitalism after mid-century, as "merchants" successfully extended their activities into financial and commercial fields (investing in banking and finance, transportation systems, utilities and land speculation) instead of moving into industrial development (1974: 16). The second part of the argument presents some difficulties: if "merchants" are defined as those investors maintaining relatively liquid investments and "industrialists" as those investing in long-term fixed capital investments, the first question is whether two such distinct groups of investors actually existed during the second half of the nineteenth century? Macdonald (1975) has suggested that the historical evidence for any practical distinction between major

"merchants" and "industrialists" is weak. Many industrialists relied on merchant capital in Canada (as elsewhere) and entrepreneurs moved freely from commercial to industrial undertakings and back again (1975: 269-78).

Naylor's argument also seems damaged by his initial recognition that Montreal merchants invested heavily in major economic infrastructures especially railroads, i.e. in fixed as opposed to relatively liquid investments (Macdonald, 1975: 266-69). His point is perhaps that such investments were made from the 1840's onwards, after Montreal merchants had established commercial empires, when the expectation of growth and development in Canada (to rival United States development) made Canadian railroad construction appear a favourable long-term investment, especially in the period immediately after Confederation and during the brief economic recovery of 1879 to 1883. Before Confederation, municipal willingness to "bonus" railways and other capital-intensive developments increased the financial attractiveness of such ventures and later, after economic growth slowed in the 1870's, the Tory Government's reluctant agreement in the 1880's to increase its support for the major transportation development of the Pacific Railway, due to political exigencies, made the Company's investment at least potentially highly remunerative. Relationships between the Tory cabinet and selected mercantile elements continued to be close and reciprocal; Naylor has described the interdependence of the Pacific Railway Company and the Government in the 1880's as characterised by a continuing flow of money, guarantees and concessions from the Government to the Company and says

In return, the railway corporation poured money into the Tory Party coffers and provided its supporters with jobs and

contracts. This [sic] the symbiotic relationship blossomed to such a degree that Conservative governments met every future company lament about financial stringency or pending bankruptcy with further largesse from the public purse. 1987: 390

We will not accept Naylor's thesis to the extent of assuming that a theoretical distinction between forms of capital was reflected in clear and firmly-embedded cleavages between parallel fractions of an entrepreneurial class in Canada. Nor do we suggest that the historical evidence favours a view of a unified entrepreneurial class fraction. But his argument has important implications for our research both directly and indirectly: firstly, in suggesting a hegemonic role for elements of the mercantile class, it instructs us to maintain an awareness of this class and its fractions in legislative research, whether concern is with matters of immediate mercantile class interest, such as railway construction, or with issues which were economically less central, such as rioting in major cities or food adulteration. Secondly, Naylor reminds us that the unity of a supposedly hegemonic class or fraction may be in question and that uniform goals, political access or effectiveness between different ruling class elements should not be assumed.

For industrial class fractions, writers including Laxer (following Naylor's suggestions) have concluded that evidence for the relative weakness of industrial capital can be derived from sources such as Clark's research on the Canadian Manufacturing Association. For instance, Clark wrote

The manufacturing interests were far from dominant in 1858, 1875, or even in 1900. The financial and transportation entrepreneurs had succeeded the fur "barons" as the

representatives of Big Business, and their corporative organizations and great wealth placed them in a commanding position in making their needs felt in government circles."

1938: 30-31

What writers including Laxer (1989: 23) ignore is that Clark was writing largely about Ontario manufacturers (who first formed a manufacturers' association in Toronto in 1858, a Manufacturers' Association of Ontario in the 1870's and renamed it the Canadian Manufacturers' Association in 1887). When the Secretary of the Manufacturers' Association wrote in 1901

Scattered and disorganized, the few men who represented the manufacturing industries of Canada thirty years ago wielded no political power and had no political influence whatsoever.

1938: 5

he was referring to the organizational structure of the Ontario manufacturers. Admittedly industrialists in Ontario were relatively weak in terms of political connections to the Tory party but this did not mean that industrial interests could not be brought to the attention of the Tory cabinet and clearly Montreal industrialists were powerful advocates. What was required, it seems, was sufficient economic "clout" and political connections but also economic goals compatible with the state's (or Macdonald's) broad policies.

Section 4.4

Farmers

The working population of the country was predominantly employed in agriculture as farm-owners or farm labourers. Clement, drawing on Pentland's figures, gives an average of 45 per cent of the labour force engaged in agriculture between 1851 and 1891 (1983: 160). The figure is deceptive in political terms for it does not reveal what proportion of

the farm labour force represented land-owners (and their families) and what proportion hired labour and it does not tell us how many of either category were qualified to vote.

In comparison with mercantile interests, agricultural political ties with government appear to have been more diffuse and less concentrated on the Tory party. Farmers had traditional links with both Reformers and Tories - as Ontario farmers were traditionally Grits and Quebec anglophone farmers in the Eastern Townships were strongly Tory. Some analysts prefer to treat farmers as a third class - the *petite bourgeoisie* - a class between capital and labour in the Canadian economy (Clement:1980)³⁸. There is evidence that farmers in the East were sufficiently numerous relative to other franchised citizens to constitute an effective political fraction and to elect parliamentary representatives. However, farmers as a *petit bourgeois* class did not form their own political party and their divided political allegiances weakened their political impact on non-agricultural issues. At the same time, farmers' spokesmen in Parliament were active on their behalf and farmers' political consciousness appeared to be strongly related to their sectoral economic interests. Their mobilization as political agents essentially depended on the existence of relevant farm issues. For example, in relation to the major questions of Reciprocity, tariffs and the National Policy, Ontario farmers favoured Canadian tariffs in the early 1870's (as an inducement to other nations to lower their own tariffs³⁹ (Creighton 1955:120)); they demanded duties on United States farm produce⁴⁰ but wanted free movement of U.S. farm machinery into Canada. Artificial agricultural fertilizers were imported at first from

the United States and subject to duty under Canadian tariffs and the National Policy after 187 . But, by the late 1880's, farmers' representatives were submitting annual resolutions to Parliament demanding that imported fertilizers be placed on the Free List ⁴¹, a position clearly hostile to Canadian fertilizer manufacturers. This suggests that farmers were politically active during the period on issues of direct economic concern but not necessarily active on broader political and economic issues.

Section 4.5

Workingmen

Turning to working class politics, while data for the "industrial labour force" - as roughly 20 per cent of the total labour force in Ontario and Quebec between 1851 and 1891 - are available (Clement, 1983: 160), there are no estimates of what proportion of the labour force across the country possessed a federal vote. Census sources do not distinguish between rural workers in local manufacturing operations and urban workers. It is, therefore, also difficult to tell what proportion of the labour force constituted an urban industrial work force and how rapidly this increased - an important point with respect to urban riots. Firestone's data for 1881 - the first year for which detailed breakdowns were given in census data - state that 51 per cent of the labour force worked in "agriculture, fishing and trapping, mining and forest operations", 16 per cent in "construction", 14 per cent in secondary manufacturing and 19 per cent in service or tertiary industries (1960: 229). But this kind of breakdown gives little perspective on the economic class basis of the social formation failing,

as it does, to distinguish capital and labour, or urban and rural workers.

It is probably more instructive to turn to sociological attempts at class identification of urban workers for the period, which are based on social stratification by work skills. Katz's analysis in the city of Hamilton distinguished the working population in 1871 as follows: professional, proprietor and business employees, 27 per cent; skilled worker, 50 per cent; semi-skilled, 8 per cent; unskilled, 15 per cent (1982: 213). These categories are not imposed *ex post-facto*; contemporary accounts recognized the importance of skill distinctions - the terms "mechanics" and "artisans" were in common use to refer to skilled workers trained in a craft or the use of particular machinery⁴². But terms such as "skilled" and "unskilled" applied to a wide range of occupations and did not necessarily distinguish capital from labour or industrial labourers from non-industrial. Twenty years later, the industrial labour force in Toronto - by 1891 a major and rapidly growing city - was estimated from census figures to be 24,000 out of a total population of 219,000 (Careless, 1978: 18) or 11 per cent. Judging from this data, it is almost certainly incorrect to speak of the existence of more than a small industrial proletariat in Canadian cities throughout the period of this study. An urban working class existed but its labour was diversified across various sectors of the economy including transportation and commerce. The result was, as Clement has emphasized, that the Canadian working class remained fragmented (1983: 159).

Limited suffrage persisted for much of the period studied. For instance, the population of Hamilton amounted to over 19,000 in 1864 but only about 3,500 or eighteen per cent was eligible to vote⁴³.

Attempts at broadening federal political suffrage were unsuccessful until some improvements in the mid-1880's; Underhill attributes the delay directly to British precedent:

Similarly British example was effective in delaying the arrival of manhood suffrage in Canada till toward the end of the century, though the Americans had adopted it in the early part of the century. 1946: 38

Was the Canadian working class therefore powerless with respect to federal political processes? One suggestion is that, although there were severe limitations on direct participation in political institutions, members of the working class had some political impact through at least three means. Firstly, as stated earlier, a minority of working men was qualified to vote federally; secondly, the political parties - especially the Tory party - were anxious to gain working class political support from actual and potential voters and had begun to listen to working class political views; and, thirdly, some working class members gained access to political channels through alternative means such as membership in organizations based on religion or ethnicity. We will consider the second and third possibilities next.

Section 4.6

Suffrage

At Confederation, an agreement made was for the Dominion to accept provincial suffrage for federal elections. But, whether or not the Tory cabinet favoured votes for workingmen in 1867, Prime Minister Macdonald

wanted Dominion control over federal suffrage. He complained of the provinces' grip over the franchise as early as 1860 (Creighton, 1955: 407) and his party proposed to introduce a federal Franchise Act on several occasions between 1868 and 1885, at least in part with a view to removing provincial control over the issue of who was eligible to vote⁴⁴.

On the question of Macdonald's listening to working class political concerns, the introduction of the Trade Unions Act in 1872 (35V.,c.30) has been cited as a legislative move designed to obtain new working class votes for the Tories and discredit the Grits and Reformers in the eyes of working men (Creighton, 1955: 124, 134-5). Against this view, Ostry has made the point that few working men had the vote in 1872

The percentage of industrial workers in urban centres like Toronto, Hamilton and Montreal who had the vote and the political interest to use it was exceedingly small, and the number of electoral districts where they could have made their limited voting strength felt was probably fewer than half a dozen.

1960: 106

But accepting Ostry's comments does not invalidate the point made; if the Tories anticipated introducing a federal Franchise Act, to include a lowering of the property qualification, then Macdonald's fostering of working class support in the early 1870's may have been part of a longer-term plan for strengthening the Tory party and assisting in the maintenance of its political rule. Political representation of the working class (as a mode of incorporation into the body politic) could have been seen to have distinct advantages over the continued exclusion of labour, a sentiment perhaps demonstrated in Tory involvement in the

formation of labour organizations such as the Toronto Trades Assembly and the Canadian Labour Union (Palmer, 1983: 93).

If, as a Gramscian perspective suggests, the Canadian state's practical goals were to create and maintain conditions at the political level conducive to the expansion of the capitalist economy, then this almost certainly contributed to a preference among legislators and hegemonic class fractions for an approach which channelled societal conflicts through political institutions. If problems including the allocation of scarce resources were being dealt with at the political level, it was preferable from the perspective of Tory governments to have conflicts acted out at the political level (if containment failed at the economic level). What was demonstrated in the limited areas involved in the research was that when open economic conflicts occurred between capital and labour - for instance in the forms of strikes against employers or demonstrations by working class elements - they were still treated by legislators, officials and the press as serious episodes of civil conflict (as discussed in Chapters Four and Five). The reactions at times suggested that, from government and ruling class perspectives, some episodes threatened anarchy and the overthrow of social order. In this context, the extension of the franchise to "qualified" working men may have appealed strongly to some state legislators as a rational means of incorporating "responsible" working class elements into political institutions. (In practice, the working class vote appears to have had some demonstrable effects in a few constituencies as early as the 1870's. The first workingman candidate, H. B. Witton, was elected to Parliament from Hamilton in 1872 (Ostry, 1960: 117).)

In our view, there was a perceptible increase in the power, or at least the visibility, of working class institutions in the late nineteenth century; working class political organizations were more evident and took various forms. In addition to the franchise there were political channels - admittedly only a few - which allowed both direct and indirect working class political participation. They arose primarily through individuals' memberships in economic, religious or ethnic organizations which represented the political concerns of their members; labour organizations, organized churches and ethnic fraternal societies were three significant examples. While labour organizations were probably the most visible development from a state perspective - (for instance the Toronto Trades Council Secretary wrote to Edward Blake in 1877 congratulating him on his legislative initiative in relation to the Breaches of Contract bill (O.A. Blake P.'s Ms 20/9/11/1134)) - the latter two forms are especially material to one of the legislative innovations studied here - namely the Blake Act, analysed in Chapter Five as a state attempt to address overt sectarian rivalry and hostility in major cities. One irony is that certain religious and ethnic organizations which, by the 1870's, were actively involved in pursuing specific political goals for their members through political processes, were also those whose members were involved in urban riots in the same period in Montreal and Toronto.

In relation to federal political parties, the groups of legislators participating in the "loose coalitions" which constituted the parties were divided between themselves by their representation of ethnic and religious factions, as well as by class and urban-rural cleavages.

Given the fundamental divisions within the social formation and the lack of permanent party organizations, it is hardly surprising that political factions looked to particular permanent organizations, based on closed and segmented societal elements, for political support and organization during election periods. Thus the Bleus in Quebec expected and received active political support from Catholic Church members. Macdonald's Tories in Ontario looked to the Protestant Orange Order for candidates, organization and funds. By contrast Orange loyalists in Quebec supported the Rouges - because Catholics traditionally voted Tory in Quebec. Both these segmented organizations, the Orange Order in Ontario and the Catholic Church in Quebec, were characterized by predominantly working class memberships. They are considered here in terms of their political roles for they were, in some respects, major political organizations capable of aligning their largely working class members, of channeling substantial political support to the political level of the social formation, and capable of making demands on political parties in return. The political activity of each organisation is discussed briefly below in order to clarify their roles at the political level of the social formation in the period of the Blake Act and the late 1870's.

Section 4.7

The Orange Order

The Orange Order was well-established in Toronto and across Ontario by the 1870's as "one of the largest ethnic voluntary associations". It had grown markedly since the 1860's (Kealey, 1988: 71)⁴⁵. The Orange organization in Canada, although primarily oriented to maintaining Protestant institutions, also performed a strong benevolent function for

its membership, and coupled this with a militaristic emphasis. Its Toronto members were largely working class (ibid: 81) but the Order provided political support for the Tory party, jobs for rank-and-file members through political patronage, and access to a political power base for a few of its more successful leaders⁴⁶.

For a generation of Conservative politicians, the Order represented a method of breaking the stranglehold of Compact Tories on nominations.

Kealey, 1988:84

The Order's political influence was considerable; the membership was conservative - tracing its political orientation to its roots as an anti-revolutionary party in the Irish Countryside - and it was politically active. For example, the Toronto Order was divided by 1876 into three administrative districts which coincided with Toronto's federal constituencies (Kealey, 1988: 81); the Order had ties with labour organizations but it was also involved in, and a major beneficiary of, municipal and federal political patronage (ibid: 83)⁴⁷ The nexus between provincial politics in Ontario and the Orange Order was also strong: despite the fact that the Liberals, under Oliver Mowat as Premier, were in power provincially, the Ontario Order succeeded in 1873 in becoming a legally incorporated organization in the Province - a development strongly opposed by Catholics across the country.

The political connections between both federal political parties and the Orange Order remained very close throughout the late nineteenth century and Orange lodges in Quebec voted en masse for Reform candidates and lodges in Ontario voted Tory. As a result Orange members of Cabinet were not unusual: for example, Mackenzie Bowell, Tory Minister of Customs from 1878 to 1891, was a member of the Order, formerly Grand

Master of Eastern Ontario (Morgan, 1898: 105). However, when issues of particular interest to the Order arose, there was a problem of political resistance from the Order's traditional enemy - the Catholic Church. The thorny problem of provincial incorporations came up several times; in the case of the New Brunswick Order in 1878, twenty-five thousand Ontario Catholics signed a petition objecting to incorporation of the Order in New Brunswick (Todd, 1880: 356-8). The two federal parties were reluctant to commit themselves for or against the Order in this matter; presumably neither the Tories nor the Reformers wanted to be identified as pro-Catholic or pro-Protestant. Nonetheless, the Tory party was generally considered to favour Protestant causes and to appoint only Protestants to patronage positions in Ontario (O'Hanly, 1872). Protestants far outnumbered Catholics in this Province; one Catholic writer in the early 1870's estimated that out of 180,000 electors in Ontario, 155,000 were Protestant and only 25,000 Catholic (ibid: 61). Despite their numerical superiority, Protestant animosity towards Catholics persisted in Ontario, encouraged by the tenets of the Orange Order symbolized in the cry "Down with popery", and hostility was channelled and expressed through the Order. The Quebec Order was, if anything, even more vituperatively anti-Catholic than the Ontario Order.

The rapid growth of the Order in the 1870's has not been fully explained, as far as we know⁴⁸. The timing of an increase in membership in relation to the onslaught of the Great Depression in 1873 deserves some investigation and, while this is not a task for the present research, we suggest that the coincidence of a surge in membership and

economic hard times for many members of the working class supports a possible causal nexus.

Section 4.8

The Catholic Church in Quebec

Turning to the Catholic Church in Quebec: if the growth of the Orange Order in Ontario in the 1860's and 1870's had positive political implications for the Tory party's electoral fortunes and for Tory success in creating hegemony, the Catholic Church in Quebec was quite as significant in political terms. The movement of the Quebec Church towards political conservatism after mid-century, coupled with its increasingly active involvement in political affairs⁴⁹, led to an effective alliance before Confederation between right-wing churchmen under Bishop Bourget and Montreal Tories under Cartier. The Tories benefitted from the Church's detestation of liberalism in any form and its conflation of Liberal politics in Canada with liberalism and anti-clericalism in Europe; this helped the Tories win the provincial election of 1875 (Wade, 1968: 359). However, Bishop Bourget's ultramontane doctrines⁵⁰ favouring the supremacy of the Church over the State and the new doctrine of papal infallibility were too strong even for Cartier; by 1870 the relationship between the Bishop and right-wing Tories was in difficulties and, by the mid-1880's, Quebec clerical nationalism had split the Tory Bleus into an ultramontane castor wing and a more moderate group under Chapleau (Clippingdale, 1979: 19)

The authoritarian role of the Quebec Church in spiritual and temporal matters has frequently been pointed out. Wade, among others, tells us

of directions for voting in the 1878 provincial elections given from the pulpit "by the observation that Heaven was Bleu and Hell was Rouge" (370), and Clippingdale comments that "the political power of the mostly anti-Liberal Church hierarchy was awesome." (17). The conservative ideological stances taken by the Catholic Church alienated many French Canadian intellectuals and, as early as the 1850's, a small group of young radical Catholics interested in liberal ideas coming from abroad took over the Montreal intellectual institution, *L'Institut Canadien*. The Institut and the Quebec liberals whom it attracted became a thorn in the side of the Church; the Institut received support from old radicals such as Papineau and new Rouges including Dorion and Laflamme, and later Laurier (all of whom eventually became federal Liberal ministers). The banning of the Institut's publications in the famous "Index" in the mid-1850's continued until the 1870's and Catholic ultramontane hostility to the federal Reform Party and to provincial Liberals only diminished with the slow decline of ultramontanism, and after Vatican interventions, in the late 1870's. Early in the 1870's, some of the more moderate Quebec Liberals, such as L.-O. David and Louis Jetté, founded a *Parti National*, as a less anti-clerical form of the Quebec Liberal party but this was equally unacceptable to the Church⁵¹. The Rouges presented a threat to the Church's hegemony in Quebec and their resistance to the Church's orders in the famous Guibord Affair beginning in 1869 provoked riots in Montreal in 1875, as discussed in Chapter Five (where incidents of unrest leading up to the passage of the Blake Act in 1878 are considered).

There has been an attempt to present in this section of the chapter an overview of certain aspects of political parties and of class, religion and ethnicity in late nineteenth-century Canada, both to demonstrate the nature of fundamental cleavages dividing the social formation of the period and to suggest the potential impact of such divisions at the political level via the activities of political parties and the elements and organizations supporting them. In these terms the groundwork has been laid for consideration in the research chapters of how fundamental cleavages were articulated through certain processes to the political level of the social formation and for eventual discussion of some of the reasons why criminal legislation was used as a state response to specific sectarian hostilities.

Section Five

STATE INSTITUTIONS AND PRACTICES IN LATE NINETEENTH-CENTURY CANADA

Selected aspects of Canadian state forms in post-Confederation Canada are considered here as a prelude to examining the state's role in enacting and enforcing particular criminal law statutes. Although treated as a distinct topic, state forms are a further part of the societal context within which legislative enactments and applications took place. In this view, state legislative actions and enforcement policies require analysis in relation to both existing and changing state structures and practices in order, firstly, to explicate the development of specific measures and, secondly, to begin to approach the

general nature of the interventionist state. As it is proposed to investigate how state forms imposed practical limitations on legislative formulations and applications, the nature of early forms of certain state institutions and processes will be discussed as a preparatory step.

The political context within which legislators acted when passing new legislation has been touched on earlier in the chapter - in discussion of the political components of early party development. Certain administrative structures and practices are examined now which "contextualized" political as well as legislative processes or which furnished enforcement structures for criminal law application. A number of principal factors are explored as especially relevant to the legislative instances studied: they include the form of the early public service and the potential significance of patronage and, probably, corruption in the civil service; the control of state-appointed law-enforcement officials working outside Ottawa in posts across the country; the degree of ministerial control over departmental legislative initiatives; the question of administrative processes for formalizing legislative proposals prior to introduction in Parliament; the specific role of the public service in criminal legislation enacted in 1868-69; and, lastly, evidence of intervention from the British Government through the continuing metropole-colonial relationship with Canada both in relation to criminal legislation and in relation to the role of the military in aid to the civil power. The material is reviewed selectively - the activities of only two government departments directly relevant to the legislation under study are considered (and

many others were involved in legislative processes) - but the section is designed to furnish potentially relevant background relating to state structures and practices for the detailed research material considered later.

This account begins with a brief review of the institutional structures of the state including Parliament, the Cabinet, the civil service and the military, it then explores the areas listed above, and finally draws some conclusions about the possible significance of relatively embryonic state institutions for state legislative interventions. Factors such as existing administrative manpower and skills and established state administrative practices, as well as financial resources, are seen as imposing marked limitations on the degree to which interventionist strategies could be developed and implemented by the early Canadian state.

Section 5.1

Institutional State Structures

There were 181 seats in the House of Commons in 1867, distributed among four provinces, Quebec with 65 members, Ontario 82, Nova Scotia 19 and New Brunswick 15 (Johnson, 1983). Parliament met usually twice annually for sessions of two to three months and during these times, and especially out of session, political decision-making was vested mainly in the Cabinet - the executive committee of the government party. The Cabinet included thirteen Ministers in 1867, of whom five were senators (a higher figure than later in the century)⁵². Ministers were usually heads of government departments and thirteen administrative departments

had been established by 1868⁵³. The administrative or civil service staff working in Ottawa in 1868 totalled 245 persons (excluding the Governor-General's staff) - in other words an average of about nineteen persons per government department (Can.C.S.R.C.1868-9). But departmental size varied considerably, from a high of fifty-six in the Post Office Department to a low of six in the Department of the Secretary of State for the Provinces.

Section 5.2

Patronage and the Civil Service

The figures given above represent about ten per cent of the federal government establishment in 1868⁵⁴, as the majority of officials did not work in Ottawa departments, in the so-called "inside service", but across the country as local federal appointees in the "outside service". The existence of over 180 federal posts after Confederation and dozens of local post offices as well as revenue offices, all requiring staffing by the appropriate customs officers, postal clerks or revenue officers, helps to explain the size of the outside service. But perhaps even more germane was the Government's need for patronage positions to bestow on faithful party supporters. The Tory party under Macdonald (from 1854 to 1891) refined the practice of patronage to an art, creating more posts and appointing Tories to them⁵⁵, so that a vast network of often overpaid and underworked federal appointees was established across the country⁵⁶. Tory methods were apparently so successful in contributing to political hegemony that Mackenzie and the Reformers failed to replace them between 1873 and 1878 and Laurier eventually adopted them fully in the 1890's.

Patronage was therefore the main characteristic of civil service appointments⁵⁷ and perhaps the single guiding principle of appointments to the outside service. The Civil Service Act of 1868 attempted some formal alleviation by introducing entrance examinations but these were "largely voluntary, simple pass examinations" (Hodgetts, 1973: 265). While an Act of 1882 stipulated examinations for all candidates seeking promotion, whether inside or outside officers (45V.,c.4,s.36), an amendment of 1889 specifically exempted outside officers from the necessity of taking any examinations, stating

"2. City Postmasters and Post Office Inspectors; Inspectors, Collectors and Preventive Officers in the Customs Department; Inspectors of Weights and Measures; and Deputy Collectors and Preventive Officers in the Inland Revenue Department, may be appointed without examination and without reference to the rules for promotion herein prescribed."

S.C. 52V.,c.12,s.2

Even in relation to the inside service in Ottawa, one can see evidence of favouritism in the period. The repetition of unusual surnames on departmental lists of officials is striking. For instance, the names Himsworth and Brunel each appear more than once within departments - a significant coincidence as one bearer of each name was a senior government official during the period⁵⁸. These examples and others raise the possibility of the practice of direct nepotism by senior officials. But, as departmental Ministers must have been aware of appointments within their own departments, perhaps appointments were favours granted to incumbents of senior positions. In any event, if political factors favoured the first appointment then, under continued Tory rule, they presumably facilitated later appointments of sons, nephews or other relatives to more junior positions⁵⁹.

The pay system for the outside service was not fully rationalised in this period. The inside service was paid by salary but outside service officers could still be paid by fees; in the case of the Department of Inland Revenue in 1877, slightly under forty per cent of the outside service staff was paid in this way (Can. H of C. Sess.P's #4, 1878). The inside service working at headquarters in Ottawa was almost certainly better supervised and probably less prone to bribery and corruption, although not necessarily immune from these hazards.

Section 5.3

Departmental Staff in the Departments of Justice and Inland Revenue

Justice and Inland Revenue, which are the two state departments most frequently mentioned in the research in Chapters 4 to 6, were among the smaller government departments, the former having seven inside staff and the latter ten in 1868, including non-clerical staff. In the case of Justice, the staff in 1868 comprised a deputy-minister, four clerks (two of them new to the government service) and two messengers (Can. CSRC. 1868-9: 62). The brunt of the work of the Department fell on the Deputy Minister and one senior clerk. As Justice was the Prime Minister's department from 1867 to 1873, the additional workload due to Macdonald's dual roles must have been considerable; and there were major additional costs under Macdonald which were later drastically reduced when his Government fell from power. By 1870-71, the staff complement was still only seven but rose by 1876 to thirteen (excluding penitentiary administrators) and then declined first under a Reform Government and then under a new Deputy Minister to nine in 1878. In 1881, the Second Report of the Royal Commission on the Civil Service recommended a

complement of 11 staff for the Department, including one deputy, a chief clerk, 3 first class clerks, 3 second class, one third class and two messengers; in addition an inspector of penitentiaries and two clerks were proposed. According to Waite (1985), the Department had fifteen employees by 1885⁶⁰. On the other hand, while the Department was small, it was considered a premier department of the Government and, with a few exceptions, Ministers appointed were reliable and experienced politicians trained in the law⁶¹. This was not the case at Inland Revenue; a marked difference between the two departments probably lay in the quality of political supervision they received as much as in the abilities of their senior civil servants.

Inland Revenue was not a pre-Confederation department but one created in 1868 by the breaking up of the old Finance Department of the Province of Canada into three departments - Finance, Customs and Inland Revenue - under three different ministers. Inland Revenue took responsibility at that time for the collection of excise duties, internal duties and stamp duties, as well as the administration of laws affecting the cutting of timber, the control and management of weights and measures and the collection of ferry tolls and rents (31 V.,c.49). This separation of Customs and Excise Departments under their own permanent Commissioners was confirmed by the Royal Commission on the Civil Service of 1868, whose confidential report stated:

There is indeed a certain analogy between the Custom and Excise, and in a smaller country the two might very well have constituted one Department; but the Excise has of late reached such large proportions, and with other branches of Inland Revenue is so likely to increase that, unless a very large reduction of Departments should be contemplated they are probably better separated.

Canada, Civil Service. R. C.1868-9:2 (underlining added)

Was Inland Revenue a rapidly-growing department during the years of relative economic prosperity after Confederation and how did its size compare with other government departments? Inland Revenue staff in Ottawa in 1868 amounted to ten persons (including the Commissioner and one messenger) and ranked tenth out of thirteen departments in terms of numbers. But by the late 1880's the Department had acquired a range of additional responsibilities including inspection of staple commodities, inspection of gas, and prevention of adulteration of food and in 1881 the Department ranked tenth out of sixteen departments. By 1886 the Headquarters staff had expanded to thirty-nine, of whom eleven employees were working exclusively on adulteration, in other words, a quadrupling of the original complement. Customs and Excise had also been one of the departments distinguished even before Confederation by the large number of "outside" Officers employed. The outside Officers of Inland Revenue increased in number after 1867 and reached the astounding total of almost 600 officers across the country as early as 1877 (Sess. P.'s 1877, Inland Revenue Report No. 4: xxv). So by the mid-1870's, when the Great Depression had begun markedly to decrease government revenues, the Department consisted of a relatively small, but rapidly-growing, central staff at headquarters in Ottawa and a huge array of petty officials spread out across the country.

One advantage of maintaining stable ministerial office-holders in the Inland Revenue, Customs and Post Office Departments was that a government could then administer large numbers of patronage positions systematically. Patronage was, in effect, the "political currency" of the party in power, used to maintain the party's support across the

country (Stewart 1986); for instance, in the case of the Customs Department, Waite comments in relation to Mackenzie Bowell, the Tory Minister of Customs from 1878 to 1891, that "his principal preoccupation was patronage" (1971: 96). The Reform leader, Alexander Mackenzie, although in principle opposed to patronage, kept one Minister of Customs in office throughout his five years in power⁶² (this despite frequent shifts in other Cabinet portfolios). Did this pattern of ministerial consistency apply for the Department of Inland Revenue in view of its large number of patronage positions? The situation at Inland Revenue appears to have been distinctly unstable. The position of Minister changed hands frequently, as often as annually between 1873 and 1878, as a series of dissatisfied or unsatisfactory Reform politicians took over the Department. But if the political stability conducive to systematic patronage failed to develop, the principal administrative appointees remained in office for lengthy terms. Alfred Brunel, who had been Deputy Commissioner at Confederation, stayed on as Commissioner from 1871 to 1882 and was followed by Edward Miall, formerly his Assistant-Commissioner, who took over for the years 1883 to 1901. Until 1882, when Costigan became Minister of Inland Revenue and held the post for ten years, a pattern of frequent ministerial shifts set against civil service stability characterized the Department and it suggests that the situation from 1867 to 1882 may have allowed civil servants effectively to control the Department's agenda. At the very least it permitted the development of civil service initiatives and priorities without strong or permanent ministerial supervision. In the absence of any relevant departmental records⁶³, a theory of ministerial neglect could be dismissed as a working assumption. But problems with Ministers of

Inland Revenue are substantiated for Mackenzie's five years of Reform government in Burke's detailed account of the low calibre of many of the Cabinet members holding this post (1960)⁶⁴.

The overall administrative structure of the state was, therefore, a small cadre of officials in Ottawa - only slightly greater in number than the total of Members of Parliament - and a vast body of federal political appointees, loosely coordinated from the Ottawa centre of government.

Section 5.4

The control of state-appointed officials outside Ottawa.

The essentially non-meritorious nature of Inland Revenue appointments has been touched on and emphasis placed on the prevalence of political patronage in the outside service and also to some degree in the inside service. The question addressed here concerns the nature of the outside service and how officials in the two departments under study - Inland Revenue and Justice - supervised and coordinated external departmental appointees.

The Department of Justice had no "outside" service *per se*. When local legal representation was required, the Minister appointed local lawyers as agents, taking political affiliation into account (Stewart, 1986: 77-81). However, the Department was responsible for the federal judiciary across the country. The Department's inside public servants were involved in practical issues relating to judicial and quasi-judicial appointments (such as salaries and travelling allowances) and in procedures for dealing with complaints about appointees. The formal

complaints process, for accusations such as incompetence, corruption or senility, is recorded in departmental files for several cases involving judges or local magistrates (in federally-administered territory).

Formalised written complaints alleging serious breach of duty were seen by the Minister and an account of the accusations sent to the appointee. The latter was expected to send a rebuttal; failure to do so was significant and taken as a sign of admission of dereliction.

Commissions of enquiry were set up in some instances. These processes were generally slow and dismissals or reinstatements after suspension could take many months from the time of first complaint.

Apart from threats of dismissal, there were few direct public service supervisory mechanisms for lesser federal judicial appointees. This is important as a number of these appointments were made under two of the series of federal statutes studied - the Peace Preservation Act and the Blake Act. Public servants could make minor criticisms, requesting overdue returns of magistrates' returns of cases heard, refusing requests of appointees in the field for travel expenses or for advances of salary or supplies of equipment. The impression received, however, is that appointees received little in the way of written instructions, direction or supervision, even when they were working in remote fields as magistrates or Commissioners of the Peace, and that they relied on local practice, their own prior professional experience and their assessment of local conditions rather than on departmental leadership and coordination.

Despite the absence of supervision, the evidence discussed later

(Chapter Four) suggests that most officials appointed under the Peace Preservation Act appear to have taken their duties seriously. Commissioners of the Peace and Magistrates appointed to remote sections of railway construction represented a functioning link in the system established by the state; it would be excessive to refer to them as "coordinated" but they carried out state legislative policy with varying degrees of zeal. Among the more zealous appointees were senior Mounted Police officers; it was common practice to appoint such officers as Magistrates and Commissioners of the Peace along the Pacific Railway in the interior of British Columbia in the 1880's.

The coordination of Inland Revenue outside staff was a more organized (although not necessarily efficient) practice. The scale of Customs and Inland Revenue activities and their fiscal significance for government meant that duties were prescribed and to some degree supervised. Official Inland Revenue departmental records, in the form of annual reports to Parliament (see Sessional Papers for each year), suggest a systematized, hierarchical organization with appointees at a number of different levels and some accountability within the Department. But given the number of appointees and the range of job titles, from "Excise Officers" to "Cullers" of timber, and considering the scale and dispersion of appointments, local corruption almost certainly flourished and the system was economically inefficient. The fact that almost half the officials were paid by fees and occasional hints of venality and corruption found in official records raise major questions about Inland Revenue officers' approaches to the enforcement of excise statutes. Royal Commissions on the Civil Service in 1868-9 and in 1881 made

statements critical of the outside service of Inland Revenue (although both concentrated on the inside service) and so did a Committee of the House of Commons in 1877. The comments suggest that revenues remained unaccounted for and found their way into the pockets of senior collectors (1881, 11-12)⁶⁵.

Section 5.5

The Public Service Role in the Development of Legislative Proposals

One major question is what administrative channels existed in Ottawa during this period for processing legislative proposals and how were such mechanisms utilized in the development of the legislation under study in the research? Admittedly the present concern is with minor and innovatory criminal law statutes but the processes involved need evaluation by comparison with any established procedures or prevailing practices for developing legislation.

The government department most likely to be involved in the production of legislation was the Department of Justice. The Department had been established under an Act of 1868 [31V.,c.39]. Although the statute did not specify a departmental role in preparing legislation, it did outline the Minister of Justice's duties to include advising "the Crown upon all matters of law referred to him by the Crown" as well as any "other duties" assigned to him [31V.,c.39,s.3]. But there is little evidence that all legislative proposals were routinely channelled through the Department in the post-Confederation period; on the contrary, one source suggests that Justice had no necessary role even in drafting legislation

until the 1940's (Driedger, 1951: 7; 1953: 46). The Civil Service Commission of 1868-9 made no mention of the Department using staff, or asking for extra staff, to assist with legislative drafting. But, by 1880, a later Commission mentioned an addition to the departmental staff of seven and stated that, while the "main business" of the Department was giving legal opinions,

It has also to examine the legislation of the Provinces, and the bills brought in by private members, and to draft or revise Government bills.

1880: 21

Perhaps these tasks were ones which department officials were willing to assume and not ones already conducted by Justice; for their scope would surely have presented difficulties - given the small size of the Department, the few qualified lawyers employed and its responsibilities for all government legal work.

In relation to the statutes studied in this research, Department of Justice officials were directly involved in the original process of writing the Peace Preservation Act (as described in Section 5.6 below) as well as in developing an amendment to the Act in 1885. In the latter instance, the Deputy Minister of Justice, George Burbidge, wrote to Collingwood Schreiber (then the Chief Engineer of the Canadian Pacific Railway Company but formerly Chief Government Railway Engineer) on the subject of the amendment on April 7, 1885. Burbidge had been in correspondence with Bradley (the Secretary of the Department of Canals and Railways) the previous year over failed prosecutions under the existing Act and Burbidge now asked Schreiber for his opinion whether "it would be desirable to go on with the amendments" (NA RG13/A3/v.617). The correspondence shows that the Law Clerk of the

Senate had drafted the amendment under instructions from the Minister of Justice. Presumably Schreiber favoured the changes (which lowered the level of proof required for conviction under the statute) as an amending act was introduced in the Senate on April 16 (Bill "O", 1885) and, when the bill reached the House, the Minister introducing it referred to the Department, saying

The bill as sent down was handed to me by the Department of Justice ...

Caron, Hansard, June 24, 1885

It seems likely that both before government legislation was introduced in the House or Senate and between readings of bills, processes of analysis, review and drafting of proposals must have taken place, over and above purely political discussions, even if these only took the form of considering the provisions and wording of bills in relation to existing statute law. Which parliamentary staff were involved in carrying out such functions? The Canadian Parliament had no Parliamentary Counsel (unlike the British system) but the two Houses had Law Clerks who were responsible for revising public bills after first reading and supervising amendments, seeing to printing, correcting etc.. The incumbents in the House and Senate, Gustavus Wicksteed⁶⁶ and E.L. Montizambert, in giving details of their responsibilities to a Joint Committee of Parliament in 1880, both stated that Wicksteed customarily prepared government bills.

Wicksteed's comments are relevant to the question of general public service responsibility for parliamentary bills. He reported that, given the limited "number of Ministers in the House", he had "managed to do a

great deal of work for many of them" but that private members' bills were not a priority for him (Can. H. of C. Jours. 1880, App#4, 2-3).

As I have said, Rule 48 [of the House] does not make it my duty to draft Bills or amendments, and for private Members I can seldom draft any but very short Bills or amendments,...

ibid: 2

If Wicksteed drafted and revised government bills (and there is evidence of some of his activities in pencilled drafts of bills and corrections or alterations to printed bills in his writing in the National Archives), in what form and from where did they arrive at his office? It seems that legislative bills did not, at this time, go through a formal process of Cabinet review; there was no formal Cabinet Committee on Legislation until 1952 (Driedger, 1953: 46). Wicksteed, speaking of government bills, described the situation as follows:

This work has come to me in various forms, sometimes merely as instructions verbal or in writing, sometimes as a draft more or less complete, made by or under the direction of the Deputy Head of a Department, and sometimes as amendments to an existing Act or Acts, to be incorporated or consolidated with it or them, as in the case of Customs, Excise, Post Office and Railway Acts, among others, and sometimes so nearly complete as to want only the same care and attention as a Bill in the hands of a private Member, except as being more subject to amendments consented to by the Government.

Can., H. of C. Journ., 1880, App#4: 3

The sources suggested for government bills are therefore both Ministers and senior civil servants - either giving written and/or verbal instructions or supervising drafting in their own departments before handing the work over to one of the Law Clerks in the House or Senate for revision, the choice of Clerk presumably depending on where the legislation was to be introduced. Driedger concluded that parliamentary bills in general might have been drafted by Ministers or Members of Parliament themselves, by departmental staff or by the parliamentary Law

Clerks (1951: 2). His view is supported in this research (although a limited number of legislative records were examined here) but it perhaps understates the complex routes taken by some of the minor bills.

It seems clearer in the case of Private Members' bills that, in principle, the form and drafting of such bills was wholly the responsibility of the proposer. When Edward Blake introduced a private member's bill in 1878 for the Better Prevention of Crime (i.e. the Blake Act), the former Minister of Justice was able to draft it himself. As Blake was the most capable lawyer in the ranks of the Reform Party, other less-skilled Members may have had to rely on their own expertise or that of friends and associates and then ask one of the Law Clerks, as a favour, to go over their bill.

As for the role of departmental public servants, the early Adulteration Acts provide evidence in relation to the Inland Revenue Department. Where their origins are known (as discussed below in Chapter Six), the Adulteration Acts were usually drafted by the senior departmental official in Inland Revenue, either by Commissioner Alfred Brunel or by his successor Edward Miall. This could have been an informal response to particular departmental conditions for, as suggested, ministerial supervision was often lacking in the Department, but it seems probable that senior officials would have played a part in most legislation affecting their Departments.

Section 5.6

The Unification of Criminal Law in 1868-1869

When the Tory Government required an initial consolidation of existing criminal law from the four colonies forming Confederation carried out urgently in 1868, the persons relied on for this major task were two highly experienced civil servants. Sir John A. Macdonald, as Minister of Justice from 1867-1873, appointed Gustavus Wicksteed, the Law Clerk of the House, and Hewitt Bernard⁶⁷, Deputy-Minister of Justice, as Commissioners to carry out the work. They were both well qualified in terms of experience and their appointments kept the work of consolidating the criminal law directly under the control of the Prime Minister himself. Macdonald's assumption of the new post of Minister of Justice - he had been Attorney-General Canada West before Confederation - suggests that he fully intended to oversee the development of Canadian law.

The process of developing criminal law in 1868-9 also involved one experienced member of the Canadian judiciary, James Gowan. Gowan, a judge of the county court of Simcoe and founder of the *Canada Law Journal*, was a dedicated legal draftsman and well-known to Macdonald; he had worked on drafting the County Attorney's Act of 1857 and the consolidation of the statutes of Upper Canada and of the Province of Canada in 1859 (Brown, 1989: 87; Romney, 1986: 302-3). Gowan was eager to involve himself in the task, perhaps feeling that judicial appointments were more appropriate than public service ones, and was eventually consulted by Macdonald (Brown, 1989: 93). But it is clear from Justice departmental records that the groundwork laid in 1868 for

prompt consolidation of criminal law after Confederation was undertaken by Wicksteed and Bernard.

Details of the process are instructive because they demonstrate not only, how the Peace Reservation legislation was developed and introduced in 1868 and 1869, but also how practice and ideology permeated the processes through which the new state obtained its criminal law; they reveal contrasts between the simultaneous informal, *ad hoc* nature of the episode and its strongly patterned elements.

In January 1868⁶⁸, Sir John gave official instructions to Wicksteed and Bernard,

To take such measures as might appear best for the amendment and consolidation of the Statutory Criminal Laws of the several Provinces of Ontario, Quebec, Nova Scotia and New Brunswick, having at the same time due regard to the more recent Imperial Legislation on the same subjects, and adopting and incorporating such portions of that Legislation as it might appear desirable to make part of our Criminal Law.

N.A. Cited in RG 13 1986-87/361/16/ 1868

The two officials attacked their task systematically; they first organizing printings of copies of the Imperial Statutes enacted after 1841 and the criminal law statutes of the Province of Canada, Upper Canada, Lower Canada, New Brunswick and Nova Scotia, as well as statutes of the State of Victoria, Australia, - principally relating to procedural law (as Victoria had recently (1864) adopted the United Kingdom Criminal Law Amendment Acts of 1861 in modified form⁶⁹). Next they set out similar statutes, section by section, and, within a month, reported to the Prime Minister that part of the comparative material was now prepared.

Their proposal at this juncture was to introduce first a modified form of the six Imperial Criminal Law Amendment Acts of 1861 as one major act divided into eight or nine parts, together with several procedural acts making up another six parts. (The procedural sections would be based on Chapter 99 of the Province of Canada Consolidated Statutes of 1859.) They recommended that the Government consider legislating in relation to the duties of Justices of the Peace and introduce a Perjury Act and subsequently legislate in relation to a number of other identified criminal law areas of lesser "general interest". Sixteen such areas were listed by Wicksteed and Bernard; these areas could "be taken into" the criminal law "by degrees" "as far as they can be adapted to the whole Dominion," (ibid: 9). The substantive areas concerned dealt with offences ranging from relatively serious crimes, such as "Acts relating to Riots" and slander and libel offences, to laws against petty offences including lotteries and desecration of the Sabbath⁷⁰.

Section 5.7

The 1868 Legislative Rationale of the Public Service Commissioners

What practical and ideological factors underlay Wicksteed's and Bernard's scheme for unification of criminal legislation? Their interim report to Macdonald set out at least three premises: the new state's criminal legislation was not to be original; it was to be drawn largely from English statute law; and, thirdly, while English statutes could be modified, they should not be fundamentally altered. Canada, although behind Britain at present, would in time achieve the British stage of development.

In Wicksteed's and Bernard's view, Macdonald's plan for prompt unification of criminal law prevented any thought of developing or devising original consolidations, as being out of the question. They expressed great respect for the Imperial Acts of 1861⁷¹,

These Acts were the result of Commission after Commission and trial after trial, and were drafted and passed with every advantage which the ablest and greatest lawyers, Commissioners and Committees of both Houses of Parliament could give; - and they had plenty of time, The Acts must have cost many tens of thousands of pounds. ibid: 2

but they recognized complaints that the English Acts were "unnecessarily prolix". However, for the two officials, the benefits of presenting tried and tested statutes to the Canadian Parliament outweighed the drawbacks, for the legislative branch

... might be expected to adopt without fear what has had six years trial in England and has been found practically to work well. -

ibid 9

Their first setting out of statutes took as its direct basis the six substantive criminal law acts passed in England in 1861, treating them as principal or "greater Acts". From the civil servants' perspective, the Imperial Acts were paramount criminal law:

The six Imperial Acts embrace almost all the general subject of Criminal Law as regards the definition of Crimes and their punishment;

ibid: 5

and wherever the colonial and imperial sets of law differed, the imperial form was to be preferred.

Despite their respect for imperial statutory innovations, the two public servants recognized that English statutes might not be wholly relevant to the Canadian setting; however they were distinctly reluctant to translate this conclusion into anything other than minor statutory

modifications. The Imperial Acts could be altered "as far as may be necessary to modify them to local circumstances and institutions" but "very little" should be left out (8-9)⁷². This position was justified on the basis of an evolutionary view of societal development - that Canada would eventually catch up with Britain:

..leaving out very little, even as to matters which are not very likely at present to be required in Canada, but which may be so as the Country advances in improvement and population,-
 ibid: 9

Their proposals, contained in a report dated February 24, 1868, asked for the Prime Minister's further instructions and assured him that, despite the short time available, the task of unifying the criminal law was being undertaken thoroughly.

Section 5.8

Political Decisions on Criminal Legislation in 1868-69

Was Wicksteed and Bernard's advice followed by Macdonald? To answer this we consider what legislation was introduced in 1868, as opposed to what was enacted, for Macdonald's legislative program was destroyed by events beyond his control. The murder of D'Arcy McGee, Howe's attempt to withdraw Nova Scotia from Confederation and the excessive Parliamentary legislative workload resulted in the Senate's eventual refusal to pass a mass of proposed criminal legislation late in the Spring Session of 1868 without detailed examination and debate; most of Macdonald's criminal law measures failed to pass (Brown, 1989: 93-95). The record of parliamentary bills for 1867-8 shows, however, that the Government introduced not only the six adapted Imperial Acts but also bills concerning Outlawry⁷³, Riots and Riotous Assemblies, Cruelty to Animals, Perjury, the Preservation of the Peace in the Vicinity of

Public Works and High Treason⁷⁴, as well as other administrative bills and several procedural criminal law bills⁷⁵. These were all Government bills and, in effect, Macdonald had taken the position that some of Wicksteed and Bernard's legislation of less "general a nature" needed prompt passage. What we suggest is that most of the bills listed above were perceived by Macdonald or by the Tory government as in certain ways useful to the operation of the newly-formed state; it was a priority to establish them as extending to all Provinces rather than only to their pre-Confederation colonies of origin.

By the session of 1868-9, when most of the bills which failed on reaching the Senate were reintroduced⁷⁶, the House bills were further extended from Wicksteed and Bernard's original suggestions to include a government bill on vagrancy and a Private Member's bill concerning seduction⁷⁷ (Bills number 39 and 71). Vagrancy statutes had been omitted from the public servants' original 1868 listing of offence categories furnished to Macdonald, perhaps because vagrancy was only dealt with under the statute law of two of the four colonies and was accorded different treatments in each⁷⁸. New Brunswick and Lower Canada had no apparent statutory provisions for criminalizing vagrants; Upper Canada legislation permitted local councils to pass by-laws against public morals including "restraining or punishing vagrants ... found drunk or disorderly in any street, highway or public place;", while Nova Scotian legislation dealt directly with vagrants, both defining them in relation to the poor laws to include "persons who unlawfully return to any place whence they have been legally removed as paupers" and describing them as "idle and wandering persons having no visible means

of subsistence" (CSUC [1859], c.54, s.282; CSNS [1864] c.152, s.2). The 1869 Dominion Vagrancy bill drew directly on the English statute of 1824 but was enacted with some modifications to lessen its severity (Phillips, 1986: 7-8).

Two factors stand out in the processes described above: firstly there was a delegation by political leaders to public servants of the major task of developing the initial content of unified Dominion criminal legislation. Secondly certain legislation was then added, probably by Sir John A. Macdonald, suggesting that the initial list failed under political scrutiny. On the first point, admittedly the standing of Wicksteed and Bernard was exceptional; they had worked closely with the Prime Minister for many years, but some of their professional public service preferences and ideology presumably entered into their analysis of pre-Confederation statutes and their approach to selecting statutory material. They must have exercised some discretion in laying out statutory alternatives from which their political masters could select a legislative program of criminal law bills for the Government.

On the second point, the selection of additional statutes seems to point in certain directions for the politicians' views of the new state's requirements in the field of criminal law. Of the substantive bills added in 1868, two out of five dealt with riot: the bill concerning "Riots and Riotous Assemblies" and the second entitled "Riots near Public Works". The colonial law of the Provinces included Riot Acts in Upper Canada, Nova Scotia and New Brunswick (N.A. RG 13, 86-87/ 361/ 533/ 1868) and the adopted version of the Imperial Act concerning

malicious injuries to property contained sections to punish rioters damaging property (32-33V.,c.22). Lower Canada's lack (according to Wicksteed and Bernard's comments) of a Riot Act may have been a significant factor in the 1868 bill⁷⁹. At the very least the addition of these two Acts against riot and against "riot at public works" to the Government's legislative program suggests that Macdonald's Canadian "Kingdom" was not perceived as being, or perhaps likely to remain, entirely "peaceable".

Section 5.9

Interventions from the United Kingdom Secretary of State for the Colonies

The slowly increasing political autonomy of the federal state in its relationship with Britain after Confederation - the status of Canada as a "Dominion" - still left areas where imperial supervision and decision-making remained significant or paramount, particularly in the early decades (Farr, 1955: 298-300). Two relevant fields were Canadian federal legislation and Canada's military defence and each is considered here in terms of the possible significance of the imperial/colonial relationship for the legislation studied.

The British Government retained certain imperial powers in relation to Canada under the B.N.A. Act and these included the review of all federal legislation at Westminster to ensure that it lay within Dominion jurisdiction and to avoid errors or conflicts with imperial enactments. The Governor General and the Colonial Secretary oversaw Canadian legislation relying on a two-stage administrative process; each bill was

either assented to or reserved by the Governor General in Ottawa and all bills were then sent to Westminster to the office of the Colonial Secretary for further scrutiny, leading to final royal assent or disallowance.

In practice, at the end of each parliamentary session, copies of newly-enacted statutes were sent to the Governor General's staff for the process of royal assent. Correspondence suggests that this was never a mere formality. The statutes were routinely referred to the Minister of Justice for his opinion as to whether there was any point of law which might preclude the Governor-General's assent. Once this reassurance was received⁸⁰ and assent given or the bill reserved, copies of all statutes were forwarded to the Colonial Secretary's office in London⁸¹.

The Governor General's assent was withheld on occasion. For instance, in 1875, the Earl of Dufferin wrote to the Colonial Secretary, Lord Carnarvon (his close friend), saying:

I reserved the Copyright Bill, in spite rather of the wishes of my Ministers, but I sincerely hope you may see your way to assent to it, as it appears to me to leave really very little that the English Authors can complain of...

I had some hesitation about assenting to the Supreme Court Bill, to which I have specially drawn your attention in an official Despatch, but, having talked the matter over with my Ministers, I have concluded that the measure is within the competence of the Canadian Parliament and have assented to it...

de Kiewiet & Underhill, 1955: 143

Assent was rarely withheld in relation to criminal legislation in the period studied; the major exceptions were matters bordering on fields where the Imperial Government retained control, such as Merchant Shipping and External Relations⁸² (Farr, 1955: 260-261). But the

process of perusal of statutes through the official channel of the Governor General and the Colonial Secretary continued and in itself it allowed imperial suggestions to be made more or less discreetly when the Colonial Secretary felt it appropriate. In relation to criminal law, in 1867 and 1868 the Colonial Secretary's office sent circular dispatches enclosing copies of two Imperial bills suggesting that the Dominion Government consider adopting them. One was designed to assimilate the law of treason in all the colonies to that of the United Kingdom and the other was a draft bill for the carrying out of capital punishment inside prisons (N.A.RG13/86-87/361/ 1/1868 & 17/1868)⁸³. This evidently explains the origins of two of the additional criminal law bills introduced in the 1867-68 session, as inspired directly by suggestions from Westminster.

In a further instance of imperial intervention, the Colonial office objected to a criminal law bill in December 1869. The Colonial Secretary's office complained that the new Perjury Act contained an *ultra vires* clause, purporting "to affix a criminal character to Acts committed beyond the limits of Canada" (N.A.RG 13 A6/v.1378/Leg.Bill 1865-72). The Governor-General was asked to bring the error "to the notice of the Government, with the view to the amendment of the Act in the above particular." Hewitt Bernard answered in January 1870, pointing out that the offending section came from an Act of the Province of Canada (19V.,c.43) which had passed unchallenged in 1856, but he responded to the implied rebuke of his own handiwork (as a Commissioner consolidating criminal law in 1868-9) that "An Act will be introduced at the ensuing Session to cure the objection made." (ibid)⁸⁴.

In addition to suggestions and complaints from Downing Street, if by oversight statutes were not forwarded to Westminster, the omission was noted: in 1874, the Department of Justice received a sharp rebuke from the Governor-General's office for failing to forward the required material to the Colonial Secretary and another reminder to do so routinely was necessary in 1877 (N.A.RG13/86-87: 361/ 26/1873; 084 20/1877)⁸⁵.

There is evidence that some Canadian lawyers and parliamentarians, of whom Edward Blake was one, strongly resented applications of the imperial power of disallowance. In 1874, a political row erupted in Ottawa over the Canadian Oaths bill, first introduced by Macdonald in 1873, which had been declared ultra vires the Federal Government by the Law Officers of the Crown in England. (The dispute was related to the Pacific Scandal which had effectively brought the Reform Government and Blake to power.) According to the Earl of Dufferin, Blake spoke in the House "of the impropriety of English Lawyers 4000 miles away over-ruling the legal wisdom enshrined in the Canadian House of Commons" (de Kiewiet & Underhill, 1955: 26).

The effective use, if not the principle, of the power of imperial disallowance came to an end by the late 1870's⁸⁶. In 1880 the librarian of Parliament could write that "this right of veto is, however, very sparingly exercised" (Todd, 1880: 127) and it does not appear to have been exercised in relation to criminal law after 1875. Nonetheless, the Colonial Office could still have moved to veto Dominion legislation with an extra-territorial effect or a Dominion statute repugnant to an

Imperial statute extending to Canada (Hogg, 1977: 14) and copies of all statutes were still scrutinised at Westminster. The existence of this measure reflected a paternalistic imperial-colonial relationship - which was resented by some Canadian leaders - but it also served as a mechanism within the broad common law system, designed to ensure the integrity of the legal system shared by Britain and the British colonies, a mechanism developed to prevent errors and discrepancies creeping into colonial systems of laws and causing subsequent difficulties.

It is a difficult question to assess precisely how much the imperial power of disallowance affected Canadian criminal law development. Effectively, the content of all bills introduced into the Canadian Parliament had to be considered in relation to eventual imperial examination. Although there is no evidence of active intervention in relation to the statutory measures studied here, we need to recognize that, at least until the late 1870's, the Imperial Government's potential interventions were a continuing feature of the Canadian state's existence as part of the British Empire and must have been kept in mind by Ministers of Justice and other members of Cabinet and by Governors General in considering all legislation.

Section 5.10

Canada's Military Establishment

The question of military resources was for Canada, as for most emerging states, important not only for defence but also in relation to state recourse to coercive civil measures, for military forces might be called

on to supplement or replace civil authority. The Canadian state relied on military force in aid of the civil power and local authorities might request armed interventions in situations of local unrest. However, it was uncertain whether the response would be satisfactory; the problem in the setting of the newly-confederated state was the absence of a standing army and gradual withdrawal of British forces from the North American colonies during the late 1860's and early 1870's exacerbated the problem.

The Colonial Office took an active interest in Canada's military affairs and continued to select commanders for Canada's armed forces, as provided for under the B.N.A. Act (s.15). After British troops were withdrawn in 1871 - except for garrisons at Esquimaux and Halifax - both Prime Ministers Macdonald and Mackenzie concluded that Canada should have a small professional army and Mackenzie favoured building a military college too. Plans for both these innovations were developed during the 1870's.

The efforts of the Colonial Office in 1873 to recruit a suitable senior military officer from the British Army and send him out to play a supervisory role vis-a-vis the volunteer Canadian militia, are detailed in the Carnarvon-Dufferin correspondence. (The favour was, however, relatively small as the officer was paid by Canada.) The eventual appointment of General Selby Smyth was the result of long negotiations over candidates, pay and expenses between the two Governments (de Kiewiet & Underhill, 1955: 57-66). Of relevance to the legislative research is the fact that, while stationed in Ottawa from 1874-80, Selby

Smyth appeared at the head of the volunteer militia during the Montreal riots of 1877, sent from Ottawa by Prime Minister Mackenzie to take charge of quelling the riots and given express directions how to do so by the Minister of Justice (see Chapter Five). Thus a General out from Britain with "a great deal of experience, some of it Colonial" was called upon to lead relatively untrained and partisan militia members to suppress sectarian riots in Montreal.

Throughout this period the Canadian Government relied largely on the volunteer militia for armed interventions during civil unrest, but the militia as a whole was recognized to be unreliable, poorly equipped and poorly trained. Lord Dufferin (admittedly in favour of stationing more British troops in Canada) said of the Canadian militia in 1875 "...the whole body, men and officers are more or less deficient in a proper apprehension of the requirements of Military discipline" (de Kiewiet & Underhill, 1955: 154). Expressing concern about the militia's ability to control civil unrest, Dufferin commented that they would be "an unhandy instrument to employ in maintaining order" (ibid: 158). The Guibord affair, which climaxed in Montreal in 1875 (see Chapter Five), brought these concerns about the militia to light. Dufferin wrote to Carnarvon

There is absolutely no force whatsoever behind the Law. The Military, at all times a bad instrument for dealing with rioters, are themselves a mob inspired by the same fanatical passions as the rest of the populace.

ibid: 159

Dufferin precisely captured a major additional difficulty characterizing the militia in Canada. The cleavages which segmented society found parallels in local militia units; militia companies had their own

factional allegiances and, like the police or fire brigades, could not be depended on to enforce the law against their co-religionists or others with whom they sympathized. And the militia was highly politicized. Even contracts for militia supplies were used as a means of bestowing patronage (Haycock, 1987: 3) and

...the Canadian Militia was constituent-based and highly politicized.....Patronage and politics were synonymous with protection for both the country and the Militia. And Macdonald knew and exploited it. ibid: 4

In sum therefore, armed military force was an uncertain state instrument in post-Confederation Canada. In theory, armed militia could be called out in aid of the civil power; in practice, the risks and drawbacks of doing so could be considerable, especially given partisan and poorly-trained local forces.

Section Six

IDEOLOGICAL PERSPECTIVES

The relevance of societal ideological perspectives to analysis of legislative developments was discussed in the previous chapter, where the position was taken that ideologies are underlying structural factors; as such, ideologies may have effects on hegemonic and political processes and therefore potential effects on legislative processes and legislative applications. Ideological viewpoints are seen as not only directly relevant to formal political processes but also as bearing more indirectly on the nature and form of discursive

communications relating to societal problems and conflicts. Given this approach, brief outlines of three major ideological perspectives of the period are furnished here to assist in situating new legislative developments in relation to existing ideological approaches.

Section 6.1

Poverty and the Labouring Poor

Whether the legislation under analysis concerned public works, carrying fire-arms in cities, or adulteration, the focus in the research is on measures affecting the working class (as set out in the warrant for selecting statutes⁸⁵). For an ideological vantage point, the goal is to ascertain relevant attitudinal perspectives relating to the working class. The specific questions posed here are what predominant attitudes existed towards the employed and unemployed poor in this period among bourgeois Canadians and how did attitudes change over time?

In relation to poverty, and indeed to most common human suffering, an ethic of individual moral responsibility tended to prevail, at least during the early post-Confederation period. The dominant viewpoint was that suffering was largely self-induced. Bliss, for example, has concluded from his lengthy analysis that most middle-class entrepreneurs took the view that "there was no undeserved poverty in Canada" (1972: 150). Poverty was explained by reference to indiscipline, ignorance and lack of moral control, even among reform-minded members of the middle class (Beattie 1977; Pitsula 1980; Ont. R.C. Prison System 1891). The antidotes were therefore discipline, education and moral reform, although some more liberal thinkers went so far as to distinguish

between the "deserving" and "undeserving" poor. Most activities for the relief of poverty tended to rely on efforts oriented to reproducing middle-class family forms - thus effectively reinforcing middle-class relations.

There is some evidence that this ethic of individual self-help and responsibility, what Cook has termed "a political economy of individualism" (1985: 117; Risk, 1981: 103-5), became increasingly outmoded during the period. In part it was overtaken by the pace of economic transition, due especially to industrial development and the concentration of ownership and the geographical relocation of industry. By the early 1880's, some manufacturers' associations had begun to support the introduction of Dominion Factory Acts and even employers' liability laws (Bliss, 1972: 153-55) and, by 1884, Ontario had enacted a Factory Act and in 1886 a Workman's Compensation for Injuries Act (Risk, 1983: 424; Kostal, 1988). The ethic of individualism did not disappear but, by the 1880's, there was evidence of change.

Perspectives on labour and poverty began to shift before the end of the century towards a recognition that questions of broader social responsibility were involved. Moral or reform positions supporting such ideological shifts were propagated by intellectuals and reformers, usually members of the urban middle or ruling classes⁸⁸. Much remains to be established about the roles of reformers and intellectuals in nineteenth-century Canada⁸⁹ and the present research deals with only a few cases. It does, however, support the view that the intellectual

leaders in innovative criminal legislation were likely to be professional men, such as legislators, lawyers and administrators; they included Edward Blake, the Reform Minister of Justice from 1875-77, and Alfred Brunel, the public servant administering the federal Department of Inland Revenue from 1871 to 1882, in other words men who fit the role of Gramscian "ruling class intellectuals".

While ideologies of individual responsibility for poverty and unemployment appear to have begun to diminish in importance, group actions by employees continued to be unacceptable to many employers. An individualist ethic prevailed here: according to Palmer, it was acceptable for one employee to approach an employer with complaints but employees banding together, or moves such as strikes, tended to be interpreted by employers and the courts as "conspiracies". Strikes or any refusal to work were often seen, certainly early in the period, as violations of economic contracts and therefore as illegal or "criminal". Despite the passage of the Trade Unions Act of 1872, strikers in the period still faced penalties under provincial Master and Servant Acts and under specific legislation such as the Railway Act (31V.,c.68,s.78) (Morton, 1977: 14). They also ran the risk of prosecutions for offences such as assault or riot. Morton found thirty-three militia interventions in strikes between 1867 and 1914 in the records of the Canadian Military (1970: 407) and Parizeau found twenty-five before 1900 (1973: 49), while Bliss concluded from entrepreneurial trade journals that this class "emphatically approved the use of troops in nearly all cases." (1972: 176).

Ideologies opposing these bourgeois views were propagated by only a few elements, even within the working class. Trade union activists were furnished with an ideology opposing entrepreneurial perspectives and could speak to the more general concerns of employees. But trade unions were, despite claims to the contrary by some labour historians, relatively weak in Canada. Except for the Knights of Labour, few could claim large or active memberships (Palmer, 1983: 99-106).

Section 6.2

Public Health and the Labour Force

A further ideological perspective - relevant to analysis of adulteration statutes - concerns public health. Increases in expressions of concern around the subject of public health have been identified as a general phenomenon of societies experiencing early stages of industrialization. The broad thesis, as expounded for instance by Foucault (1980), is that public health became a matter for middle class concern and state attention in the same period as early industrial economies became more heavily dependent on a reliable and disciplined labour force. This is not necessarily to imply a simple cause-effect nexus but to suggest that economic, medical and social developments at least demonstrated certain convergences in these periods. Foucault argues that the concern of European states in the eighteenth century with "population" was a new departure. In Foucault's analysis population emerged as "an economic and political problem" as states came to view

...population as wealth, population as manpower or labour capacity, population balanced between its own growth and the resources it commanded. 1980:25

As a result governments saw

...that they were not dealing simply with subjects, or even with a "people", but with a "population", with its specific life expectancy, fertility, state of health, frequency of illnesses, patterns of diet and habitation. 1980:25

In contrast to European states, the North American Colonies were necessarily and continually concerned with population - in the sense of quantity at least - from the earliest periods of settlement. In Canada, this pre-occupation with questions of sufficiency of population, although still central, broadened by the post-Confederation era of early industrialization and increasing urban populations to include a concern with the health of the population constituting the labour force. Among professional medical men and social reformers there was evidence of a new interest in the quality of existence of the urban poor. By the 1880's, according to Cook (1985:175-9), the notion of the necessity of moral and physical regeneration of the labouring poor became a common theme of reformers; prohibition of liquor, Sunday observance, "decent food, clothing and shelter" were typical social goals of conservative religious groups while more liberal religious groups demanded justice and equality of opportunity (ibid:179-184)⁹⁰.

By the Confederation period, the medical establishment in Canada was concerned with issues relating to "population" in Foucault's sense, but adopted a relatively "scientific" discourse as opposed to a purely moral or religious one. The members of the medical profession in the four colonies, in founding the Canadian Medical Association in 1867, immediately established a Committee on Statistics and Hygiene⁹¹ and the Committee's first report stated

Yet is there no branch of science more important than that which relates to man's physical and moral condition; which deals with the external, physical and chemical agents on which his health or life depends - ...

Proceedings. Meeting of C.M.A., in Lovell, 1868:59

The first Committee's members⁹² were critical of Canada's failure to legislate in areas relating to public health, stating in their report

A necessity, therefore, exists for the introduction by the General Government - or simultaneously by the Local Governments - of a comprehensive system of sanitary laws, ... The details of such a Bill, or Bills, will, with the permission of this Association, engage the attention of this Committee.

ibid. :60

Such concerns for public health were not restricted to the medical profession but were propagated more widely in the country. For instance, by 1869, readers of *The Globe* were exposed to articles on water purity and the problems of obtaining a supply of "good" water for the city of Toronto⁹³. Even before the period of Confederation, concerns about "an ample supply of pure water" and improved sewer systems can be traced to as early as the 1840's and 1859, as Jones and McCalla's study of the Toronto Waterworks (1979) and MacDougall's research on public health in Toronto (1982) both show. It is significant to find that, in 1859, Toronto's leading reform alderman was Alfred Brunel (later the federal Commissioner of Inland Revenue), one of only a few "sanitary enthusiasts" in the city (Mac Dougall, 1981:96). By the late 1860's and 1870's public health had become a standard element in reform discourse as well as medical thinking. The spread of concerns for public health among medical professionals appeared to coincide with proposals for sanitary reform by local administrators. The health measures advocated were not necessarily promptly implemented and, where they were introduced, they did not always produce

improvements in public health⁹⁴; but by the 1870's scientific language was more widely used, specific public health problems were identified and medical men recognized as "experts" in approaches to public health.

Section 6.3

Religion and Ethnicity

A brief review of the ideological perspectives of Protestant and Catholic elements in the period is included as background to discussion of disturbances preceding the introduction of the Blake Act (after sectarian riots in Montreal) in 1878.

Ontario Protestants were strongly and unrepentently anti-Catholic, despite the fact that Catholics were a small minority in the Province, and Orangeism grew increasingly strong, at least until the 1880's. The Orange Order enshrined a set of anti-Catholic views, carrying over historical Irish antagonisms to Canada (Baker, 1973). The perspective has been described as follows:

It is not easy now to recover the intensity of the Protestant convictions of Ontario. It was obscurantism, hatred, fear, all a legacy of Protestant history....The Roman Catholic religion was a conspiratorial engine, designed to dominate and ultimately to destroy Protestantism.

Waite, 1971: 209

Orangemen coupled fear and distrust of Catholicism with an overt identification with the British Crown and a strong community identification (Can. Encyc. 1985: 901). When Orangemen were on occasion killed as a result of their political and religious convictions, the vehemence of the reaction in Ontario was alarming to governments. The trial and execution of Thomas Scott in the Red River settlement in 1870 by Riel's supporters produced such strong sentiments in Ontario that

federal politicians were still struggling with the consequences years later and the question of pardoning Scott's murderer was a factor in Catholic/Protestant enmity in Montreal towards the end of the decade. Dufferin, a witness of religious feuds in Ireland, wrote to Carnarvon four years after the murder of Scott describing what he had been told of Ontario's reaction to the affair.

You can well imagine that the news of what had happened in Manitoba ran through the Protestants of Ontario like wildfire and generated a very vindictive feeling among Orangemen.

de Kiewiet & Underhill, 1955: 104

Similarly when Orange-Catholic riots in Montreal resulted in the death of another Orangeman in 1877, Thomas Hackett, the effect on the authorities was electric. The significance of such incidents must be understood in relation to the ideological positions held by members of both affiliations - effectively extremist opinion believed the other element aimed at its extermination. What Baker has written of relations between Protestants and Catholics in Belfast fits for some periods of Protestant-Catholic relations in the major cities of Ontario and Quebec in the 1870's:

Riots and revivals were the emotional release in an impoverished working-class culture where politics and religion were the only respectable activities.

1973: 810

French-English relations were another significant source of societal cleavage during the period. Quebec French-Catholic perspectives shifted during the 1870's to a much stronger anti-Protestant stance, in part as a reaction to political events in Manitoba, Ontario and New Brunswick. But, in part too, this shift reflected the increasing strength of clerical nationalism in Quebec as the Church began to see itself both as a bulwark of French Catholicism in a sea of North American doubt and, as

the Church itself in Europe and in Quebec moved to an increasingly conservative position, as the recipient of ultramontane doctrines. Despite these sectarian cleavages, the realities of Canadian politics meant that *Canadien* representation was essential to either the Tory and Reform parties in order to form a government. For the Reform party, the Church's opposition to liberal politics brought religion directly and forcefully into the domain of politics. During Mackenzie's Reform (and liberal) government of 1873 to 1878, it was essential for the Party to deal successfully with religious issues and especially with issues around religious conflict between Catholics and Protestants in Quebec. The political imperatives of attending to ideological conflicts in order to prevent sectarian hostilities are therefore relevant to the question of Mackenzie's reluctant intervention in events in Montreal in 1877 and 1878 and the Reform Party's eventual passage of legislation in the form of the Blake Act.

This concludes a preliminary examination of economic, political and ideological factors which contextualized the discrete instances of law making and law enforcement analyzed in the research. In the three chapters which follow, features of the contexts outlined here are grouped together or expanded and discussed as the settings within or against which criminal law statutes were enacted or implemented. Developments relating to the Peace Preservation Act, the Blake Act and the Adulteration Acts are considered in the context of some of the structural and conjunctural factors described above, that is, against a background of changing social structures, institutions and ideologies in late nineteenth-century Canada.

"The contractors of the railway have all along strenuously opposed the sale of whiskey among their men, they having found old rye to be a more formidable obstacle to the progress of the railway than roaring torrents, impassable gulches or mountains of adamantite granite....The Public Works Act which prohibits the sale of liquor within ten miles of the line of railway is in force and at most points the authorities have been able to keep the upper hand of the liquor dealers. There are one or two notable exceptions, however,...

The Globe, October 20, 1884

CHAPTER FOUR

THE STATE, THE DOMINION LIQUOR LAW AND RAILWAY LABOURERS: THE PEACE PRESERVATION ACT, 1869

This chapter explores evidence relating to the development and use of the Peace Preservation Act¹, a federal statute enacted for the purpose of preventing or reducing disturbances and violence among labourers building railways and canals. The Act prohibited the possession of weapons and the sale of liquor near public works, although the liquor sections were used alone in practice. Its chief application during the late nineteenth century was to impose a form of prohibition on labourers working on the construction of the Pacific Railway.

The purpose of this chapter is to approach the origin, development and applications of the Peace Preservation Act from the analytical perspectives developed earlier - using the theoretical notions discussed in Chapter Two to look in turn at each of five aspects of the legislation. To restate briefly, these aspects are: (1) the reasons for state interventions in relation to labourers or "navvies"² constructing public works, analysed in relation to the state's economic role and its

role in resolving social conflicts; (2) the legislators' orientations to prohibition of liquor by means of criminal law, in relation to preserving the peace on public works construction; (3) the discourse associated with both law making and the application of law in relation to the statute; (4) the linkages between the legislation and the broader social formation; and, (5) the processes occurring within state apparatuses relating to the Peace Preservation Act.

To summarise the content of the 1869 Act: the statute consisted of two major parts respectively forbidding the possession of firearms or any other weapon near public works (32-33V.,c. 24,s's 2-10) and the sale of liquor near such works (s's 11-16). The intent of the Act was outlined in the preamble:

For the preservation of the peace, and for the protection of the lives, persons and property of Her Majesty's subjects, in the neighbourhood of public works on which large bodies of labourers are congregated and employed:

The 1869 Act applied to places where "any Railway, Canal or other public work is in progress of construction" (s.1) but an 1875 amendment extended its application to any major works, whether publicly or privately built or owned, including roads, bridges and mining operations (38V.,c.38). The Act applied to "any place or places in Canada" and was not restricted from applying to provincial public works or even to provincially-incorporated private works. Other changes included an amendment of 1870 which permitted the partial application of either part of the Act; in practice, after 1870, only the liquor sections were proclaimed in use on public works sites, the weapons sections never being used (33V.,c28). A later amending Act of 1885 made the liquor

sections easier to enforce by lowering evidentiary standards and increasing some penalties for selling liquor (48-49V.,c.80).

The Peace Preservation Act contained unusual provisions for proclamation and for enforcement. Firstly, the Act was to be effective only at particular sites, as proclaimed in force by Order-in-Council, that is, by decision of the Federal Cabinet (s's 1 & 2). Secondly, the Act provided for enforcement by federally-appointed Commissioners, as well as by Justices of the the Peace. Such Commissioners were given the powers of Justices to issue search warrants to search for arms "upon the oath of a credible witness" (s.7) and warrants to search for liquor if "three credible persons" swore liquor was being kept for sale (s.14). "Commissioners of the Peace", as they were termed, were also empowered to try liquor cases under the Act (s's 17-18) and to impose fines on sellers ranging from twenty to forty dollars and to imprison for up to six months (s's 12, 14.2). Carrying weapons was punishable by a minimum penalty of two dollars and the penalty for concealing arms was forty to one hundred dollars (s's 2,6).

Section One:

THE STATE AND THE PEACE PRESERVATION ACT

The specific question addressed is how the state used the Peace Preservation Act to impose a form of Prohibition on workers constructing the Pacific Railway, but the broader question concerns the general parameters of state intervention against labour in relation to major works. The research materials examined suggest direct Dominion Government interventions on public and private works sites operated in

two distinct ways: there were long-term interventions based on proclamations of the Peace Preservation Act coupled with appointments of local enforcement officials; and there were short-term or crisis interventions relying on calling out the militia or sending in extra enforcement officials. Both forms of intervention could be applied in the same setting and both will be examined here. This section of the chapter analyzes four distinct aspects of state action in relation to maintaining peace on public works: the origins of legislation and legislative amendments; the state's use of legislation through proclamations of the Peace Preservation Act along sections or lines of railway construction; situations in which the state declined to proclaim the Peace Preservation Act; and major strikes on public works construction leading to state short-term or crisis interventions.

Section 1.1

The Origins of Legislation

The history of public works development in Canada, as discussed in detail in Chapter Three, was marked by boom periods in railway and canal construction from the 1840's onwards. Major public works brought large numbers of labourers together under harsh and oppressive conditions; one student wrote of Canadian public works labourers and pre-Confederation work sites as follows:

...around the public works were clustered communities of labourers characterized by their extreme poverty. These communities were also notorious for their social disorder: drunkenness, rowdiness, and more seriously crime and rioting, drew frequent comment from contemporaries.

Bleasdale, 1984: 9

After Confederation, the Dominion Peace Preservation Act was introduced by Sir John A. Macdonald as one of a number of criminal law bills designed to unify the criminal law of the four colonies forming Confederation. As discussed earlier, the process of initial organization of criminal legislation was undertaken internally as a civil service task and produced proposals for both immediate and subsequent legislation (see Ch.3,s.5.6). Although the Commissioners did not recommend the prompt introduction of legislation dealing with riot, Macdonald introduced bills in the House in April, 1868 on the subject of "Riot and Riotous Assemblies" and "Riots near Public Works" (Bills 76 & 77, April 16, 1868). Most of Macdonald's criminal law bills failed (due to pressure of business and the Senate's refusal to pass a mass of legislation hurriedly) but his introduction of these two bills suggests a particular government concern with provisions against civil disorder.

The Government was already committed, under the terms of the British North America Act, to build an Intercolonial Railway connecting Halifax with Rivière du Loup and Québec. It seems probable that the prospect of renewed large-scale railway construction under state auspices prompted Macdonald's introduction of the Peace Preservation bill. It is significant too that Macdonald was familiar with the contents of the bill, for its form was a composite of two pre-Confederation Province of Canada Acts - one of 1845 concerning weapons and policing at public works sites and one of 1853 prohibiting sale of liquor at public works sites (8V.,c.6; 16V.,c.164). Not only had Macdonald voted in favour of these interventionist Acts in 1845 and 1853 ([P.C.] Journ.) but the Acts

had been applied routinely in the pre-Confederation era - forces of mounted police being stationed on public works sites and sales of liquor prohibited within a three-mile distance (Pentland 1981: 193-6).

Macdonald cannot have been unaware of the use of these control measures for, during the period before Confederation, the policing of public works began to feature in government administrative records:

magistrates' appointments, police and militia or army expenses, and petitions from citizens demanding damages "for the outrages committed by the labourers" are all included in the Journals³. There was no evidence found of external demands for the reintroduction of these two Acts in 1868 and, in view of the fact that the composite 1868 and 1869 bills each applied only to public works and that little construction was being undertaken in the period, it seems likely that their introduction was a precautionary state measure designed to furnish a recourse for controlling labour forces on future public works.

However, one important change in enforcement occurred between the pre and post-Confederation Acts: the 1845 Act provided for the establishment of a mounted police force, of up to one hundred men, for

... more effectually ensuring the preservation of the peace,
and that safety to the lives and property of Her Majesty's
subjects which it is the object of the Act to attain.

8V., c.6, s.xiii (P.C.)

In the bill reintroduced in 1869 in the Senate by Sir Alexander Campbell, sections in the 1868 bill providing for a mounted police force on public works were cut out entirely⁴ and the bill was retitled "An Act for the better Preservation of the Peace in the Vicinity of Public Works". The question of the policing of the Act is important in

relation to the effectiveness of the legislation, and some of the problems presented in practice by the removal of policing provisions are considered later in this chapter.

In contrast to the 1869 statute the origins of an 1875 amending act, which extended the statute to private as well as public works, can be directly assigned to external capitalist demands on the Reform Government of the period. There is evidence that pressure was brought to bear on the Cabinet by at least one private company. The Cobourg, Peterborough and Marmora Railway and Mining Company had both Prime Minister Mackenzie's and Edward Blake's ears through the person of its lawyer, J.D. Armour, who appears to have had influence among Reform politicians. (Armour, a Coburg lawyer, became a Benchler of the Law Society in 1871, the same year as Edward Blake, and went to the Ontario Court of Queen's Bench in 1877, the year when Blake retired as Dominion Minister of Justice for the Reform Government⁵. In December, 1875, after Blake had become federal Minister of Justice, Armour was asked to prepare the Dominion case on the dispute between the Dominion and Ontario over the boundary of Ontario and Manitoba in Keewatin⁶, so it is apparent that he was held in professional regard by Blake.) Armour had written to Blake early in 1875, asking for an amendment to the Peace Preservation Act to extend it to "works carried on by an Incorporated Company". The letter was forwarded to Hewitt Bernard, Deputy Minister of Justice, by Mackenzie's secretary on February 10 as a reminder to him to draft an amendment "If it is deemed prudent to take action..." (N.A. RG 13, A4 v.1379. "Legislation 1875")

In his letter to Blake, Armour wrote in a familiar and insistent style:

My Dear Blake

The Coburg, Peterborough and Marmora Railway and Mining Company are very anxious to have the sale of and use of liquor at or within their works or their mines prohibited. Their men get drunk and blow up their fellow men.

... I spoke to Mr. Mackenzie about it and he promised to see Bernard and have it done but I am afraid that the multiplicity of his concerns will lead him to overlook this matter. It is of vital importance ...

Yours always ...

The timing of the reminder from Mackenzie to the Deputy Minister of Justice, five days before first reading of an amending bill in the House, suggests that Armour's earlier communication with Mackenzie had been fruitful and that the Cobourg lawyer and Benchet carried considerable clout within Cabinet. The incident suggests that the legislation was changed to widen its scope, in part at least, as a result of entrepreneurial pressure. What is more surprising is that after Mackenzie consented to widening the scope of the Act, his Cabinet never proclaimed the Peace Preservation Act in force during the Reformers' term of office between 1874 and 1878.

As Mackenzie was Minister of Public Works as well as Prime Minister, he must have been aware of the nature of past labour problems on public and private works. It seems possible that Reform policies in favour of more efficient and less costly government (see Chapter Three) militated against the prospect of applying Dominion criminal laws which provided for direct Dominion enforcement. It is also possible that Mackenzie agreed to the 1875 Amendment Act not expecting to use it, due to his Party's principled and practical opposition to state measures of

intervention, or that his Cabinet (perhaps bowing to Blake's opposition to the Pacific Railway) declined to assist construction by proclaiming the statute. However, the Reform government did not withdraw proclamations already in force.

In direct contrast the Tory Cabinet under Macdonald rarely hesitated to proclaim the Peace Preservation Act in force for private, as well as public, works. In addition the Tories introduced amendments in 1885 to make the liquor provisions easier to enforce (48-49V.,c.80) and they were ready to widen the geographical limits for application of the Act.

The limits of application of the statute were stated in each proclamation of the Act. In the pre-Confederation Province of Canada statute, prohibition customarily applied for a distance of three miles on either side of the track. In the post-Confederation era, the practice was to set the distance at ten miles and by the 1880's the North West Mounted Police, who administered the Act in British Columbia, requested and obtained an increase to a limit of twenty miles on each side of the track. Major Sam Steele of the Mounted Police stated in his memoirs that both the increase in punitiveness and the limits of the area proclaimed were a result of his requests:

When, in 1884, the Mounted Police took over the duty of maintaining the law along the line of construction of the C.P.R. in British ColumbiaI also recommended that the government increase the width of the railway belt to 40 miles, and increase our powers so that the magistrates could punish with imprisonment for the second offence of selling intoxicating liquor. These suggestions were approved and had a good effect.

1915, 186-7

and Steele added,

The wholesale and retail stores on the edge of the 20 mile area had to move and navvies found a 20 mile walk too long for the sake of a spree. ibid

Internal Justice Department papers suggest that Steele exaggerated his responsibility for the 1885 amendment. Complaints had been received from enforcement agents in Ontario: a Peace Commissioner at Biscotasing, Harry Abbott, had complained and the Ontario Attorney General was writing letters to Ottawa about the difficulties of enforcing the statute⁷ but Sam Steele - like the fly in Fontaine's fable - claimed all the credit.

Section 1.2

Railway Construction Areas Proclaimed

The question considered next is the Government's role in situations of potential and actual conflict between labour and capital during construction of major public works. It was argued in Chapter Three that the State and the Pacific Railway Company had a close financial and political interdependence; in this case, did the reciprocity extend to necessary state intervention in incidents of unrest along the railway? To translate this question into more empirical form, it is analysed by asking, firstly, how frequently the state intervened in relation to labour using the Peace Preservation Act and, secondly, by considering some particular incidents of violence or unrest, asking what distinguished incidents in which the state intervened from those in which it took no action. Was the central state apparently bound to intervene, for instance, in major disturbances on government sections of the railway or on government canal construction, and was intervention

less likely on Canadian Pacific Company sections of the railway than on government-built sections?

The number of proclamations of the Peace Preservation Act and the geographical areas designated as "proclaimed districts" varied markedly during different time periods between 1869 and 1886. From 1869 to 1873 the Act was proclaimed in force five times by the Tory Cabinet - four times in relation to sections of the Red River Route, the land and water route from Port Arthur to Winnipeg, and once for the Intercolonial Railway but no appointments of Commissioners were made under the Act⁸. The Reformers, led by Alexander Mackenzie, did not proclaim the Act at all between 1874 and 1878 - although Mackenzie agreed to the introduction of the amendment broadening its application in 1875. The Tories returned to power in 1878 and proclamations were issued frequently, almost exclusively along the line of the Pacific Railway. Appointments of about twenty commissioners were made between 1878 and 1886, when the Canadian Pacific Railway was completed.

The extent of Tory use of the Act can be examined firstly by transferring proclamations to a map of the Pacific Railway route. (See Map C: 176) From records of Orders-in-Council, the Tories proclaimed the Act in force on the Government sections of the Pacific Railway - Sections 14 . 15 in 1878 and Sections 25, 41 and 42 in 1879 (see Map D: 177). In 1882 the Act was proclaimed along the line of the railway in British Columbia between Port Moody and Savona Ferry⁹ and on the sections of the line in Ontario between Callander Station and Algoma Mills, and from Prince Arthur's Landing (Port Arthur) to River Pic (see

- Map 2 -

NAF _ D _

Canadian Pacific Railway route Port Arthur to Winnipeg

MAP OF CANADA

To illustrate the questions in dispute with the
PROVINCE OF ONTARIO.

COMPILED BY G.B. KIRKPATRICK, P.L.S.

Department of Crown Lands,

ONTARIO.

May 12th 1882.

NOTE.

The part striped with yellow and red crosswise, denotes that part of the Territory awarded to Ontario which is now claimed by Manitoba and the Dominion.

The part with yellow stripes only, is transferred by 44 Vict Cap 14 D. to Manitoba conditionally.

The part with green stripes only, is transferred by 39 Vict Cap 21, D to Keewatin conditionally.

The part striped with red only, denotes that part of the awarded Territory which is claimed by the Dominion.

SETTLEMENTS ALONG THE LINE OF THE C.P.R. IN BRITISH COLUMBIA

1. Laggan	5. Farwell (Revelstoke)
2. Golden	6. Boston Bar
3. Donald	7. Hope
4. Beavermouth	

3

**PM-1 3½"x4" PHOTOGRAPHIC MICROCOPY TARGET
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Maps F and D: 179, 177). By 1883 the Act applied along the line in northern Ontario from the River Pic to Michipicoten and it was withdrawn in the District of Keewatin from the town of Rat Portage (now Kenora) and then from railway sections from Rat Portage to Port Arthur. The following year it was extended in Ontario to include the Michipicoten supply road and the Sudbury - River Pic section of the line. It was also proclaimed along the Company line east of the B.C. border, first for 20 miles, then for 130 miles and in 1885 that distance was extended to 150 miles. The same year the Act was extended to 35 miles "beyond the west crossing of the Columbia River" and was withdrawn from the Callander to Sudbury section in Ontario. Finally in 1886, it was extended into central B.C., from the Columbia River to Schuswap Lake, where the Company line climbing up from Golden and Donald would join up with government sections in British Columbia.

These proclamations may appear to be a piecemeal list but on careful examination they prove to extend along almost the entire line of railway construction in British Columbia, Ontario and the District of Keewatin. The Prairies were exempt from proclamation of the Act because an 1873 Customs Duties Act already prohibited liquor sales throughout the North West Territories. So prohibition by central state edict was the norm along most of the length of the line of the Pacific Railway at least during periods of active construction.

A second source of evidence on the Company-Government nexus in relation to the Peace Preservation Act is provided by Company correspondence. The close relationship between Company Directors and officers and

political leaders is well-known; the Company's Board of Directors and especially its first President, George Stephens, were well-acquainted with Macdonald and members of his cabinet. Stephens was in frequent contact with Tupper, Minister of Canals and Railways 1879-1884, Pope who was Minister from 1885-1889 and with Tilley, Minister of Finance 1878-1885; and his correspondence with them and especially with Macdonald shows a high degree of intimacy and frankness (as well as, at times, financial desperation). Furthermore, Macdonald's Cabinet was willing to make political moves in favour of the Railway Company as demonstrated, for instance, by the Dominion's refusal to allow the granting of railway charters to provincial lines which might compete with the Canadian Pacific; four Manitoban charters were disallowed in 1882 (Creighton, 1955: 320-22, 344).

A limited survey of Company correspondence found that the General Manager, Cornelius van Horne, was involved both in discussing applications of the Peace Preservation Act with other Company officials and in making direct requests for proclamations to the Minister of Railways and Canals. In July 1883, van Horne wrote to the Company Secretary in Montreal inquiring why the Peace Preservation Act was not in force between Sudbury Junction and Thunder Bay and why the weapons sections of the Act did not apply between Callander and Algoma Mills and asking him to "communicate with the proper authorities at Ottawa as to this" (CPR Letterbook No. 2, 1883: 474). In May the following year van Horne sent a letter directly to the Minister of Railways and Canals describing problems with liquor sellers along a supply road for the Canadian Pacific line at Michipicoten (near Wawa) and asking for the

road to "be put under the operation of the Public Work's Act [sic] if it is possible." (CPR Letterbook No. 5, 1884, 907-910.) In both instances the proclamations requested (except for the weapons sections) were promptly forthcoming¹⁰. So the overall finding is that the Tory Cabinet approved proclamations on both government and Company sections of the Pacific Railway.

Section 1.3

Refusals to Apply the Peace Preservation Act

The state declined to proclaim the Peace Preservation Act in the case of some public works, despite requests from contractors. As we have said, the Act was never proclaimed under the Reform Government. During Mackenzie's term of office, when an application was received in 1875 by the Department of Public Works from the contractor Joseph Whitehead (later of Cross Lake) who was working on construction of the Pembina Branch of the Pacific Railway, south from Winnipeg to the border, it was refused even though Whitehead was a known Reform supporter, having sat in the House of Commons as a Reformer from 1867 to 1872 (Can.Dir.Parl, 1968; N.A. RG13/index v.451/#774). Another petition came from an Ontario contractor on the Hamilton and Great Western Railway in 1877 (N.A. RG13/index v.454/#705). In both these cases and in others no action appears to have been taken.

Even in the case of the Tory government, while there is no record of Macdonald's Cabinet declining requests for proclamation from the Canadian Pacific Company or from companies owned by the CPR, the application of at least one other railway company was discouraged. In

1885, officers of the Quebec and Lake St John Railway Company petitioned the Secretary of State to apply the Peace Preservation Act along their line of construction south from Lake Simon to Lake Edward near Quebec (N.A. RG 2-1/v.5134/p.c.848). Bradley, the Secretary of Railways and Canals, asked Burbidge, the Deputy Minister of Justice how

...the Government can meet the views of the Company without becoming liable for the consequent expenses.

RG13/ 1885/731

and Burbidge responded that in his opinion the Government

...should have a undertaking by the Railway Company that they will bear all the expenses connected with the administration of the Act during such time as it may be in force along the line of their railway.

ibid, May 26, 1885

and this apparently ended the matter.

Section 1.4

State Interventions using Armed Force

The phrase "state intervention" has been clarified by the distinction between two practical levels at which the federal state could introduce measures to reduce labour disturbances on public works. Proclamations of the Preservation of the Peace Act were, as already discussed, one level; but it would be wrong to assume that, once proclaimed, this Act was necessarily enforced, as Dominion appointments of Peace Commissioners under the Act, Police Commissioners and constables under the Dominion Police Act, or provincial appointments of local magistrates, were necessary before the provisions of the Act could be carried into effect. (Jurisdictional questions are considered in Section Two of this chapter and more practical enforcement issues in Section Four.)

If the Act was already routinely enforced along a section of railway and disturbances still took place, under what circumstances did the Federal Government resort to extraordinary remedies? In relation to this second level, of short-term or "crisis" interventions, three major episodes of violence are considered - one on construction of the Lachine Canal near Montreal in 1877, another on a government section of the Pacific Railway at Cross Lake in 1879, and the third at Michipicoten near the Canadian Pacific Company's North Shore construction in 1884. The purpose is to ask what factors helped to encourage or prevent central state interventions in each case¹¹. The three incidents at Lachine, Cross Lake and Michipicoten represent situations where local authorities considered routine measures had failed and governments were called on to provide additional and extraordinary remedies. These instances can help to address the question of the central state's coercive role by considering its use of force against public works navvies.

Section 1.5

The Lachine Canal Strike, 1877

Control of disturbances among labourers working on canal improvements in the Montreal area was customarily left to local authorities, on the basis that the Peace Preservation Act had no application in cities (32-33V.,c.24, s.1.3). However, militia had been called out to the Lachine Canal in 1875 to suppress a strike (Parizeau 1973: 52, 78). In 1877, in the case of improvements along the Lachine Canal, work sites lay partly inside and partly outside the city of Montreal and the authorities involved were the city of Montreal as well as neighbouring smaller municipalities including Côte St. Paul, St. Henri, and Ste Cunégard.

By 1877 labourers' wages in the Montreal area had fallen below subsistence level as a result of a labour surplus due to the Great Depression¹². Labourers working on the Lachine Canal nonetheless struck for higher wages on December 17, 1877, demanding one dollar per nine-hour day. The canal sections were privately contracted and the strikers complained that the contractor, Davis, had "promised them ninety cents per day for winter's wages, during the short days and that he only allowed them eighty cents, last pay day"¹³. The contractor denied this. About twelve hundred men went on strike from seven construction sections and both the local civil authorities and the government engineers supervising the canal works demanded assistance from Ottawa. The mayor of Montreal, Jean-Louis Beaudry¹⁴, telegraphed directly to Prime Minister Mackenzie on December 18 to ask for action:

General strike and much rioting on Lachine Canal public works
outside city limits immediate steps should be taken to
preserve order otherwise consequences may be serious

N.A. RG 11 B 1(a) v. 473

Mackenzie, perhaps more cautious after the Montreal experiences of 1875 (including the Guilbord affair), refused outright to consider the request and replied to Beaudry on the 19th: "Matters wholly in hands of local authorities" (*ibid*).

The supervising government engineer, G.F. Baillargé, reported to his superior the Secretary of Public Works, F. Braun in Ottawa, detailing events: more than a thousand men were on strike and only fifty were working by December 18th; the contractor had offered ninety cents per nine-hour day, to increase later to \$1.00 per ten-hour day, but the men were refusing the offer. The labourers wanted the contractor to

withdraw and hand over construction to a higher-paying contractor. Beaudry had reported "much rioting" on the 18th, but Baillargé reported no violence until the 19th, when some one fired shots into contractor Davis's office, slightly injuring his son, and shot at his foreman. Shots were fired back and a Canadien labourer was "dangerously wounded". According to Baillargé the engineer, on the 19th before the shootings, Davis had applied to the Minister of Justice "for protection on the works, as many would be willing to work for the ninety cents per day... if the strikers did not prevent them". A request for proclamation of the "Public Works Act" was rejected using the argument of local responsibility but, in Baillargé's view, problem was that "the local authorities ... are unable to give the requisite protection". Baillargé commented from an engineering viewpoint on December 18

This strike is much to be regretted, happening as it does, at a time, when the weather is very favourable, much more so than usual at such a season for the prosecution of the work.

(ibid)

But the Public Works Secretary, Braun, told Davis' representative that the "Government has no desire to hurry the work" (Dec.20). Meanwhile, Mayor Beaudry took matters into his own hands by calling out one hundred militia volunteers on the 19th and he telegraphed Prime Minister Mackenzie again reporting that more volunteers would be needed on the 20th. In the face of this show of armed force, the strike was suppressed without central state intervention.

In this instance the Reform Government refused to be drawn into policing public works at all despite a major strike. The Government's defence

was that the terms of the Peace Preservation Act precluded its application to public works within cities and the technical response was relied on to refuse long-term Dominion intervention in the Montreal region via the Peace Preservation Act. But Mackenzie effectively refused the local authorities' request for short-term intervention as well. This forced Mayor Beaudry to rely on calling out the local volunteer militia, presumably meeting the costs from local funds.

Section 1:5

The Strike at Cross Lake, 1879

A strike on the Pacific Railway near Cross Lake in 1879 received a very different response from the Tory government. This strike took place in early May, on the government part of the Pacific Railway between Rat Portage (now Kenora) and Cross Lake. (See Map D.) The section where the strike began, Section 15, had been a particularly difficult one to build. The government contractor for the section, Joseph Whitehead¹⁵, eventually defaulted early in 1880, despite additional government subsidies, blaming his failure on the conditions at Cross Lake - namely the muskeg which swallowed the sand and gravel deposited in several attempts at building the line (Berton, 1971: 285). Whitehead's financial difficulties and the physical obstacles to construction probably combined to worsen working conditions and helped to cause severe labour problems. On May 5, Sir John A. Macdonald, as Minister of the Interior, received a telegram from Chief Justice E.B. Wood¹⁶ in Winnipeg requesting the calling out of the Manitoba militia to Cross Lake in the District of Keewatin to quell a strike. (N.A. RG 2-1, v.378, May 8, 1879).

The Government had already proclaimed the Peace Preservation Act in force along Sections 14 and 15 of the Pacific Railway on December 20, 1878 (N.A. RG 2, p.c.#1066) and for good measure had repeated the exercise on January 23, 1879 (N.A. RG 2, p.c.#92). In December too, Captain J.W. Brereton had been appointed Commissioner of Peace under the Act and a Justice of the Peace for Keewatin (N.A. RG 2, p.c.#'s 1056, 1066 and 1095), but no Police Commissioner had been appointed for Keewatin under the Dominion Police Act. Keewatin, as a District under direct federal administration but with few inhabitants, had little policing and Brereton appears to have been the first federal judicial appointment in the District and to have been appointed without any formal means of swearing in police constables.

The Winnipeg telegram depicted a serious situation:

a strike of all men on contract 15 a few compelling all, have forced all, work stopped stores broken open provisions and goods used in common and wasted force necessary to suppress it

N.A. RG 2, v.378, p.c. #685, May 8, 1879

The Acting Minister of Militia and Defence, Mackenzie Bowell, appeared ready to comply with Chief Justice Wood's request and submitted a favourable report to Cabinet suggesting that the Winnipeg militia's commanding officer,

... be instructed by telegraph to take with him to the place of disturbance such a body of men with the necessary arms etc. as may be thought requisite ... in preserving the peace - using the greatest caution and forbearance and firing upon those causing the disturbance only as a last resort.

ibid

Presumably these were customary departmental phrases. The contradiction, as other telegrams plainly showed, was that although

there was a strike there were no disturbances. The contractor, Joseph Whitehead in Montreal, received telegrams from his son Charles at Cross Lake and from another correspondent, John Bain¹⁷, a Tory lawyer in Winnipeg. Bain reported "no serious rioting yet" and added "mere appearance of militia will probably restore order". The younger Whitehead, supervising the work on site at Section 15 at Cross Lake, said that the men were quiet "but want two dollars good or bad and board down to four"¹⁸ adding that the strike was limited to one division along the line but the men involved were trying to stop work on two others (ibid).

What lay behind the strike at Cross Lake? The Winnipeg newspapers - the *Free Press* and the *Daily Times* - gave conflicting reports; the *Daily Times* sent a reporter to Cross Lake and gave its readers detailed but sensationalized accounts of events. The *Times* claimed that the strike was due to resentment at Captain Brereton's appointment as "Stipendiary Magistrate"

The profitable business of whiskey selling has been so seriously interfered with, that some means, no matter how violent must be used to restore it.

May 5, 1879

A letter written by one of the strikers and printed on May 10 put an entirely different interpretation on events. The writer listed the workers' grievances: they had learned at the beginning of May that wages would be cut to \$1.50 from \$1.75 per day; the men went to Cross Lake to see Charles Whitehead who admitted giving the order, which was to apply to new hands and old hands who moved to another cut as well as men returning from sick leave. The strike began with the men asking

\$2.00 per day, demanding that board be reduced to \$4.00 from \$4.50 a week or better food provided, that pay be in cash every month instead of by cheque every two months, and, "as fifty cents a month is stopped from every man for doctors' fees, we either want a doctor or else not pay for one". The letter ended,

It is rumoured here that 50 specials (constables) are coming out on a train to put an end to the strike; but so far we have done no violence to any person, or any injury to any property. But we are determined to see this thing out.

Daily Times, May 10, 1879

As early as May 4, Whitehead's son informed his father that the Countess of Dufferin (the first Pacific Railway engine) would be in Winnipeg on May 5 to pick up special constables "and will clean all McLeod's division off" (N.A. RG2, v.378, p.c.#685). But it was only four days later on May 8 that the Cabinet approved an Order-in-Council calling out the Manitoba Militia to Cross Lake (N.A., RG 2, p.c.#748). We do not know how closely members of Cabinet were in touch with the contractor or whether they were aware of the relatively peaceful nature of the strike but, as Captain Brereton was at Cross Lake, there was no reason for a lack of information.

Seventy militiamen from Winnipeg commanded by Col. Osborne Smith arrived by train at Cross Lake on May 9th accompanied by newspaper reporters. Charles Whitehead, the contractor's son, pointed out five leaders among the assembled strikers and they were arrested on Brereton's orders. The crowd of strikers dispersed. On May 10th rumours of impending efforts to rescue the ringleaders appeared to be correct when a large crowd of strikers gathered at Cross Lake. Captain Brereton read the Riot Act and

Col. Smith and Brereton, backed by the armed militiamen, eventually succeeded in persuading the dissatisfied workers to accept wages in cash and free travel to Winnipeg. The strike was over. The five men arrested were convicted by Brereton - reportedly for riot and conspiracy - four were fined ten dollars each, one five dollars and one "arrested for insulting Col. Smith" was discharged with a caution (Daily Times, May 13, 1879).

Part of the difficulty at Cross Lake may have been the absence until 1878 of any judicial appointments¹⁹ and until 1879 of police appointments. Judicial matters in the district were complicated by the dispute between the Dominion Government and Ontario over the northern and western boundaries of the Province (See Map E). Although this question had been disputed since 1871 and submitted to arbitrators in 1878, no solution was reached for over another decade (Waite, 1988: 117-8). Disputed jurisdiction in the District also raised problems over where crimes had been committed - in the District or in a Province - and where prisoners should be tried and where should they be sent to jail. In 1880, the Federal Government passed an Act to allow trials of crimes in either Manitoba or Ontario until the border question was settled²⁰. But, in the period before 1880, general confusion prevailed. For example, in May 1880, the Minister of Justice James McDonald commented in the House that persons convicted of the sale of liquor along the line of the Railway in Keewatin and sent to jail in Winnipeg had had to be released when it was discovered that magistrates had no authority to send them to Manitoba (Hansard. Commons, May 3, 1880). Whether or not the Cabinet had been well-informed about the situation during the strike

on Section 15, it recognized the need by May to provide more local enforcement officials in Keewatin: three justices of the peace were appointed for the District on May 2 and May 20, in addition to Brereton. (See N.A. RG 2 p.c.#'s 298, 414, 700, and 748)²¹.

As for local police appointments in Keewatin, at least two possibilities were available under federal Acts but in practice neither of them was open to Brereton at Cross Lake in 1879. The federal Railway Act authorized appointments of constables to police railway lines, beginning with the Act of 1868 (31V.,c.68,s.49)²². But the Railway Act of 1879 only referred to constables being sworn in at General or Quarter Sessions of the Peace and did not mention areas of the country outside the four founding colonies (42V.,c.9,c.61). In the 1881 Act this oversight was amended to allow appointments by a Stipendiary Magistrate or two Justices of the Peace in Ontario, Manitoba or the District of Keewatin (44V.,c.25,s.110). But, before this date, Brereton would have had no power to appoint constables under the Railway Act. Could this have been done under the Dominion Police Act? The difficulty here was that there was no Dominion appointee in Keewatin until Brereton himself was made a Commissioner of Police in October 1879 (p.c. #1465)). This situation may have left Brereton unable to appoint police constables during the strike and it could explain why the contractor's representative referred to fetching special constables from Winnipeg. These assessments, made initially as surmise, are supported by letters in Department of Justice files. In January, 1879, Brereton wrote to the Department asking for "authority to appoint constables" (Reg. 1979 #237) and the correspondence continued until March 1879, with memos being sent

between Justice and the Public Works Department. The outcome was another Order-in-Council of March 26, 1879 appointing Brereton as Commissioner of Police, not for Keewatin but for Manitoba, with the Department of Justice recommending he be authorized to appoint constables (N.A. RG2/ p.c. #414/ 1879). In effect, less than six weeks elapsed between this Order-in-Council and the start of the strike at Cross Lake, leaving little time for Brereton to make any moves.

Four elements stand out in this account and can be compared with the Lachine Canal strike: firstly, the strike was peaceful, although it was based on serious grievances relating to rates of pay and company charges for board and medical treatment; secondly, the strike took place on a government section of the railway built by a private contractor which had recently been proclaimed under the Peace Preservation Act; thirdly, the location of the strike in a remote area of Keewatin and the new appointment of a local Commissioner of the Peace implied the absence of anything but makeshift policing arrangements in the area; and fourthly, the Dominion Government responded promptly to send in armed force, although evidence suggested that there was probably no necessity to do so. What is also notable is that, according to research by Parizeau relying on National Defence records for use of the civil power in Canada, Cross Lake was the sole occasion on which troops were used in railway construction strikes along the Pacific Railway.

There were three call-outs related to railway construction strikes; these occurred at Cross Lake, Man., in 1879, at Port Rowan, Ont., in 1884, and at Bury, Que., in 1888.

Section 1.7

The Michipicoten Riot of 1884

The third example, the Michipicoten Riot, was not the consequence of strikes or violence among railway workers but the direct result of violence among "whiskey peddlars"²³ - the dealers who followed the railway construction crews to supply illicit alcohol. Michipicoten lay in Ontario - not in Keewatin - on the North Shore of Lake Superior between Port Arthur and the Sault, where the C.P.R. Company was building the adjacent section of the main line.

Events at Michipicoten were reported in great detail in major newspapers²⁴ and according to these accounts the crisis arose in Michipicoten as a result of the highly profitable, but changing and uncertain, nature of the illicit liquor business. Contemporary accounts suggest that illicit liquor was demanded and sold on a large scale all along the Canadian Pacific line at highly inflated prices. As railway construction progressed eastwards along the North Shore of Lake Superior, the liquor traffic shifted with it. Small harbours developed, expanded rapidly, and then declined, each becoming in turn a miniature entrepôt for the unloading of railway supplies and illegal liquor. Villages such as Peninsular Harbour and Michipicoten were temporary centres of business activity, with steamers carrying construction materials, food, liquor and passengers arriving regularly from the Sault and Port Arthur (The Globe: October 20, November 4, 1884). The Peace Preservation Act had been proclaimed in force for ten miles on each side of the railway line in 1883²⁵ (N.A. RG2, P.C. 22480, Dec 10, 1883), but did not apply to the village itself, as Michipicoten lay on the Lake at

the mouth of a small river forty miles from the line. The CPR Company built a supply road from the landing north to the railway line. Then in May, 1884, at van Horne's direct request, the Peace Preservation Act was extended to the supply road, including the village of Michipicoten itself, and a Peace Commissioner, J.C. Gough, appointed under the Act (P.C.#1174, May 27, 1884).

According to the local Ontario magistrate, Captain Burden, who lived in Michipicoten, the proclamation of the Peace Preservation Act in May, 1884 came "too late" (The Globe, November 13, 1884); the liquor supply business was well established at Michipicoten by the 1884 season²⁶. Michipicoten was already, in one reporter's words, "a perfect sink of iniquity".

Every other log shanty in it is a whisky hole, where the day is enlivened by free fights, and gambling and robbery and [sic] zest to the evening performances. ... Although the place consists of less than a hundred houses it yet has within its borders a score of lewd women, the very offscourings of the world.

The Globe, October 20, 1884

By the fall of 1884 "respectable" local residents decided to take more forceful action against the whiskey peddlars in Michipicoten. However, those residents on the side of the law - the provincial magistrate, the CPR agent and a few others - were outnumbered by the local supporters of the liquor trade. The latter, led by a former "chief of police" named Wallace, attempted to frighten and evict the "respectable" residents from the town to gain an unimpeded monopoly over the liquor trade (Globe, October 20). On the night of October 10, several hundred shots were fired into buildings housing the magistrate and the agent; surprisingly no one was injured.

The Globe announced that the County Crown Attorney of Sault Ste. Marie would "levy and transport an armed force of sufficient strength to overcome the lawless element" (October 17). But Provincial Magistrate Burden had promptly travelled to Toronto and he met with Premier Oliver Mowat and the Toronto Police Commissioners there on October 17. A decision was made to send a police sergeant and ten men from the Toronto police force to Michipicoten and the party eventually arrived there on October 23. Despite reports in The Globe that the Toronto police could expect to be outnumbered on arrival in Michipicoten (October 29), "Toronto's boys" landed safely (October 31, November 1)²⁷. Later, the Globe's readers heard details of how the "law-breakers" had fired on the police at night, of seven arrests for aiding and abetting a riot, the assistance of "two local constables", of an effort to defend the local lock-up against an attack (which never materialized) and the failure of the police to arrest three of the four ringleaders.

Magistrate Burden moved quickly and promptly held preliminary examinations of eight or nine men, discharging several but committing four for trial at the Sault²⁸. However, as soon as the magistrate, the police and the prisoners left Michipicoten by steamer for the Sault, the "outlaws" reappeared from the woods; they departed later, again by steamer and also for the Sault, firing on the local residents as they left, and were arrested on the American side of the border. (The Globe, November 8)

This account raises a number of questions about local administration of justice and about the Peace Commissioners appointed under the Peace

Preservation Act and what they were doing during the Michipicoten Riot. The jurisdiction of the new Peace Commissioner, Gough, already running from the River Pic to Michipicoten, had been extended all the way to Sudbury the previous summer (P.C.#1223, June 2, 1884). A third commissioner was appointed under the Act in the same summer, namely Harry Abbott the CPR engineer in charge of construction on the eastern Lake Superior section, which included the Michipicoten area (P.C.#1257, July 8, 1884). This meant that two or three commissioners, Gough and possibly McCabe and Abbott²⁹, had authority over ten miles on each side of the railway for a distance of approximately one hundred miles west of Michipicoten and two hundred miles east - a total area of roughly six thousand square miles. Abbott's was a startling appointment; its effect was to give the Company's chief engineer on the section judicial powers over his seven hundred employees³⁰ and the local liquor suppliers - a point to be examined in more depth in later discussion of appointments under the statute (Section 4)

The Dominion Government moved finally to recognize not only the occurrence of problems in Michipicoten but the ineffectiveness of some of the Commissioners for, on October 14, the Cabinet replaced Gough appointing Frank Moberly C.E. Commissioner on the Michipicoten supply road. Moberly was another engineer (possibly for the Canadian Pacific, as he was brother of Walter Moberley the CPR surveyor). Although the Order-in-Council stipulated that he was to take "vigorous action on the part of the law along this supply road" (N.A. RG2, p.c.#1980, 1884), his appointment came too late to be useful. Moberly was the only Dominion appointee mentioned by The Globe which announced on November 4 after the

excitement at Michipicoten was over, "Mr. Moberly and a posse are expected at Michipicoten today."³¹

Were the Peace Commissioners inactive or ineffectual in the Michipicoten district and were the proclamations of the Peace Preservation Act put to any use at all? The provincial Stipendiary Magistrate at Sudbury, McNaughton, claimed that the Act was routinely enforced and reported handing out over 90 convictions himself during the previous 14 months (the Globe, October 29). In addition, he said that Harry Abott, the CPR engineer, had handed down 20 convictions and that fines under the Act totalled \$2,000. However, a contractor on the North Shore, a Mr Commee, was also reported as saying that cases of repeated liquor selling offences were customary (The Globe, October 21). If fines were twenty or forty dollars under the Act and bottles of liquor sold at similar prices - as newspaper reports suggested - it seems probable that the profits of trading in illegal liquor far exceeded the expenses of justice for many whiskey traders.

Section 1.8

The Findings from Section One

It is evident from the data amassed that the state under the Tory party facilitated contractors' control of railway labourers by proclaiming prohibition along the line of the Canadian Pacific Railway and appointing Commissioners to enforce the Peace Preservation Act. It is less evident that the state under the Tory party was willing to use coercion in the form of armed intervention to force solutions to disputes between contractors and navvies or to pacify areas of railway construction.

Mackenzie's inaction during the Lachine Canal strike of 1877 may be characterized as the result of a more general Reform Party disinclination to rely on measures involving state intervention. For the Tory Government in power during the Cross Lake and Michipicoten "riots", no such disinclination was evident. But one noticeable difference between the two incidents of railway violence under the Tories is that we find Dominion Government intervention at Cross Lake, in response to a relatively peaceful strike of navvies, and federal inaction during a violent episode at Michipicoten. Yet both areas had been proclaimed under the Peace Preservation Act and both had Dominion appointees at least nominally responsible for breaches of the Act. What were the factors distinguishing the two cases which might help to account for the differences in Dominion actions?

One possibility is that the Cross Lake strike was a more serious threat in real financial terms to railway construction than the Michipicoten riot. The strike not only brought construction work to a halt but threatened to cause demands for increased wages and reduced rates of board along other stretches of railway. The fact that Cross Lake was on a government-built section of the railway could also have made government intervention seem more necessary. But, against this view, progress on government sections of the railway had always been slow, so that a work stoppage might be taken less seriously (although perhaps not by the contractor directly involved).

The factor of publicity attached to incidents of unrest on the railway was apparently not significant in these cases as both incidents were

reported in detail in newspapers. The Dominion Government acted quickly to make a new appointment of a Police Commissioner at Michipicoten as soon as the news was published, but their reaction was far less interventionist than calling out the militia. (Commissioner Moberly eventually arrived in Michipicoten more than three weeks after the riot.)

The obvious differences between the Cross Lake and Michipicoten affairs which may have affected the Federal Government's decision to intervene appear to be three-fold. In the first place, the Michipicoten Riot took place within Ontario, which was conducting legal and jurisdictional disputes with the Dominion, in a village where a provincial magistrate and other officials such as constables had jurisdiction and supposedly administered justice. The Cross Lake strike occurred in a disputed territory, where the Federal Government was ready to raise the flag on Manitoba's behalf in defiance of Ontario's claims and where no established policing existed. Secondly, the Cross Lake incident was a strike which potentially threatened demands for wages of two dollars a day along the Pacific line in 1879. In effect all the Government's contractors could have been faced with the same demand and this in a period when wages in cities were as low as one dollar a day for unskilled labour (Bleasdale, 1984: 161). Thirdly, in the case of Cross Lake, the local contractor requested Dominion assistance and in the events at Michipicoten the local authorities appealed to the Ontario Government. These differences seem plausible as a partial explanation of why the Dominion Government took a more interventionist stance in one case than in the other.

Do we find any evidence of railway construction strikes or riots within Provinces where the Dominion Government intervened actively? The answer might appear to be a cautious "yes" for there are examples of the N.W.M.P. effectively containing or stopping strikes, not only on the Prairies - at Maple Creek in 1883 - but in British Columbia - at Beaver in 1885 (Steele, 1915: 171, 197). But in the Beaver strike on the Pacific Railway line, the Mounted Police were already in place as the effective local police (and also as part of the local judiciary) so there was no need for direction from the central state to intervene; the Mounties assumed direct responsibility. We need to give more careful consideration to other known instances, but the overall impression received is that armed intervention along railway construction was used cautiously, even under Macdonald's more interventionist Tory Governments.

Section Two

PREVAILING ORIENTATIONS TO THE PEACE PRESERVATION ACT AND ITS ENFORCEMENT

There is little doubt that the provisions under the Peace Preservation Act for the arbitrary prohibition of liquor sales³², while not unique in Canada, were both contentious in law and, to some degree, provoked local conflict and disorder. In this section the form of prohibition will be reviewed, firstly, in relation to other modes of liquor control and, secondly, with respect to its geographic particularism. One practical result of enforcement of the statute was a number of disputes between federal and local authorities over the right to control sales of

liquor. The question of the legal status of the Peace Preservation Act is looked at in the third part of the section and then, in the fourth and fifth sections, practical disputes which occurred in both Ontario and British Columbia are examined.

Section 2.1

Liquor Prohibition in Law: Local Option or Government Fiat

Efforts to suppress alcohol use were not new in Canada. By the 1860's prohibition was a popular cause in many parts of the country.

Government legislative action included Ontario legislation in 1864 (the "Dunkin Act") and Dominion legislation - the Canada Temperance Act (or Scott Act) in 1878. But the Peace Preservation Act differed from much of the temperance legislation of the period in its provisions for Prohibition by government fiat.

The early history of prohibition legislation and licensing legislation in Canada was complicated by disputes between the federal and Ontario governments in the exercise of their respective jurisdictions under the B.N.A. Act. These disputes occurred between 1878 and 1885 - i.e. in the same period as prohibition was applied along the Pacific Railway line by means of the Peace Preservation Act. The eventual outcome of a series of appeals and disallowances was that the Dominion's provision for prohibition, via the Canada Temperance Act, was upheld under the "peace, order and good government" provisions of the B.N.A. Act; but the provinces retained power over licensing the sale of liquor under their jurisdiction over property and civil rights in the province (Creighton 1955: 340-1, 347, 377).

The Canada Temperance Act or Scott Act of 1878 allowed local communities to vote on whether they wished to adopt the temperance option. In contrast the Peace Preservation Act enforced compulsory prohibition on a generally non-abstemious segment of the working class employed in building railways; under the Act, only a "city" was exempted from proclamations. (In remote construction areas, any vote would almost certainly have shown a majority against prohibition.)

So the difference between the effects of the Peace Preservation Act and the Scott Act was that "navvies" working on canals and railways were forbidden access to liquor by state decree, whereas ordinary communities were given a right of choice. As suggested earlier, it is probably significant in this regard that navvies were excluded from suffrage unless they owned property. But public works labourers were not the only societal segment to which a form of compulsory temperance by government decree was applied. In 1873 a new Act dealing primarily with customs duties extended prohibition to the entire North West Territories. Under the statute, entitled "An Act to Make Further Provision as to the Duties of Customs in Manitoba and the North West Territories" (36V., c.39), it became an offence to import spirits into the Territories; all liquor was forfeit and fines were set for smuggling offences³³ and, in 1874, the newly established North West Mounted Police were given powers to search for intoxicating liquor anywhere in the Territories (37V., c.22). When the enforcement agents responsible under either of these statutes made efforts to enforce prohibition provisions in the Territories and along the length of the Pacific Railway, the result was that the supply of liquor fell below demand. Enormous

policing problems were created as a result of prohibition policies; liquor smuggling into the Territories became a preoccupation of the Mounted Police and, along the Pacific Railway line, relatively weak police forces and a few magistrates attempted to deal with whiskey peddlars and with small villages that sprang up as liquor centres³⁴.

It is relatively easy to interpret prohibition in the Territories as a paternalistic device to protect the native people from whiskey trading. The evidence from early Mounted Police accounts demonstrates that the officers of the Force saw their role in this light. Major Sam Steele, writing in his memoirs of Calgary district in the year 1883, commented that

The same old law for the suppression of intoxicating liquor was in force... It was intended for the prevention of the Indian trade, and our powers under it were so great that we could enter or search any place at any hour of the day or night.
1915: 176

But it was also plain to Steele that the prohibition law was ineffectual in the North West Territories and he did not mince words.

The prohibitory law made more drunkards than if there had been an open bar and free drinks at every street corner. Liquor was brought into the territories by every conceivable trick. Egg shells were emptied of their contents and alcohol substituted; tin imitations of the Holy Bible were filled with intoxicants and sold on the trains; metal kegs filled with alcohol came concealed in the centre of barrels of kerosene, and mince-meat soaked in brandy and peaches prepared in the same manner were common.
ibid: 177

The penalties for selling liquor under the 1869 Peace Preservation Act, the 1873 Customs Duties Act and the 1878 Canada Temperance Act were roughly similar - fines of twenty to fifty dollars for a first offence and imprisonment for a second or third offence. So it is significant to find that the same device which failed in the North West Territories was

used by the Dominion Government after 1878 in an effort to promote public works construction and to allow rapid and orderly development of the Pacific Railway in Ontario, Keewatin and British Columbia. In effect, the right to hold a vote and accept or reject prohibition under the Canada Temperance Act was arbitrarily withheld from the entire North West Territories and from those areas along the railway proclaimed under the Peace Preservation Act.

Section 2.2

The Geographic Particularism of the Peace Preservation Act

A second feature of the Peace Preservation Act, namely its particularism or geographic delimitation, was unusual in the field of criminal legislation. By "particularism" we mean that the Act had to be proclaimed in force on any public work by Cabinet Order-in-Council and it applied only to a defined geographical area. The 1869 Act specified proclamation for a "canal or railway" (32-33V., c.24, s.1) but the 1885 Act was more general:

1. The Governor in Council may, as often as occasion requires, declare, by proclamation, that ... this Act ... shall be in force in any place or places in Canada in such proclamation designated, within the limits or in the vicinity whereof any public work is in course of construction, or in such places as are in the vicinity of any public work, within which he deems it necessary that this Act ... should be in force ...

(48-49V., c.80, s.2.1).

The Act was exceptional because most Dominion criminal law applied broadly across the nation³⁵. But the Peace Preservation Act represented a small, distinct, category of legislation containing a regime of criminal law that only applied to "proclaimed districts". Alcohol sales were prohibited under the Act only in selected places and Parliament

handed the Cabinet discretion to identify the relatively few times and places involved³⁶. Unlike the Vagrant Act, which legislators failed to extend to the North West Territories³⁷, the Peace Preservation Act was extended to provinces as they entered Confederation but the statute allowed differential application of law by government fiat in different areas. There was some parallel, evidently, with the idea of districts proclaimed under the Canada Temperance Act but, unlike that statute, local areas had no right to adopt or reject the Peace Preservation Act as a local option.

The geographic particularism implicit in the Peace Preservation Act raised problems in practice; when proclamations of the Act set geographical limits for application, both illicit whiskey traders and licensed saloon operators could establish themselves with impunity outside these limits and carry on business in response to demand³⁸. Alternatively, traders ignored the prohibition and went to work in clandestine fashion within the proclaimed district, and peddlars of illicit liquor, together with other suppliers of services including prostitutes, moved with the progress of the line. A Peace Commissioner or his constables, eager to prevent liquor-trading, had to track the traders down to their tents or shanties; two accounts from contemporary reports are included here - the first in relation to Rat Portage in Keewatin (now Kenora in Ontario) and the second for Laggan in British Columbia, near the Bow River pass.

In 1880 Rat Portage was a new railway village - the headquarters for the contractors on Section "B" of the Pacific Railway - which, according to

the *Winnipeg Daily Times* had been "nothing more than a Hudson's Bay Post" the year before (November 8, 1880). In December 1880 the new Dominion Magistrate and Commissioner of Police, McCabe reported the findings of two of his constables sent to investigate "the houses of illfame and other places of resort of the more disreputable portion of this community" and sent the findings to the Minister of Railways and Canals - apparently not the first time he had complained to Ottawa about the lawlessness in the fast-growing village (N.A. RG 13, A4; Corresp. Misc.Depts.1867-1887). The constables visited two houses of prostitution and found eight prostitutes, although they estimated the number in the area to be as high as fifteen. One constable, O'Keefe, claimed that when work on section 15 of the Pacific Railway had stopped "all the half-breed poor whites who lived by prostitution on that section came down to this section". He also posited a close connection between the liquor traffic and prostitution; in his view prostitutes harboured the whiskey peddlars and gamblers and, according to both McCabe and his constable, only the extension of the Vagrant Act to the District of Keewatin would allow them to clean up "the dens of iniquity" (ibid).

In Rat Portage the sale of liquor was rampant and out of control (according to some reports) in 1880, despite the small size and newness of the village and earlier proclamations of the Peace Preservation Act. Rat Portage lay at the junction of Sections 15 and 42 of the Pacific Railway line; sections 14 and 15 were proclaimed under the Act in December 1878 and January 1879 (N.A. RG 2, p.c.#1006; p.c.#92, 1879) and Section 42 later in 1879 (N.A. RG 2, p.c.#1212). The location of the

town between the sections proclaimed under different Orders-in-Council and between the jurisdictions of different Commissioners, Magistrates Bent and McDonald (for section 42) and Magistrate Brereton (for section 15) perhaps allowed uncertainty about whether the Act covered the town itself. Almost certainly, Magistrate Bent, who was notoriously corrupt, chose not to enforce the Act in the village - probably given some encouragement by local whiskey traders - before he was suspended from his post in the summer of 1880 and replaced by Magistrate McCabe.

A second account of the kinds of local problems experienced in relation to the Peace Preservation Act and railway construction is furnished by Major Steele, who described the influx of "nefarious" characters when CPR headquarters were established in Laggan, at the end of the track near the summit of the Bow River Pass, in 1884

Large numbers of gamblers, whiskey men, in fact almost every description of criminal who had been plying their trade on the Northern Pacific Railway, were wending their way from Sand Point and establishing their dens on every little creek along the line.

1915: 180-81

In essence in both instances, the onset of railway construction created threats of local disorder, threats exacerbated as a result of the presence of elements specializing in supplying the recreational needs of large numbers of railway labourers. The particularism of the legislation made liquor - an already prized commodity - more difficult to obtain in the specific areas proclaimed. As a result the trade became more profitable and attractive to suppliers who tended to settle in areas immediately outside the proclaimed railway "belt", or to conceal themselves within it, in order to supply the demand.

Section 2.3

Federal and Provincial Conflict over the Peace Preservation Act.

A series of major legal battles took place in the 1870's and 1880's as the Dominion and provincial governments struggled over their constitutional roles within Confederation. Appeals and disallowances over temperance and licencing legislation have already been mentioned as one example (Sn. 2.1). These disputes, termed "the provincial rights movement" (Vipond, 1985), provide a background against which specific Peace Preservation conflicts can be seen as lesser or minor engagements. In one example of these struggles the Ontario Government, under Liberal premier Oliver Mowat, enacted two Acts in 1877 which paralleled the content of the federal Peace Preservation Act. These Acts ([Ont.] 41V.,c.31 & 32) were modelled on the early Acts of the Province of Canada of 1845 and 1853 designed to control canal labourers, and included not only prohibitions on liquor and weapons but even the provision for a mounted police force to enforce the provisions - now omitted in the federal statute³⁹. Furthermore, the Ontario statute purported to be applicable to any public work, "whether the work be constructed by the Government of Canda or of this Province, or by an incorporated Company, or by private enterprise" ([Ont.] 41V.,c.32,s.1). The concern here is with the specific question of the practical conflicts of federal and provincial laws applying to control over liquor in areas of railway construction and not with larger questions of whether the 1877 provincial statute formed part of a deliberate provincial policy aimed at claiming greater rights for the Province. However, it is noted that the Federal Government did not disallow or seek to have struck down in the courts the Ontario Peace Preservation

statutes (Hodgins, 1895). It is possible that the Ontario laws were restricted in their application to wholly intra-provincial railway lines within Ontario, while the federal statute applied to inter-provincial or national lines. While sources on the use of the Ontario statutes have not been investigated in any depth, there is no evidence in Ontario Orders-in-Council that the Ontario Acts were proclaimed in force before the end of the century⁴⁰.

Quite apart from the constitutional paramountcy of the federal law, there would have been considerable practical difficulty in proclaiming the Ontario Act in force along the Pacific line within the Province. The substances of the federal and provincial laws were sufficiently different to create operational conflict. The provisions of the Federal Government Act were harsher: its proclamations banned liquor for ten miles on each side of any railway line (until 1885) and the statute excluded "any City"; the Ontario legislation referred to a limit of three miles on each side of a railway and specifically excluded "any City, incorporated or other Town or Village" (41V.,c.32,s.1). Furthermore, the Ontario statute failed to mention Dominion-appointed Police Commissioners as enforcement officers, and included Reeves or Mayors of Towns or Villages, together with J.P.'s and Police Magistrates. The potential for confusion over enforcement provisions, if the Ontario legislation were proclaimed in the same area, is therefore evident. Judging from the absence of recorded applications of the Ontario statutes, perhaps they were one provincial move in the larger game of provincial rights which the Ontario Government recognised was too potentially confusing to bring into play⁴¹.

But the jurisdictional conflicts went rather further than questions of who had the right to arrest whom for selling liquor and in what geographical vicinity. They also raised fundamental questions about the rights of local communities situated near railroads under construction to administer their own affairs and issue licences for the sale of liquor in local taverns, and they involved the rights of local citizens to open taverns and operate hotels serving liquor. No doubt some residents saw their pocketbooks being adversely affected, as the illegal liquor business siphoned off large amounts of labourers' money to illicit operators - the "whiskey traders"; and, not surprisingly, some local communities affected by the federal Peace Preservation Act resented its application.

As the federal Peace Preservation Act was re-enacted for different Provinces as they entered Confederation⁴², and because the Act was applied within the Provinces of Ontario and British Columbia and in the disputed District of Keewatin (as the Pacific Railway was constructed across these regions), a number of practical questions arose as federal law conflicted with local laws concerning liquor and liquor sales. On the question of conflict, the legal situation was complex: under the British North America Act, while the Federal Government had the power to make criminal laws (s.91(27)), the provinces had the power to impose "punishment by fine, penalty or imprisonment" for the purpose of enforcing otherwise valid provincial laws under their powers over property and civil rights (s.92(15); see Hogg, 1971: 277-8, 191). In addition, provincial jurisdiction under s.92(9) included the right to make laws in relation to "shop, saloon, tavern, auctioneer and other

licences in order to the raising of a revenue for provincial, local or municipal purposes" (Hogg, 1971: 400). As pointed out earlier, federal-provincial disputes over liquor laws were particularly serious and protracted and were not settled until 1885. Questions of constitutional rights and legal powers were not so much at issue in federally-governed areas such as the North West Territories where no division of powers existed. Municipalities here exercised powers delegated by the federal Parliament (and, according to Macleod, most incorporated towns in the Territories did not want to run their own police and where they did the police were "too few or too incompetent to handle the job" (1988, 55)).

In 1877 the issue of jurisdiction to enact laws prohibiting the sale of liquor near railway construction remained an unresolved question. However, the Federal Government did not hesitate to proclaim its own statute in force on Ontario and British Columbia sections of the Pacific line and these unilateral moves created practical difficulties. Opposing legal orientations between the Dominion and the provinces over the right to control liquor sales set the scene for local conflicts over judicial and policing practices. These problems arose not only in geographical areas within provinces but also in Districts such as Keewatin which provinces claimed as part of their territory. The federal Peace Preservation Act came to be viewed with particular hostility in the village of Rat Portage, Keewatin where the Act was applied in 1879 and in Farwell (Revelstoke) and in Golden City and Donald, in British Columbia, after the Act was proclaimed in 1883 along the "railway belt" in that province. In both cases local and federal law enforcement officials confronted each other and the disputes ended

in violence. We suggest that these instances can be analyzed in the light of conflicting orientations to law between federal enforcement officers and local citizens including local law enforcement officials.

Section 2.4

Conflict between Federal and Provincial Officials in Keewatin: the "War of Rat Portage, 1883"

There were a number of complications in legal terms in the situation in Rat Portage: firstly, the town lay in the District of Keewatin, in the disputed territory between Ontario and Manitoba, and the Ontario boundary question became an intense legal and political issue between Ontario and the Dominion in the late 1870's. To aggravate Ontario, John A. Macdonald unilaterally extended the Manitoba boundary eastwards in 1881 and encouraged Manitoba to allow the incorporation of Rat Portage as a Manitoban town in 1882 (Waite, 1971: 117-8). (Manitoba newspapers reported that Ontario had refused to consider the residents' earlier application for incorporation.) The Manitoban incorporation gave Rat Portage municipal powers including the right to license taverns (a right of course denied under the operation of the Peace Preservation Act and one which conflicted directly with it). However, the right to revenue from liquor licenses was also claimed by Ontario in exercise of its claimed authority over the disputed territory.

In the second place the contractors for section "B" of the Railway (see map of Government Contracts for CPR, map D), Messrs. Manning, McDonald, McLaren and Co., now rejected the situation of licensed saloons in Rat

Portage. By October 1882 the contractors approached the Minister of Justice to have the Peace Preservation Act proclaimed from Cross Lake to English River along the line, which included Rat Portage, ie. the old sections 15 and 42 of the line. The contractors' move was successful and the Act was proclaimed (N.A. RG 2, P.C. #2116, 1882). While this may have stifled any questions over whether Rat Portage was covered under earlier proclamations, it enraged local businessmen and entrepreneurs.

Local citizens were already annoyed by the lack of resolution of the longstanding Ontario border dispute. On April 5, 1883, two hundred "leading citizens" met to protest "the protracted disputation for judicial and proprietary rights between the Governments of Ontario and Manitoba" claiming that the "mining, industrial, agricultural and manufacturing interest of the Territory of Keewatin are suffering..." (Macdonald Papers, v.34). The Peace Preservation Act was an additional irritant and the Dominion M.P., the Hon. S.J. Dawson, submitted a petition signed by 40 inhabitants of Rat Portage to the Governor General, requesting withdrawal of the Act. The petitioners' case was that the town was newly incorporated, was the "Centre of a large Milling and Mining District and large numbers of people are daily arriving for the transaction of business". They wanted:

...to see a certain number of Hotels duly licensed for the sale of intoxicating liquor and believe that if such were the case the illicit traffic liquor would be stopped to a large extent.

(N.A. RG 13, A2, V.1886 976/1883)

Correspondence continued from the officials of the town to their M.P., Dawson, urging prompt action to withdraw the Act; by May 1883, the Mayor reported that:

...the matter is becoming serious here, as no less than thirty unlicensed saloons are selling liquor in the town of Rat Portage.

and he pointed out that fines imposed by the Police Magistrate under the Public Works Act [sic] "had very little effect in controlling the liquor traffic" (ibid). On June 14, a telegram reached Sir John A. Macdonald from W.H. Plummer⁴³, in Prince Arthur's Landing

... just arrived from Rat Portage all goes well please have public work(s) act withdrawn in so far as it applies to town of Rat Portage Causes much irritation without good grits trying to make capital out of it

(N.A. RG 13, v.1886 1883/976)

The background to this request included a forthcoming election in the Province of Ontario, set for the early fall of 1883; Tories like Plummer were organizing in the hope of defeating Oliver Mowat's government. The town achieved its goal of withdrawal of the proclamation, not suprisingly given pre-election support by Tory federal members and the Dominion Government's championing of Manitoba in the boundary dispute. On June 26 an Order-in-Council was passed withdrawing the Peace Preservation Act "within the limits of the Town of Rat Portage in the District of Keewatin (sic)"⁴⁴ (N.A. RG2 p.c.# 31855, June 26, 1883).

The situation in Rat Portage was now reversed - the sale of liquor was legal - and officials from both Provinces began competing over the right to issue liquor licences (Macdonald Papers, v.34, letter to J.H. Pope, July 4). To aggravate matters, the Ontario-appointed officials were necessarily Grit sympathizers and the Manitoban officials were all

Tories. Once the Peace Preservation Act was withdrawn and the role of the federal Peace Commissioner in the town was no longer clear, active conflict between Ontario and Manitoba-appointed officials was inevitable; the incidents which ensued have been termed "the war of Rat Portage" (Waite, 1971: 117-8).

After June 26th, 1883, the Government of Ontario took a number of initiatives in relation to Rat Portage, which it claimed as Ontario territory. Beginning on June 27 and continuing through the month of July, Ontario made unilateral plans to assume the administration of justice in Rat Portage and appointed a gaoler and constables; provincial plans were also underway to build a new jail (OA MS 203(1) RG3/v.16/347, 366, 377, 383,430)). According to an account in the *Manitoba Free Press*, the "war" erupted in Rat Portage when the magistrate appointed both for the Dominion and Manitoba, Captain Brereton, tried the case of an accused on July 25 charged with selling liquor without a Manitoba licence and with introducing liquor without a North West Territories' permit. The accused, Montgomery "had applied for and was about to receive an Ontario licence" to sell liquor. Montgomery brought in a lawyer from Winnipeg, Hugh McMahon Q.C., and the defence challenged Manitoba's jurisdiction in the disputed territory. Convicted by Captain Brereton, Montgomery elected to go to jail and McMahon went to Winnipeg to file a writ of *habeas corpus* (July 25, 1883). By the following evening, increased animosity between rival police forces was evidenced by the arrest of a Manitoba special constable by two Ontario constables. On July 27, rumours were circulating that "the Manitoba jail was to be broken open to-night to release two men confined therein"

one of whom was the prisoner Montgomery (*Free Press*, July 28). The jail was surrounded by a crowd and several prisoners forcibly released; one shot was fired but none of the four constables in the jail resisted or was harmed. The following morning an attempt to burn the jail down was thwarted. Meanwhile a party of town "delegates" had taken the train to Winnipeg to consult with Premier Norquay over the crisis and returned on July 28th bringing Manitoba police reinforcements and the Premier with them (*Winnipeg Times*, July 28). The Manitoba police arrested the supposed ringleaders of the jail break at night and spirited them away by train to Winnipeg for trial.

During all these events, telegrams were flying back and forth to Ottawa and from there to Sir John A. Macdonald at his summer house in Rivière du Loup. Captain Brereton telegraphed to Macdonald on July 27 saying "My chief and one constable arrested by Ontario constable. Great excitement among town people" (Macdonald Papers, v.34). Constable O'Keefe telegraphed to A.P. Sherwood, the Chief of Dominion Police, the next day reporting that the two sets of appointees were in serious conflict (N.A. RG13. Index 1883 v.468, # 1252) and Sherwood relayed the telegram to Sir John.

...twenty-five Ontario constables here and fifteen Manitoban
they are now arresting one another citizen[s] taking part on
both sides a general riot expected you had better come here at
once answer only two Dominion constables

MacDonald Papers v.34, July 28, 1883

O'Keefe warned Sherwood that "Ontario constables bound to take possession" and "three Manitoba and two Ontario constables are arrested." By July 28 he reported "that Manitoba jail is broken into by mob of prisoners' friends". Burbidge, the Deputy Minister of Justice,

communicated with Sir John by telegraph and reported his reaction on July 30.

Sir John says to do nothing. It is between Manitoba and Ontario. G.W.B.

RG 13, #1252, 1883

Macdonald's laconic response may have been deceptive for he had telegraphed immediately to the Comptroller of the N.W.M.P., Fred White in Winnipeg, and a party of Mounties was sent out from Medicine Hat to Rat Portage expressly to intervene in the conflict. The contingent had only reached Winnipeg when they heard that "the trouble seemed to have blown over at Rat Portage" but they were kept in readiness at Winnipeg (Steele, 1915: 173-4).

The "war" would appear to have been the result of continuing conflict between Ontario and the Dominion over the boundary question, with the Dominion taking Manitoba's position that Keewatin was part of Manitoba. The issue of the status of Rat Portage and the administration of justice in the town seem to have represented the more general dispute. What is also evident is that the withdrawal of the Peace Preservation Act after the June 26 Order-in-Council precipitated the situation. As early as July 6, Alexander Campbell, the Minister of Justice, received a telegram from the Dominion M.P. for Selkirk, Manitoba, A.M. Sutherland⁴⁵.

Most important that Order-in-Council withdrawing public works act [sic] from town of Rat Portage be gazetted immediately
answer N.A. RG 2, P.C. #1462, 1883

and Campbell moved immediately to have the order published.

Without the Peace Preservation Act in force, the town of Rat Portage became the only legal drinking centre along the Pacific Railway between

Winnipeg and Prince Arthur's Landing (Port Arthur). Both the Ontario and Manitoba Governments anticipated the withdrawal of the Act from the town would leave an administrative vacuum over liquor licensing; both provinces seized the opportunity to sell licences and Ontario moved to appoint local officials (including police) in a town where Manitoba had already re-appointed Dominion Magistrates and police constables. An account of the War of Rat Portage given by Waite (1971) does not suggest why Ontario moved to appoint police for Rat Portage in June 1883, but the timing of the Dominion Order-in-Council in June suggests the withdrawal of the Act was the triggering factor precipitating dual policing which in turn led to conflict and arrests.

Section 2.5

Conflict between federal and provincial officials in British Columbia

The second example of withdrawal of the Peace Preservation Act, in British Columbia in 1886, shows several parallels with the Rat Portage situation in terms of local opposition to the Act, failure of the Act to assure prohibition in an area, and provincial readiness to provide local policing. One major difference, however, was that in B.C. the Federal Government did not have a territorial agenda and the Dominion was prepared to relinquish policing duties more readily; the Tory Cabinet had no interest in continuing to appoint Police Commissioners in B.C. once railway construction was complete.

The Dominion Government had extended the Peace Preservation Act along the Pacific railway line in B.C. in 1885 and applied it for a distance of twenty miles on each side. Whether or not this change worsened

relations, there were conflicts between federal and provincial appointees in B.C. in 1885. The basis of the problem according to Major Steele of the N.W.M.P. was the "determination of the government of British Columbia that the province should not be deprived of its internal revenue". The province continued to sell liquor licences and

...issued all comers licences to sell "spiritous and fermented liquors" within the belt already proclaimed under the act. This action gave courage to the liquor men, and many sold who, had they not been granted licences, would not have attempted it.

Steele, 1915: 187

As a direct result of these conflicting orientations, a serious disagreement over jurisdiction developed in Farwell (Revelstoke) between Johnston the Dominion magistrate and Sproat the Provincial magistrate. Johnston was responsible for enforcing the Peace Preservation Act in the face of the provincial government's licencing policies. Sproat, according to the (not unbiased) Major Steele, had a policy of harassing Johnston and his constables, writing letters of complaint to the B.C. newspapers and doing

... his utmost to bring discredit upon Mr Johnston and his men, who had at best a hard uphill fight against the lawless element, 1915: 234

Matters came to a head when Sproat arrested Johnston, with the result that Sir John A. Macdonald appointed Lt-Col. MacLeod, Stipendiary Magistrate of the NWMP, as Commissioner of Police in B.C. and instructed him to investigate the problems (N.A.RG 2, p.c. #1647, #2215, 1885).

According to MacLeod's official report, Johnston's and Sproat's disagreement centred on their conflicting perspectives over the jurisdiction of the federal Peace Preservation Act and the Provincial

Liquor Licence Act. Magistrate Sproat and Farwell residents, some of whom sold liquor under the provincial Act, held the Dominion Act to be ultra vires. When Johnston seized liquor and destroyed it, three residents prosecuted him for theft before Sproat. As Alexander Campbell, federal Minister of Justice, described events, it was:

...the arrest by the Commissioner of two Provincial Constables which culminated in the arrest by the Provincial Authorities of the Commissioner himself and his officers.

N.A.RG 2, p.c. #2215, October 27, 1885

Johnston had been released before Lt-Col MacLeod reached Farwell but had been cited for contempt for refusal to appear in Sproat's court to face charges of theft. MacLeod calmed the parties and the affair was sorted out - according to Steele's account, over a glass of hot Scotch and a pipe⁴⁶.

The two magistrates were minor players in a much larger game of federal-provincial disagreements: Sproat took the Province's view when he argued that B.C. was "perfectly capable of maintaining peace all along the line of Railway"; MacLeod, who certainly could not be regarded as impartial in this affair, took the opposite view. He was convinced that "from what I heard from Railway officials", the Mounted Police was a "very necessary force" while the railway was under construction (N.A.RG 2, p.c.#2215, 1885). MacLeod did offer a sensible resolution for the town by recommending to Campbell that the Peace Preservation Act be withdrawn from the town of Farwell itself, to allow the licensed sale of liquor, commenting:

If this is done I feel sure every chance of collision between the two authorities will be done away with, (ibid)

The Farwell conflict was repeated in other towns in B.C. where, according to the Lieutenant-Governor, writing in 1886,

The presence of the Dominion Police in the localities indicated is productive of great irritation.

N.A.RG13, 86-87/084 Box 12, 75/1886

The reference here was specifically to the communities of Golden City and Donald on the railway line east of the Rogers' Pass (see Map F), but it could equally have applied to other communities along the Pacific line. The Lieutenant-Governor of British Columbia formally requested Ottawa in 1886 to withdraw the Act and the services of the North West Mounted Police, who were enforcing its provisions along the B.C. Railway Belt. The Executive Council of the Province, prompted by complaints from a provincial Stipendiary Magistrate in Donald, Arthur Nowell, sent a memorandum to the Governor General stating their opposition to the Peace Preservation Act

...it is far better to have licensed houses under the control and supervision of the local authorities and limited in number, than to have no licensed houses whatsoever with the result of illicit whisky traffic

and the Council complained

... instead of the Peace Preservation Act being carried out, its provisions have by the Dominion Police been enforced in some cases and neglected in others, and that so far from the liquor traffic having been regulated or suppressed the reverse has been the experience.

(N.A. RG 13, 86-87, Box 12, 75/1886)

This criticism of its operations may have been galling to the Government, but the Council sweetened its comments by adding that the Province was both willing and ready to provide more police to maintain law and order in the Railway Belt if necessary.

These incidents help to furnish alternative orientations to the Peace Preservation Act and its workings, as seen by both provincial officials and the citizens of the larger settlements developing along the route of the Pacific Railway. The perspective underlying the original Act, taken directly from the pre-Confederation statutes, assumed the absence or insufficiency of policing in the geographical area of public works construction and assumed too that the pre-Confederation Province of Canada's jurisdiction over the sale of liquor and the issuing of liquor licences would continue in the post-Confederation era. In applying the Act routinely to the construction line of the Pacific Railway, the Dominion Government ignored the realities of settlement and development. From the viewpoints of the provinces and the small but growing communities along the line, the Act was an affront which took away municipal rights to license taverns and usurped provincial prerogatives by appointing Dominion magistrates and police. The application of the Peace Preservation Act effectively ignored the existence of any settlement smaller than a "city" as cited in the Act and imposed prohibition regardless of the views of permanent residents. In time, settler communities came to see their affairs might be run differently; if prohibition failed and whiskey peddling and liquor traffic remained unabated, then the situation could be turned to local advantage by legitimating the trade in liquor and drawing local licensing revenues from it.

Section Three

DISCOURSE AND THE PEACE PRESERVATION ACTS

Discourse was discussed previously (in Chapter Two) where it was defined as communications relating to law and law enforcement and treated as an "ideological practice" which helped to link social structure to law via ideological stances. In this section, possible effects of discursive practices for the Peace Preservation Act and its operation are considered in relation to communications from a number of agents, relating to the Act in different ways. These communications range from legislators' comments and newspaper commentary on public works labourers to responses from the navvies themselves, the perspectives of contractors petitioning for proclamations of the Act, and the views of officials involved in enforcement.

The overwhelming impression received from the discursive materials is the scarcity of public comment - the overall lack of communications relating to the Peace Preservation Act and the labourers it affected. The point is that public works labourers were not a subject for public comment, public analysis or debate in late nineteenth-century Canada. There were a few exceptions: official records pertaining to the Act, occasional newspaper accounts of incidents of unrest on railway construction, and some personal memoirs of the period; otherwise there was public silence. Some incidents where discontent among sections of the public works labour force erupted into major disturbances were recorded but there must have been many less serious episodes which seem to have passed unnoted⁴⁷.

We suggest the silences around unrest and Peace Preservation legislation in newspapers and Parliament may have been significant, although not necessarily in straightforward ways. It seems likely that there was a connection between the relative silence of public discourse with respect to labour unrest and law enforcement on public works and the fact that construction of major public works depended on cooperation from, and a continuing supply of, unskilled labour paid at low rates. But it is must be emphasised that no simple conspiracy of silence is suggested. The linkages between discourse, or lack of discourse, and state interventions in transportation infrastructures cannot be analyzed by assertion or by conjecture. Instead the available evidence must be examined carefully, looking at discontinuous and fragmented pieces of discursive material which may be able to shed light on relationships between ideological practice, the hegemonic functions of language and state intervention through law. We must begin with the, admittedly limited, material available.

Section 3.1

Legislative Debate

The initial Peace Preservation Act received very little public attention when it was enacted in 1869; apart from brief newspaper mentions in reports of parliamentary business, no public or parliamentary debate was reported. The lack of public discourse around passage of the statute can be attributed to several factors: the large amount of criminal legislation enacted hurriedly in this period, of which the Peace Preservation Act was only one small part; the existence of similar legislation in the Province of Canada before Confederation; and a low

level of public works activity in the 1860's and therefore a reduced public interest in the entire subject area. These factors may have come together to give the Tory Cabinet of the post-Confederation era the opportunity to introduce the Preservation of Peace Act as a piece of routine national criminal law.

Given the pre-Confederation acceptance of the legislation in the Province of Canada, perhaps the question is one of why there would be discussion of the apparent reintroduction of one measure of criminal legislation among the many introduced in the new Dominion Parliament. In effect (as discussed earlier) many of the 1868 and 1869 criminal law bills, introduced by John A. Macdonald in the House or by Alexander Campbell in the Senate, could be seen as part of an adaptation process aimed at generalizing and modernizing criminal law to apply to the newly-formed national state⁴⁸. The Peace Preservation Act of 1869 was one such bill, extending the law of the Province of Canada to New Brunswick and Nova Scotia.

The third factor suggested, namely a low level of public works activity in the period, is substantiated in many accounts. As described in Chapter Three, construction of public works halted with the world trade recession in 1857 and only resumed slowly in the late 1860's with the Intercolonial Railway and some private railway construction (s.3.1). As a result the number of labourers employed on public works in the 1860's was low as compared with the decades before and after. When, in other decades, as many as ten thousand navvies were working on the canals or on building the Intercolonial, public and legislators' awareness of

problems associated with the work force seems more likely than in the 1860's.

The second major legislative initiative related to the Peace Preservation Act came under Mackenzie's Reform Government in 1875 when the Act was extended to apply to private as well as public works at the behest of a Reform lawyer and entrepreneur. The irony here is that the Act was never proclaimed in force by Mackenzie's Cabinet. However, another major contradiction lies in the Government's extending the scope of an already interventionist measure, given its declared political ideology of state economy and efficiency (Thomson 1960: 105).

Mackenzie, as Minister of Public Works, introduced the 1875 bill stating simply that its object was to:

... extend the authority which the Government now had to prohibit the sale of liquor, and to take other measures for the preservation of public order in the vicinity of Public Works. At present that authority was confined to certain classes of Public Works and it was proposed in this bill to extend it to other classes.

Hansard: February 15, 1875.

The bill passed, apparently without parliamentary discussion.

Continuing parliamentary unfamiliarity with, and lack of concern over, the Act is suggested by debate during a subsequent amendment to the statute in 1885, over thirty years after the original passage of the first (and very similar) Act concerning public works (in 1853⁴⁹). Two Ministers, who introduced amending bills in the House and in the Senate, made statements about the nature of the legislative changes: Alexander Campbell, in the Senate, described the amendments as remedying "certain

defects" in the original Act relating to its administration and as a result of complaints by stipendiary magistrates and others (Hansard: Senate, April 16, 1885). However Adolphe Caron, Minister of Militia, introduced the bill in the House, saying:

There is to be no change whatsoever in the principle of this Act, it is simply a consolidation of the various amendments
 ... Hansard: Commons, June 24, 1885

and adding later in debate: "... This is an exact copy of the old Act, Chap. 24, 32-33 Vict., The Public Works Act" (ibid).

An attack by the Reform Opposition in the House ignored the changes in penalties and procedure⁵⁰ and focused instead on the question of whether the Act constituted "criminal law". While the Reformers were unable to sway the Tories over to their new legal orientation to the statute, the parliamentary debate revealed something of the Tories' attitudes. A section taken from the original 1853 Province of Canada Act made a principal criminally responsible for the actions of his agent or servant in selling liquor in violation of the Act (16V.,c.164,s.II); when David Mills criticized the provision for ignoring the criminal law requirement of mens rea, Caron responded:

... this Act is for the special purpose of preserving peace in the neighbourhood of public works, and from the beginning the evident intention has been to make it as strict as possible.
 ... the consequences of allowing intoxicants to be sold on public works may be so grave that the strictest possible interpretation is placed upon the Act.

Hansard. Commons, June 24, 1885

Macdonald explained the clause (included in his original federal bill of 1868 (Bill 77, s.19)), as "prepared for the purpose of acting with a strong hand and putting down this crying evil" citing the maxim "qui facit per alium facit per se". Both Macdonald and Caron approached the

Peace Preservation Act in this debate as legislation designed to protect public works. Sir John also spoke of "preventive justice" and Caron shared this notion saying:

... it was right and proper, in furtherance of the object of the Act, the protection of these public works, to make the Act as wide as possible. This legislation, I take it, is much stricter than the criminal law, but we should go as far as possible, of course with due respect to the liberty of the subject, in our efforts to protect these public works against the evil effects resulting from the sale of intoxicants to men who work upon them. (ibid)

Macdonald expanded upon the preventative theme, saying that the statute's purpose was to seize "this liquor before it is actually drunk and consumed". Ridiculing the Opposition, he sketched the hypothetical case of a steamboat on a British Columbia river, stocked with spirits:

The Honourable gentleman says there must be a crime committed first, but the steamer or the raft may be about to start, and according to the hon. gentleman, after the liquor has been drunk, and riot and outrage has been committed along the line, you must issue a search warrant to find the liquor in the stomachs of the fellows who drunk [sic] it.

Hansard. Commons, June 24, 1885.

Caron introduced the bogey of violence, citing a murder rate of one a day on U.S. public works and concluding: "...it is for the object of preventing such frightful results here that the legislation is submitted" (ibid).

These exchanges of parliamentary debate tell us something about official Tory government thinking for the period of the 1880's and the Tory view of public work's labourers. Firstly, riot was still seen as the inseparable outcome of supplying liquor to navvies⁵¹. The assumptions were that liquor sales would result in direct physical damage to public works (although no Canadian examples were cited in debate) and that

making the Peace Preservation Act harsher would serve to "protect" public works. Secondly, prohibition was viewed as an instrument for directly reducing disorder and violence; there appeared to be agreement among all shades of parliamentary opinion that prohibition was justifiable public policy in the case of labourers building public works⁵². Thirdly, arguments about the status of the legislation as criminal law were summarily dismissed. Macdonald ridiculed the claims of Opposition lawyers that the Peace Preservation Act was an illegitimate use of the criminal law power of the Dominion in view of its preventative use. (In Macdonald's view, the offence was possessing alcohol - the purpose to prevent future harm due to present conduct.)

No mention was made in these debates of the conditions of work or pay of public works labourers. Few comments appear to have been voiced in this connection until the 1890's, when the critical report of a Commission appointed to "inquire into the treatment of labourers on the Crow's Nest Pass Railway" was published. Nor were the navvies themselves able to voice complaints effectively, due in part to their remote work locations and lack of political representation. Although Palmer (1983) has argued that the relative prosperity of the 1880's was precisely the period in which working class movements were beginning to develop in Canada, in segmented and often unorganized forms⁵³, there is little evidence of such developments among public works labourers.

The silences in public discourse were not at all startling to contemporary ears. Articulations of grievances by emerging labour movements were threatening to entrepreneurs and capitalists relying on

cheap labour, and labourers' working conditions or pay were topics that few middle class members of Parliament wanted to champion on a continuing basis. Although both Tory and Reform parties sought the votes of working men, only one or two politicians were prepared to be associated with the rights of railway navvies. In an era when sentiment favoured prohibition, to argue for the rights of labourers on public works to consume liquor would have appeared absurd or politically suicidal. One Tory Senator made this point in 1885 when he taunted an opposition member saying:

... there will be no possibility for those labourers who are engaged on our public works to get the beer and wine which he thinks so essential for their well being.

Senator Vidal to Senator Almon: April 16, 1885

Parliamentary silence could also have been an artifact of the relatively rare use of the Act and its technical nature. Many members of the House or Senate were likely to be familiar with commonly applied statutes; many had a legal background - one estimate sets the figure for this period as high as one-third of the members of the House - and some had sat as magistrates. But the Peace Preservation Act had a relatively narrow and restricted application to only one element of the working class - the navvies building public works and those who supplied them with liquor. Although the Act was listed in magistrates' manuals of the period published in Canada⁵⁴, many magistrates or lawyers outside areas of public works construction would never have heard of the Act.

Section 3.2

Public Discussion

The technical and unusual nature of the Peace Preservation Act, the requirement for Cabinet application, and its implementation in remote areas of construction may also help explain why the statute was neither broadly recognized, understood nor discussed publicly in Canada. Even its formal title "An Act for the Better Preservation of the Peace in the vicinity of Public Works" prompted confusion with the Blake Act of 1878⁵⁵, entitled "An Act for the Better Prevention of Crimes of Violence in certain parts of Canada". Judging from the infrequency of newspaper comment, reporting of disturbances at public works in this period was unusual unless unrest was large-scale or prevented construction altogether, so that only members of the public living in close proximity to public works may have been aware of the degree of labour unrest. When newspapers did discuss Government policy, the Peace Preservation Act was not necessarily cited or understood. For instance, when the Globe published an editorial on the occasion of work starting on improvements to the Welland Canal in 1874 (under the heading "Duty of Keeping the Peace on Public Works"), it was devoted to questions of policing costs and contractors' responsibilities and the editor failed to mention the existence of a statute to preserve the peace.

At that time the Globe took a strong position against the Dominion paying any of the costs of policing public works - a viewpoint in line with the Reform party policy of its editor George Brown. In the writer's view:

We are not to be told that a contractor is to gather all the ruffianism of a continent around him to do his work, and have at the same time no responsibility as to their behaviour.

The Globe, May 25, 1874

The Globe proposed placing responsibility for labour unrest on the contractors and on the local authority, rather than on the state.

It is for the contractors to see that they do not hire or do not retain those who are quarrelsome and insubordinate.... It is not right to make the quarrelsome navvies engaged in digging the canals believe that they are of such importance as to have special constables appointed by the Dominion to keep them in order. ibid

The editorial went on to claim that, given the hiring of suitably self-disciplined labourers, it was the local authority's duty to see that peace was maintained.

Section 3.3

The Contractors' Justifications

The contractors and railway engineers working on local railway sites had the task of translating construction parameters set by the state or by railway entrepreneurs into practical terms. While the contractors' economic goals were to reduce costs as far as possible, to allow maximum profits on any one section of railway construction, the engineers must have strived to solve construction problems and meet standards and completion dates. Labour problems had to be minimized or eliminated as they increased costs and delayed completion. So, from the viewpoint of contractors and local engineers, the Peace Preservation Act was likely to be considered a useful administrative device which helped to assure the functioning of labour by denying labourers alcohol or, at a minimum, making it more difficult to obtain.

The communications of contractors with the state reflected a view that the application of the Act was essential to their goals. When contractors filed sworn petitions requesting the application of the Act to their works, the Peace Preservation Act was demanded as a direct answer to labour problems along the Pacific Railway. The first proclamation under the Peace Preservation Act was for a public road⁵⁶ being built near Thunder Bay in 1869 as part of the Red River route. The Order-in-Council included the following details: - two hundred men were employed; the District of Algoma lacked provisions "for the preservation of the peace, and the protection of life and property"; steamers on Lake Superior were bringing in liquor to sell to the Indians and labourers; as a result "scenes of outrage and violence and other serious consequences" were occurring and the author "apprehended...obstruction to the programs of the works" (N.A.RG 2,p.c.#666, 1869).

An equally persuasive approach came in a letter a decade later from railway contractor J.W. Sifton to David Mills, Minister of the Interior, complaining about difficulties in carrying out work at Selkirk Station. Sifton reported that three squatters were selling liquor to his labourers and said:

... we find [it] nearly impossible to carry on the work so long as liquor is sold so close by. There have been rows and trouble for the last month

(NA RG 2/A1c/P.C. #746, 1878)

Despite support from Mills and R.W. Scott (the Secretary of State), the Cabinet rejected Sifton's application. Possibly, declaring the town of Selkirk a prohibited district might have been counterproductive for the Reform Government as a federal election was to be held shortly. More

likely, Mackenzie and the Reform Cabinet were maintaining their earlier stance and refusing to proclaim the Act, resisting demands for state intervention as contrary to Reform policy.

In 1881 a contractor, James Worthington, swearing out a statutory declaration in support of his application, detailed the "evils" which impeded the efficient use of labour and which "seriously retarded" construction. Worthington, who was building the Canada Central Railway in Northern Ontario, identified the major problem among the five hundred men working for him as

... the illicit sale of intoxicating liquors along the line by parties who follow the construction of the line and continue their illegal traffic causing grave breaches of the peace quarrelling and fighting - among the men and leading to the commission of crimes of a more serious nature.

(N.A. RG 13/86-87, O.84, Box 6/327/1881)

Substantiating his case for the Peace Preservation Act to be proclaimed in the District of Nipissing, Ontario, from Mattawa (about forty miles east of North Bay) to Callander on Lake Nipissing, Worthington wrote:

... it is impossible to carry on the construction of the railway works satisfactorily and restrain intemperance and prevent breaches of the peace among so large a body of men in so remote and unsettled a Locality unless the sale of intoxicating liquors can be prevented. (ibid)

His submission brought prompt results: it was sworn on June 11 at Mattawa and by June 16 an official in the Department of Justice had drafted a submission to Council on the subject; the order was approved in Council on June 20⁵⁷ (R.G.2, o.c.#952, 1881).

Discussion of applications for proclamations of the statute raises the question of whether the language used and purposes stated were couched

in standard terms. The rhetoric seems to represent the contractors' analyses of their labour problems translated into phrases likely to persuade the government to apply the Peace Preservation Act. Is it possible that a ritual discourse was associated with requests for proclamation of the Act; was the wording formulaic? The few petitions found in Justice Department records prevent investigation of the question at present⁵⁸ but they supply the basis for the contractors' claims - that prohibition would necessarily reduce violence and disorder.

Section 3.4

The Labourers' Discourse

The voices of labourers were rarely heard in opposition to the Peace Preservation Act; perhaps their actions in supporting a major illicit liquor trade along the line of the Pacific Railway spoke more loudly than words. The navvies were not organized and could not command the ear of the newspapers as the CPR could. When the Canadian Pacific's General Manager gave an interview in relation to the riots of 1884 at Michipicoten, van Horne was quick to defend the Company - saying the riots were due to whiskey peddlers and not to the working conditions of the labourers. He went on to deny rumours that the men's pay was delayed, that they had to use company stores and that they were at times paid in script:

... no complaints had ever been made to him of anything of the kind and he was positive that that could not be at the bottom of the [riots]. ... the men were all paid in cash. The contractors ... kept stores for the accommodation of the men, ... but there was no compulsion of any kind, and the men were free to trade or not as they saw fit.

The Globe: October 24, 1884.

But not all the navvies kept silent and a few succeeded in complaining to the *Globe* from the Michipicoten sections of the Pacific Railway along the north shore of Lake Superior, making "grave complaints concerning the way they are treated by contractors and mail carriers". According to a *Globe* editorial, mail from the labourers to the *Globe* had been intercepted - three previous letters had failed to arrive - and the labourers were only able to receive the *Mail*⁵⁹. The thirteen "workingmen" who signed the letter complained they were not fairly treated by the contractor in the classification of their work. Their letter (printed only in part) said:

We think our treatment is very unjust and we should like to know if there is no redress. We think the best means of getting justice done is by publishing this letter in your paper so that by this means it may catch the eye of some of the head officials, as we have no chance of getting any justice here.....

Now, as many of us are married men and have got large families and our work is classed as above mentioned, it means nothing short of ruin, in fact we will make little more than our board. We are given to understand that there have been three or four letters sent you from here before this one and none of them appears to have reached you. We have taken other methods to get this letter sent out. The contractors seem to be very careful about any letters that are addressed to THE GLOBE. We think they are afraid that the public should get to know how they treat the men when they get them out here in the back woods.

The *Globe*: November 10, 1884.

The claims of injustice in this instance are difficult to evaluate but there is evidence in several other incidents that the complaints of labourers were well-founded. The strikes examined in this study all appeared to be based on substantiated grievances: the strikes on the Lachine Canal in 1877 and at Cross Lake in 1879 were due to reductions in pay rates. A strike at Beaver in British Columbia on April 1, 1884

occurred after the men had not been paid for over two months. Wages were paid within a week of the start of the strike (after Major Sam Steele reported quelling a riot of seven hundred men using eight Mounties); Steele felt the men had some justification, for he wrote:

...many of the men ... complained to me [in February and March] that they had not been paid for some time, and the money was needed for their homesteads in Manitoba, Minnesota and Dakota. In every case I counselled patience, saying that the money would be forthcoming and all claims settled.

1915: 196

Section 3.5

Enforcement Officials' Discourse

Evidence of how enforcement officers viewed the Act is also limited. No written accounts were found by Dominion Police Commissioners⁶⁰, with the result that the material relied on consists of a few reports by North West Mounted Police officers enforcing the Peace Preservation Act in British Columbia. The Mounties tended not to question their role in enforcing the Act, however discouraging the work became. In 1884, when Major Sam Steele was prosecuting labourers in the Bow River pass in face of the British Columbia Government's persistent policy of issuing liquor licenses along the railroad, he refused to despair and insisted on enforcing laws against drunkenness "to the limit". He commented in chauvinist tones

We had right on our side, however; the building of the great work must not be retarded.

1915: 187

Steele's superior, Commissioner MacLeod, supported his stand. After settling a dispute between provincial and federal magistrates in the locality, MacLeod stated in his report to the Dominion Government that the Mounted Police were "a very necessary force" during railway

construction in British Columbia (N.A. RG2, p.c.#2215, 1885).

Contractors' convictions that the Act would solve liquor problems were not necessarily sustained in the experience of the Mounties, who found controlling liquor sales anywhere along the line a difficult business. The ever-optimistic Major Steele, in his detailed account, admitted the task was demanding and, at times, left him little time for sleep. At Fort Qu'appelle in 1882, he commented that there was "much smuggling [of liquor into the North West Territories] but the sale was kept within bounds and the navvies could not at any time get enough for a spree" (1915: 165). In his view, the Mounties' operation saved the contractor "thousands of dollars". In B.C. the Mounties failed to prevent sales of liquor, due to provincial licensing policies, and had to be content with dealing with the resulting drunkenness. Steele describes his solution to the problem of local toughs "preying upon the navvies" who came into the village of Beaver on pay day and got drunk.

The term "rolling" was common, originating in the practice of turning over an incapable man, searching his pockets and appropriating anything which might happen to be found therein. The best thing that could happen to such a man to prevent him from being robbed was to place him in the cells.

1915: 195

The discursive silences around the Peace Preservation legislation, especially the lack of parliamentary familiarity with its form and use, serve to distinguish the Peace Preservation Act from common public order statutes such as Vagrant or Riot Acts. Furthermore, it is suggested that the silences were possible precisely because the segment of the working class affected by the legislation was highly marginal and in

many periods relatively replaceable. Passage and application of the statute were both reinforced by prevailing ideological stances towards working men generally, and navvies in particular; even in the Mounties' view, "the great work must go on" whether or not the navvies in B.C. were paid. Possibly the ideological perspective and existing unfamiliarity with the statute served to reinforce each other - leading to an absence of discourse and a mystification of the effects of the legislation. This could help to explain the corresponding exaggeration of the role of legislation - allowing Caron's position, for instance, that without the Peace Preservation Act, murders would be routinely committed along the line of Canadian Railway construction.

Section Four

LINKAGES BETWEEN CRIMINAL LEGISLATION AND THE SOCIAL FORMATION

The following section discusses evidence for the effects of applications of the Peace Preservation Act along the Pacific Railway between 1878 and 1886. Government records suggest that application of the Act along particular sections of the Pacific line had practical effects for contractors, for navvies and for liquor-traders and, in addition, had less direct effects for legitimate merchants and for the state itself, which subsidized the costs of construction and supplied some of the enforcement agents. But enforcement presented considerable uncertainty as to effectiveness and to outcome; some of this uncertainty has been conveyed in accounts of events at Michipicoten and Cross Lake (in Section 1.1)

With respect to this uncertainty, the Peace Preservation Act presents a classic example of the complexities of imposing central state legislation on a diverse and geographically-extended social formation. The practical effects of proclamations of the statute depended upon several major factors - the personnel appointed, the conditions in the local areas where they exercised jurisdiction and the legal orientations among all parties concerned towards the Act and its enforcement. A preliminary examination of Dominion Government judicial appointments is made here drawing on official records. The question of prevailing local conditions is too complex to be assessed, for the conditions in any one locality were the result of numerous factors ranging from political and social conditions to economic as well as geographic factors. For instance, the ubiquitous presence of "whiskey peddlars" was noted in contemporary accounts but there is no means of ascertaining how numerous or active such entrepreneurs were along particular sections of the railway, or what quantities of liquor were being traded in an area. Even the numbers of navvies or the numbers of settlers in a district are not easily established. As far as legal orientations are concerned, the states of systems of justice operating locally, in areas where appointees were posted, are difficult to gauge; federal Department of Justice records do not establish whether other law and order personnel were present in districts as a result of provincial or municipal appointments. Even Dominion policing resources applied to enforcement of the statute remain obscure in some places where the Act was proclaimed.

The proposition advanced here is, therefore, that enforcement was a complex and contingent process - and certainly one requiring a larger research effort before details can be unravelled to provide a fuller picture. The central state formally controlled initial stages of the application process, namely the proclamations of areas and appointments under the Act, but enforcement practices may have varied considerably between different areas of proclamation and need to be studied through detailed local research. Given an emphasis on the role of the central state, the approach adopted is to focus on appointees under the Act relying on evidence derived from official federal documents, and not to attempts to assess local conditions. Other available evidence on enforcement practices is, however, introduced - including any known local arrangements made to allow procedures and penalties relating to the Act to be carried out. At best, therefore, the view of application of the statute remains a relatively one-sided, official one.

Section 4.1

Appointments under the Act

The Act empowered the state to appoint subordinate officials to carry out the duties of Commissioner of Peace; most Peace Commissioners were also appointed as Dominion Commissioners of Police or Stipendiary Magistrates (under other statutes) - but the state's enforcement system was probably hampered by its own political processes - especially by its use of political patronage in making appointments.

A total of twenty appointments was made along the line of the Pacific Railway during the period. The majority, and possibly all, of the

appointments made by the Tories in the years 1878 to 1885 were of men with some kind of professional education or specialized training; engineers, lawyers and Mounted Police were among the most frequent appointees. (The full details of appointments are dealt with in a lengthy footnote⁶¹.) One appointee was a Canadian Pacific engineer: Harry Abbott was in charge of the CP's Eastern Section, north of Superior⁶². Another appointee, Frank Moberly, was also an engineer and may have worked for the CPR; he was a brother of Walter Moberly who had surveyed the Pacific Railway route through the Rockies in 1871. Four Commissioners were North West Mounted Police Officers - all appointed along the Pacific Line in British Columbia - namely Herchmer, Irvine, Steele and Antrobus. One was a retired magistrate from Victoria (Elliot) and another a doctor in Northern Ontario (Smith). Several were lawyers; three - Bent, McDonald and McCabe - were barristers or J.P.'s from Nova Scotia. Newton Flannigan was a Hudson's Bay factor and Charles Brereton, the first appointee, a military man. The occupations of the remaining appointees - Judge, Gough, Bruyere, Hill and Todd - are not known although Hill was another Nova Scotian. At least three of these five appointees resigned promptly, had their appointments cancelled or never took up their posts⁶³.

Several aspects of these appointments are striking. In relation to the three barristers from Nova Scotia, all received appointments during the tenure of James McDonald as Minister of Justice from 1878 to 1881; and, as McDonald was also a Nova Scotian, suspicions of patronage arise. That patronage appointments occurred perhaps seems less surprising than that Company engineers were appointed as Peace commissioners and/or

magistrates along the Pacific Railway. One Canadian Pacific engineer and one other engineer, Harry Abbott and Walter Moberley, were appointed as Peace Commissioners and magistrates and Abbott was never paid by the government. In addition, mounted Police officers were appointed in British Columbia, a move which raises questions concerning the impartiality of the Bench in that setting; court proceedings were certainly open to accusations of bias and conflict of interest as a result. In wider terms, the coercive powers of the state which underlay the exercise of judicial discretion in relation to criminal law, were placed, in at least the case of Commissioner Abbott, at the disposal of a private company. Given the appointment practices of the federal government, one goal is to establish as far as possible the degree to which the state abnegated its prerogatives in the enforcement of the Peace Preservation Act,

Little evidence on the selection of particular appointees was available in Department of Justice records. Occasional recommendations of names in letters to the Minister suggest that these appointments were perhaps not well-known or not frequently sought after or, possibly, that requests for appointments went directly to the Prime Minister's office⁶⁴. One appointment made through the Minister of Justice, when a Dominion M.P. wrote to the Minister about local disorder requesting that an additional Commissioner be appointed in his riding (without suggesting the name of a suitable candidate), was made very promptly. Mr S.J. Dawson M.P. complained in October 1884 about the lawlessness at Peninsular Harbor⁶⁵ and recommended the appointment of a new Police Commissioner. The Department's response was to forward the letter to

the Secretary of the Department of Railways and Canals (RG2/Reg.470/ #1079/1884). As Frank Moberley's appointment was announced the same month, it may have been an outcome of existing state concerns about Peninsular Harbor as well as a reaction to the disturbances at Michipicoten.

Section 4.2

The Form of Justice

A major question is what forms of rough and ready justice prevailed along the railway line during construction and what can be surmised about the nature of justice administered, even if it cannot be described in detail?

One description of a trial on the line of the railway was given by Harry Armstrong, a young government engineer, referring to mid-winter 1877-78 on Section 15 (which ran from Cross Lake to Rat Portage), before Josiah Whitehead went bankrupt but, according to Armstrong, after the Peace Preservation Act was proclaimed⁶⁶. The account is entertaining; for instance, the prisoner was held by the blacksmith in his shack at Inver after being found with "a dog-team and toboggan load of whiskey" - but too lengthy to give in full. What is relevant is that Armstrong records two J.P.'s acting as judges, both engineers, one employed by the Government and one by the contractor, Josiah Whitehead; Whitehead's son, Charles, acted as prosecutor. The trial was held in the camp dining-room at the contractor's headquarters at Inver and the room was packed with men watching the trial. In an example of the close interrelations of accused and judge, the prisoner, Shay, had been an axe-man working

for the same Divisional Engineer hearing his case before his attempt at whiskey-peddling⁶⁷.

What is suggested here and what fits with the scarcity of state officials along the line is that the system of justice on public works operated highly informally; moreover, it may have frequently involved parties closely interrelated on the basis of economic roles and functions. The phrase "log cabin justice" has been adopted to refer to such a brand of informal, questionable, and sometimes incestuous summary justice dispensed under frontier conditions⁶⁸; most buildings along the railway were of log cabin construction and accounts of the administration of criminal justice refer to trials held in log cabins and log cabin lock-ups and jails. In the following sections on the activities of state enforcement agents, more evidence on the nature of log cabin justice is introduced and the question of its form is reviewed at the end of the section.

Section 4.3

Payment of Commissioners

It seems evident that whoever paid the Peace Commissioners must have exercised some authority over them. So another major question in relation to the state's role in enforcing the Peace Preservation Act is whether the state or the railway companies paid the Commissioners; alternatively, did Commissioners rely on fees from their office?

During the pre-Confederation period the state had begun to shift responsibility for the costs of administering the legislation

forerunning the Peace Preservation Act onto private railway companies. But repayment of expenses to the state is distinct both from private companies paying the salaries of justices directly and from company employees being given state powers to administer justice. Which pattern prevailed in the case of the Peace Preservation Act?

The Act itself contained no mention of costs of administration but the fact that it provided for direct federal appointments of enforcement officials implied that the provinces would not be responsible for costs, as they generally were for the administration of justice under S.92(17) of the B.N.A. Act. Evidence from Privy Council records shows that the appointees were salaried officials. Commissioners were appointed at set annual salaries, some with travelling expenses for taking up their posts. While the salaries varied, the records suggest that twelve hundred dollars was the most common annual rate⁶⁹. The question of who paid the salaries is a little more obscure but there is evidence of a pattern of reliance on the "railway vote", that is, on government funds for railway construction.

The most usual practice involved payment from railway funds. For example, the salaries for Bent and for Macdonald in 1879 were "to be paid out of the appropriation for construction of the Canadian Pacific Railway" (RG 2, p.c.#748, 1879); and the salaries of the three Commissioners on the Eastern Section in 1880 were to be "charged to the Canadian Pacific Railway vote" (RG 2, p.c.#1943). (This was a question of government bookkeeping rather than principle.) Such detailed provisions for payment ceased to appear in Orders-in-Council after about

1883, most likely because payment from the Railway vote had become standard⁷⁰.

However, there were also a few marked departures from this pattern. For instance, in 1878 Captain Brereton's travel expenses of \$100 were charged to the vote for Dominion Police (RG 2, p.c.#1095); and, in 1882, Dr. Smith's entire salary was "to be paid to him by the Canadian Pacific Company" (RG 2, p.c.#139). In addition, when the Canada Central Railway Company was bought by the Canadian Pacific in 1881, the Canada Central was granted a proclamation of the Act but the Order-in-Council stated clearly

...the salaries of the Commissioner, and such constables as he may appoint for the purposes of the said Acts, be fixed and paid by the Canadian Pacific Railway Company - the amount fixed for such salaries to be reported however to the Secretary of State.

RG2, p.c.#952, 1881

Besides the above order and the payment of Dr. Smith's salary by the CPR, one other example was found of railway companies paying directly for the administration of justice. In 1881, contractors claimed expenses of \$5,000 from the Government for maintaining the peace between Keewatin (Rat Portage) and Eagle River along Section 42 of the railway; but the Commissioner for the section was still paid by provision from the CPR vote and the contractors recognized this in their application. Messrs. Manning, McDonald⁷¹, McLaren and Co. claimed expenses for "policing and administration of justice". Stating that the fines they had collected surpassed the amount submitted, they claimed that:

...the beneficial effects of their action in this respect have, undoubtedly, not been confined to their own employees, but have been shared by the settlers in the adjacent country.

RG 2, p.c.#789, 1881)

What is striking in the example of Section 42 of the Pacific Railway is the apparent taking over of some aspects of justice by a contractor, leaving the Government to foot the bill by accepting fines, paying costs and appointing and paying a magistrate. It seems that contractors may have been involved too in building a jail in Rat Portage in 1880; one account refers to the jail built by the CPR and another to its being built by the contractors, Messrs Manning, McDonald, McLaren and Co.⁷². In these instances the contractors were demonstrably eager to prevent the sale of liquor in Rat Portage (which as stated lay between sections 15 and 42, in the middle of section "B" of the railway). It seems likely that the contractors' readiness to administer justice for Section 42 was an outgrowth of their concern for the lax enforcement of the law under an especially ineffective judicial regime at Rat Portage in 1880. The solution of private policing seems to have been condoned by the Department of Railways and Canals but not to have received official Cabinet sanction, for it was this Department which supported the contractors' request for reimbursement in 1881 and forwarded it to the Department of Justice for approval⁷³.

Was there a regime of "contractors' justice" on Section 42, with railway company constables arresting fellow employees and collecting fines? If so, it seems an amazing abnegation of state prerogatives in the latter part of the nineteenth century. However the matter is explained, it is difficult to understand state consent at the ministerial level to contractors administering "justice" among their employees or ex-employees and to their building jails to house whiskey-traders.

When the Mounted Police enforced the Act in British Columbia, very close relations were established between the Mounties and the Canadian Pacific Company. For instance, two elements which emerge from Major Steele's account of a strike at the end of the line at Beaver in British Columbia are his relations with the state and with the railway company. Steele was a state-appointed Commissioner and he wired the Prime Minister directly in 1885 to report that a strike was imminent. But his practical dealings at Beaver were with CPR construction supervisors and it was they who backed him and his eight men (literally) against the striking labourers.

By this time a considerable number of engineers, respectable merchants and contractors, all well armed, had assembled at the barracks to back me up. The eight Mounted Police stood at the head of the bridge under [Sergeant] Fury with magazines charged, ready to act when needed.

1915: 200

It was James Ross, the manager of construction, and other CPR men who applauded the putting down of the strike at Beaver. Steele reported "I was much pleased and so were all the contractors, Mr Ross, especially." (201).

Why did the Canadian state rely at times on employees of private railway companies to enforce criminal law along the line? One advantage of appointing salaried individuals, such as railway engineers and Mounted Police, was that this relieved the Government of paying for additional appointments. However, the costs of justice were minute compared with the overall costs of railway development and, from a state perspective, the attraction of the approach probably lay more in the availability of these "professional" men - the fact that they were already living and working in areas of railway construction and were familiar with local

conditions - than in saving money. In the case of the Mounties, officers could be transferred to frontier areas as required. It is noticeable that the pattern of appointing Mounties and engineers was evident in the later period, after 1882. Perhaps earlier patronage appointments, especially of Nova Scotian lawyers under Justice Minister McDonald, had been deemed unsatisfactory because such commissioners were inexperienced in the North. In the case of one political appointee, in 1880, the magistrate had succumbed to offers of bribery from local whiskey traders (s. 5.4).

Whatever the explanation for this use of Mounted Police and CPR appointments, the majority of appointees continued to be paid directly by the state and were, therefore, formally responsible to the Government in Ottawa - as far-flung members of the state's "outside" bureaucracy. The exceptions were the one or two Commissioners paid by the Canadian Pacific Railway Company. The degree to which the state supervised appointees is discussed in the final section of this chapter but it is noticeable that far less correspondence was maintained between the supervising Department of Justice and the CPR engineer, Harry Abbott, appointed as Peace Commissioner than between the Department and the state-salaried appointees, indicating a less intensive degree of supervision.

Overall, the impression received is that many appointees working as local Commissioners of the Peace and Magistrates along the line were hard working and dedicated public servants but, as will be discussed shortly, some were affected by political affiliations which succeeded in

making them ineffectual, and others were undeniably incompetent or corrupt.

Section 4.4

Police Constables

Orders-in-Council empowered Peace Commissioners, who were also appointed Commissioners of Police under the Dominion Police Act, to appoint constables:

...each of the said Commissioners be authorized to appoint any number of fit and proper police constables under and within his jurisdiction."

RG 2, p.c.#1471, 1880

Some details have been found about these appointments. In a newspaper account of Sir Charles Tupper's tour of Keewatin in 1880, the local police force under Magistrate McCabe is described as consisting of "chief O'Keefe and constables Ross, Camerson and McKenna" (Winnipeg Daily Times, Nov.8, 1880). Four men seems a small number, considering the railway work force in the area must have numbered several thousand and, according to contemporary accounts, construction communities attracted many "disreputable" characters. But when policing for railway construction in the interior of British Columbia was discussed in 1881, the same pattern of a few appointments was used: a draft Order-in-Council filed in the Department of Justice stipulated the appointment of a Commissioner and "not more than two constables" (RG 13/86-87/084/Box6/327/1881). Such parsimony in appointing constables along the railway during the early period of construction in British Columbia perhaps helps to explain the later disorder and why it was thought necessary to bring in the North West Mounted Police in 1884 to act as Commissioners and constables.

Two problems relating to police constables seemed to confront the Commissioners along the Pacific Railway: some Commissioners lacked powers to appoint constables and many, once empowered, must have felt a lack of manpower or, at least, of suitable manpower. Both Commissioners Captain Brereton and Frank Moberley found it necessary at different times to write to the Department of Justice requesting appointments as Commissioners of Police under the Dominion Police Act to give them powers to appoint constables (N.A. RG 13: Reg.1879/#237; Reg. 1883/#1769). And, as late as October 1884, the Department of Railways and Canals requested an opinion from the Department of Justice on whether Commissioners of the Peace "can call upon workmen of the CPR to assist in preserving peace (N.A. RG 13 Reg.1884/#1079). The answer stated that constables could call for assistance when arresting, with or without a warrant, but it seemed a belated clarification of a fundamental question. Mr. A. Power responded for the Department and told Bradley, Secretary of Railways and Canals

I may add that the Commissioners for the preservation of the peace are in nearly all cases appointed Commissioners of Police - and as such have within their jurisdiction, all the powers of Justices of the Peace, Police Magistrates in Cities or Stipendiary Magistrates in Territories or Districts, for carrying out the criminal law or the laws of the Dominion only. For the purpose of carrying out these laws they can appoint from time to time as many constables as they may find necessary.

N.A. RG 13/v.470/Reg. 1884. # 1079

But the theoretical freedom to appoint constables was not a practical freedom when the number of appointments along the line was limited by Order-in-Council or funds were not forthcoming.

When Major Sam Steele was appointed to police the line of railway construction in British Columbia he was able to rely on enlisted men,

taking with him a "strong party" of constables from the Prairies.

Steele selected the "best shots with rifle and revolver" and posted them along the line as needed (1915: 180). According to Steele the manpower was essential.

We had a great deal of trouble with gamblers and toughs of every description, who had concentrated first at Donald and built log-houses, saloons and dens of all sorts; (1915: 194)

Nonetheless, Steele and his men appear to have managed satisfactorily. According to his account, there was only one murder within their jurisdiction in B.C. during the years the Mounties' were policing the line (ibid: 192). The precise number of Steele's constables in B.C. is not known. Only eight men and a sergeant were with Steele during a riot growing out of a strike at Beaver in 1885, but several others were posted further up the line.

Reliance must be placed largely on piecemeal accounts for the pay rates of constables and for their responsibilities. One draft Order-in-Council stipulated pay rates for constables of fifty dollars per month (RG13/86-87/084/Box 6/ 327/1881) and the same figure was given in CPR correspondence referring to the salary of Constable O'Keefe in 1883 (CPR Letterbook #3, Oct.5, 1883). Constables' pay was no higher elsewhere in the country; the minimum pay rate for the Dominion Police in 1880 was \$1.25 per diem. On the other hand, if labourers were being paid to work on construction of the line at \$1.75 or \$2.00 a day, why would able-bodied persons apply for the job of constable at a lower figure? Perhaps constables could work at other jobs as well, or possibly they received hidden benefits such as bribes or accomodation, or intangibles such as prestige or power.

On the subject of constables' reputations, one appointee who appeared several times in federal records is Constable O'Keefe of Rat Portage. It was he who inspected and reported on local brothels in Rat Portage in 1880 on Magistrate McCabe's directions, and it was O'Keefe again who telegraphed from Rat Portage to the Dominion Commissioner of Police, Sherwood, in 1883 to report that the "war of Rat Portage" had broken out (N.A.RG13/Reg.1883/v.468/#1252). O'Keefe was the only constable noted as having communicated directly with the Department of Justice, presumably because he was senior constable and gaoler of the Dominion jail at Rat Portage. But even O'Keefe was hardly a figure of rectitude, for he was arrested by Captain Brereton in 1882 for having intoxicating liquor in his possession (N.A. RG 13/ Index 1882/ #86)⁷⁴. On the other hand O'Keefe, during cross-examination as a witness at a Winnipeg trial, made a comment about an accused, James McKay, charged with conducting himself in a disorderly manner (viz. breaking into the local jail), which summarized the situation in Rat Portage in 1883 to perfection:-

McKay is a quiet, peaceable man, but we cannot tell what any one will do in Rat Portage.

Manitoba Daily Free Press, August 8

Section 4.5

Enforcement Practices

It would be useful to know what the Peace Commissioners did during their working lives - what time they spent in court hearing cases, whether they went out with their constables seizing liquor and enforcing the Act and what directions they gave to their constables? But available reports derive from newspapers and dwell on major arrests or seizures of liquor, appearing sensationalized. For example, in Rat Portage in 1880,

during Sir Charles Tupper's visit to Keewatin as Minister of Railways and Canals, the local police were described as having just arrested four whiskey peddlars twenty miles up the line, taking twenty gallons of whisky from them. Readers of the *Winnipeg Daily Times* were told

Two voluntarily surrendered and were shackled, being surprised, separately, the other two took to the water, and one of them, Charlie Durgan, swam over 150 yds before headed [sic] off in a canoe by Constable Ross; while Constable McKenna brought his man to bay by firing a shot over his head in the water just after he leaped into the lake."

Nov.8, 1880

Use of the Act is documented: we have discussed its application in the mid-1880's along the North Shore of Lake Superior. In Rat Portage in 1880, O'Keefe reported 75 arrests during the seven previous months "and the sum of \$6,000 collected in fines and fees" (but for a variety of offences including "highway robbery" as well as "selling illicit whiskey" (ibid)). Steele, working in the B.C. interior in 1884, found the tasks of policing the railway line onerous. The CPR construction manager, James Ross, declined to allow the Company's trains to bring in any supplies for the operators of the whiskey dives with the result that sneak thieving was endemic (195). Steele reported that

When by any chance a fight or riot took place, the cells were filled and I was kept busy all the forenoon disposing of the prisoners, from five to thirty of these appearing every morning, and my afternoons were often occupied in summary trials for petty theft, assault, etc.. The town being awake most of the night we had to be likewise ... We were rarely to bed before two or three a.m. and were up in the morning between six and seven ...

1915: 195

The Peace Commissioners and Magistrates were responsible for all prisoners arrested by their constables along the line of railway construction. The usual practice was to build local lock-ups which

housed those charged with summary offences and to ship any more serious offenders out by train after a preliminary examination. But processes of constructing suitable buildings and obtaining official approval for them as jails were usually protracted. Captain Brereton reported in 1878 that a building used as a jail at Cross Lake had been burned (RG 13/ 1878/#719) and, as late as 1881, he was still asking permission from the Department of Justice to build a log hut, at a cost of about \$60, as a temporary prison. His request was refused and he was directed to use a building under erection as a station at Whitemouth. Whitemouth was at least thirty miles to the west and presumably Brereton had to move prisoners by train. In 1881 too, Brereton had difficulty getting a response to a complaint that the jail at Rat Portage was insecure; a prisoner had escaped and he needed authority to strengthen it (RG 13/ Reg. 1881/#1810). Even the Commissioners' claims for expenses were not necessarily accepted. Thus, while Brereton and McCabe received payment for feeding and transporting prisoners on several occasions, Brereton was refused a claim for "costs and expenses incurred by Constable Lewis in defending himself from a conspiracy" in 1881 (RG 13/Reg.1881/# 745).

Some appointees succeeded in adjusting to dispensing justice under rough frontier conditions; one or two brought their wives to settle along the line. (For instance, Captain Brereton's wife accompanied him to the Keewatin District; in 1880 Sir Charles Tupper stayed a night with them during his tour of inspection as Minister of Railways and Canals (Winnipeg Daily Times, Nov 8)⁷⁵.) But the Commissioners appointed in the early years from 1878 onwards had no facilities provided, planned or even necessarily available for the administration of justice. There is

a record of Brereton and McCabe being granted a formal request in 1880 for expenses for renting court rooms (at \$12.50 each per month) and for buying handcuffs and leg-irons to equip their constables (RG 2, p.c.#1975). On the other hand, the Mounties were used to the routine of establishing their barracks wherever a detachment was ordered; such situations were within their experience and capabilities. In B.C. Steele described the construction of headquarters for the Mounted Police at Beaver River

Accordingly a good log building was constructed by the company. It was very strong, with cells for thirty prisoners, a separate portion for women, a court-room, two rooms for myself, a mess for the staff of the road, excellent quarters for my men, and stables. 1915: 191

The close relations of contractors and Mounted Police are demonstrated once again in this account. It was the CPR Company who built the Mounties' barracks at Beaver. (One wonders who paid the cost?)

Section 4.6

Comments

The almost incestuously-close relations underlying the form of what has been termed "log-cabin justice" - characterized by close working relationships between several of the parties involved and often by the economic interdependence of judge, prosecutor, witnesses or accused - remain startling to contemporary eyes. It is tempting to suggest that they were perhaps more marked in the early example of the trial described in Harry Armstrong's memoirs than they were in later periods, but it should be remembered that local engineers were being appointed as magistrates as late as the mid-1880's and were trying their own ex-employees⁷⁶. In addition, Mounties in the interior of B.C. were hardly

dispassionate magistrates when they had simultaneous responsibility for policing districts, putting down strikes against the CPR Company and trying the whiskey peddlars and the strikers. So justice of the "log cabin" kind not only continued along the railway line, throughout the period under study, but also at times showed a marked potential for bias. The most extreme cases, when the state handed over criminal law powers to a company employee or permitted "company justice", suggest a minimal regard by Tory Ministers in Ottawa for the administration of criminal justice among labourers and others along the Pacific line. The state preference in these instances appears to have been for administrative convenience rather than for standards of administration of justice.

Section Five

INTERNAL STATE PROCESSES RELATING TO THE PEACE PRESERVATION ACT

Due to its unusual form and its frequent use, applications of the Peace Preservation Act involved considerable activity in Ottawa by public servants. This activity involved a wide range of state agents, from Cabinet ministers to junior clerks in the Department of Justice. The Cabinet was responsible for decisions to issue Orders-in-Council, whether for proclaiming the Act in force or for appointing Commissioners; several state departments participated in recommending proclamations and appointments; the Department of Justice was directly

involved in overseeing appointees and the Finance Department was responsible for paying them. Admittedly some of the internal state action for the period remains hidden or unrecorded, for decisions were made in a small capital city where the principals - either senior politicians or senior civil servants - knew each other and met frequently, but some broad patterns can be examined.

This section focuses on two of the areas mentioned above, - the internal processes leading to proclamations and appointments and the state's supervision of appointees across the country - relying on evidence in official records of the operation of these state processes. The goal is to establish, firstly, how the Act came to be proclaimed and, secondly, what efforts were made by the central state to direct, control or discipline state agents enforcing the Act in the field. In the latter context questions of how agents came to be regarded as too corrupt to remain in office and how they were removed are also considered.

Section 5.1

Processes underlying Proclamations

Requests for the Peace Preservation Act to be brought into force were initiated by railway contractors or railway companies and came directly to government departments or ministers⁷⁷. In the early period up to 1879, contractors' and railways' requests were directed to the Minister of Public Works or to his Department (which had responsibility for canals and railways). After 1879, when a separate Department of Railways and Canals was created (Hodgetts, 1974: 19,92), requests went either via the Secretary of State or directly to the Department of

Railways and Canals. The Secretary of the Department then drafted a recommendation to Council proposing a proclamation and/or appointments for the Minister's signature. This routine process and some of what went on behind the scenes is demonstrated in a letter of reproach sent to the Secretary of Railways and Canals, Braun, in 1881 by the Deputy-Minister of Justice, Zebulon Lash. Braun had requested Lash to "have the necessary steps taken" to bring the Peace Preservation Act into force in British Columbia and Lash chided him in his reply, setting out the correct process from his perspective. According to Lash, the "course followed heretofore in similar cases" was for the Minister of Railways and Canals to recommend proclamation, and for the Minister of Justice to recommend the appointment of a Police Commissioner under the Act. Lash added that

The same person should be appointed to both offices as was done along the line of the C.P. Railway from Fort William to Winnipeg. N.A. RG 13/ 86-87/ 084/ Box 6/ 327/1881

In essence, the process outlined had advantages for both Departments; it accorded the Minister of Railways and Canals an opportunity to favour railway companies' requests and earn their good will, and it gave the Minister of Justice the right to select appointees and thus dispense minor judicial patronage.

Officials in the Department of Justice took the view that the requests for proclamations were not a matter to concern them and that the legitimacy of the demands should be settled between the railway companies or contractors and the Department of Railways and Canals. The only issue on which the Department offered an opinion was the withdrawal

of proclamations after construction work ended. In 1886 the Deputy-Minister, George Burbidge, responding to a query from the Minister, Sir John Thompson, explained that the Act applied only during construction and not after completion of a railway line

The Public Works Peace Preservation Acts [sic] are intended to be put in operation during the construction of a public work and ought not I think to be continued after construction is completed.

RG 13/86-87/084/1763/1886

Section 5.2

The Direction and Control of Appointees

Appointees under the Act did not necessarily share a common ethos or a common conception of their role and were not necessarily legally-trained⁷⁸; although uniformly middle class, they came from a variety of professional backgrounds. What they had in common was, at a minimum, their application for and the resulting award of an "appointment".

Appointments were mostly made to remote locations, to enforce Dominion criminal law over wide areas of the country, among an element of the working-class population regarded as "lawless". Under such conditions, the absence of an occupational ethos, the lack of legal training and the geographic dispersion and isolation from others similarly employed must all have aggravated customary state difficulties in supervising "outside" appointments.

Staff of the Department of Justice in Ottawa attempted to maintain some control over appointees using several standard bureaucratic practices. Firstly the Department exercised financial control: returns were required from appointees every six months - to include the amounts of

fines remitted to the Auditor in the Department of Finance; expenses too, in connection with prisoners or witnesses at trials, had to be submitted for approval. Then the Department acted as a resource for the Commissioners, answering a range of queries ranging from points of law to policy questions; in addition, many queries concerning pay and appointments were directed to the Department from appointees. In the third place, the Department acted in a more general supervisory role, dealing with requests, questions and complaints from third parties in relation to the Peace Preservation Act and informing the correspondents and appointees of relevant outcomes.

Routine returns of fines were only recorded occasionally in Justice files but for one period in 1882 McCabe remitted \$633 and for another in 1885, \$1,470. According to the *Winnipeg Daily Times*, Bent was reported to have collected several fines of \$200 each during his tenure at Rat Portage. (The Commissioners, being appointed as Magistrates, had jurisdiction over all summary offenses, not merely over offences under the Peace Preservation Act.) Processes of filing returns did not always flow smoothly; in 1881 Captain Brereton reported that he could not make up his half-yearly return because the paymaster on Section 15 of the CPR refused to cash an order for \$70, the fine paid by a labourer on the Section (RG13/Reg11880/11150). The Department was able to respond to many queries but chose to ignore a few - perhaps because they were too difficult to answer officially. When Magistrate Todd inquired in 1885 what he was permitted to do with \$5,000 worth of liquor seized under the Act in B.C., Mr Power of the Department told him he was allowed to destroy the liquor, as an 1885 amendment to the Act included a section

to this effect (48-49V.,c.80,s.14) (N.A. RG 13/86-87/084/11/181/1885). But, in 1881, when Magistrate McCabe asked whether expenses would be allowed him "for holding inquests in the absence of a Coroner" (RG2/o.c.#719), he was not sent a reply. He did receive approval the same year for expenses of \$212 for "preliminary examination of indictable offences to date".

The Department's supervisory role was curious in relation to one series of incidents. As mentioned earlier, the provincial rights battle over control of liquor and the Manitoba border question compounded each other in Keewatin in the 1880's; these conflicts over legal perspectives were manifested in severe jurisdictional frictions between Ontario and Manitoba officials at Rat Portage in 1882 and 1883 leading to the "war" of Rat Portage (see Section 2.4) and the development of this local crisis can be followed in federal documents from as early as 1881. Despite clear indications of difficulties, Justice departmental officials refrained from recommending any course of action to avoid problems. The Minister, Alexander Campbell, communicated with the Manitoba Attorney General over the difficulties but did not appear to communicate with the Province of Ontario.

Friction between officials in Rat Portage was evident as early as the spring of 1881, when Dominion Magistrate and Peace Commissioner McCabe had asked the Department whether the Ontario Stipendiary Magistrate at Rat Portage might "lodge prisoners in [the federal] jail" in the town and inquired whether he was to regard previous convictions by the Ontario magistrate as "valid"⁷⁹. The Department recorded "no action"

and filed the query away (RG13/Reg.1881/#746). That summer, Constable O'Keefe - presumably in his role as keeper of the local jail - submitted the same enquiry, adding that the Rat Portage jail was only large enough to accommodate six prisoners; O'Keefe was sent a letter telling him "he must apply to local government". After Sir John A. Macdonald had unilaterally extended Manitoba's boundaries eastwards in 1881 to include Rat Portage (and the whole of Keewatin lying between the two provinces) and the town was incorporated by the province of Manitoba in the summer of 1882, the railway contractor at Rat Portage complained to the Department in September 1882. The contractor asked for the Manitoba Government "to be restrained from issuing liquor licences" in the town (RG13/Reg.1881/ #1419) and, as related earlier, the Dominion Government reproclaimed the Peace Preservation Act along the Pacific Railway line in the district. In November and December of the same year, the Attorney-General of Manitoba suggested to the Department that Magistrate McCabe proceed at Rat Portage under the Peace Preservation Act in "cases arising out of the liquor traffic within the ten miles proclaimed" and not under the Keewatin Act (ibid #1754) which was (presumably) no longer applicable if Rat Portage lay in Manitoba. In December and in January 1883, the Attorney General of Manitoba sent the Department an extract from the *Globe* "respecting the disturbance at Rat Portage" saying that the statement was "altogether sensational" (ibid #1785). In sum then, Departmental officials were fully aware that events at Rat Portage were getting out of hand long before the outbreak of the so-called "war" in the summer of 1883.

The Department's civil servants could, however, do little independently to respond to these political issues; part of their job must have been to identify correspondence which lay in the political arena and redirect it to the Minister. What is noticeable, however, in relation to events at Rat Portage is that the Minister of Justice took little or no political responsibility in this regard; federal appointees in Rat Portage and federal civil servants in Ottawa directed all correspondence and telegrams to the Prime Minister, not to the Minister of Railways and Canals or to the Minister of Justice. Joseph Henry Pope, the Minister of Agriculture and Acting Minister of Railways and Canals appeared to throw up his hands in despair at events at Rat Portage; as early as July 13, 1883, when Ontario had moved to appoint provincial constables and other officials, he forwarded a letter of complaint (from a relative in the District) to Sir John, saying

I know nothing of the country nor can I do anything I am so much
in the dark about it

Macdonald Papers, v.34,

On less difficult political issues, the civil servants did respond, attempting to placate private complainants who protested about illegal liquor sales or the traffic in liquor. Nonetheless, their processing of complaints (usually from contractors and lumbermen) relied at times on the bureaucratic device of transferring correspondence to other Departments. A complaint from Hugh Sutherland of Winnipeg on behalf of the Rainy River Lumber Company, about the illegal liquor traffic at Fort Francis, was simply forwarded to the Indian Department (RG13/Reg.#805/1882), and a number of proposals for changes to

legislation appeared to meet with formal answers and no further action, presumably being filed for "future reference".

Section 5.3

Disciplining and Dismissal of Appointees

If departmental officials directed appointees using routine bureaucratic methods and if they were slow to take any unusual initiatives, what happened if evidence of dereliction of duty by appointees was brought to their attention? In practice, this was not an unusual occurrence. Most appointees had to defend themselves against accusations from local residents at some time in their careers as Commissioners. The Department's role was to distinguish between petty and serious complaints and to involve the Minister in the latter. While a ministerial decision was eventually made over whether or not to proceed further, such response processes could be protracted ones.

Several of the more respected Magistrates, including Captain Brereton and Mounted Police Commissioner Herchmer, came under criticism at some time in formal letters of complaint sent to the Department. The Department had routinized its response to complaints against any member of the judiciary, sending a copy of the letter of complaint to the appointee concerned and asking for his "report". Once an explanation was received, then a judgement was made as to whether it was satisfactory and the appointee was notified of the outcome.

Some complaints against magistrates were political in origin, for the magistrate was perceived as insufficiently sympathetic to the Government

which had appointed him. The most striking instance involved Magistrate McCabe at Rat Portage in 1883. A campaign was launched against McCabe by Fred White, the Comptroller of the North West Mounted Police and a close friend of Sir John A. Macdonald, in direct communication (by private and ciphered correspondence) with the Prime Minister⁸⁰. White first complained on July 27 in a telegraph stating "Public Works Magistrate Rat Portage sympathizes with Ontario", and on July 28 again telegraphed Macdonald saying "Suggest that Public Works Magistrate be ordered to Ottawa. He should not remain in territory." White's pleas were supported by John Shields, a successful Ontario entrepreneur, railway contractor and Tory supporter, who was building a section of the Pacific line near Rat Portage⁸¹. Shields also complained to Sir John on July 28

Dominion Stipendiary Magistrate McCabe should be dismissed immediately as he is in sympathy with Ontario officials and does not maintain Dominion authority and [sic] backs up Manitoba authority, Something must be done forthwith. Send Chief Sherwood to act in McCabe's place for six weeks if possible.

Macdonald Papers, v. 34

Despite his earlier protestations of ignorance about the country, the Acting Minister of Railways and Canals was soon embroiled in the attempt to replace McCabe. Deferring to the Prime Minister on questions of patronage, J.H. Pope telegraphed Macdonald on July 30 saying

Must name a first class [magistrate] before McCabe is removed.
Please name one.

ibid

On August 28, John Shields was still complaining about McCabe, clearly in a political context:

McCabe back here playing into hands Ontario officials by fining all prominent Conservatives and creating bad feeling against

Dominion Government. Have him ordered to Algoma Mills forthwith. He is a bad man and doing mischief to us here.

decoded letter to Sir John, v.34

McCabe disappears from official records after this date; presumably he resigned or was sent elsewhere. The attack would have been difficult to survive - the depth of hostility from entrenched Tories was clear.

In most cases of general complaints against judges recorded in Department of Justice files during the period, the claim was made that the individual was professionally incompetent - usually due to senility or a handicap (such as deafness) - and most complaints of incompetence related to judges in settled parts of the country. But two serious cases involved Dominion magistrates in frontier areas. In both instances, following usual departmental procedure, the appointee was given a chance to explain the accusations and in one case, when the appointee denied the complaints, a formal commission of enquiry was set up and sat to take evidence before issuing a report. This involved accusations against Magistrate Matthew Ryan of Fort Francis, one of the first two Stipendiary Magistrates appointed in the North West Territories (RG2 pc#386, March 4, 1880). Magistrate Ryan was appointed in 1876; complaints and charges dated back to 1877 and the Minister of Justice's excuse for inaction until Spring 1880 was that formal complaints before that date had gone to the Department of the Interior. In fact departmental files show Justice had received formal complaints about Magistrate Ryan by the fall of 1879. The second case involved one of the Peace Preservation Commissioners, Frederick Bent, and is followed in some detail here.

Section 5.4

The Case of Magistrate Bent

Frederick Bent was a Peace Commissioner and Magistrate appointed in 1879, a former Nova Scotian barrister appointed by Justice Minister James McDonald to enforce the Peace Preservation Act and other criminal laws on the government sections of the Pacific Railway in Keewatin⁸². Bent appeared to have the confidence of the Department of Justice as late as April 1880, when he was authorized to appoint a gaoler for the wooden building put up by the contractors which was now to be recognized as a "Common Gaol for the District of Keewatin" (p.c. #715 1/2). But he was suspended in June 1880 and dismissed the following month (RG2 o.c.#'s 1212, 1879; 748, 1879; 1261, 1880). According to the *Winnipeg Times*, Bent went into liquor peddling after his dismissal,

... he is now actively engaged in the illicit traffic of selling crooked whiskey himself.

June, 1880

Bent and Captain Brereton had jurisdiction over adjoining sections of the Pacific line east of the Manitoba border, with Brereton based at Cross Lake and Bent at Rat Portage. According to a newspaper account, Bent had allied himself with whiskey peddlars at Rat Portage in 1879 and had "corrupted justice". Indeed, the *Winnipeg Daily Times* blamed the situation at Rat Portage in 1880, including the shooting of an escaped prisoner linked to Bent, entirely on Bent's failings

...a very sad tragedy that may be said to owe its inception to the reckless administration of justice in Keewatin, and its prostitution to the furtherance of every species of crime in the calendar.

August 14, 1880

The *Times*' account may have been biased for it was supplied by Constable O'Keefe, who was visiting Winnipeg from Rat Portage, and O'Keefe was probably eager to exonerate himself from guilt by association with Magistrate Bent. According to the *Times*, Bent had been involved in tipping off whiskey peddlars about forthcoming attempts to catch them, in handing out light sentences to his friends and in thwarting Captain Brereton's attempts to deal with particular traders. In the *Times*' words:

The district too was unfortunate in having for its chief magistrate, one who allied himself with those who prostituted themselves to every species of crime and villainy and who made a mockery of justice and winked at the exertions of the police who were entrusted under him with the guardianship of the peace.

While the hand of O'Keefe is visible here, the allegations leading to Bent's dismissal came from at least two other sources: from the High Constable of the North West Territories, Hugh Kerr, who complained in November 1879 and, later, from residents of Rat Portage. Their complaints were formulated and forwarded to Ottawa in May 1880 by a local lawyer named Livingstone (RG 13/mfm 4329/#780/1880). By June 1880, the Minister of Justice, James McDonald, reported receiving confirmation of Bent's unsuitability from "a reliable source". The most likely source was Bent's fellow magistrate, Captain Brereton; a record of correspondence with Brereton is in departmental files and Brereton was in the best position to know what judicial shenanigans were being conducted by his neighbouring magistrate. The Department sent Bent a list of the complaints against him and the fact that Bent failed to reply to official enquiries at all was particularly damning. The Minister, McDonald, decided to fire Bent; by July, he wrote that he had no doubt that

Mr. Bent had been guilty himself of grave offences against the very laws which he was appointed to support.

RG2, p.c.#1261, 1880

The Bent case, which alleged whisky trading, corruption and the non-remittance of fines, was a relatively serious one; Magistrate Bent was part of the problem of disorder in Rat Portage in 1879 and 1880, allegedly accepting bribes from the whiskey peddlers he was supposed to be trying. In addition, Constable O'Keefe may not have been as innocent of corruption as he protested; Captain Brereton's conviction of him for illegal possession of liquor in 1882 suggests that Brereton was not satisfied with O'Keefe's performance of his duties. In part, then, the collapse of law enforcement in Rat Portage in 1879 and 1880 can be ascribed to the corruption of local officials and not only to disorderliness among the construction labour force.

Section Six

CONCLUSIONS

This detailed examination of one statutory development serves at least two purposes, for it establishes the nature of certain processes underlying the development of the Peace Preservation Act, in this way serving to unwrap some of the complexities of historical features of lawmaking. But it also demonstrates the ambiguities and contradictions characterizing the development and application of the particular statute series. It is useful to summarize developments and outline some major disjunctions revealed by the history of the Peace Preservation Act as a prelude to further discussion in the final chapter of the thesis.

In 1869 the Canadian federal Parliament re-enacted parts of pre-Confederation legislation enforcing prohibition against public works labourers. But the new statute omitted earlier legislative provisions for specialized policing. The Reform Government broadened the application of the Act in 1875 but consistently refused requests to proclaim it in force. Under the Tories, the statute began to be applied to construction sections along the Pacific Railway by Cabinet decision during the late 1870's. Twenty appointees were named to act as Justices over a seven year period. The statute was used, despite the lack of adequate forces for policing it, in an attempt to prevent the sale of liquor to navvies and to lessen the problems of drunkenness facing those responsible for construction. The Peace Preservation Act was little-known, rarely referred-to, and applied directly by Order-in-Council in response to contractors' requests channelled through state departments. Local justices were weakly supervised from Ottawa and the nature of the appointments combined with local conditions to result in informal and sometimes degenerate modes of justice - termed here "log cabin justice".

This account reveals major disjunctions in several facets of the design of the Peace Preservation Act and its applications; and they include the following:- while historical analysis identifies elements in the social formation participating in specific instances of lawmaking - political party leaders, capitalist entrepreneurs and enforcement agents - it fails to fully explain the reintroduction of legislation against public works labourers in 1869 during a period of little or no public works construction. Furthermore, the Peace Preservation Act was a curious and inappropriately archaic form of statute; it conflicted with provincial

powers and provincial legislation and appeared to be enacted without thought as to its impact. Proclamations neglected the needs of local communities and succeeded in generating violence between rival law enforcement officials in some locations.

Legislators' references to the statute, while rare, showed evidence of confusion in relation to its provisions. If discursive communications are viewed as reflecting ideological practice, then the broader silences surrounding the Peace Preservation legislation are striking: the general absence of comments on the statute suggests it was non-controversial and considered ideologically justified; among those familiar with the statute, there appears to have been a broad acceptance of its provisions and a willingness to condone its coercive features. Expressions of opposition to the statute came only from Reform Party lawyers (concerned about its status in relation to federal heads of power under the B.N.A. Act) and from the particular segment of the labour force it targeted.

Proclamation details for the statute show the state routinely facilitating contractors' enterprises in relation to the Pacific line, responding positively to their requests for prohibition yet, at the same time, declining to intervene directly in major incidents of unrest on public works and refusing to send emergency forces (apart from one "exceptional" situation). In addition, local implementation of the Peace Preservation Act demonstrated biased, conflicting and parsimonious practices. The informal and incestuous nature of local "log cabin" justice, with its partial reliance on Mounted Police and a Company

Engineer as judicial officers, ignored even canons of contemporary criminal justice. Moreover, the patronage appointments of justices and the parsimony of the central state after proclamations of the Peace Preservation Act suggest reluctance to invest state resources in effective application of the legislation. The routine supervisory practices of the central state bureaucracy exacerbated problems of inadequate appointments by leaving, in some cases, corrupt appointees in position; on the other hand state officials were powerless in the face of harassment and dismissal of one upright appointee on the basis of political affiliation.

The project now is to move on to examination of two other examples of lawmaking and law application, in order to obtain a broader picture of processes of criminal law as they pertained to different facets of working class life, and then, in the final chapter, to compare the findings and respond to more general empirical and theoretical questions. .

"The Orangemen of Montreal seem determined to parade the streets, and it is too evident that there is a counter determination on the part of the Irish Catholic Union. A collision seems inevitable. Confronted with a danger of such magnitude, ready to burst upon our comely city in countless horrors, it were criminal indifference to fold our arms and wait the issue."

Letter from "Free-thinker", Montreal Daily Witness, July 9, 1877

CHAPTER FIVE

THE BLAKE ACT OF 1878

The late 1870's were marked by increased public disorder in major cities in Canada. Riots occurred in Montreal and Toronto and in the city of Quebec and they served to unmask old rivalries and to bring undeniable evidence of continuing sectarian feuds to the federal government's attention. The prevalence of sectional feuds arose principally from ethnic and religious cleavages in the Canadian social formation, compounded by competition in labour markets; cleavages such as French-English rifts and those between Protestants and Catholics, especially the internal divisions among the Irish, dated from the periods of colonial settlement and early Irish immigration. Sectionalism and its resulting rivalries and the violence confrontations they generated were common problems in nineteenth-century Canada but the incidence of violent manifestations varied considerably over time; increasing violence in the period between 1873 and 1877 was deeply unsettling to all levels of government. Frequent disturbances led to fears on the part of authorities that public order was seriously threatened; one result was that the Blake Act was enacted in 1878 in anticipation of

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PRECISIONSM RESOLUTION TARGETS

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continued violence in Montreal. It is the development of this singular and short-lived statute to control the use of firearms, and its applications as a method of controlling urban disorder and violence, which are examined in depth in this chapter.

The Blake Act or "An Act for the better prevention of Crimes of Violence in certain parts of Canada" was introduced in haste at the end of a parliamentary session in May 1878 as a temporary federal measure to prevent the carrying of arms, in response to violent incidents in Montreal. The Act was re-enacted annually for several years and stayed on the statute books until 1884¹. Two subsequent attempts were made to apply the legislation to other cities; it was proclaimed for Quebec in 1879 and for Winnipeg in 1882. Although the Reformers under Mackenzie enacted the statute in 1878 and proclaimed it in force in Montreal, the Tories under Macdonald took up the statute after their return to power in 1879 and proclaimed it for Quebec and Winnipeg. These relatively few applications of the Blake Act by both political parties, coupled with its lapse in 1884, suggest that the Act had limited utility from the perspectives of governments in power and the account of its development and use in this chapter will ask why the Act failed to achieve fuller acceptance.

Edward Blake moved the criminal law bill as a private member and his measure was adopted by the Government. The *Dominion Annual Register and Review* reported that "... Mr Blake introduced a bill respecting Crimes of Violence" and summarized the concerns underlying the bill as outlined in Blake's speech

...[he had] been moved, notwithstanding the late period of the session, to bring in the measure on account of the unfortunate condition of affairs in the City of Montreal, where during the previous year the reckless use of firearms had been so frequent as to lead to grave apprehension regarding the consequences unless steps were taken to repress the practice. Already one life had been lost, and even more serious results were to be feared. 1878, 133-135

The Review noted that "Mr Mackenzie, on behalf of the Government, entirely concurred with the principles and provisions of the bill," (ibid., 135)².

Despite its title, the terms of the Act did not deal with crimes of violence generally but only with carrying arms. Its substance prohibited the carrying of arms³ in a proclaimed district; weapons might be owned but not carried anywhere outside a residence without a licence. Carrying weapons was a misdemeanour punishable by imprisonment for up to twelve months and so too was storing weapons in order to carry them (s's 3,6). Under the Blake Act, Commissioners could be appointed by the Dominion government to issue licences to carry arms in a district; in addition, powers of search and seizure on suspicion were given to Justices of the Peace, constables and peace officers, while any person might arrest an offender. The Blake Act appeared to be a relatively draconian measure aimed at curbing urban violence by suppressing the carrying of weapons.

This Chapter analyzes the passage and the subsequent applications of the Blake Act while emphasising the context of continuing sectarian violence in late nineteenth-century Canada in which these events occurred. In our view, the Blake Act must be considered against a broader background of societal unrest and violence, for the origins and the use of the Act

can only be understood in the setting of a divided social formation and in relation to the limited ability of the Dominion Government to prevent or control sectarian strife. The approach will again be a reflection of the theoretical queries highlighted at the outset of this research, responding to the following queries: (1) the relation between the State's economic role and its role in resolving social conflicts manifested in the form of urban violence and how development of the Blake Act illuminates this relationship; (2) the legislators' orientations to criminal law in relation to riot, illegal use of arms and religious processions and the relations of such orientations to the adoption of the Blake Act; (3) the complex and hostile communications associated with urban violence and the discourse relating to law making and the Blake Act; (4) any linkages between the legislation and the broader social formation due to applications of the Blake Act and their effects; and, lastly, (5) the processes occurring within state apparatuses in relation to the Blake Act.

Section One

WHY STATE INTERVENTION? THE LINKAGE BETWEEN CONFLICT RESOLUTION AND ECONOMIC GROWTH IMPERATIVES

The aims here are both to make a preliminary examination of the nature and possible sources of the phenomenon of increased urban crowd violence in the 1870's and to inquire why the Canadian state responded by developing criminal legislation in the form of the Blake Act to curb violence in the city of Montreal.

Section 1.1

The Background to the Blake Act

The North American colonies had a lengthy history of class, sectarian and ethnic rivalries resulting in violence well before the period of the 1870's (Ch.3, s.4.7, 4.8, 6.3). The 1830's to 1850's in Canada were marked by frequent and sometimes serious urban riots⁴ and, after a relatively quiet period in the 1860's, Montreal and Toronto, Quebec and St John all witnessed violent outbreaks in the 1870's. The incidents lead to injury and deaths and gave dramatic evidence of the limited ability of local police to control major incidents of urban unrest.

One indicator of the apparent increase in the extent of disorder is the increasing frequency with which militia or troops were called out in aid of the civil power during the period; using figures from Pariseau's research, incidents are analyzed both for five-year periods and for the decade 1871-1880 (1973: 23)

TABLE 1: CALL-OUTS IN AID OF THE CIVIL POWER BY 5-YEAR INTERVALS

<u>YEARS</u>	<u>NUMBER OF MILITARY CALL-OUTS</u>	<u>AVERAGE</u>
1867-1871	5	1
1872-1876	20	4
1877-1881	27	5.4
1882-1886	10	2
1887-1891	10	2

TABLE 2: CALL-OUTS IN AID OF THE CIVIL POWER FOR THE DECADE 1871-1880

<u>YEAR</u>	<u>CALL-OUTS</u>	<u>YEAR</u>	<u>CALL-OUTS</u>
1871	0	1876	5
1872	2	1877	12
1873	6	1878	7
1874	3	1879	3
1875	5	1880	4

An increase in call-outs is demonstrated in the 1870's, beginning in 1873 and peaking in the year 1877, followed by a prompt decline. What is more pertinent to the Blake Act is that, if rural and frontier incidents are excluded from Pariseau's findings, incidents occurring in urban settings involving the militia or troops increased dramatically.

TABLE 3: CALL-OUTS TO URBAN* INCIDENTS, 1871-1880

YEAR	CALL-OUT	YEAR	CALL-OUT
1871	0	1876	3
1872	2	1877	6
1873	1	1878	6
1874	2	1879	1
1875	4	1880	1

*"Urban" is used to include Quebec, Montreal, Toronto, Charlottetown, St. John and, more loosely, Winnipeg, Sarnia and Belleville.) (1973: 78-81)

The question of factors implicated in increasingly frequent manifestations of urban violence in the 1870's is evidently complex. While it cannot be resolved⁵, some possible effects of continuing cyclical changes in the economy must at least be considered; fluctuations in the business cycle had profound consequences for the urban working class. The impact of the Great Depression of 1873 to 1896 (as reviewed in detail in Chapter Three (s.2.5)) had become increasingly severe for the working poor by the mid-1870's, with both direct economic effects on the urban working class, especially in Montreal, and probably more indirect effects on cleavages within the working class. Pariseau (1973) and Baker (1973) have suggested that sectarian unrest and violence in the nineteenth-century were associated with economic downturns and the Great Depression and its possible nexus with sectarian unrest need to be considered.

Section 1.2

The Great Depression and Economic Impact on the Working Class

Too little is known about the social impact of the Great Depression for full evaluation of its effects on Canadian labour and in particular on the conditions of working class life in cities (Palmer, 1983: 94). But at least two general consequences drawn from the material discussed in Chapter Three are directly relevant to urban violence in Montreal; firstly, the 1870's were marked by increasing rural depopulation; that is, in a time of lowered wages and severe unemployment, working-class families continued to move from the land into towns and cities. The tendency for rural labour either to migrate to Canadian cities or to emigrate from Quebec and Ontario to the United States⁶ significantly increased urban populations and, in the case of Montreal, the city became overcrowded with unemployed and migrant labourers. Competition for scarce urban resources such as housing and jobs was necessarily intensified by processes of urban migration.

A second concomitant effect of economic "hard times" was the worsening situation of the labouring poor in Montreal. As the number of unemployed increased and available work lessened, wages for the employed fell until a labourer's pay was insufficient to support a family (Ch.3, 2.5). Direct evidence of dissatisfaction due to economic hardship was furnished by demonstrations of unemployed workers in Montreal in 1875 and again in 1877 and 1878 (ibid). In addition three strikes occurred in 1875 - 1877, two of which were largely defensive in nature, and which drew the reluctant attention of the federal government: a strike of Lachine Canal labourers in Montreal in December 1875, a strike of

engineers on the Grand Trunk Railway beginning in December 1876 and another strike on the Lachine Canal in December 1877. These took place in a period which Desmond Morton has described as one of "almost unbroken labour setbacks" (1977:6) and, given the risk for labour of strikes during a depression, they serve to indicate the strength of labour discontent among both skilled and unskilled workers.

In response to worsening economic conditions, Palmer tells us the city of Montreal hired unemployed labourers to work on the roads as early as 1875 (1983: 95) and, by 1876, Sir John A. Macdonald felt moved to encourage the use of public works to provide work for the unemployed (Creighton 1955: 215). It is therefore evident that labour dissatisfaction was expressed and that both local and federal authorities were fully aware of the worsening condition of labour in Montreal during the 1870's and the potential threat this posed to public order.

Section 1.3

The Great Depression and Working Class Sectarian Relations in Montreal

The indirect impact of economic hardship is more difficult to assess. Comments are necessarily speculative but it is suggested that reduced incomes and high unemployment among the Montreal working class may have given rise to distinct and divergent effects on working class relations. Firstly, there is evidence that some relations, where workers shared religious and class cleavages, became more solidary over the period of the late 1870's. At the same time, rivalries between other working class factions differentiated by race and religion appear

to have intensified during the period. The very complexity of cleavages in the province of Quebec, where historical elements of class, religion, language and ethnicity underlay patterns of cleavage, suggests that the simultaneous reduction of factionalism in some respects and its increase in others was possible in times of economic depression.

As to how such divergent processes could occur in the same time period, it is possible, firstly that workers sought to join solidary organizations during times of economic hardship. Rapid growth in membership of the Orange Order in Toronto and Ontario generally during the period may have been in part symptomatic of effects of the Great Depression, as Protestant members of the working class sought to come together in benevolent societies and unions for greater solidarity and support during threatening times (Ch.3, 4.7). This was the period for which Palmer has written

Many nineteenth-century workers might also have been attracted to the charitable protection provided by both voluntary and secret societies, as a means of transcending economic constraints. 1983:79

Parallel effects may have occurred in Montreal where, it is suggested, French and Irish Catholics drew closer together under conditions of economic hardship (to the point of celebrating religious festivals together for the first time in 1878 (Bleasdale, 1984: 258)). At the same time, sectarian relations between Protestants and Catholics in Montreal appear to have worsened, especially where economic rivalry underlay hostility and old ethnic and sectarian feuds persisted. Here opposing sectarian elements provided readily available scapegoats and even objects for violent attack during difficult times, as detailed below.

The argument offered above is not all-encompassing, in the sense that economic change is proposed as the variable explaining all factionalism. It is evident, for example, that some divisions bore little relationship to the Great Depression despite being synchronous with it - for instance, new internal divisions within the Catholic Church in Quebec. The suggestion is that the downward economic cycle beginning in 1873 may have exacerbated some existing factional relations, improved others and, at the same time, had no impact on certain cleavages.

In order to approach the Blake Act as a state response to unrest in Montreal and its initial application in that city in 1878, it is considered essential to explore some of the worsening working class relations in the setting of the early years of the Great Depression, prior to the passage of the Act. Some historical evidence relating to specific cleavages is set out in limited detail below, in order to begin to examine the sectionalisms giving rise to violent incidents. This approach is proposed to clarify the authorities' perceptions of events as well as their official reactions to urban disturbances.

Section 1.4

Ethnic and Religious Segmentation

Firstly, generalised French-English and Catholic-Protestant hostility persisted both between Quebec and other provinces and within Quebec. At the level of provincial distrust, such an interested external observer as the Earl of Dufferin (Governor General from 1873 to 1878) saw French-English enmity as unmodified during the period. Pointing out that

Orange Order members in Ontario were as implacably opposed to clemency for the "murderers" of Thomas Scott in the first Riel Rebellion as the Quebec Catholic and French population was in demanding such clemency, Dufferin wrote to the Secretary of State for the Colonies in 1874

I am aware that the old feud between Roman Catholic and Protestant is only slumbering and that any mismanagement might lead to most grave results.

1955: 104

A new cleavage in this period, the internal divisions within the francophone Catholic Church in Quebec, was partly based on fundamental ideological differences between conservative and liberal religious elements, which echoed divisions within the Church in Europe (Ch.3, s.4.8). Conservative or ultramontane⁷ elements were ascendant in the 1870's and some Catholic bishops in Quebec went so far as to try and silence any members of the Church who admitted to political liberalism - in effect confounding religious and political liberalism. The Church hierarchy remained opposed to the Liberal or Rouge political party in Quebec and, as a direct consequence, to Mackenzie's Liberal Reform Government which took power in Ottawa in 1873 - a Government which included prominent Quebec liberal Catholics such as Wilfred Laurier, Antoine-Aimé Dorion and Rodolphe Laflamme. The Church took pointed sides in political issues; the ultramontane leaders' views were sufficiently strong for curés in Quebec pulpits to remind parishoners which way to vote - for the Bleus and not for the Rouges (Wade, 1968: 360, 370)

The events of the "Guibord affair" illustrate the potential this internal church schism had for producing violence. A major crisis developed in the period between the ultramontane or conservative faction

led by Bishop Bourget and the Rouge or liberal faction led by members of the (heretical) Institut, over *L'Affaire Guibord*. Guibord, a former printer and member of L'Institut, was denied burial in consecrated ground after his death in 1869 due to his political liberalism. The Guibord affair became a focus for opposing Catholic viewpoints in Quebec for several years as a lawsuit, brought by liberal Catholics in order to obtain burial in the Catholic cemetery of Notre Dame des Neiges, progressed through the courts and up to the Privy Council, where Guibord's supporters won their case five years later.

A subsequent attempt by members of the liberal Catholic faction to rebury Guibord's body in September 1875, in the Catholic cemetery in Montreal, provoked a riot. The episode is instructive for its demonstration of the strength of animosity between warring Catholic factions. The context has been outlined as follows:

All of Montreal and much of Canada was up in arms over the Guibord case, and both the mayor and chief of police were warned by Bishop Bourget to take measures against possible popular outbreaks on the day set for burial.

Wade, 1975: 349

Not surprisingly on September 2, 1875, when a Catholic crowd (reportedly excited by the ultramontane press) closed the gates of the cemetery against the funeral procession, a riot broke out and the burial was halted. Official responses were ineffectual: at the local level, Mayor Hingston of Montreal, "summoned by telegram", arrived on the scene with police reinforcements, but the funeral procession had already retreated to the Protestant cemetery "amidst some stone-throwing and a growing hue and cry" (1975:349). The attempt at reburial was abandoned. Guibord's reburial was finally completed peacefully in November 1875 with almost

eleven hundred militia on duty (Pariseau, 1973: 78). Watching from Ottawa, the Earl of Dufferin commented "How glad I am that the Guibord affair is well over"⁸

In addition to French-English enmity and divisions within the French Catholic majority in Quebec, another major source of societal cleavage was the Protestant/ Catholic division in both Ontario and parts of Quebec, which was carried over by Irish immigrants to Canada and reflected traditional Irish enmity between the "Orange" and the "Green" (Ch.3 s.2.3). Activities of the Orange Order membership within Ontario translated into anti-Catholic violence on a number of occasions during the 1870's. According to one of the few empirical analyses of Orange violence, twenty-two Orange-Irish Catholic "clashes" occurred in Toronto between 1867 and 1892 (Kealey, 1988) with riots declining sharply in frequency after 1878⁹. Most incidents in Toronto are described as examples of "restrained ritual riots", an important point in relation to analysis of events in Montreal, but two included "serious violence" (1988: 85). The minor riots characteristically occurred during parades of Orangemen or Catholics, usually on the dates of major anniversaries such as March 17 or July 12, and were often prompted by territorial incursions, that is, by "Orange challenges to Green neighbourhoods". Two major riots were the so-called "Jubilee Riots" of 1875 ("the bloodiest sectarian riots in Toronto's history") and a riot in 1878 during the visit of the Irish Fenian revolutionary leader, O'Donovan Rossa, to Toronto (Kealey, 1988: 88).

The Jubilee Riots occurred in 1875, after the pope had declared a year of jubilee celebrations for the fiftieth anniversary of his consecration as a bishop, when frequent Catholic parades and celebrations in Toronto provoked Orange resentment. The Catholic Archbishop of Toronto refused to cancel a planned parade in September 1875 and the city government supported by Oliver Mowat, the Reform provincial Premier, decided to support the Catholics' right to march. A series of riots ensued culminating in a major riot on October 3 which resulted in 22 arrests; the militia was called out and one estimate is that 6,000 to 8,000 people were involved (Kealey 1988:89; Rogers, 1984: 130-131). A second serious riot, the O'Donovan Rossa riot, between Catholics and Protestants in 1878 was less severe - the militia was not involved, although policemen and participants were still injured (Rogers, 1984:131)¹⁰.

In his analysis, Kealey's explanation for the decline in frequency of Protestant-Catholic riots in Toronto after 1878 is that the Order's leadership came under "social pressure" to make increasing efforts to control members and to limit violence. According to the author, this social pressure was a concomitant of the advent of industrial capitalism during the 1870's. Although Kealey does not explain the mechanisms by which industrial capitalism translated into "social pressure", he does argue that the fact that Orange leaders were unable to restrain Orangemen in 1875 and 1878 was due to Catholic overstepping of unwritten limits in the ritualized conflicts between the two religious parties. Frequent Catholic processions in 1875 and the introduction of a Fenian

anti-Protestant speaker in 1878 were seen as "extraordinary events" by local Orange leaders and membership alike.

When seen against the background of these riots in Montreal and Toronto in 1875 and added to general fears of increasing urban working class unrest during "hard times", subsequent riots in Montreal in 1877 must have increased the impression of a general breakdown of "social order" and added to the authorities' uneasiness.

Section 1.5

The Montreal Riot of 1877

Hostilities between Catholics and Protestants in urban Montreal during the years 1876 and 1877 were more severe than in Toronto. Tensions between more extreme members of the Protestant minority and the Catholic majority were so high by 1877 that incidents of violence on the street were commonplace. In addition the use of hand guns in episodes of violence appeared to be increasing. The largely Irish-Protestant and vociferous membership of the Montreal Orange Order (which, in its degree of anti-Catholic virulence, probably represented only a small proportion of Protestants) was closely organized in local "lodges". The Order's inflammatory actions and sectarian rhetoric provoked local Catholics - so much so that individuals identified as belonging to the Orange Order were likely to be harassed, or risked physical attack, if they ventured into certain Catholic areas of the city.

Hostility characterized both Irish-Protestant/Irish-Catholic relations and Irish-Protestant/Canadien relations and, despite the efforts of

local leaders to promote racial and religious harmony, worsened during 1876 and 1877. The Irish-Protestant/Irish-Catholic division drew on a bitter shared history of conflict and strife and brought the quarrels of the "old country" to the new, with the memories of historical incidents and anniversaries carried by Irish immigrants. This cleavage was so strongly rooted in the past that, as incidents in Montreal in 1876 demonstrated, mention of three-hundred year-old events (such as the Battle of the Boyne) or displays of Orange symbols (such as clothing or "regalia" and even traditional emblems such as flowers) as well as irritants including Protestant marching tunes, were anathema to Irish Catholics and sufficient to provoke violence¹¹.

The Protestant/Canadien divisions in Montreal were similarly long-standing and, although not as bitter as the internal Irish feud, had taken deeper root since Confederation as the result of a series of major political crises. These crises, which ranged from the Riel affair to the treatment of the Catholic minority in New Brunswick¹², had assumed a pronounced local significance for Canadiens in Montreal in 1877 due to difficulties between Methodist Indians at Oka and local Catholic priests. The burning down of buildings belonging to the Seminary of St Sulpice at Oka on June 15, 1877 by a group of local Indians converted to Methodism (who bore a grudge against the Order) and the support given to the Indians by Montreal Protestants had reopened Canadien/Protestant divisions¹³. In response to Catholic protests, Protestant extremist spokesmen complained of the authoritarianism of the ultramontane element in the Catholic Church and looked for evidence of Catholic persecution of Protestants, going as far back as mistreatment of the Huguenots in

seventeenth-century France to justify their complaints (*Daily Witness*, July 12, 1877:8).

As a result, sectarian tensions in Montreal, almost certainly exacerbated by economic hardship and unemployment during the period, pitted militant Orangemen against both Irish and French Catholics. Distinct sectarian elements were organized into social groupings, called "national societies", whose formal leaderships were furnished by their elected officers. The Irish Catholic "societies" joined together in a solidary umbrella organization called the Irish Catholic Union¹⁴; the *Canadien* associations were represented by the St Jean Baptiste Society. Several protestant societies made efforts in 1877 to mitigate the enmity between Catholics and Protestants; organizations such as the St George's Society, the St Andrew's Society, the Oddfellows of the Manchester Unity, the English Workingman's Benefit Society, the Irish Protestant Benevolent Society and the German Society were all involved in attempts to halt increased sectarian hostility and violence. Their leaders made active efforts to influence both sides and preserve and promote peace (the *Gazette*, July 11, 1877). However, younger elements of rival Orange and Catholic factions were increasingly out of control: the cadet branch of the Orange Order - the Young Britons - was a source of concern to the leadership, while many young Catholics failed to join official youth organizations altogether. Gatherings of either Catholic or Orange parties in 1876 and 1877 provided an excuse for such peripheral elements to turn up in force and violent fracas were a frequent result. Not surprisingly, Protestant-Catholic violence concentrated around religious events such as Orange funeral processions

or Catholic parades (Cross, 1969: 169-171). The fire set by Methodist Indians at Oka in June 1877, when Catholic property including the Church, presbytery and hay granary (valued at over \$50,000) was burned down, effectively provided a new and local focus for Montreal sectarian animosity.

At this time in uneasy sectarian relations, the Montreal Orange Order announced plans for reviving a major procession and church service for members on July 12 to celebrate the victory of King William over James II and the Irish at the Battle of the Boyne in 1690. Whether the procession was planned as a rash act of defiance or as a calculated and direct act of aggression by the Orange Lodges, few projects could have been more offensive or more inflammatory to Irish-Catholics or to Canadiens than an Orange walk through the streets of Montreal. The prospect of Orange members, clad in full regalia and accompanied by bands playing insulting anti-Catholic tunes, marching through the city was viewed with alarm and seen as a guarantee of Catholic retaliation - both by city officials and by leaders of other national societies.

The Order formally requested protection for the parade from the local authorities but the Mayor, Jean-Louis Beaudry, refused on the grounds that the society was not "incorporated" and that it had no official status¹⁵. The Order's leaders responded that they would seek "military protection through the magistrates" (MDW, July 9, 1877). On July 7 the Police Committee of Montreal met in camera to discuss the planned "walk" and decided to request the Orangemen not to walk (ibid). Fearing mob scenes and riots, other national societies including the Irish Catholic

Union joined in asking the Orangemen to refrain from wearing regalia and from marching (MG, July 11, 1877). After last minute meetings on July 10, the proposed Orange procession was abandoned; tension, nonetheless, was extremely high, especially as newspapers reported the Orangemen planned to go ahead with a Church service on July 12. Editorials admonished employers to refuse time off on July 12 to any employees on pain of dismissal (MDW, July 9, 13, 1877). Leaders of the Irish Catholic Union pleaded with the Secretary of the Grand Trunk Railway not to run an excursion train to Montreal bringing car loads of Orange supporters from Eastern Ontario (MDW, July 10, 1877) and local authorities in Montreal made plans to have sixty picked men of the police force available with breach loading rifles (ibid). Meanwhile volunteer militia units, including the Mount Royal Rifles and the Prince of Wales Rifles were called out on July 9 to patrol ammunition depots in the city (MG, July 17, 1877).

Rumours abounded and were reported in several newspapers; the Protestant and Irish Daily Witness informed its readers that a report that a prominent Orangeman had been shot and a serious riot had taken place in Point St. Charles was false (July 10, 1877). Again, on July 11, the newspaper printed an article published in the Sun the previous day which reported a militia officer as stating "whether there be a magistrate's requisition or not, we will turn out" and "if any man fires that day over the heads of the mob I will shoot him through the head". (The Sun had published this item under the heading "Preparing for the Fray".)

Given the tensions in the city and the preparations for unrest, it is not surprising that confrontations occurred in the days leading up to July 12; several incidents between Catholics and Protestants ended in shootings or violence (MDW, July 12, 1877) and one in particular, involving a Canadien member of the militia and an Irish Catholic ship labourer, conveys the moods of fear and intimidation prevailing in the city.

The Montreal militia was popularly supposed to have Protestant sympathies (as local units were dominated by English members and officers), but the unit of the Mount Royal Rifles - which was given the task of sentry duty at the Quebec Gate Barracks on Water Street on July 9, 1877 - was a Canadien unit with French officers. On July 11, the sentry on the barracks' gate was Francis Fitzpatrick, a 16 year old Canadien¹⁶. Six or seven ship labourers came past the gate of the barracks in the early afternoon on their way to work and, according to divergent newspaper accounts, either threw stones at the sentry, shouted insults and "roared" abuse, or tried to force entry to the barracks. Fitzpatrick, speaking in English, ordered one of the men John M'Keown age 22 to stop, and, when M'Keown ignored the order, called out the guard and with other militiamen pursued M'Keown, his brother and their companions down the street in order to arrest him. A struggle occurred between Fitzpatrick and M'Keown - M'Keown reportedly grabbed Fitzpatrick's rifle - and Fitzpatrick wounded M'Keown in the side with his bayonet and he fell to the ground and died.

Who were the M'Keown brothers and why did they harass the sentries of the Mount Royal militia? They were Irish labourers and from a family with British ties; it emerged that their father had served in the British Army but had, according to the Gazette, "fallen on hard times" (July 13, 1877)¹⁷. M'Keown was a Catholic - prayers were offered for him at Grand Mass at St Patrick's Church the following Sunday (MG, July 16, 1877) - and the fight with Fitzpatrick was either the result of racial slurs or possibly the outcome of anti-militia sentiment or even hostility to a Catholic serving in the Protestant militia. No reasons for the fight were given in newspaper accounts of the incident or at the subsequent inquest. What is significant in relation to ensuing incidents of violence is that the *Daily Witness* mentioned the possibility of revenge for M'Keown's death and spoke of "large numbers of rough-looking men gathered in the neighbourhood" of the barracks that night (July 12, 1877). An officer of the Mount Royals testified at the inquest that

...an immense crowd had gathered around the barracks saying that "they would have him [Fitzpatrick] out.

Lt-Col Napoléon Labranche, MG, July 17, 1877

According to one report, the militia guard was doubled that night at several barracks (MDW July 12, 1877).

There was generally little sympathy expressed for M'Keown's fate. The conservative French newspaper, *La Minerve* - the official organ for the *Quebec Bleus* - described him as "un rough bien connu a la police". Newspapers such as the *Gazette* were quick to dismiss M'Keown as a troublemaker, adding that he lodged at a local Irish Catholic stronghold called "The Black Horse". Judging from questions about life at the

Black Horse Tavern, put to M'Keown's brother at the inquest, the tavern was part of the Montreal underworld - what has been described in relation to Joe Beef's Canteen as "part of a criminal subculture that existed on the margins of working-class life" (Palmer, 1983: 85).

Why did the group of Irish Catholic labourers choose to harass the militia sentry on duty at the barracks? Firstly, it is possible that placing a *Canadien* unit in a tough Irish Catholic neighbourhood may have been regarded as a provocation by the M'Keown brothers (although French/Irish Catholic working class relations were reportedly improving at this time). Alternatively the M'Keown brothers as Catholics may have deeply resented the visible presence of the militia, widely regarded as an Orange institution. This second interpretation is supported by other evidence which suggests that harassment of militia sentries was not an isolated event; a newspaper report of an accused sentenced to a month's hard labour stated that Patrick Green had insulted a sentry on duty at the Dalhousie Barracks on July 16, and Green was described as also a member of "la bande du Cheval Noir" (LM, July 18, 1877). Was Green avenging M'Keown's death or was the practice of "roaring" at militia sentries a pattern of protest among Irish Catholics labourers? The latter seems likely. The commanding officer of the militia unit at the Quebec Barracks - Lt-Col Labranche - disclosed at the inquest on M'Keown that this was not the first incident since the guard was placed on duty at the barracks. On July 10 several parties had come and used "taunting expressions" to the guard and Labranche added

I was aware of previous disturbances at the barracks. It is a dangerous rough locality, and I have heard "Murder" shouted

there several times....I didn't know the moment but that some of the sentries would be attacked by the roughs of that locality.

MG, July 18, 1877

Fitzpatrick's report at the inquest stated that, after the "roaring and shouting", M'Keown came in the gate after him, swore at him and tried to seize his rifle and that the deceased drove him down the street (MG, July 17, 1877). This account conflicts with the testimony of a passerby, a marine architect named Joseph Stanford Sr. who, at the inquest, described the incident involving M'Keown and Fitzpatrick as apparently over - with M'Keown walking quietly away - when Fitzpatrick called out the guard (MG, July 14, 1877). M'Keown's brother, John, said at the inquest that his brother had worked all night, had had nothing to drink and he did not know "whether the prisoner had seen my brother before" (MG, July 14). James M'Keown also claimed that his brother had died because he resisted arrest - in his own words "They were bound to take him or kill him" (July 14).

Was Protestant opinion outraged by M'Keown's apparently unprovoked attack on a member of the militia or was local Irish Catholic feeling infuriated by Fitzpatrick's response? The precise effects of M'Keown's death and Fitzpatrick's arrest on local sectarian sentiment were not reported, but it must have been Irish Catholic "roughs" who gathered in the streets outside the barracks in response to M'Keown's death. Did this incident provoke Catholic retaliation against the Orange Order the following day, July 12? Was the killing perhaps the proverbial "last straw" in a series of provocations? Fitzpatrick's role was downplayed by the military testifying at the inquest; perhaps not surprisingly,

given his age, inexperience and the need to protect the reputation of the militia, the killing was treated as a matter of "obeying instructions". Fitzpatrick was exonerated and released after the inquest (LM, July 18, 1877).

It was evident by Thursday, July 12, 1877 that - despite last minute efforts by leaders of the national societies to promote a more peaceful state of mind - Orange Order celebrations of the Battle of the Boyne were likely to produce problems. Large numbers of working men, many of them Catholics, stayed away from work on July 12 (MDW, July 13, 14, 1877) and crowds had gathered downtown by the time the Orangemen met for their church service, at Knox Presbyterian Church on Dorchester Avenue. Early in the day, Police Chief Penton mustered his men and, according to one account, sent a posse of 14 down to the Church, holding the rest in readiness at Central Station (MG, July 13). The Orangemen kept to their agreement and walked to church in small groups without wearing regalia; it was established later that many were armed with revolvers. Events proceeded peacefully until the Orange service ended some time after 1.00p.m.; the congregation of 150 - 200 supporters, who had listened to a vitriolic anti-Catholic sermon (from the Rev. Charles Doudiet, Quebec Chaplain of the Order), began to emerge from the Church and disperse along the street. The loiterers in the area moved in the same direction, insults were shouted, and scuffles began to occur between the two parties. According to a Gazette reporter, one woman onlooker seized orange lilies - the Orange Order emblem - from a woman supporter and Orangemen rushed to defend her. Despite the presence of a local

Catholic alderman who tried to keep the factions apart, shots were fired; the Gazette claimed that the police were not on the scene.

Events of the next few hours were termed "mob rule" in several newspapers; this may have been an exaggeration but the phrase accurately conveyed the authorities' feelings of loss of control. One death occurred and several injuries resulted from other shootings (F-P, July 13, 1877); crowds of Irish Protestant and Irish Catholic "roughs" assembled in different parts of the city (MDW, July 14; MG, July 17). In the fatal instance, according to details reconstructed at a later inquest, a group of Irish-Catholics chased a young Orangeman along McGill Street; the man James Henshaw, who was holding a gun, was cornered and beaten on the steps of Dunn's store when a second Orangeman, Thomas Lett Hackett, also carrying a gun, attempted to rescue him. Henshaw escaped and Hackett, described as a quiet respectable clerk from Ottawa, was shot several times while lying on the ground held down by "a large man in black". Two police constables arrived on the scene some time later. As word of the violence spread, militia volunteers were called out by their officers and the police were sent in force to Victoria Square; by three o'clock in the morning, the Gazette reported, the city appeared to be under control again and the militia were allowed to go home. The calm was superficial; minor incidents of violence continued during the night and, over the next few days, local newspapers reported shootings, unknown assailants and confrontations. For example, between the following Saturday and Tuesday, *La Minerve* claimed five or six more shots fired and one more injury (July 17, 1877).

What was the official response to the events of July 11 and July 12, 1877? The new mayor of Montreal, Jean-Louis Beaudry, had refused to order out the militia when asked to do so on the afternoon of July 12 after Hackett's death (MG, July 13). He was widely criticized in the English press but he had claimed that the police force was adequate for the situation. The local militia commanders, on their own initiative, called out the volunteers and marched them around some parts of the city during the evening of July 12 (MG, July 14). Beaudry's constituency was French and Irish Catholic and excluded Protestants, especially Orange Order members (D.C.B.v.11, 61), and he was reluctant to offend Catholic opinion.

The most immediate focus of concern for Montreal authorities after July 12 was Orange Order plans for Thomas Hackett's funeral on Monday, July 16. With the prospect of large numbers of Orangemen arriving in Montreal to attend the event, the situation in Montreal as seen from Ottawa was now sufficiently serious for Prime Minister Mackenzie to take the initiative and write to Beaudry asking

Do you apprehend any disturbance on Monday? We desire to make necessary preparations if such is likely to arise.

N.A. Mackenzie Papers: July 14, 1877

This surprising volte-face on the Dominion Government's part - Mackenzie having earlier refused to interfere actively in the Jubilee Riots or in the Grand Trunk strike and proffering only advice during the Guibord affair - suggests that the Government's apprehensions in relation to the Montreal situation were serious. Mayor Beaudry issued a proclamation warning the population against disturbing the peace and replied to Mackenzie that he thought the police would suffice to control the crowd

expected at the funeral (MG, July 23). The Mayor refused to call out the militia but three magistrates signed a requisition and militia units mustered with over one thousand men placed at strategic points around the city (MG, July 16,17; Pariseau, 1973: 79). Hackett's funeral turned into a vast anti-Catholic demonstration, with Orangemen brought in from Ontario (MG, DW, LM, July 17, 1877), but the event remained relatively non-violent apart from the non-fatal shooting of one Orangeman¹⁸ (MG, July 18, 1877)

After the tensions of the summer of 1877, Montreal was relatively free of major Orange-Catholic riots over the winter until the spring of 1878 (Cross, 1969: 172) but labour disturbances worsened and another Lachine Canal strike took place in December 1877 (see Ch.4, s.1.4). In 1878 Protestant-Catholic relations appeared to deteriorate again: Hackett's assailants had not been convicted; there were numerous incidents of street violence including apparently random attacks on Irish Catholics; and new plans were made by the Orange Order for a parade on July 12 . The prospect of revengeful Montreal Orangemen, backed by supporters coming from Ontario, again trying to stage a march in full regalia in Montreal was too daunting for the authorities and action began at several levels of government in efforts to prevent an expected confrontation between Catholics and Protestants on July 12, 1878.

These events suggest a background of sectarian violence and disturbances in Montreal against which the introduction of the Blake Act in May 1878 should be situated. First, however, it is essential to review governmental responses to riot and violence, especially those of the

federal government, in order to establish the range of practical methods available during the period and the limitations of the state's methods for suppressing disturbances.

Section 1.6

The Authorities' Responses

The disparate incidents described in the previous sections were, from the perspectives of authorities, all incidents of "civil disorder" but this did not imply that official responses were uniform or necessarily similar.

The Jubilee Riots of 1875 in Toronto produced no direct response from the federal government. The riots were significant for the fact that the local authorities and the provincial premier, Oliver Mowat, defended the Catholics' right to march in a predominantly Protestant city and used 850 militiamen and a largely Orange police force to suppress the resulting riots (Pariseau, 1973: 78). As Kealey points out, the authorities' more aggressive approach to suppressing potential riot relying on armed intervention, served to turn events into more serious affrays (1988: 89).

The affair of Guilford's reburial beginning in September 1875 again produced no direct central state reaction at the time. But Alexander Mackenzie's Reform government was watching anxiously and eventually acted, over a month later in late October. The Cabinet, while concerned at the prospect of another attempt at reburial planned for November,

limited itself to issuing an Order-in-Council offering advice to provincial and Montreal authorities on how to handle "riot and disturbances of the Peace". The Order requested the Lieutenant-Governor of Quebec to remind those involved of the responsibilities of the provincial authorities to administer justice and of local officials to swear in special constables in "the expected emergency". In addition, it cited the Toronto authorities' response to the recent Jubilee Riots (October 1875) and attached a copy of correspondence on this subject between the Premier and Attorney-General of Ontario - Oliver Mowat - and the Mayor of Toronto and the Board of Police Commissioners - as an illustration of "their powers and their duties in the expected emergency" (N.A. RG2 p.c. #1074, Oct. 29, 1875). The Federal government's advice was conveyed to the Quebec government but not well-received; Richard Scott, the Dominion Secretary of State, wrote to Edward Blake, the Minister of Justice, on November 4th enclosing part of the Lieutenant-Governor of Quebec's reply to the Order-in-Council:

The Honourable Attorney-General [of Quebec] further states that no application whatever has been made to his Department by any person whomsoever for advice in the expected emergency, and as he did not think it his duty to volunteer any, none has been given ...

O.A. Blake Papers Ms 20 Reel 6. Scott 13

In fact, however, the provincial Attorney-General had written to the Mayors of Montreal and Notre Dame des Neiges (the site of the cemetery) "pointing out to them the law on the subject and the resources which the law places at their command" (ibid) and over one thousand local militiamen were called out for the reburial (Pariseau, 1973: 78).

So, in the Guibord affair, central state intervention was limited to the proffering of advice by Ottawa as to the powers of local authorities in advance of the second attempt at reburial in November. But it is evident that events in Montreal were causing concern in Ottawa and the Guibord affair marked a new Dominion Government concern with riot: it was a case at least of anticipatory intervention in the form of advice - and notable for the general perspective the Cabinet memorandum took on civil unrest, linking official responses to riots in two major urban centers and proffering Mowat's advice in the Toronto context to the Montreal authorities. The Cabinet probably found it necessary to respond to increasing instances of urban unrest in the past year; and the Governor General may have urged intervention¹⁹; also, Edward Blake had become Minister of Justice in May of 1875, and the Guibord intervention may have been in part a result of his presence in Cabinet²⁰.

However, the Cabinet reverted to its earlier public inaction in 1876. In the Grand Trunk strike of 1876-77, the mayors of two towns affected - Sarnia and Belleville - called out the local militia. When the latter proved ineffectual, the Ontario Premier instructed local authorities to apply to the Deputy Adjutant-General at Toronto for military aid. Prime Minister Mackenzie refused to intervene directly although requested to do so by the General Manager of the Grand Trunk, Joseph Hickson (Morton, 1977: 24); and Mackenzie's reply to Hickson's third request demonstrated his firm position.

If your solicitor will look at the law, he will inform you that the Dominion Government has no power to interfere for preservation of order. The magistrates and local authorities alone can act. You are simply asking us to violate the law.

Jan. 1, 1877

In line with this position, Mackenzie again refused requests from canal contractors to call out the Montreal militia during the Lachine Canal Strike of 1877²¹.

The reasons for central state reluctance to intervene, even when urban riots threatened to grow out of hand, were severalfold. Legally, responsibility for responding to situations of riot did rest with local authorities - a point discussed in more depth in the following section (Section 3 - Legal Orientations). When the central state was formally requested by local authorities to intervene, practical, as well as legal and political, problems mitigated against a policy of armed intervention. Firstly, there was the question of the availability of military intervention: the small number of permanent troops meant that there were rarely professional soldiers to be called on.

Imperial troops had been withdrawn from central Canada in 1871, leaving only the garrisons in Halifax and Esquimaux (Creighton, 1955: 410), and Canada had replaced them with two artillery batteries but no standing army (ibid: 236). Over a decade later in 1883, Parliament approved up to 750 regular troops to be stationed at Kingston, Quebec, Toronto, St-Jean and Fredericton and soon afterwards at Victoria and Winnipeg (Morton: 1970, 417). According to Pariseau, Canada had 300 permanent troops in 1871, 750 by 1883 and 1,000 by 1886 (1973: 9). Between 1871 and the mid-1880's the burden of dealing with major disturbances outrunning the resources of local officials tended to fall on local volunteer militia units. Admittedly authorities were less ready to respond to civil disorder towards the end of the century by sending in

troops and firing on rioters²² (one estimate is that troops and militia opened fire in four instances out of 126 call-outs between 1867 and 1933 (ibid: 20)). What was intended in most instances was for the presence of the military to have a "salutary effect" without actual use of force (ibid) and it was recognized that calling out a volunteer local force (whose members were likely to share local sympathies and prejudices) was a different recourse from calling out regular troops.

To illustrate the difficulties reliance on the militia produced, Morton's account of the Grand Trunk strike in December 1876 tells us that a hundred local strikers faced down a disorganized and poorly equipped local militia in Belleville although the latter were armed and pointing fixed bayonets at the strikers (1977:21). The Belleville experience suggests that there was some uncertainty as to outcome when local militia attempted to disperse a determined and organized group of strikers. The militia were hardly professional troops; Dufferin's comments in his letters to Carnarvon on the state of the militia and the Montreal police at the time of the Guibord affair were scathing:

Militia would be a most unhandy instrument to employ in maintaining order, - the Municipal Police are of course useless.

de Kiewiet & Underhill, 1955: 158 (Oct 22, 1975)

There were also throughout this period serious doubts about where the sympathies of militia members would lie if called into action, especially in the case of sectarian riots. The Orange Order was, for instance, greatly over-represented in the Toronto police force and in the Ontario militia, and local forces in Ontario had hesitated in the past to defend local Catholics - although they evidently did so in the Jubilee Riots of 1875²³.

The Dominion Cabinet was sufficiently dissatisfied with the militia's performance in Belleville in December 1876 to issue an Order-in-Council asking Edward Blake, Minister of Justice, to enquire into the circumstances; a new bill, the "Payment of Active Militia" bill, was introduced in Parliament the following session by Blake as a result (Bill #102, March 29, 1877). This bill attempted to deal with the thorny question of militia expenses for transportation and for housing and feeding of officers and men, which were felt by some parliamentarians to cause local authorities to hesitate to summon military help - and to be a particularly severe problem for outlying rural areas. Militia commanders were responsible for recouping the expenses of their units from the municipalities concerned until 1879 but many municipalities failed to pay the costs of transport, food and lodging (ibid: 16)²⁴. The cost could be considerable even in towns with local militia units; in Montreal during the disturbances of 1877 the Mayor's refusal to call out the militia was attributed to "economic motives" (MDW, July 10, 1877). In essence then, Blake's Militia bill addressed a second serious problem in use of the militia against rioters, the question of who should pay the cost of military services, and it attempted to alleviate the burden of costs when the unrest spread to several localities by invoking federal responsibility for the mails. But the amendment provided only for the Dominion to underwrite militia costs when a disturbance interrupted the mails, so this change to the Militia Act did relatively little to encourage most municipalities to summon the militia in aid of the civil power in the first place and nothing at all to improve the militia's performance once in action.

Finally, the use of military intervention by the central state in aid of the civil power had to be considered in terms of its effects at the political level. Intervention, whether against English or French, Protestant or Catholic, and whether in Ontario or Quebec, was fraught with political ramifications. Orange loyalists in Ontario voted Tory while Orangemen in Quebec tended to vote for the Reform party and, in the 1870's, the Reform party under Mackenzie required the votes of Catholics in Toronto and of Orange supporters in Montreal (as outlined in Chapter Three, s.4.6). In addition they needed the radical French vote in Montreal (to return Canadian reform members such as Dorion, Laflamme, and Jette²⁵) as the Reformers had made an uneasy alliance between the Rouges and the Ontario Grits. These federal political complexities meant that intervention in disturbances in Toronto and Montreal in the period implied a possible loss of support from one or more religious or ethnic elements essential to the Reform Party alliance and this factor must have added considerably to Prime Minister Mackenzie's disinclination to intervene in urban riots. The Montreal Gazette seized on this point in July 1877, setting Mackenzie's refusal to intervene in the Grand Trunk Strike of 1876-77 against his offer of help to Mayor Beaudry at the time of Hackett's funeral,

...the strong contrast between the conduct of Mr Mackenzie last winter when the workingman's vote was to be secured, and his conduct the other day when the Orange vote was to be courted.

July 25, 1877

In contrast, at the local level, the mayor of Montreal, Jean-Louis Beaudry, relied politically on French and Irish-Catholic support and could afford to alienate Orange and English political opinion even further. Oliver Mowat, the Ontario Reform premier, could also count on

provincial political survival without Orange support and it is significant that he strongly recommended intervention in aid of Catholic marchers to the Toronto mayor during the Jubilee celebrations.

The Earl of Dufferin in his dealings with Mackenzie saw the political calculations involved in federal Cabinet responses to requests for intervention. For instance during the Guilford affair, he wrote to Carnarvon

I found my Ministers in a very unsatisfactory frame of mind about the Guilford affair. The Priests are endeavouring to set the French Canadians against Mackenzie and his colleagues by representing them as partizans of Guilford, and they evidently dread losing the whole of the French vote.

de Kiewiet & Underhill, 1955: 1159 (Oct 29, 1875)

Section 1.7

The Blake Act of 1878

Violent incidents between Protestants and Catholics increased in Montreal until, by the Spring of 1878, the fears and antagonisms of national factions focussed on the Orange Order's plans to celebrate the Battle of the Boyne on July 12, 1878. Hackett's death the previous July, the failure to convict an accused and further incidents during the year had increased concern. Local authorities and Catholic and Protestant organizations alike were seeking ways by the Spring to avoid repetitions of the violence of July 1877 when a further riot occurred between Irish Catholics and Protestants resulting in another death. This clash on April 29, 1878 involved about a hundred men gathered in two groups near the Wellington Bridge who fired shots at each other. The man killed, John Colligan, was Irish Catholic although others were injured (MG, May 3, 1878).

Edward Blake moved on May 1 in Ottawa to introduce a bill in the Dominion Parliament, with the events of April 29 in Montreal fresh in legislators' minds. The bill "to prevent further crimes of violence in certain parts of Canada" was rushed through the House between May 1 and May 6 and through the Senate by May 8, before the session ended on May 10 (Bill #77, 1878). Meanwhile Colligan's funeral in Montreal was orchestrated to attract public attention; the huge event on May 6, attended by an estimated four to five thousand people including many Catholic officials and dignitaries, rivalled or surpassed Hackett's funeral of the previous year; and it took place as Blake's new bill was under parliamentary consideration. Once enacted, the new legislation (soon known as "the Blake Act") was proclaimed in force by Cabinet Order-in-Council of May 25 for the city of Montreal and the County of Hochelaga effective on June 1²⁶.

A feature of the introduction of the bill, besides the haste involved, was that Blake was no longer Minister of Justice - he had resigned from the post the previous summer - nor did he hold any government office, having resigned from the Cabinet at the beginning of 1878. Thus Blake introduced the bill as a private member, presenting it to the House as a solution to recent violent events in Montreal,

...in view of the events ... which culminated in a crime the other evening ... [which] were premonitory of far more serious events in the future unless some steps were taken to suppress those circumstances.

Hansard, May 1, 1878

What therefore lay behind the bill? Did the Prime Minister give Blake - now a private member - the task of designing and introducing a bill,

perhaps because Laflamme, his successor as Minister of Justice, was inadequate to the task or, as a Rouge supporter, politically unsuitable? Did Blake himself take the initiative in proposing a legal solution in criminal law to sectarian unrest, or was Blake a parliamentary spokesperson for other elements who wanted a measure introduced to avoid more conflict in Montreal? What had occurred - on the basis of evidence from parliamentary debates²⁷ - was that several Catholic Reform M.P.'s from Montreal, including the moderates Louis-Amable Jetté and Bernard Devlin²⁸, had come to Blake to ask him to introduce a legislative measure to reduce the probability of violent conflict between Catholics and Protestants in Montreal. To an extent, therefore, Blake was a parliamentary spokesman for Montreal Catholic elements. The attraction of asking for Blake's intervention was that he had been Minister of Justice, he was widely respected as well-learned in the law - regarded as "the greatest legal mind in Canada" (Underhill, 1955:xxxvi), and he was also an Irish Protestant who, for the most part, kept a careful distance from endorsing Orangeism²⁹. At the same time, Blake was directly interested in Irish Catholic-Protestant relations and in Irish problems generally. So the answer lies both in Blake's interest and in his willing involvement in the search for solutions to the Montreal conflict, combined with his suitability as a spokesperson, professionally and in political terms³⁰.

The principle parliamentary promoters of Blake's bill were Irish Catholic and French M.P.'s from Montreal who were politically liberal, moderate rather than Rouge, and practising Catholics active in religious affairs. Devlin and Jetté, for instance - who spoke several times in

the debate - were both devout Catholics. They represented the joining together of moderate Irish Catholic and moderate French Catholic opinion in Montreal but their objectives also obtained political support from leading Montreal Reform Protestant M.P.'s and some Tories; the former included Luther Holton and the latter the senior Montreal Tory M.P., Hector Langevin. These Members all spoke strongly in favour of Blake's bill emphasising the need for prompt action in Montreal. Holton summarized the situation as follows:

...The position was a very grave one. He was a citizen of Montreal himself and the indications of the last few days were of the most urgent character as to the necessity of something being done to prevent even graver evils than had yet arisen.

Hansard. Commons, May 1, 1878

The Blake Act was expressly drafted to respond to fears of violence between Protestant and Catholics in Montreal; the preamble to the statute made direct reference to fears of violence and to the transitory nature of the legislation

Whereas, in consequence of the prevalence of crimes of violence in certain parts of Canada, it is necessary to make temporary provision for the better prevention thereof.

and parliamentary endorsement of Blake's bill was gained on the basis that the resulting statute was to be applied to prevent Protestant/Catholic murders in Montreal.

One interesting political question in relation to Blake's bill and its acceptability is how the Cabinet was able to reconcile passing the legislation and proclaiming the Blake Act in force in Montreal with the Reform Party's heavy reliance on political support from Orangemen in the province of Quebec. Orange Order representatives in the House of

Commons in fact spoke out strongly against the bill (blaming the Montreal shootings and violence on Catholic factions) but they could not argue that the proposed legislation was inherently unfair, discriminatory or anti-Orange. Blake's bill was defensible as essentially non-partisan, directed against the carrying of arms by any private citizen, and not only against the Orange Order. The bill neither barred any religious society nor religious processions or parades. In this way, a bill urged by Catholic members provided some protection against political repercussions for Mackenzie's Reform party by ostensibly being in the interests of Orange members - making murders like that of Thomas Hackett less likely in the future. In fact the bill could be seen as a political victory for moderate Reform Montreal Catholics, both Irish and French.

Section Two

ORIENTATIONS TO CRIMINAL LAW SUSTAINED BY THE BLAKE ACT

If violence appeared to be threatening the stability of cities in several parts of the country during the 1870's, and if events in Montreal in 1877 and 1878 were regarded in Ottawa as finally necessitating central state intervention, then the crux of the problem confronting the Dominion Government was the question of an effective recourse for limiting sectarian violence. The essential problem under consideration by Edward Blake and other legislators pressing for Dominion action was what new measures the federal government could apply in Montreal under its own control to reduce the threat of continuing violence? This meant in Blake's terms, "whether there was any remedy by legislation." (Hansard. Commons. May 1, 1878).

Section 2.1

The Need for New Legislation

The Federal Government's existing criminal law powers provided methods for attempting to halt the spread of violence between Catholics and Protestants in Montreal, although application of most criminal legislation depended on local law enforcement officials as the Dominion Government did not direct enforcement policies in relation to criminal law statutes in the Provinces. But was criminal law relevant to or adequate for the Montreal situation or were there pressing reasons to develop new legislation? The Dominion had statutes in place which could be used against individuals involved in outbreaks of violence - for instance the Riot Act or the Firearms Act (which Blake had brought in when Minister of Justice the previous year)³¹ - but in practice, existing legislative solutions suffered from various drawbacks; several approaches to sectarian violence had been tried or considered in the past and all had presented problems.

The most promising of unpromising avenues, the strengthening of the Riot Act, had been looked at by Blake himself the previous year at the time of the Grand Trunk Railway strike. The Riot Act provided a traditional legal remedy of last resort against crowd violence but was rarely a satisfactory instrument in practice. Riot (as Beattie has said) was "a legal category, not a description of behaviour" (1986: 76) and use of the Riot Act depended on the subjective assessment of local officials as to what behaviour constituted a "riot".

The legal concept of riot was firmly linked in English common law with

the concept of "unlawful assembly", defined by one legal authority as follows

...whenever so many as three persons meet together to support each other, even against opposition, in carrying out a purpose which is likely to involve violence or to produce in the minds of rational and firm men any reasonable apprehensions of violence, then even though they ultimately depart without doing anything whatever towards carrying out their design, the mere fact of their having thus met will constitute a crime.

Kenny's, 1958: 379

An unlawful assembly becomes a riot once violence is committed and, if the violence has a public goal which aims at the overthrow of government, then the offence is insurrection. By the period of the 1880's riot was defined by one English legal authority as "a tumultuous disturbance of the peace" by a number of people unlawfully assembled for a common purpose who actually executed that purpose "to the terror of the people" (Harris, 1881: 103). In the Canadian statute of 1868 (31V.,c70), as in the English statute, the number was set at twelve people and the rioters were given an hour to disperse after orders to do so from a magistrate³². Magistrates were empowered to use force to control such disturbances and available measures included calling on civilians, swearing in special constables and, as a final resort, calling on the military (Pariseau, 1973: 15).

Blake had made an attempt, in amending the Militia Act the previous year, to begin to deal with questions relating to payment of militia costs but from a state perspective there were still the practical problems of the inefficiency of Canadian militia units (discussed above, s.1.5) and their reliability and their sympathies in relation to rioters. Use of the Riot Act was always fraught with difficulties and

magistrates and local authorities had become reluctant over time to rely on a measure which empowered armed militia to fire on a crowd refusing to disperse. In Montreal there had been attempts after election riots in Montreal in 1832 to arrest militiamen and charge them with manslaughter when rioters were killed (Kyte Senior, 1988: 85-86).

In addition, the Riot Act was not often employed to avert anticipated problems; it was not customary for local authorities to summon expensive military aid before there was evidence of threats of violence or expected confrontations. In the context of Montreal in 1878, attention focussed precisely on the problem of how to inhibit the circumstances leading to violence on July 12 - rather than on how to stop a riot between Orangemen and Catholics once one was underway.

If reliance on the Riot Act was rejected, a second logical possibility in law for dealing with sectarian violence might have been to broaden the Peace Preservation Act of 1869 to apply, not only to public works, but to cities and to proclaim the sections prohibiting weapons in force. But there were major disadvantages to a blanket weapons prohibition, not the least being that such a move would be politically disastrous for any government. In addition, no government wanted to include cities within the Peace Preservation Act because of the expense of policing urban public works construction³³.

A further option which the Government might have considered to restrain Orange Order activities, namely the banning of all secret societies, was probably too extreme and again too certain of wide public unpopularity

to be considered³⁴. It seems likely that major Protestant organizations, such as the Orange Lodges and the Freemasons, as well as various Catholic Societies would have objected strongly to the banning of, or to restrictions on, their meetings. The society the Government needed to control vis-à-vis the Montreal disorders, the Orange Order, was almost too powerful for the state to ban by the 1870's. As discussed (Ch.3, s.4.7), the Order had grown rapidly in Ontario in the early 1870's and in Montreal by the mid-decade, and it had great strength among local official's and militia members, especially in Toronto (Kealey 1980:78; Cross 1969: 168). The Order was nearly above attempts at government control: Waite has described the Orange Order of the 1870's as "an engine of intimidation, before which governments, being representative, were bound to be circumspect." (1971:88). In addition the Order and the Tory Party were closely interconnected; at least one of Macdonald's Cabinet ministers from Ontario, Mackenzie Bowell, had been a Grand Master in the Order and a number of Dominion M.P.'s were known to be active members³⁵.

A fourth, more limited, possibility, that of controlling meetings or assemblies or parades, appeared more pragmatic but this approach had been attempted more than once before, for instance in pre-Confederation statutes developed in the Province of Canada³⁶. The thrust of one early piece of legislation (an outcome of the election riots of 1841), had been to provide for the control of public election meetings through involvement of local officials empowered to authorize and supervise such meetings. This Act provided for the swearing in of special constables and confiscation of weapons by J.P.'s; it was re-enacted in 1859 ([P.C.]

C.S.C. c.82) but then disappeared from view until 1886³⁷. A further statute of 1843 banned Party processions. According to Sir Francis Hincks³⁸, "So violent had been the conduct of the Orangemen during eight or ten years prior to 1843" that the bill was supported by both Protestants and Catholic legislators (MG, July 30, 1877). Whether or not the anti-processions legislation of 1843 was used or obeyed (and only one reference to its use has been found (Cross, 1984: 108)), the statute was repealed in 1851. So methods including controlling meetings and banning processions had been adopted but not regularly applied prior to Confederation. Was it possible for the authorities to develop and apply provisions against meetings, parades and processions during the 1870's? Sir Francis Hincks opinion was that, even if such legislation were passed, Orangemen were unlikely to obey it.

It has been tried already, and the Orangemen have refused to obey the law....Orangemen have not obeyed any law forbidding them to march in procession with banners and badges. After the experience of the past, I look on it as quite useless to legislate against Orange processions.

MG, July 30, 1877

Section 2.2

Blake's Analysis of the Law

By April 1878 the federal Cabinet had done nothing to solve the crisis developing around plans for a July 12 celebration by the Orange Order in Montreal and the end of the parliamentary session was near; Blake moved to introduce his proposed remedy in the form of a criminal law bill. In his speech introducing the bill, Blake provided the explanation that his analysis led him to conclude there were only three possible legislative approaches to the problem of violence in Montreal: one approach was the

banning of religious processions, another was the formation of a Dominion police force, and the third was changing the criminal law to repress or prevent violent crime (Hansard. May 1, 1878).

The banning of religious processions was, as suggested, an immensely difficult subject, coloured by historical experiences of conflict and fraught with complexities which varied according to time and place. Macdonald and other veteran parliamentarians listening to Blake must have remembered the relatively unsuccessful efforts made to ban processions or meetings in Upper Canada before Confederation. As Blake clearly saw, any solution in law proposed by the Dominion for the Montreal problems had to be applicable to a variety of settings and circumstances and agreeable to different ethnic and religious groups. Catholic religious processions would have to be outlawed along with Orange parades. It was not clear that the Dominion Government could declare all processions, no matter how peaceful, illegal; it was hardly an appropriate use for criminal law; in Blake's view, local governments had the power if they wished to enact by-laws regulating processions (Hansard May 1, 1878).

The second option raised by Blake, the establishment of a national police force, was not one that he expected to see considered seriously by Parliament due to legislators' long-standing opposition to centralized state policing³⁹. Proposals for a central state police had been canvassed a number of times both before and after Confederation and, with two exceptions, had been firmly rejected on each occasion⁴⁰. Even the NWMP - strictly a regional police in this period - were treated

with hostility by the Reform party, especially after 1878, and regarded as a temporary expedient by Blake, and by Macdonald too⁴¹. Blake himself was not in favour of a national police force: when a call for a police force under central state control was made by Mackenzie Bowell in 1877, Blake refused to contemplate the proposal (Hansard. Commons. April 4, 1877)⁴².

This parliamentary hostility to Dominion policing derived in part from traditional British abhorrence to the idea of state police, which had carried over from the English experience to Canada. The English had resisted professional policing and remained implacably opposed to a centralized state system until the nineteenth century (Jones, 1982:164; Phillips, 1980: 167; Ignatieff, 1979: 443). Their rationale included the abuses a state-centred force could bring; the English cited the example of the French police in support of this view and, as Palmer has written in relation to the eighteenth century,

In their opposition to the idea of police, Englishmen constantly cited their historic liberties and, by contrast, deplored French despotism and centralization.

1988: 71

This was an attitude which Edward Blake fully shared. While his speech dismissing a national police force as the solution for urban riots emphasised the cost and practical difficulties of such a scheme (May 1, 1878), more fundamentally, as MacLeod has argued, Blake favoured the idea of local autonomy and "believed that any police force above the municipal level was a threat to individual liberties." (1976: 163). Blake's emphasis on liberty was a constant theme in his approach to criminal law; the previous year, when discussing calling out the militia

in aid of the civil power (during the debate on an amendment to the Militia Act), he had based his argument against allowing central state intervention on the threat this offered to the liberty of the subject.

Blake said then,

It was the essence of British liberty that the forces could not be taken out in aid of the civil power except under the orders of the civil authorities....We must submit to those inconveniences which were essential to the conditions of the liberties we enjoyed; we should leave it to the civil power to keep the civil peace.

Hansard, April 4, 1877

Blake's third possibility, changing the criminal law, had the obvious advantage of being the Dominion's prerogative under the B.N.A. Act. As the injuries and deaths in Montreal were the results of shootings and as legislation against firearms had been passed after Confederation and made more rigorous in the previous year⁴³, general parliamentary acceptance of the necessity of some increased degree of firearms control seemed a probable answer. But the 1877 Firearms Act had not been easily enacted; "attended by many difficulties" was Blake's phrase, and additional measures were unlikely to be welcome⁴⁴. In addition the 1877 Act had proved ineffectual, particularly in Montreal. Its offence provisions were limited to post hoc measures against those arrested carrying guns or pointing guns, except for the binding over of a person carrying a gun for six months, after a complaint to a Justice of the Peace (40V.,c.30,s's 2,4,1).

Section 2.3

The Form of the Blake Act

Given the difficulties he cited, Blake surmounted the problems by arguing that a general prohibitory firearms law was not necessary for a "special difficulty" such as the troubles in Montreal. Quoting the examples of the Peace Preservation Act, 1869 (the "Public Works Act") and of an Act passed by the Imperial Parliament "to meet the difficulties in Ireland", he proposed legislation with specific application, i.e. for proclamation in a particular geographical area, and with one year's duration - to be renewed as necessary. Blake advocated issuing licences for carrying firearms and weapons within a proclaimed district, coupled with police powers of search on suspicion of persons on the streets for "dangerous and deadly" weapons. No general demand for the giving up of all weapons was proposed (as provided for under the 1869 Peace Preservation Act) because in his view this

... would involve the arbitrary right of searching which was very liable to be abused.

Hansard: May 1, 1878

How much then did the Blake Act owe to the Canadian Peace Preservation Act and how much to the "Irish Arm Act" (as one member referred to the British Statute in the House on May 4, 1878)⁴⁵? The Blake Act combined one clause from the Canadian Peace Preservation Act, dealing with proclamation of the Act to a district by Order-in-Council, with several provisions adapted from the Imperial statute, including licences for carrying arms, and the same penalties for the offence of carrying arms contrary to the law as in the Act applying to Ireland⁴⁶. But Blake's bill, it should be said, was a gentle approach to civil disorder in

comparison with British methods adopted in Ireland. The Irish statute included a general requirement for a licence to carry any arms, a requirement for a certificate signed by two Justices by the Peace to obtain such a licence and general searches of persons and houses for arms in the proclaimed district - as well as other harsher measures including the suspension of *habeas corpus*. So Blake's proposal imposed limited weapons control in a proclaimed district and tried to prevent the carrying of weapons more effectively than under the Firearms Act, but it did not attempt to prohibit their possession entirely⁴⁷.

What were the effects of Blake's statute in legal terms? As a result of the legislation, the central state acquired two new areas of specific discretion: firstly, the timing and choice of areas for proclamation of weapons control under the Blake Act and, secondly, through its appointment of local commissioners, control over the issuing of licences to carry arms⁴⁸. A more general effect was an enhancement of views of state power; the Act appeared to enshrine an acceptance of the necessity of state control over the carrying of arms in some urban areas. In principle this view was translated into practical enforcement through the appointment of Commissioners, the introduction of licences and use of powers of search and federal legislators took up this new orientation to the possession of weapons with enthusiasm and demanded that the bill be made more forceful. Provisions for searches of persons by Justices of the Peace and constables had been included in Blake's original bill but were strengthened in Committee to include "search of any house or place" (where a credible witness swore that arms were kept for the purpose of being carried within the district, 41V.,c.17,s.6). Members

of the Senate proposed strengthening this provision further and eventually agreed, over the Secretary of State's objections, to a clause permitting trial by "any functionary or tribunal" instead of the usual two or more Justices of the Peace (s.10). So the Act emerged from the legislative process a stronger piece of legislation in theory than Blake had originally proposed. Whether it was applied and then enforced as these provisions allowed is discussed later in this chapter (in Section 4).

In sum then the Blake Act, in this writer's view, has to be set against a background of worsening economic times and analyzed in the context of multiple factors: mounting incidents of civil unrest especially in Montreal; increased sectarian violence between Protestants and Catholics in Toronto and Montreal; demands on the federal government by local authorities to assist in maintaining civil order; fear of reliance on poorly-trained militia to enforce the Riot Act; and lack of remedies open to the Dominion Government. Our next topic concerns the public discursive communications on sectarian struggles and argues that certain rhetorical positions permeated these communications making legislative solutions more difficult to achieve.

Section Three

THE DISCOURSE SURROUNDING THE BLAKE ACT

Discursive communications are viewed as reflecting underlying societal ideological positions and ideologies, in turn, as providing sets of filters through which agents in society interpret societal events. How were events in Montreal in 1877 and 1878 perceived by participants and observers and why were legal solutions seen as advisable or desirable? To begin to answer these questions, two aspects of discourse relating to the Blake Act are examined: the public discourse in newspapers concerning sectarian relations and the Montreal riot of 1877; and the Parliamentary discourse relating to passage of the Blake Act in 1878.

Section 3.1

Public Discourse

The public discourse in the press associated with sectarian unrest in Montreal in 1877 began with a gentle and optimistic approach but grew markedly more strident and bitter over the year 1877-1878. At the time of the July 12, 1877 riot, the press insisted on the peaceful nature of Montreal relations in the immediate past. The Gazette, expressing hope that this era was not about to end, claimed

Fortunately for years all classes in Montreal have lived in harmony and peace, begotten of mutual respect for the feelings and convictions each of the others.

July 12, 1877

and the Protestant Daily Witness reported a speech by Bernard Devlin M.P. to a Catholic meeting stating

For half a century they had lived together in peace, and he would regret if that peace were now to be jeopardized.

July 10, 1877

A report of a meeting of the Protestant and Irish Catholic Societies on July 10 referred to

...the peace, good order and social relations so long happily existing between the citizens of Montreal, of all classes and creeds, ...
MG, July 11, 1877

Statements such as these did not reflect the historical reality of sectarian relations in Montreal: relations between Catholics and Protestants had broken down on several occasions in the 1830's, 1840's and 1850's when there had been violence and riots⁴⁹. However, relations had been relatively harmonious during the 1860's and early 1870's. What had gone wrong - from the perspective of those directly involved - to upset this harmony? Part of the blame was placed by both sides on a shift in public communications and discourse. According to Catholics, a change in mood had occurred in the Protestant press and the press now took a more hostile approach - "a stand of aggression towards the Catholic Church" as one priest said in a sermon at St Patrick's (MG, July 16, 1877). The effect, in Father Leclair's words, was that the press was wounding

...the feelings of the Catholics in the shape of slander, sneer or misrepresentation, of marked partiality of anything Protestant, and a heavy colouring of anything that was unfavourable to the Catholics. ibid

At the same time, Protestants considered the Catholic press had grown more strongly anti-Protestant, a development which Cross dates to M. W. Kirwan assuming editorship of the Catholic paper True Witness in January 1877 (1969: 172). In other words, changes had occurred in underlying ideological perspectives, probably - it can be suggested - as a result of recent economic and political events.

Before turning to the nature of these changes, public discourse during the period can be approached by separating the content of sectarian rhetoric into three distinct aspects. Firstly, the greater part of printed newspaper comment dealt with broad issues of Protestant-Catholic relations and treated them from a particular sectarian perspective; secondly, a more specialized branch of discourse addressed the role of the local authorities and the police in dealing with the violence in Montreal; thirdly, a limited vein touched on the possible role of legislation in ending the unrest. These aspects of discourse are considered, drawing on newspaper editorials, reports and letters from readers, to try to establish which factional elements were furnishing which discursive elements and how these discourses affected events in Montreal.

To begin with general relations, Orange spokesmen now demanded the right to walk through the streets of Montreal as part of their "liberty as British subjects" - thus assuming that the rule of law defended sectarian processions and arguing that refusal was a denial of these rights and liberties (MDW, July 11, 1877). The Orange Order, they claimed, was also a "national society" and should be allowed to walk in procession, as the French did on St Jean Baptiste Day and the Irish on St Patrick's Day (MDW, July 12, 1877). Orangemen had no hesitation in reviving celebrations of a two-hundred year old victory although fully aware of the offence this would give. Their chaplain, Charles Doudiet, spoke openly of

...thanksgivings to God for the great deliverance He granted to the nation on the day of the Boyne in 1690.

MDW, July 12, 1877

The Order's traditional attitudes to Catholicism hardened in the decade; in the words of the Order's chaplain, the Orange Association "finds itself in constant antagonism with the two elements of treason and popery" and their "first principles ... are no compromise with error and no surrender to popery" (ibid). In his sermon of July 12, 1877, Doudiet described the Catholic Church as "drunken with the blood of the saints" (MDW). Again after Hackett's murder, the Protestant newspaper the *Montreal Daily Witness* demanded that Catholic priests and laymen publicly disclaim "sympathy with the outrages" (July 14, 1877). The Irish Catholic Union had offered to send representatives to Hackett's funeral (an offer rejected by the Order) and editorial opinion in the *Gazette* had recognized that

So far as the great body of the respectable Irish Catholics are concerned, we are sure they deeply deplore what occurred...

July 13, 1877

So the request was a gratuitous insult to the Catholic majority.

Furthermore the Orangemen ignored the other face of Boynewater, the systematic repression practiced by the British in Ireland. A correspondent calling himself "Free-Thinker" described the Battle of the Boyne in the *Daily Witness* as

[a victory] associated [with] all the penal laws and persecutions inflicted on the natives of Ireland through centuries; brutal, diabolical enactments that ought to make a Protestant Irishman blush at their memory let alone exulting at the historical fact of their atrocity.

MDW, July 9, 1877

But, in their increasing hostility to Catholicism, Orangemen persisted in regarding the Catholic Church as a threatening and monolithic institution, intent on destroying alternative forms of Christianity.

Spokesmen ignored evidence of cleavages within the Church in Quebec, for instance, those evidenced by the recent Guibord affair.

The intransigence of Orangemen and the Orange press during a time of sectarian tensions drew both rebukes and counter-attacks. Even the distant Times of London felt moved on July 19 to comment on "the fanatical Protestantism of the Orange Party" in Montreal and, referring to events of July 12, said "public opinion should denounce the selfish and reckless bigotry which provoked the conflict."

The level of Orange rhetoric and its implacable anti-Catholicism succeeded in provoking Canadiens as well as Irish Catholics. There was general recognition among Catholics that Hackett's funeral, with its huge parade of over 3,000 Orangemen, flags, marching tunes and regalia, was intended to humiliate and insult Irish Catholics but, more than that, the gathering and the messages of support from Orange Lodges across the country were an affront to all Catholics.

Pour quiconque a voulu voir et entendre, il était évident que la démonstration ne s'adressait pas seulement aux Irlandais Catholiques mais bien aussi à tous ceux qui professent notre religion.
LF-P, July 17

A lengthy editorial in the same paper on July 20 not only denounced Orange hostility to Catholicism (basing the comments on the phrase "Down with Popery") but also criticized Protestant interference in relation to L'affaire Guibord and the troubles at Oka; the editorial went on to attack the roles played by Protestant newspapers such as the Globe, the Leader and the Montreal Witness in generating anti-Catholic feeling and ended by demanding that Catholics no longer bow before Protestant errors. La Minerve similarly denounced Orange

actions, citing events at Oka as Protestant provocations. So that, as the Protestant press in Montreal grew more rancorous in its denunciations after Hackett's murder, Catholic discontent with the Protestant minority and the Orange Order similarly increased. These prevailing moods grew more entrenched as episodes of sectarian violence continued after July 1877.

Meanwhile, however, Catholic clergy in Quebec continued to counsel their parishoners to practise restraint. The following advice was given at the Cathedral mass in Montreal on July 15, the day before Hackett's funeral:

Ne prenez part à aucune démonstration; demeurez dans vos maisons ou à votre ouvrage; priez pour que le bon Dieu préserve notre ville de tout malheur et pour que la charité chrétienne ne soit point blessé.

LM, July 16, 1877

What is also noticeable is that few public comments on unrest linked the violence in Montreal directly with economic circumstances or with the impact of the Great Depression. Instead commentators complained of the effects incidents of violence would have on Montreal's reputation. "Lowered our city in the eyes of the whole world" was one press summation but the same paper, the *Montreal Daily Witness*, also suggested that the riots "struck a blow at Montreal's prosperity" (July 13, 1877). The *Gazette* added in a similar strain

We have already sufficient cause to deplore the influences which have militated against Montreal's prosperity; but if to these is to be added a reputation for religious bigotry and faction fights ... no man can look with complacence upon the future.

July 14, 1877

The focus in these discourses was on the effects of violence on Montreal's trade and commerce and not on the causes of increased violence. Working class violence was seen to result from insufficient control by the authorities; violence was a phenomenon which could break out at any time, not something to be explained or examined in relation to other social factors. The absence of such linkages is emphasised by the juxtaposition of news of unrest and news of economic hardship in the press; for instance, in the Gazette, a report of "The Recent Troubles" was printed next to a report of a meeting of Canadian working men called to discuss local unemployment; a figure of 6,000 unemployed labourers in Montreal was estimated at the meeting in August, 1877.

The second aspect of discourse to be examined - the comments on local authorities and their responsibility for events of July 12 and July 16 and for unrest generally - was similarly increasingly polarized between Catholic and Protestant opinion. The Protestant press attacked local authorities for failing to protect Orangemen and failing to prevent violence on July 12, focusing resentment on Mayor Beaudry and on the police, while the Catholic press defended the same actions. The Mayor's refusal to call out the militia on the afternoon of July 12 was termed "imbecile or worse conduct" by the President of the United Irish Protestant Benevolent Society at a meeting on July 15 and a clergyman at the same meeting, the Rev. James Carmichael, spoke of "the shameful inactivity of the Mayor and authorities" (MG, July 16, 1877). The Daily Witness accused Beaudry of "wilful neglect of duty" suggesting that, if his refusal to call out the militia had been

based on economic motives, it was miscalculated and the same paper dismissed the police as inefficient and called for "a better sort of protection" in Montreal or a Dominion police force (July 13, 1877). Ottawa Protestant papers joined in this condemnation; the Free Press contrasted Mayor Beaudry's response with the conduct of Toronto authorities during the Jubilee Riots of 1875.

The general thrust of Protestant criticism was that the police should have been sent to disperse labourers who hung about downtown promptly and that, when events grew out of hand, the Mayor should have called out the militia. The only praise accorded by Protestant newspapers was to three Montreal magistrates (including one Catholic) who, in the face of Beaudry's continued refusal to call out troops, signed a requisition calling out the militia for Hackett's funeral on July 16 (MG, July 16, 1877).

Irish Catholics and *Canadiens* on the other hand, moved to defend the Mayor and police. The St Patrick's Society passed a resolution commending Beaudry for not calling out the volunteers "unnecessarily" on the 12th and the Society emphasised the dangers involved in relying on a predominantly Orange militia:

...whereas the volunteers are composed of men, many of whom are well-known to entertain hostile feelings towards the majority of the citizens.

MG, July 28, 1877

The *Canadien* press pointed out that the accusations against Beaudry were unfair and that the Protestant press had prejudged the circumstances; Hackett might have started the brawl and was perhaps partly to blame for his own death. Furthermore, the press argued that

the Orange Order was neither a national society nor a religious denomination and it should be denied the rights of either group including the right to parade. Lastly, they argued that the Chief of Police had deliberately refrained from showing his hand on the morning of July 12 knowing that the appearance of numbers of police would irritate the crowds (LF-P, July 13, 17; LM July 18, 1877).

Overall this discourse demonstrated a hardening of sectarian positions over the period, suggesting that the events of July, 1877 provoked a deepening divide between Catholics and Protestants placing French and Irish Catholics on one side and English and Irish Protestants on the other. On which side of this sectarian divide did the Dominion Government choose to situate itself? The Protestant element in Montreal felt that the Prime Minister had their concerns at heart; Mackenzie was praised by the English Protestant press for offering military aid before Hackett's funeral, and for placing the batteries at Quebec and Kingston on alert (MG, July 30) and for ordering the Montreal militia to be called out in readiness (Ottawa Free Press, July 23, 1877). Perhaps the Prime Minister had seen both the political advantage of intervening on behalf of the Quebec Orange Order and the political danger of allowing events in Montreal to worsen without the Dominion Government appearing to try to stop the pattern of growing violence. The Catholic press was relatively silent on the subject of the actions of the federal Reform Cabinet, probably preferring to put their trust in Mayor Beaudry.

The third feature of the 1877 discourse under consideration - demands for a legislative solution - remained a relatively infrequent feature of the rhetoric surrounding unrest. Discussion of legislation tended to review old provisions tried in the Province of Canada before Confederation, including the banning of processions and the banning of secret societies. The Protestant Montreal Daily Witness took up this call and demanded the banning of all processions except funerals,

...for the Dominion Government ... to pass a general law to suppress all public processions and demonstrations of every kind, except those of funerals, and even in the latter case to prohibit the wearing of any regalia.

July 14, 1877

The Gazette too favoured this solution. Perhaps moved by the obvious dangers of Hackett's funeral, the editors suggested relinquishing all processions and asked

... are our laws to be thus enforced by military and armed power behind them and about them? Surely the time has come when some law should be enacted which would work smoothly in its own groove, without any of these military accompaniments which bear on their very appearance a testimony as to the failure of the law itself.

July 18, 1877

But these proposals were simply grandstanding; the editors of both Protestant papers knew that Catholics would not give up their religious processions on Feast Days and could not agree to do so and allow Orange funeral processions to continue. More realistically, the old Reform politician Sir Francis Hincks dismissed the solution of prohibiting processions as impossible to enforce against the Orange Order (MG, July 30, August 7, 1877); the Orange Order would ignore any such prohibitions in his view. One legal expert pointed out that a statute of Lower Canada banning secret societies (but exempting Freemasons) was still in force (C.S.L.C., [1861] c.10) not having been

repealed in 1869 (MDW, July 14, 1877). No one in authority seemed interested in reviving its use until Mayor Beaudry proposed relying on the statute to prohibit another Orange parade in June 1878. Blake's Firearms Act of the previous Spring [40V.,c.30] came under criticism as both unenforced and unenforceable; one report claimed there had been no prosecutions under the Act in Montreal and the *Daily Witness* called for firm enforcement

Let it be conclusively proved that the law against pointing fire-arms, whether loaded or unloaded, at any person, is a living thing and not a dead letter, and there will soon be fewer offences ...

MDW, July 10, 1877

The *Canadien* press in Montreal was much less sanguine with respect to the Firearms Act, calling the act "inefficace" and describing the penalty of swearing over to keep the peace for six months "dérisoire" (LM, July 17, 1877).

The communications demonstrate a recognition that legislative solutions to the Montreal "troubles" might be appropriate but included few concrete suggestions for remedies; no agreement prevailed on the forms new legislative remedies should take. This was the political space into which Blake succeeded in inserting the "Better Prevention of Crimes of Violence" bill in May 1878; how was Blake's proposal received by the various parties concerned?

Section 3.2

The Parliamentary Discourse

Parliamentary discourse relating to Blake's bill in 1878 was characterized, if not by attempts to heal the deep sectarian divisions

within Canada, at least by efforts to paper them over in the setting of the House of Commons. But the debates also included aggressive verbal stances by M.P.'s allied with both Catholic and Protestant organizations, especially from Orange Order representatives. The result was a multi-layered debate, coupling a veneer of statesmanlike concern with levels of sectarian hyperbole and, on occasion, an inflammatory rhetoric guaranteed to incite opposing religious elements. A few speakers managed to meld all three discursive approaches into the same speech in striking displays of barely-concealed hostility. Perhaps only a member with Blake's stature could have drafted and steered any legislative solution through such tricky waters.

The tone of statesmanlike concern was set by Edward Blake in his lengthy introductory speech (May 1, 1878) and maintained by senior opposition M.P.'s including Langevin and Macdonald; the emphasis here was on non-partisan ways of diminishing violence between Catholics and Protestants in Montreal. This discourse was interwoven with a second more partisan approach from a number of M.P.'s who typically expressed regret at the necessity of imposing such legislation but went on to propose harsher measures not included in Blake's bill, such as the banning of all weapons and house-to-house searches for arms. In practice, this contribution was typical of moderate Montreal Catholic M.P.'s such as Devlin (Montreal Centre) and Jetté (Montreal East) and other Quebec Catholics. All Montreal members favoured the legislation - or so Langevin claimed when urging adoption of the bill (May 4, 1878) - and it was the Montrealers who were successful in obtaining

harsher amendments, including house searches, from the Commons.

Mr. Devlin. ...it was, of course, to be regretted that a law of this kind should be found necessary, but it was not the first time that a law as severe as this had been introduced. The Habeas Corpus Act he thought was suspended on more than one occasion⁵⁰ ... and it was now absolutely necessary, in the interest of the peace, happiness and welfare of the leading city of the Dominion of Canada, to press a law and a stringent law to deal with the lawless class who had so far set the law at defiance.

Hansard, Commons May 4, 1878

Devlin and Langevin, both from Montreal but of opposite parties, agreed that the legislation must be harsh. When Langevin said on May 4, 1878

... The intention was to strike terror into the minds of those who were disposed to trouble society, break the peace... and commit such violence as might lead to bloodshed.

Devlin used similar terms

He was in favour himself of making the Bill as stringent as possible, and a terror, if possible, to evil-doers, and to show those persons who had set the law at defiance, that the law, after all, was strong enough to deal with their offence, and to put them down.

Hansard, Commons: May 4, 1878

What both were arguing, although their speeches were sufficiently discrete and encoded not to make this explicit, was that the activities of Orangemen must be controlled through the use of new, more restrictive legislation.

At the opposite pole, the Orange Order was represented in the House by its spokesman John White, Grand Master of the Order in East Ontario and M.P. for East Hastings. White was also publicly supportive of the proposed legislation but he contributed a partisan Protestant discourse to the debate by including references highly offensive to Catholics wrapped in apparently conciliatory phrases. The character of the debate shifted to a more partisan and acrimonious level due to his

interventions and the veneer of statesmanship broke revealing underlying ideological conflicts.

In a long speech on May 6, White spoke of Hackett as "foully murdered". "because he protected a lady who wore an orange lily" (that is, an Orange supporter). White attacked Mayor Beaudry, claiming that "if the mayor of Montreal had on that occasion, discharged his duty, this life would not have been taken". He went on to make a series of minimal offers in truly implacable fashion: if the Catholics in Montreal would allow the Orangemen to march, and it was their right to walk in procession, they could be sure that the Orangemen would not "play insulting and uncalled-for tunes"⁵¹. If the march were permitted on July 12, 1878, he would discourage Ontario Orangemen from going to Montreal. In his view, all that was necessary for the march to proceed peacefully in Montreal was "a word or two from the gentleman who occupied the high position of R.C. Bishop of Montreal". Later in the debate, White summed up his own intransigence when he commented, "The only thing he could do was to advise that the Orangemen of Montreal should walk there, and that others should not visit them."

Montreal Catholic M.P.'s were infuriated by White's statements and Devlin responded in kind suggesting that White

... use his powerful influence with the Order in which he occupied a high position, and point out the advantage of abstaining from a procession in Montreal on the next 12th of July.

Hansard, Commons: May 6, 1878

Other Catholic and Protestant M.P.'s joined the increasingly bitter debate on each side until Blake intervened with a conciliatory summing

up, pointing out there was concurrence between "gentlemen on both sides of the question" as to the need for such a "temporary measure".

When the Senate considered the bill two days later in calmer fashion, Montreal Catholics lead by Senator Ryan succeeded in introducing amendments to strengthen the proposed Act; a major change was the introduction of summary trial by a Magistrate, not requiring the accused's consent⁵².

Two further points can be established from the parliamentary discourse around the Blake Act. The content and purpose of the statute were sources of confusion for legislators. For instance, despite the fact that the Act began with a clear preamble⁵³ and then stated that it applied to a district only by Cabinet order (s.2), a Western M.P. was persuaded it was a national measure and would have immediate application to Manitoba and British Columbia. As late as third reading, Mr. Bunster M.P. asked

...the Hon. Member for South Bruce [Blake] to exempt British Columbia from the provisions of the Act, in as much as a few white people could not protect themselves against 160,000 indians if the use of firearms was prohibited.

Hansard, Commons: May 6, 1878

Blake and Devlin joined in assuring him the bill would not affect his Province. On the other hand a Manitoban Senator, Girard, was in favour of having the local authorities in Manitoba and the B.C. empowered to proclaim the Act in force, but met with general disagreement.

Confusion prevailed with respect to the relation between the Blake Act and the Peace Preservation Act, probably due to their general similarity

in titles and to similar provisions for proclamation. This confusion was demonstrated in 1878 and it dogged the Blake Act until its demise six years later: in the 1878 debates, one Senator spoke of the usefulness of having the Act on the Statute books because "there may be difficulties in connection with large public works" (Senate, May 8, 1878). Even Sir John A. MacDonald was guilty of confusing the two Acts when he commented on the Blake Act in 1882 that

We think it should be continued because there are a great many works going on in the unprotected parts of the North-West to which the Act should be made to apply.

Hansard, Commons: May 16, 1882

Secondly, the legislators' discourse can help to establish whether the Montreal disturbances were seen as strictly religious riots or in part as episodes of class violence. While the emphasis throughout the 1878 debate was on sectarian rivalries and, as pointed out, there was no mention of current economic hardships and their effects on the urban working class, the use of class terms and imagery was present throughout the debates. The phrase "class" resurfaced several times; Devlin said the legislation was for "the safety of all classes in Montreal ... and not on behalf of any one class" (May 4) and then contradicted himself by referring to "the class they intended to control" with reference to "persons found with loaded arms in their possession for the purpose of assassination". His usage was primarily a sectarian one - "class" almost certainly meant "all armed Orangemen". Huntington, who was the Reform Postmaster-General and a Quebec Protestant, used the phrase "dangerous classes", arguing that the violence was carried on by "infatuated people" who had to understand that

the carrying of arms was *prima facie* evidence that they belonged to the dangerous classes and would be put under arrest.

Hansard, Commons: May 4, 1878

Huntington's usage had the opposite meaning and referred to the so-called Catholic "roughs" - the Catholic youths and labourers who constituted the oppositional crowds during Orange parades or were implicated in other violent episodes in Montreal.

The debate focussed on specific concerns with religious cleavages rather than on the general spectre of class violence (although some M.P.'s shared the view that those who participated in violence were effectively all members of the "dangerous classes"). This focus raises the question of how legislators could ignore economic realities in relation to sectarian hostilities among the urban working classes of the period. Were the Members of Parliament too blinkered to perceive other factors underlying sectarian violence; was the economic situation considered to be a fact of life beyond the control of politicians; or was the thought privately voiced that the Blake Act would be useful if more working class demonstrations or strikes occurred in Montreal or elsewhere in the country during hard times? Perhaps both the second and third perspectives are plausible. Economic downturns were regarded as inevitable, although by 1878 the depression seemed to be lasting longer and to be more serious than most, and the authorities' role was to cope with unrest as it occurred, not to ameliorate the hardships necessarily suffered by the poor. The Blake Act was seen as a useful instrument and the question of whether it would be a suitable one in practice was hardly raised during the debates.

After 1878, the Blake Act was renewed annually until 1883 but with declining parliamentary enthusiasm. A year after its first introduction, Alexander Campbell - the Senate Tory leader - praised the legislation saying that it

... had been passed last session for the purpose of endeavouring to prevent trouble in Montreal, and it was thought desirable, as it had the effect last year of preserving the peace, to continue it for another year.

Hansard, Senate: May 12, 1879

But by 1881 the Liberals themselves attacked the annual renewal bill in the Commons. Mr. Anglin said

Many entertained the opinion that the Act had not worked as well as was expected by the hon. Minister of Justice.

Hansard, Commons: Feb. 4, 1881

Blake himself added at this time that the bill "was designed to meet an exceptional state of things and ought to be continued only on the responsibility of the Administration" (Hansard *ibid*). The Tory Justice Minister, James McDonald, displayed a laissez-faire attitude when he responded in debate, saying

... He had not considered really whether or not the Bill was as perfect as any one that could be framed. It had done no harm and could remain on the Statutes.

ibid

The annual bills to continue the Blake Act in force reappeared for another two years and then ceased, during Senator Campbell's period as Minister of Justice.

Section 3.3

Public Commentary on the Blake Act

How was the Blake Act seen by legal professionals or the broader public in the period? The scarcity of comment supports the view that the statute was the subject of little interest to lawyers or to the general

public. Even legal publications tended to overlook the Blake Act; the Act was omitted from Stephen's Quebec Law Digest of 1882 (v.2) but mentioned (without any reported cases) in the third volume (1886: 228); it was also omitted from Lewis' Magistrate's Manual of 1884 - admittedly published in Toronto. Few references to the statute have been found in legal handbooks of the period.

Reactions to the Blake Act in newspapers mirrored political allegiances. For instance, moderate French Reform opinion in Quebec, represented in the Weekly journal *L'Opinion Publique* (founded by L.-O. David and Louis Amable Jetté M.P. (Wade, 1968: 325, 361)) was predictably favourable⁵⁴. In May, 1878 this paper published a lengthy front-page article praising the bill and calling Blake "un veritable homme d'Etat", but argued that the Quebec Legislative Assembly should also act to ban public processions for two or three years (May 16, 1878). The paper warned that the sacrifice of public processions must at least be discussed; if not, perhaps

...the 12th of July there will be hundreds of people killed in the city of Montreal, buildings burnt and sacked, a thousand women and children deprived of those who support them.

ibid

The warning probably reflected general fears and the Assembly did pass such a bill, although too late to be effective by July 12, 1878.

By 1879, when further sectarian riots broke out in the city of Quebec between French and Irish dockworkers, the Quebec right-wing French paper, *Le Journal de Quebec* maintained a relatively impartial stance, seeming most concerned about the effects of riots on the tourist business in Quebec. *Le Journal* stated

Nous ne pouvons que regretter cet état de choses qui va aggraver nos maux, en éloignant de nous cette foule d'étrangers qui, à cette saison, ne laissent pas de faire du bien à toutes les industries de la ville, et qui va aggraver encore la paralysie des affaires généralement.

Aug. 18, 1879

Le Journal was one of the few newspapers to link rioting directly with unemployment but it chose to use the connection to revive an old parochial concern, saying

On se demande, dans ce temps de chômage pour un si grand nombre de notre classes ouvrière, chômage qui a dû, sans doute, avoir été pour une partie un aliment aux scènes de la semaine dernière, ce que font les autorités à Outaouais, qui laissent passer la belle saison sans pousser à fin les travaux de réparation aux murailles de Québec.

Aug. 22, 1879

While self-serving, the editor's approach reflected serious consideration of the problems of unemployment for the working class; the conclusion reiterated the premise: "ces chômages, sources de tant de misère pour les familles, et qui ont de si funestes conséquences pour la paix publique". We can contrast this sympathetic approach with that of the *Toronto Globe* which, similarly conscious of the absence of American tourists due to the 1879 Quebec riot, stated

... a few death sentences for homicide would have a marvellous effect, perhaps, on one part of the quarrelsome population. Quebec and Montreal have each taken turns at being cities governed by Riot. But this time Quebec takes the prize for disorder.

Aug. 22, 1879

What is seen, therefore, is a range of discursive responses to riot and unrest. While these were partly conditioned by the perceptual glasses worn by the observer, no doubt responses depended too on the apparent threat to the broader community due to the unrest. The question of whether disturbances might spread or were by their nature limited in character was crucial for local residents and especially for local

businessmen and retailers. One can contrast, for instance, the alarm accorded to Protestant-Catholic violence in Montreal in 1877 and 1878 by most newspapers, with the response to French-Irish violence in Quebec (see s.4.2 below). The former was viewed as a major threat to the peace of the community and to its economic reputation and thus directly to the Protestant English bourgeoisie which controlled Montreal's economy. The latter was treated as a relatively minor threat involving a small dockworking labour force in a declining industry and in a city already in serious economic decline.

Section Four

LINKAGES BETWEEN CRIMINAL LAWMAKING AND THE BROADER SOCIAL FORMATION

Examination of the three applications of the Blake Act, in Montreal in 1878, in Quebec in 1879, and in Winnipeg in 1882, tells something about the features of each application leading to a proclamation as well as the impacts of the statute on the districts proclaimed. The view proposed is that no clearly defined legislative role was developed for the Blake Act in relation to local unrest and that, once proclaimed, the legislation was not strongly enforced, even in the Montreal setting for which it was developed.

Section 4.1

Montreal, 1878

A parade was planned again by the Orange Order for July, 1878 in Montreal; no legal remedy appeared to be available to prevent the event taking place and there was considerable concern about the possibility of

violence on July 12. The Blake Act had been proclaimed in force in the city of Montreal and the county of Hochelaga under an Order-in-Council of May 25, 1878⁵⁶ but Commissioners were not appointed under the Act until August 8⁵⁷, so no licences to carry arms would have been issued in the interim. The effects of the statute in this period are not recorded but the Blake Act seems not to have allayed public fears.

Both the Mayor of Montreal and Prime Minister Mackenzie were involved in attempts to ward off the violence foreseen for July but, despite correspondence in June and July and a meeting in Ottawa on July 8, they could not reach agreement on solutions (Morton, 1970; Cross, 1969). The mayor, Jean-Louis Beaudry, now relying on the argument that the Orange Order was an illegal society in Quebec (under the pre-Confederation statute 2V.,c.8,s.2 or C.S.L.C (1861) c.10) claimed that Orange marchers had no right to protection. Mackenzie responded that Orangemen had the right to "walk the public streets" even if they were members of an illegal organization and, as citizens, they were entitled to protection (Cross, 1969, 173). Mackenzie urged Beaudry to

...lose no time in making the most vigorous preparations in your power for maintaining the public peace.

Mackenzie to Beaudry, July 3, 1878

Mackenzie also pointed out to Beaudry that, under the Blake Act, persons suspected of carrying arms could be searched and disarmed

...you have the power under the Act to require all persons coming by trains to the city some days before the 12th. to be searched and disarmed, as well as to disarm all those in the city itself who are likely to cause trouble.

Mackenzie to Beaudry, July 3, 1878

Mackenzie urged Beaudry to requisition military aid and he would see "that the troops immediately in the pay of the Dominion, as well as

some other volunteer regiments are made available for the preservation of the peace" (ibid) but Beaudry refused. Mackenzie formally requested Orangemen in Ontario to stay away from Montreal, in an effort to reduce the risk of violence due to Orange Lodge members arriving in the city to celebrate July 12th.

In a further move Beaudry was instrumental in persuading the Quebec Assembly to pass a bill banning religious processions "likely to be insulting to other religious denominations" (Morton: 1970, 413) but, according to a contemporary account, the bill came too late to be enforced before July 12 (*Dominion Annual Register and Review*, 1878: 181). Meanwhile the Protestant minority on Montreal council acted independently in their capacity as Justices of the Peace and requested military assistance to maintain peace in Montreal on July 12. Despite Beaudry's refusal to support this request and despite the Reformers' disinclination to intervene in civil disturbances, Mackenzie must have seen the risks of refusal as too great and three thousand militia volunteers were assembled in Montreal on the 12th. The outcome on July 12 could have been a pitched battle between Catholics and Protestants with Protestant volunteers entering the fray on the side of the Orangemen. Beaudry, however, managed affairs by organizing special police to meet incoming trains to "warn-off and disarm would-be demonstrators" (Morton: 413) so that the anticipated invasion of armed Ontario Orangemen was stemmed. The militia involvement remained hypothetical - the soldiers were never called into action - while the Montreal Orangemen were besieged in their meeting hall by City

constables and only allowed out at the end of the day to travel home by cab.

Where did the Blake Act play a role in these events? According to *The Dominion Annual Register and Review*, powers granted under the Act were used to search for arms:

The first occurrence of importance was the searching, under Mr Blake's Act, of the passengers arriving by the steamboat from Quebec in the morning, to see whether any of them carried arms, as it was asserted they did. The search, however, disproved this assertion, for no illegal weapons were found.

1878, 186

As Morton tells us that train passengers from Ontario were also searched, presumably under the Blake Act, Beaudry had undertaken pre-emptory measures in anticipation of July 12, including reliance on the Blake Act and the appointment of special constables to undertake searches, and these measures seem to have been effective. Beaudry's practical remedies can be contrasted with the military aid provided by Ottawa. Militia units were under the command of Lieut. General Sir E. Selby Smyth, recently recruited from England to head Canada's armed forces⁵⁸, and the General's instructions reflected the constitutional limitations on the federal power. In an interview with Rodolphe Laflamme, the Minister of Justice, Selby Smyth was told that that

The Commanding Officer is bound not to execute any illegal order and the Mayor cannot give any order to disperse the Orangemen as Orangemen - it is only after the riot has commenced and after the civil authorities have found themselves unable to restore order that the Military force should be called upon to act.

Zebulon Lash, Deputy Minister of Justice, to Mackenzie,
July 11, 1878. NA. RG13 A3, v.590, C-14-317

Fortunately the situation did not degenerate to the degree required

before military intervention or Smyth might have had difficulty dealing with the situation relying on militia volunteers.

Section 4.2

The Quebec Riots of 1878 and 1879

The town of Quebec was in serious economic decline by the late 1870's as the traditional ship-building industry had been failing for several decades and the city was relatively unsuccessful in obtaining railway development. As a result the port of Quebec was overtaken by the port of Montreal (Wade, 1975: 334-6. *Supra* Ch. 3, s.2.5) and local disturbances broke out in Quebec as unemployment rose. In the face of low wages and few prospects of employment, a riot broke out in April 1877 over the cost of living and troops were called in (Pariseau, 1973: 79). By 1878 wages in the town were as low as fifty cents a day (Thomson, 1960: 331) and labourers, "unable to feed their families" on amounts half of subsistence level, joined in a general strike in June. Pillaging for food occurred as well as fighting between those working and the strikers and unemployed. Local authorities responded first by swearing in 150 special constables and, after several days, by calling out the military. Local troops and Montreal militia amounted to thirteen hundred men and, in an ensuing confrontation, the militia fired on a crowd of strikers and one labourer was killed (ibid: 331) - the first instance of troops firing on rioters since Confederation (Pariseau, 1973: 55).

The 1879 Quebec riot must be placed against this background of general hardship in the town, but closer examination supports the contention

that it resulted within the broader and unsettled context from increased competition between Irish and Canadiens for scarce longshoremen's jobs in the Port of Quebec. According to Cooper (1949), Canadiens had traditionally worked at the skilled trade of ship building and the industry was slowly disappearing; Irish immigrants of the post-famine era had taken on less skilled (but dangerous) jobs as ship labourers loading ships with square timbers for export (ibid: 337). The Irish had received lower wages as longshoremen but they constituted a cohesive community, probably predominantly Irish Protestant (although this is not clearly established in contemporary accounts). They assisted each other in times of need and had organized a union the "Ship Labourers Benevolent Society" dating from the mid-1850's to help indigent members and their families (ibid: 339-342). The Society's motto "We support our infirm; We bury our dead" demonstrated the members' solidarity and members celebrated their organization in an annual parade on July 23.

The earlier ethnic division of labour began to break down in harder economic times, as the shipbuilding industry failed along with the decline in the export of squared timbers and, by the late 1870's, Canadiens had increasingly assumed longshoremen's jobs. A few Canadiens joined the Irish Ship Labourers Benevolent Society but most refused and fights broke out in 1878 between members of the two factions. In 1879 the Canadiens founded their own union, L'Union Canadienne, and riots broke out again in August when members agreed to work for wages lower than those paid to the Irish members of the Ship Labourers' Society (Dom. Ann. Reg. & Rev. 1879: 222). Members of

L'Union Canadienne undertook an inaugural procession through the town on Friday, August 15. In passing through the streets, the parade breached traditional territorial boundaries by travelling along the rue Champlain, in the heart of the Irish Lower Town (Cooper, 1949: 336-7).

The procession of *Canadiens*, variously estimated at 800 to 2,000 persons, was fired on, attacked with stones and bricks thrown from houses, and finally halted by two small cannon drawn up in the rue Champlain (*Journal de Quebec*, August 15, 1879). The *Journal* reported one dead, two severely injured and a total of fifteen hurt in "l'affaire de la rue Champlain". The affair threw Quebec into disarray: the following day shops stayed closed, the Assembly adjourned early, the artillery battery and the militia were on standby (for the third time in two years) and the magistrates met to discuss how to restore order. Disturbances between *Canadiens* and Irish continued and spread to the outlying districts of the town. The *Journal* reported that the rue Champlain was a fortified camp. Citizens went about armed, train services were interrupted, and there were sporadic incidents of violence (August 18, 1879). Meetings of both unions were called on Saturday; a Catholic priest counselled *l'Union* members to disperse peacefully and the local M.P., Arthur Murray, encouraged 600 members of the Benevolent Society to do the same. The inquest on the murdered *Canadien* labourer began and the militia and artillery were paraded in different parts of the town to prevent crowds forming; but the town was quiet by Sunday (*Le Journal*, August 18, 1879).

By the following Tuesday, the newspapers denied rumours of theft of militia arms and reported that leaders of the clergy, local officials and military were meeting to discuss ways of restoring "harmony between the diverse elements of our society" (August 19). The Journal added that union leaders were present to explain their positions. A local committee had been established to consider the problems. By the 20th, barricades had been taken down on the rue Champlain, militia were stationed throughout the town and the two unions had come to an agreement not to conduct processions and to make what terms they pleased with their own members.

How did the Blake Act proclamation ensue as a result of these violent conflicts over scarce employment in the port of Quebec? During the riot of 1878, Prime Minister Mackenzie had been deeply concerned by the dispatch of large numbers of militiamen from Montreal to maintain peace in Quebec - "beside himself with concern" in one phrase used (Thomson, 1960: 331) and his worst fears were confirmed when the militia fired on the strikers and unemployed. In the 1879 riot (and probably as a direct consequence of events of 1878) the local authorities in Quebec decided not to rely on the Riot Act but to use a patrol of citizens to protect the Upper Town; two hundred men were sworn in as special constable and professional troops and militia were available as a last resort (Pariseau, 1973: 80). The magistrates met under Mr Murray M.P. on August 15 and made this decision (Journal, Aug 16); by August 18, the authorities had decided to "make the law respected" and to begin by confiscating all arms.

Quand il n'y aura plus personne d'armé que ceux qui doivent
l'être par état, on aura plus de chance d'apaiser les esprits
et de faire entendre raison à tout le monde.

Journal, Aug 18, 1879

On August 19, the newspaper stated that the authorities had decided to apply "la loi Blake" against carrying arms in the city; this was followed by a report on August 20 that a meeting of Quebec magistrates had voted 13 to 6 in favour of requesting the Federal Government to proclaim the Blake Act in force.

Macdonald's Tory party had resumed power in Ottawa in the fall of 1878 and, given Macdonald's political reliance on the Quebec Catholic vote combined with the Quebec magistrates' official request for proclamation of the Blake Act, there was no reason to refuse. The Act was proclaimed in force on September 2 (N.A. RG2, p.c.1230), a full two weeks after "harmony" had been restored in Quebec.

Section 4.3

Winnipeg, 1882

A third - and more puzzling - proclamation of the Blake Act occurred in the Spring of 1882 in Winnipeg. In early April the Lieutenant-Governor of Manitoba forwarded a request from Manitoba's Attorney-General to the Dominion Government "urging the expediency of extending the provisions of the Act 41 V., c.17 to the City of Winnipeg" (N.A. RG 13, 86-87, 084, Box 8, 8731 (43)1882). The Attorney-General's statement referred to complaints from the Chief of Provincial Police and the Chief of the Winnipeg City Police about unsavoury characters arriving in Winnipeg.

Amongst the recent arrivals in the City there are many of a notorious character who are in the habit of carrying revolvers and other dangerous weapons, ...

N.A. RG13 A3v.606 c.14,3331, May 10, 1882

The Attorney-General requested the Blake Act be proclaimed "in the interest of the maintenance of good order and the prevention of crime in the City", and an Order-in-Council was duly published in the Canada Gazette on May 23, 1882 to take effect on June 1st. At this point the record of the Order vanishes⁵⁹, for it was not brought into effect. What is probable is that the proclamation was requested by Winnipeg officials in the belief that the Blake Act could in some way "prevent" crime, for no evidence has been found of guns being used in the city or reports of killings or woundings with weapons.

Winnipeg had experienced "frontier disorders" during its founding years, in 1873 and 1874 but, while there were good reasons for the Manitoba and Winnipeg police and for Winnipeg City Council to feel concerned about local developments in 1882, there had been no serious local disturbances for almost a decade (Pariseau, 1973: 78-81). What had occurred in 1882 was an influx of immigrants, far larger than in preceding years, who began to arrive in the city in the Spring of 1882, and this invasion strained the small city of 8,000 to its limits. The newcomers, who came mainly from Ontario, were arriving by train via the United States, stopping in Winnipeg to buy land and then moving on further westwards. Already in early March, the newspapers were filled with advertisements for land sales and real estate and by the end of the month the largest land sales ever were reported in CPR land offices in the West. One newcomer, no doubt exaggerating when he claimed a rate of 2,000 new

arrivals in Winnipeg per day⁶⁰, described the city as "packed like a sardine box" with temporary residents (WDPP, March 22, 1882). City Council estimated 600 - 1,000 arrivals per day by March 29 and sent a telegraph to the Minister of Agriculture, Joseph Henry Pope, requesting assistance with accommodating the sudden increase in population.

City officials had recognized the seriousness of the situation a month earlier and had considered all available public buildings in Winnipeg for emergency housing for immigrants. Although school buildings were rented and empty militia barracks investigated, hundreds of immigrants were forced to spend their time in Winnipeg camped at the railway station. Local entrepreneurs hurried to supply demands for accommodation; spurred on by visions of increased profits they offered houses, previously worth five to ten dollars a month, at rents of twenty to twenty-five dollars (WDT March 1, 1882). Several local capitalists built new hotels while others erected tented additions and some put up tents. By April 6, in the face of mounting criticism of the Dominion Government for general unpreparedness, especially by the *Globe*, the Minister of the Militia, A. P. Caron, gave instructions for help

... the military tents now at Winnipeg should be placed at the disposal of immigrants and the military tents in store at other places.

WDPP April 6, 1882

The movement of immigrants through Winnipeg provoked fears among the small permanent population for, together with profits, went the spectres of speculators and profiteers and the arrival of the "unsavoury elements" dreaded by the Attorney-General. The local press was quick to

fan the flames, republishing a report from the Ottawa Free Press identifying a move by the "demi monde" of Ottawa to Winnipeg

The police report there is quite an exodus of the class mentioned from this city to Winnipeg

and the Winnipeg paper responded

Winnipeg must not be made a refuge for the abandoned classes of the older cities

MDFR, March 4, 1882

Despite these fears and despite the lack of shelter for the influx of immigrants, Winnipeg newspapers reveal little evidence of any increase in serious crimes before the date of the Attorney-General's request for the Blake Act, on April 3, 1882: reports of police court fines for January and February 1882 gave a total figure of \$49 (WDFP March 30, 1882); even by May 9, at the height of the "emergency", the most serious offence in reports of recent cases was assaulting a policeman. The Free Press' main complaint at that time was that punishments of \$40 for keeping a house of ill-fame and of \$20 for prostitution were too light. Referring to "painted harlots", the editor ranted

If these people had been sent to jail instead of being fined, it might have done some good. The harlot business is reaching enormous dimensions.
May 9, 1882

Given the absence of serious crime, rioting or threatened unrest, why did the Federal Cabinet agree to proclaim the Blake Act in Winnipeg? If the problem lay in a shortage of temporary housing for the transient population moving westwards, more practical solutions than extending the provisions of criminal law were appropriate. The immigrants were not reported to be carrying arms, nor ready to riot at the poor conditions prevailing in Winnipeg. Most likely, the explanation for Cabinet

consent lies in the effects of a series of relatively unrelated but contemporaneous events in Winnipeg.

The Lieutenant-Governor of Manitoba forwarded the Attorney-General's request to Ottawa in early April, 1882 and it was referred to the Dominion Minister of Justice on May 10. By coincidence, but as if in fulfillment of the worst predictions of the Winnipeg police, one major fire and several attempted fires were started in the city earlier in the same week in May. The main fire, which destroyed several major buildings, was the culmination of a series of local fires, beginning in April, which sustained suspicions of instances of arson. The local press created a panic, interpreting the fires as the work of a "gang" intent on "robbery and plunder"; the headlines in the Winnipeg Daily Times on May 8 read

WICKED WORK IN WINNIPEG - A Gang of Fire Bugs Infecting the Place - Several Scorplings on Saturday and Sunday - Devilish Deeds Deliberately Done - Formation of a Property Protective Association with all that the Name Implies

Winnipeg authorities responded to the apparent threat of further incidents by swearing in special constables and organizing all-night patrols of the city. The police force grew ten-fold almost overnight: to 150 volunteer police, 86 paid special constables and 21 regular police (WDT May 8, 1882); but the police made only one arson-related arrest. The suspect was an unemployed drifter who had been caught setting a fire in a pile of wood shavings in an alley.

The suggestion that these events assisted in obtaining prompt proclamation of the Blake Act from the Federal Cabinet is speculation,

but the sequence of events in an overcrowded small city with its buildings constructed of wood, may have been a significant factor. The Department of Justice memorandum recommending proclamation of the Blake Act was dated two days after the climax of the arson incidents in early May. The Cabinet therefore considered the memorandum in the light of serious threats to the safety of the City and its inhabitants.

In addition, party political considerations may have played a part in ministerial thinking. There had been demands in Reform newspapers, including the Globe, for Government action in relation to the immigration crisis in Winnipeg. Cabinet reaction had been slow and small-scale (consisting of releasing tents for the immigrants' use), but a Dominion election had been called on May 20, 1882 - three days before the date of the Cabinet Order-in-Council proclaiming the Blake Act in effect in Winnipeg. It seems possible that Macdonald and his Cabinet were prepared to grant a request for proclamation without reflecting closely on its appropriateness, when this cost the government nothing and might gain the Tories some votes in Winnipeg.

Another question is why the Act was not implemented in the Winnipeg instance? The Order-in-Council of May 23 recommended the appointment of the Winnipeg Police Magistrate, Colonel Adam Peebles, as Commissioner under the Act, but there is no evidence that he served in this capacity or that the appointment was made. The proclamation of the Act coupled with its non-implementation and the silence of official records in Ottawa, suggest either that the ending of the arson incidents may have put an end to the view that "dangerous elements" were at work in the

city, (no dangerous elements were uncovered in the lengthy inquiry subsequently held into the fires in Winnipeg); or that the true nature of the Act may have been ascertained and its lack of relevance to Winnipeg's problems discovered.

Section 4.4

Procedures for Proclaiming the Blake Act

Riot and unrest were usually regarded in 19th century Canada, following the British tradition, as strictly local responsibilities; Edward Blake commented in the 1877 debate on the Militia bill

Our system was that those matters were to be managed by the local authorities themselves except in cases of grave public necessity.

Hansard. Commons. April 4, 1877

Under existing provisions, the Riot Act could be declared in force by the Chief Municipal Officer and two Magistrates or by the Chairman of the Quarter Sessions (31V., c.70). The wording of the Blake Act, unlike the Riot Act, did not specify who was to advise the Governor in Council as to the necessity of proclaiming the Blake Act in a district but, in the two applications after 1878, local or provincial officials requested proclamations from the federal Cabinet.

In Quebec in 1879, fighting began between Canadiens and Irish longshoremen on August 14 and it was August 19 before a local newspaper, the Journal, announced that the authorities had decided to apply the Blake Act to Quebec; this was amplified the following day by the explanation that the magistrates had met and voted 13-6 to ask the Federal Government to proclaim the Act. In terms of procedure, the

Ottawa Citizen reported that the Mayor of Quebec had asked the federal Government to declare the Act in force but he had been told it was necessary to have proof of the need of such a step; the Government had suggested that the Quebec magistrates meet to discuss the question (Aug. 19).

In the Winnipeg case in 1882 the request was made to Ottawa formally, by the provincial and local authorities, through official channels and it seems doubtful that prior informal inquiries were made.

It is evident that, although the Blake Act was under the direct control of the Dominion government, it was a much slower response to unrest in practice than the Riot Act. In the two instances in which local proclamations were formally requested, considerable periods of time elapsed between requests and proclamations; in 1879 in Quebec the lapse was from August 19th to September 2nd and in 1882 in Winnipeg from April 3rd to May 23rd. The Act could not be effective in carrying out the claim to "prevention" in its title unless the Dominion Government proclaimed it in force before violence broke out; instituting it after events could only be useful in preventing subsequent recurrences of armed violence. So the Blake Act functioned largely as a *post hoc* criminal law measure, applied to situations of violent conflict to prevent recurrences. It was not recognized as a method of weapons control or seen as a development of the Firearms Act of 1877 or earlier firearms legislation. Instead the Blake Act was viewed as specific legislation to deal with weapons use related to urban unrest, not as legislation capable of general development for firearms control.

Whether or not the Blake Act had specific effects is a difficult question as relatively few conclusions can be drawn about the practical operations of an Act which was used so rarely. Perhaps its existence served as a useful federal threat to local officials to "put their house in order", but the impression is that it was more a federal government recourse for city administrations who requested help, which avoided federal authorization of, and payment for, the use of military force. Such payments could be substantial: the Cabinet had authorized a \$10,000 contribution towards use of the militia on July 12, 1878 in Montreal, when the total cost had been \$13,000; and Quebec call-outs in 1878, 1879 and 1880 cost over \$6,000 in the first two summers and \$2,000 in 1880. The federal Cabinet may have seen the appointment of two or three federal Commissioners in a city to issue licences to carry firearms, at one hundred dollars per annum each, as an economy measure; furthermore the appointments served as a visible federal intervention to assist in maintaining order.

While the Blake Act was never proclaimed in Toronto, violent sectarian incidents diminished there after 1878. In Montreal and Quebec the Act was continued in force indefinitely, until the statute lapsed in 1884, but the expiry of the Act was not marked by any resurgence of violence in either city. It is probably significant that the economic climate of 1884 across Canada was different from that of 1878. Implementation of the National Policy was begun in 1879; the first downswing in the economy lasted from 1874 to 1879 and the next did not begin until 1884 (Waite, 1971: 77). So the effects of the Great Depression had worked their way through the economy and the new policy of promoting

industrialization through high tariffs adopted by the Tories had probably helped domestic manufacture to some degree (Firestone, 1958). In effect, the introduction of the Blake Act accompanied the beginnings of a temporary improvement in employment conditions for the urban working classes.

Section Five

THE BLAKE ACT AND INTERNAL STATE PROCESSES

The Blake Act was the legislative outcome of the concerns of Montreal Catholic M.P.'s over sectarian violence, a concern which was shared by Edward Blake and was directed into legislative form relying on Blake's specialized knowledge of Canadian and English criminal law. The Canadian public service was not a participant in developing the Blake Act but took some routine responsibility for its applications. The work of Department of Justice officials characteristically involved dealing with Commissioners appointed under the Act and the processes concerned are discussed next. The second part of the section concerns the Department of Justice's role in the provision of specialized legal advice on the Blake Act.

Section 5.1

Enforcement of the Blake Act

Enforcement of the Blake Act was placed in the hands of local police, but the provisions of the statute directed the Dominion Government to appoint Commissioners, responsible for issuing licences to carry arms, in proclaimed cities. In the case of the Winnipeg proclamation of 1882,

no Commissioner is recorded in Department of Justice records as being active in Winnipeg⁶¹ - a confirmation that the Act was inoperative in the City. Appointments were made, however, in Montreal in 1878 and in Quebec in 1879 and continued to be made until 1884. Altogether five Commissioners were appointed in the two cities; four of these five Commissioners held other judicial posts. For Quebec Charles Alleyn, Sheriff of Quebec, C.G. Holt, Judge of the Sessions in Quebec, and E.-A. Déry, Recorder of Quebec were appointed; for Montreal Sheriff P.-J.-O. Chauveau was appointed and so was one non-lawyer, William Darling, a Scottish merchant. Chauveau had a long and active political career, having been Conservative premier of the province after Confederation (D.C.B.v.11:177-186). Darling was a Reform Party member who was active in civil and political affairs in the period (D.C.B.v.11:232-3). It is therefore possible that some appointments were made as minor forms of political patronage; the duties were not onerous and the pay was small but useful - \$100 per annum. But clearly, most appointees were expected to combine their new role with existing judicial tasks.

In contrast to the Peace Preservation Act, the appointed Commissioners were not minor and unknown individuals; most were well-known local figures or senior officials in the province, accustomed to public and judicial office. Several Commissioners were inactive in practice: of the five appointments, only Sheriff Chauveau in Montreal and Recorder Déry and Judge Holt in Quebec, left any signs of activity - claiming fees and writing letters to Department of Justice Officials concerning the Blake Act. (Judge Alleyn became ill and had died by 1883 and

Darling led an busy public life, which may have precluded him from functioning effectively as a Commissioner.)

The Commissioners were required to operate a simple system for issuing licences: each official was provided with forms for licences and forms for revocations and each licence issued was signed by a Commissioner. In 1878 Commissioner Chauveau was given fifty blank forms of each kind (suggesting few successful applications were expected (N.A. RG13.Letter book 1878, f.# 1290)). Annual returns were made on occasion by Recorder Déry (N.A. RG 13.Letterbook 1881,f.# 129) and Sheriff Chauveau (N.A. RG 13 A3 v.600 c-14326)⁶². There were no official fees charged; at least, when Recorder Déry inquired about fees, the Deputy-Minister of Justice responded "the Statute makes no provisions for such charge" (N.A. RG 13, A3 v.596, C14322 Nov. 12, 1879).

While correspondence pertaining to the operation of the Blake Act in Department of Justice records is relatively infrequent, there were some applications for posts as Commissioners (which supports the view that these were regarded as patronage positions). There were also annual inquiries from Recorder Déry asking when his salary would be paid; Déry's requests arrived as early as February and, as a cheque was not usually sent until June or July, Justice officials were firm in answering his queries. Chauveau too wrote to urge prompt payment on at least one occasion. The problem with remuneration was that no routine provisions had been made for payment of Commissioners and each set of annual cheques required an authorizing Order-in-Council.

Departmental officials refused to authorize payments when Déry wrote in 1881 claiming to be entitled to Justice Alleyn's remuneration, as well as his own, because "he performed all Sheriff Alleyn's business resulting to Alleyn being sick and unable to attend to his duties"; Déry received a definite refusal from the Department (1881, f.# 685). But, for the most part, internal processes were routinized; by 1882, the Justice clerk had begun to write "usual \$100.00" against the record of the file for both Chauveau and Déry.

What is frustrating is how little the information in federal records discloses about the use of the Blake Act, how it was applied and whether it reduced the carrying of arms in the two cities. The impression received is that the Commissioners' activities were both limited and undemanding and it would be useful to locate annual returns from Commissioners to begin to assess how much the practice of issuing licences was used in Montreal and Quebec.

Section 5.2

Legal Opinions on the Blake Act

In addition to routine internal state measures relating to the Blake Act, the Department of Justice was called on for specialized advice respecting the Act on at least two occasions.

In early July 1878, Prime Minister Mackenzie referred two letters to Zebulon Lash⁶³, the Deputy Minister, from Mayor Beaudry of Montreal and from Bernard Devlin M.P., for a legal opinion. Beaudry had written on June 21 proposing the view that the Orange Association was "an illegal

combination or confederacy" under the Consolidated Statutes of Lower Canada ((1861), c.10), and suggesting to Mackenzie that members were prohibited from assembling to walk in public. Lash rejected this argument; he responded that while it was not

... of course the duty of the Dominion Government to advise Mayor Beaudry as to the effect of the Statutes in question. I may say, however, that the question of the legality or illegality of the Orange Association has in my opinion very little bearing upon the matter in question, namely the preservation of the peace in Montreal on July 12.

N.A. RG 13 A3 v.590 C-14317, July 2, 1878

The same point was put even more strongly in a letter to Mackenzie on July 11 when Lash wrote of "the fallacy" of suggesting that

... because the members of the Association have committed an offence by becoming members, they commit another offence by simply walking together in the streets

ibid, July 11, 1878

It is evident that Prime Minister Mackenzie was in close and frequent communication over arrangements for July 12, 1878, both with central state officials such as Laflamme, Lash and the militia commander, General Smyth, and with local political representatives from Montreal such as Beaudry and Devlin. Lash referred to Smyth having an interview with the Minister of Justice at which the General was offered "guidance" on his powers in the event of riot. Mackenzie also directed Lash to consult with Laurier and Scott over the question of issuing a commission to General Smyth. After July 12th passed off peacefully, the Cabinet was delighted with the Commander and, probably relieved by the lack of need for using military force, passed a flattering Order-in-Council referring to "the admirable arrangements made in the disposition of the Troops" in Montreal and praising Smyth's "prudence and discretion, under the most trying circumstances"; a copy was sent to the Colonial

Secretary and the Duke of Cambridge, the British Commander in Chief (RG2-1, v.370, July 23, 1878, p.c. 645).

The second instance where the Department's opinion was sought related to minor confusion over the proclamation of the Blake Act in Quebec in 1879. A request for the Blake Act from the local Quebec authorities met with delays in Ottawa because of its form. The resolution by the Quebec Magistrates requesting military aid to the civil power was sent to the Secretary of State in Ottawa from the Clerk of the Peace in Quebec, D. Murray, addressed to the Mayor of Quebec, Robert Chambers, without a covering letter. The status of this unusual letter was referred to Deputy Minister Lash on August 22 and Lash promptly wrote an opinion that a response should be sent to Chambers telling him of the receipt of the resolution and asking him "by what authority the letter referred to was sent to the Hon. Secretary of State", and adding "actions in the Provinces [sic] will be delayed until such remarks in reference to the letter are made by the Mayor as he may think proper to make" (N.A. RG 13 A3v.595 c-14321, August 23, 1879). In the Quebec instance, procedural confusion among local authorities clearly increased delays in Cabinet proclamation of the Act.

Section Six

CONCLUSIONS

The fact that so few proclamations of the Blake Act occurred in the late 1870's and early 1880's does not imply that the legislation should be dismissed as a minor and irrelevant episode of Canadian criminal

lawmaking, for some things can be learned from examples where statutes were enacted and applied but failed to become standard weapons within the state's arsenal of criminal law. The Blake Act can add to our knowledge not only of broad issues (in particular of sectarian conflicts within the social formation), but of narrower questions concerning the production and working of state control measures. In its unique design and purpose, it can be informative on the limits of possible uses of criminal law in the period. Lastly, by examining such failures we can perhaps begin to understand why legislators considered some criminal law measures "successful" and others not.

The circumstances around the passage and proclamations of the Blake Act, as described in this chapter, reveal certain features of the interrelations of law and the social formation in the period. They encapsulate societal processes which range from parliamentary seizure on a legislative solution to widespread, worsening and apparently insoluble sectarian conflict, to the selection of a specific legal response from a range of solutions considered relevant to sectarian urban disorder, and from a very specific process of law application in the period to the practical limits of such a criminal law approach to urban social conflict.

In terms of its failure to become part of the state's arsenal of criminal law, the Blake Act of 1878 was an instance in which a statute (seized on by legislators in 1878 as a solution to ongoing problems of social order) was deemed to be irrelevant within six years. Was the statute inappropriate from the beginning - in some way misconceived,

misconstructed or misapplied - or did the nature of the problem to which it responded, the very form of societal conflicts, change over time? Evidence reviewed in the chapter suggests both possibilities bear examination.

Confiscation of firearms, as a mode of state intervention, was ineffectual if undertaken after urban violence had occurred and it is evident that the Blake Act could not assist the state in limiting public use of violence (or supplant reliance on the Riot Act) unless it was in force and applied before incidents of unrest passed beyond local police control. Although the Blake Act might have been proclaimed in advance of expected urban unrest, what has been established here is that it was not used until incidents of violence had broken out and been brought under control, and then in order to prevent recurrences. In the role of a post hoc solution, it proved to be a lame duck measure. Why it was not proclaimed sooner is a moot point. There clearly was Dominion hesitation to interfere in local unrest until intervention was demanded but was it also (as we suspect) because firearms control even in urban areas was not easily acceptable as broad public policy?.

On the nature of conflict, there is also evidence (from other sources) that the form of societal unrest shifted away from sectarian hostility after this period. According to Morton (1970), Pariseau (1973) and Torrance (1986), incidents of military aid to the civil power changed in character towards the last decade of the century from suppressing sectarian violence to suppressing labour unrest. Riot and disturbances as defined by the authorities increasingly resulted, in these authors'

analyses, directly from economic relations between labour and capital, often during strikes against employers, rather than from religious or ethnic cleavages. These conclusions support the view that a diminution in sectarian disturbances in major cities after 1878 can be ascribed to temporary improvements in economic times and to the shifting nature of conflicts, rather than to the effects of the Blake Act or to other Dominion, or provincial and local, measures. So, the failure of the Blake Act can probably be attributed to its inherent defects as a state measure of intervention - its irrelevance to the ongoing economic problems of the urban working class and to the shifting economic conjunctures and the changing nature of societal conflicts in the period.

The central state adopted the Blake Act as an emergency response within its criminal law jurisdiction to violent incidents arising from sectarian cleavages in Montreal and elsewhere. Whether or not later crises responded to with proclamations of the Blake Act arose from the same sources, the symptoms of unrest appeared sufficiently similar to legislators in Ottawa for the same remedy to be applied to incidents in Quebec and Winnipeg. But the purposes of the Blake Act were limited to an attempt to prevent the escalation of violent incidents involving weapons; as a criminal law statute, it did not and could not address any of the causes of violence.

The Blake Act also demonstrated several features of the central government's role vis-à-vis the extended formation. Firstly, and not surprisingly, it showed the relative powerlessness of a small central

state structure to respond to major economic change: the Great Depression and increased sectarian tensions in Montreal between Protestants and Catholics, the decline of the port of Quebec and the breakdown of established divisions of labour, the social dislocation produced by the movement of labour from Ontario to the West - all produced symptoms of crisis which the state was either unable to respond to or initially unwilling to do so. In these cases, the Blake Act seems to have been used as a "band-aid" response by a relatively weak but interventionist central government to local crisis manifested in the form of disorder.

On this question of the underlying reasons for local conflict: accepting the prevalence of sectarian violence, there were, in our view, strong undertones of economic crisis in the Montreal situation in 1877 and 1878 and the proclamations in 1879 in Quebec and in 1882 in Winnipeg can both be seen as responses to economically-conditioned crises. In each instance, certain effects of fundamental societal transformations working their way through social structures resulted, in the short-term, in increased local conflict, strife or tensions in urban settings. These conflicts and tensions appeared to the central state to be problems deserving of political solutions, either because of their obvious seriousness (as in Montreal) or because local authorities demanded federal interventions. From a Dominion perspective, the contexts became defined as instances where inaction by the central state would be damaging or dangerous in political terms or where action, even if largely symbolic, might carry political advantages. Although the sectarian conflicts were viewed and interpreted from the political

centre of the social formation, the legislative solution - namely the Blake Act - was implemented in a local context, reliance being placed directly on local appointees to carry out provisions (and only indirectly on officials of the central state). Once an immediate crisis passed, use of the statute and rigorous applications of its provisions appeared to lose interest and priority for local appointees and police in the cities of Montreal or Quebec as well as for politicians in Ottawa. Quite possibly, carrying weapons was no longer regarded as a threatening or forbidden activity when removed from the context of general sectarian or ethnic violence.

Moreover, the Blake Act represents an instance of the (not unusual) problem of discontinuity between theory and practice in state action, in this case between law and legislative enforcement. It exposes the gap between the intentions of central state legislators and the state's practical ability to carry out interventionist measures relying on local agents of law enforcement in complex urban social settings. Federal legislators assumed that confiscating weapons would prevent violence, without enquiring closely whether such a measure was acceptable, how such a measure would be carried out, or what means could be used to ensure that owners of guns went before local Commissioners to acquire licences. What analysis of the Blake Act demonstrates is, as suggested, the inadequacy of an ad hoc solution in criminal law (even when drafted by Edward Blake) and the ineffectiveness of the response of the Blake Act as a practical method of central state intervention in urban unrest.

Section 1.1

The Inland Revenue Act of 1875

The first federal adulteration legislation was passed in a amending act of 1874 which dealt with several concerns of the Department of Inland Revenue and was known as "The Inland Revenue Act of 1875" (37V.,c.8). Of the Act's twenty-five sections, approximately one-third related to the adulteration of food, drink and drugs - although adulteration had not been mentioned in the Inland Revenue Act of 1867 or elsewhere in post-Confederation federal statutes.

The Inland Revenue Act of 1875 appeared to take a comprehensive approach to adulteration of edible substances. It provided for sampling of suspected adulterated substances by an inspectorate (s.15), for the appointment of official analysts of food, drink and drugs to carry out testing for purity (s.14), and for severe penalties for adulterating food and liquor or for selling adulterated substances (ss.22-24). It must be noted that the new legislation left considerable discretion in the matter of enforcement:

The Governor may appoint in each Inland Revenue division one or more persons ...as analysts of food, drink and drugs purchased , sold or offered for sale... s.14

(The inspectors) shall when required to do so by any regulation made in that behalf by the Department of Inland Revenue, procure and submit samples of food or drink or drugs suspected to be adulterated, to be analysed by the analysts appointed under this Act; s.15

The 1875 statute was essentially an enabling act which allowed prosecution of certain defined adulteration offences as criminal acts but placed responsibility for sampling, testing and enforcement entirely

The result was an ineffectual and probably largely irrelevant criminal law statute. What is perhaps unexpected is that the law was removed from the statute book five years later, not as part of a general measure of legislative house-cleaning but because the Commons decided not to renew the statute, making the Blake Act an unusual example of a criminal law discarded for its lack of utility.

"I will grant you that putting the business under the Excise law would pretty nearly crush it, for I do not know anything that can successfully resist the Excise except whiskey and tobacco." Mr Fairbanks M.P. Hansard. April 16, 1886

CHAPTER SIX

THE CRIMINAL OFFENCE OF ADULTERATION

The federal Parliament's introduction of adulteration as a criminal offence in the 1870's, under the aegis of the Department of Inland Revenue, rounds out the analysis of three fields of criminal law affecting the working class. Having examined criminal legislation instituting prohibition (relating to the labour force on public works) and the Blake Act prohibiting the carrying of weapons (in relation to urban working class unrest), attention is turned to a series of statutes stipulating criminal penalties against sellers of adulterated food, drink and drugs and against adulterers of specific substances ranging from butter to agricultural fertilizers.

Ideas and practices in any society relating to the control and regulation of adulteration of food are necessarily tied to developments in methods of exchange or sale of foodstuffs and to available methods of detecting impurities¹. To adulterate has been defined as "to make impure by the admixture of other or baser ingredients; corrupt; render counterfeit" (Funk and Wagnall, 1924). The precise detection and quantification of adulterative practices was only possible in Western societies after the development of microscopic and chemical techniques

of analysis in the nineteenth century, but concern with quantities of food and drink had arisen far earlier. In England the central state used legislation as a measure against fraudulent marketing practices including adulteration as early as the Assize of Bread in 1265. By the eighteenth century, when the variety of foodstuffs for sale and the range of cheaper substitutes was far greater, food processors and importers and retailers came under attack in British newspapers for adulteration of substances including coffee, tea, sugar, bread, salt and spices². In Canada, the Dominion Government took formal action in 1874³, passing legislation which followed in the suit of English statutes against adulteration in 1860 and 1872. Several U.S. states, including New York, New Jersey and Massachusetts, passed anti-adulteration legislation in the early 1880's, while Canada continued to enact a large number of statutes relating to adulteration throughout the period under study (Appendix D).

Adulteration statutes evidently differed in a number of ways from other criminal legislation defining lesser or "minor" offences in the period. Most minor criminal offences related to behaviours more commonly practised - or at least more visible - among poorer segments of society, including assaults, drunkenness and vagrancy. In contrast the Adulteration Acts targeted entrepreneurs, ranging from petty shopkeepers and stallholders to major importers and manufacturers of consumable substances. If, as has been argued, minor criminal legislation was characteristically directed towards disciplining the lives of the working poor and the "dangerous classes", then adulteration statutes were anomalous due to their apparent benefits for

the same classes. At the same time in legal terms, in relation to their use of absolute liability⁴ offences, the Adulteration Acts anticipated the differentiation of legal supervision of economic activity from the criminal law, where the focus was on punishing the offender, to civil regulatory controls, where the focus was on creating a "level playing field" for economic competition. The early adulteration legislation of the 1870's developed a form of regulatory administrative scheme which used both *mens rea* and absolute liability offences to provide threats of prosecution against suspects, adulteration being detected through a complex inspection and testing system administered by officials in the Department of Inland Revenue. In this system, adulteration was not a matter for the police, as were other criminal offences, but for investigation by civil servants.

Three major questions are why adulteration was treated as a federal criminal offence in new legislation of 1874, why enforcement was delegated to the Department of Inland Revenue and how the nature of adulteration offences shifted over time; was there a move towards absolute liability offences and away from *mens rea* offences? An additional issue includes the introduction of legislation to "protect the consumer" in a period before public health legislation was generally adopted in Canada, which raises queries relating to the role of public health reformers, or "sanitarians" as they have been termed (MacDougall, 1981), in introducing adulteration legislation. Furthermore, there are also questions about the frequency and range of legislation in the period after 1874. All these aspects will be considered as we attempt to reach an understanding of the processes

underlying the origins, development and enforcement of the nineteenth-century legislation.

This chapter will approach the paradoxical nature of adulteration legislation through the "theoretical grid" framework used throughout the thesis; firstly, by exploring adulteration legislation in relation to the state's economic role and its role in resolving social conflict; secondly, through examination of orientations to law both for the early adulteration statutes and for later specialized legislation. The third aspect of the perspective concerns the discursive communications associated with adulteration legislation, and the fourth discusses the linkages between legislation and the broader social formation (in terms of the effects of legislation) while the final section examines evidence of internal state processes associated with adulteration legislation and its enforcement.

Section One

THE LEGISLATIVE HISTORY OF ADULTERATION STATUTES

The history of the development of adulteration statutes in Canada is relatively complex in comparison with the legislative histories of other criminal law areas studied. After initial legislation in 1874, adulteration statutes were enacted relatively frequently, took different statutory forms and were extended to non-consumable substances. In order to furnish a guide to some of the legislation discussed later, the legislative developments between 1874 and 1892 are discussed in a preliminary review.

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The Inland Revenue Act of 1875 appeared to take a comprehensive approach to adulteration of edible substances. It provided for sampling of suspected adulterated substances by an inspectorate (s.15), for the appointment of official analysts of food, drink and drugs to carry out testing for purity (s.14), and for severe penalties for adulterating food and liquor or for selling adulterated substances (ss.22-24). It must be noted that the new legislation left considerable discretion in the matter of enforcement:

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[The inspectors] shall when required to do so by any regulation made in that behalf by the Department of Inland Revenue, procure and submit samples of food or drink or drugs suspected to be adulterated, to be analysed by the analysts appointed under this Act; s.15

The 1875 statute was essentially an enabling act which allowed prosecution of certain defined adulteration offences as criminal acts but placed responsibility for sampling, testing and enforcement entirely

in the hands of officials of the Department of Inland Revenue. There was no provision under the Act for private prosecution or for police responsibility for enforcing the statute. In addition, the practical approach taken to adulteration would depend on departmental policy, for the Inland Revenue Department received delegated responsibility to provide processes and specify procedures. Government officials might be called on by Inland Revenue to carry out sampling to detect adulteration and were named in the statute: all were employees of the Department. (No specialised inspectorate was to be created for the inspection of foodstuffs until late in the period under study.)

The officers of Inland Revenue, the Inspectors and Deputy Inspectors of Weights and Measures, and the Inspectors and Deputy Inspectors acting under the Act respecting the Inspection of staple commodities, or any of them, shall when required to do so by any regulation made on that behalf by the Department of Inland Revenue, procure and submit samples of food or drink or drugs suspected to be adulterated... s.15

The principal offences under the 1875 Act were the wilful mixing with any article of food or drink of "any deleterious or poisonous ingredient or material to adulterate the same for sale" (s.22) and knowingly selling "as adulterated any article of food or drink or ... any drug which is adulterated." (s.23). Both were summary offences and procedures for prosecution followed those provided under the Inland Revenue Act of 1868 (31V.,c.8). The penalties for adulteration were relatively severe compared with lesser criminal offences⁵, but fairly close to other penalties for offences against the Inland Revenue⁶ and included imprisonment for second offenders. The underlying intention appeared to be to protect the public by punishing heavily those involved in producing or selling adulterated substances; although (as argued later) this was not the effect in practice. What is apparent too is

that prevention of adulteration was only part of the thrust of the statute; as the full title - "An Act to impose License duties on Compounders of Spirits; to amend the "Act respecting the Inland Revenue;" and to prevent the Adulteration of Food, Drink and Drugs" - suggests, there was an evident concern with regulating the activities of professional compounders⁷ of liquor and a determination to control and to tax their activities rigorously. Under the Act, compounders were to post a one-thousand dollar bond to the Department as well as paying an annual licence fee of fifty dollars (ss. 3,4). In addition the statute included absolute liability and mens rea provisions against adulteration of liquors (s.24).

Section 1.2

Broader Legislative Developments

The development of adulteration legislation during the period between 1874 and 1892 was marked by a rapid growth and a diversification of adulteration-related law. The process of expansion included acts dealing with adulteration of non-foodstuffs such as agricultural fertilizers, which followed the form of the 1875 legislation, and some statutes concerning foodstuffs, which took different legislative forms; the latter included three acts pertaining to butter, to canned goods and to milk supplied to butter and cheese manufacturers, all of which included absolute liability offences.

In practice, the 1875 statute appeared to open a veritable floodgate of lawmaking on adulteration. One could conjecture that the 1875 statute acted as a key piece of legislation, functioning effectively as a

legislative model or hook on which to hang other statutes. But, if this were the case, how can one account for the varying statutory forms and a reliance on different kinds of criminal offences? These questions are addressed in detail in discussion of the orientations underlying Canadian federal adulteration legislation (Sn.3), while the major developments in legislation are outlined briefly first below.

To clarify the stream of adulteration legislation enacted between 1874 and 1892 (as listed in Appendix D), it can be broadly divided into five sub-series which are set out and then described below. The first series of statutes began with the 1875 legislation within the Inland Revenue Act relating to food, drink and drugs, which was expanded, amended, refined and given an independent status over time, but remained a recognizable series of related statutes (37V.,c.8; 41V.,c.11; 47V.,c.34; 48-49V.,c.67; 49V.,c.41; 49V.,c.107; 51V.,c.24; 53V.,c.26). The second series of statutes dealt with agricultural fertilizers (47V.,c.37; 48-49V.,c.67 and c.68; 49V.,c.107 and c.108; 53V.,c.24). Thirdly, there was both an amendment and an act relating to the adulteration of butter (41V.,c.11 and 49V.,c.42). Next there was a statute concerned with the purity of canned goods (48-49V.,c.63) and, lastly, there was an act protecting manufacturers of cheese and butter against supplies of adulterated milk (52V.,c.43).

How did each series develop over time? The initial adulteration legislation within the Inland Revenue Act of 1875 was transformed into a separate statute in 1884, in an Act which brought together Dominion adulteration legislation under the title of "The Adulteration of Food

Act, 1884" (47V.,c.34). Modifications made in this Act included a redefinition of "adulteration", a new provision for private prosecution, the removal of fixed offence penalties in favour of flexible ones and the introduction of a defence of "ignorance of adulteration" to the charge of "knowingly selling adulterated food" (ss. 2,26, 27, 27.c). The 1884 Act also included definitions of "adulteration" in relation to milk, alcoholic liquors and vinegar (ss. 16,17,20). The changes appear to have made the Act less stringent; private prosecutions were rare and the defence of "ignorance" was used regularly and successfully; but the statute was reenacted in 1885, 1886 and 1890 with only minor modifications. However in 1892, when the Criminal Code was passed by the Federal Government (55-56V.,c.129), offences under the Act dealing with the adulteration of food, drink, drugs and fertilizers were not incorporated into the Code as criminal law. Instead the Code included one indictable offence, the sale of adulterated food, under the general heading of "nuisances" (Part XIV, s.194) and it omitted the offence of adulterating food altogether (see Sn.3).

In the case of agricultural fertilizers, a private member's bill to control their composition was enacted in 1884, requiring the accurate labelling of contents, with penalties to go to the purchaser in the event of wilful, false labelling⁸ (indicating a regulatory, as opposed to a criminal, approach). A year later a new fertilizers bill was introduced by a private member, then taken over by the Government and an offence of adulterating agricultural fertilizer was incorporated into the newly consolidated Adulteration of Food Act, which was renamed "An Act respecting the Adulteration of Food, Drugs and Agricultural

Fertilizers"(48-49V.,c.67 [1885]). At the same time a Fertilizers' Act was passed requiring government registration of manufactured and imported fertilizers under the aegis of the Ministry of Inland Revenue, all contents to be listed with the Ministry and samples to be provided⁹ (48-49V.,c.68). The Dominion Parliament thus introduced state processes to regulate the composition of imported or manufactured artificial fertilizers; the Ministry of Inland Revenue became the branch of government responsible for recording standards, holding samples, and sampling and testing fertilizers sold to the public; and, in addition, the Adulteration Act was amended to provide a threat of criminal prosecution by Inland Revenue against manufacturers, importers or retailers who failed to supply the product they had specified. After 1885 the Adulteration Act and the Fertilizers' Act were re-enacted in tandem with only minor changes during the Consolidation of 1886 and again in 1890¹⁰.

How did the form and content of "special" adulteration statutes relating to butter, to canned goods and to milk supplied to butter and cheese manufacturers differ from the initial adulteration legislation of 1875? The "butter" legislation was a transparent attempt to defend sales of butter against potential inroads by margarine manufacturers; it began in unobtrusive fashion in 1878 with an amendment to the Inland Revenue Act of 1875 calling for the labelling of any butter containing substitutes for milk or cream as "oleo-margarine"¹¹ (41V.,c.11,s.2). The consolidated Adulteration of Food Act, 1884 repealed all previous adulteration statutes, including the "oleomargarine" labelling requirement, and omitted any specific reference to butter substitutes¹²

but, two years later, a highly specific and stringent piece of legislation banned all substitutes for butter and made manufacture or sale of margarine an absolute liability offence punishable by a fine of two to four hundred dollars (49V.,c.42). At the same time the importation of oleomargarine was prohibited under an amendment to the Customs Act (R.S.C. 1886, c.37). The stringent restrictions remained in force throughout the period, persisting until the legislation was struck down in the Margarine Reference of 1951¹³.

In relation to legislation concerning the quality of milk supplied to butter and cheese manufacturers, an early move by Ontario to discourage adulteration of milk supplied to manufacturers eventually became part of the nineteenth-century rivalry between Ontario and the Dominion over their respective powers under the B.N.A. Act. In 1868 Ontario had passed an "Act to protect Butter and Cheese Manufactories" which instituted fines for the "fraudulent" provision of adulterated milk to manufacturers of butter and cheese¹⁴ ((S.O.) 31V.,c.33). In 1888 two new provincial acts were introduced¹⁵ entitled "An Act Respecting Creameries" ((S.O.) 51V.,c.31) and "An Act to provide against frauds in the supplying of Milk to Cheese or Butter Manufactories" (c.32); the first statute established chemical standards for milk for butter-making in Ontario and the second rewrote the 1868 Ontario Act in a regulatory form requiring milk suppliers to notify manufacturers in writing when the supplied milk had been diluted or adulterated and making it an offence to fail to do so.

A case brought under the 1888 Ontario Act, *R. v. Wason*, resulted in an acquittal and was appealed [17 O.A.R.,221]. During the period of the appeal, the Dominion Government moved to adopt a slightly modified form of the earlier Ontario statute ([S.O.] 31V.,c.33), reenacting it as federal criminal law (52V.,c.43). In this instance, adulteration legislation appeared to become a minor pawn in the federal-provincial "rights" question (Vipond, 1985), with an Ontario statute coopted by the Dominion, whose paramountcy in constitutional matters ensured that its enactment (if valid criminal law) would prevail.

Canned food was the subject of a short bill introduced in the House of Commons in 1885, which contained provisions making two labelling requirements mandatory. One stipulated the name of the manufacturer or packer on the label and the other the quantity or weight of the contents¹⁶ (48-49V.,c.63) and failure to include either was an absolute liability offence.

Developments in adulteration legislation can be seen from this brief account to have been both complex and divergent. Not all the collateral developments are examined in this chapter but major enactments, including the original adulteration legislation as well as the introduction of fertilizer and butter statutes, are analyzed in detail. But, before turning to reasons for state interventions, the kinds of practices referred to by the term "adulteration" in this period are outlined briefly.

Section 1.3

Adulteration Practices

The results of analyses of food, drink and other substances undertaken by analysts of the Department of Inland Revenue are an informative source on common adulterative practices in some Canadian settings. Chemical analysts were appointed under the Inland Revenue and Adulteration Acts¹⁷ and, over the years 1875 to 1892, they investigated the composition of foodstuffs ranging from bread, butter, canned fruit and vegetables to potted meat and fish, sweets and infants' foods, finding a large variety of adulterants. Substances commonly found in foodstuffs included alum in bread, methyl derivatives and water in liquor, foreign matter (i.e. plant leaves) in tea, chicory in coffee, water and animal fats in milk and butter, and starch, sugar and sawdust in cocoa and chocolate (Parl.Can. Sess.Papers 1885,no.4: xii-xv).

The first year of official chemical testing in 1876 produced analyses of 180 food samples including coffee, tea, sugar, milk and a range of imported spices. The principal findings were that ground coffee was "greatly adulterated" and that "the adulteration of condiments and spices, such as mustard, pepper, ginger etc., prevails to a very large degree...." (Parl. Can. Sess.Papers (No. 4) 1877: vi-viii). Milk samples were difficult to evaluate due to "natural variations" in butter fat and the absence of accepted chemical standards for milk. Tea and sugar samples were found to be rarely adulterated. By the end of the period under study, in 1892, the inspection of foodstuffs was under the supervision of a full-time professional chemist in the Department of Inland Revenue in Ottawa, the "Chief Analyst", who adopted a directed

approach, continuing a general testing program but emphasising certain substances each year and issuing special bulletins when results were considered significant. In 1892, bulletins were published on coffee, agricultural fertilizers, and milk samples "from the North-West"; testing was also carried out on samples of certain drugs, rye whiskey and white lead (used as a colouring pigment). The results suggested that ground coffee, in the Chief Analyst's words, "continues to show shameful sophistication" and white lead was rarely pure but rye whiskey and fertilizer were generally unadulterated. The drugs tested were only slightly less pure (Parl.Can. Sess.P.'s 1893, no.6b).

The analysts' findings are mentioned later in discussions of legislators' perceptions of substances commonly adulterated in the period, for the findings provide a useful "scientific yardstick" to set against publicly-held beliefs.

Section Two

REASONS FOR STATE INTERVENTION

What explanations can be provided for the apparently unheralded appearance of federal adulteration legislation in 1874? This study found no evidence of specific or sudden crises in this period. Canadian adulteration legislation did not result from one or two highly publicised incidents endangering public health; unlike the British situation there were no major outbreaks of disasters, no mass poisonings, no "Bradford incidents". (In the Bradford case in 1858, over two hundred people were poisoned and seventeen died in an English

poisoning incident. By comparison, reported incidents of poisoning in Canada were minor ¹⁸.) Nor was adulteration legislation the outcome of a long or determined public campaign of the kind undertaken by reformers

England, such as Dr Hassall and Dr Wakley (Paulus, 1974:22-23) or by Harvey W. Wiley later in the United States (Stieb, 1972: 21). In the absence of major crises or campaigns, the reasons for state interventions require detailed empirical investigation in relation to broader societal contexts. The approach taken in this section is to inquire whether the concepts of economic growth imperatives and state intervention to resolve conflict can usefully be applied to illuminate specific processes underlying instances of legislation. After any linkages between economic imperatives and state resolution of conflict are considered for cases of adulteration legislation, then the role of broader societal ideological developments will be discussed (in Section 4). This approach is applied to three legislative developments: the anti-adulteration provisions of the 1875 Inland Revenue Act, the fertilizer legislation of the mid-1880's and the butter legislation of the same period.

Section 2.1

State Intervention and the Act of 1875

As suggested, very little about interventions to include adulteration legislation within the Inland Revenue Act of 1875 is particularly clear and a number of possibilities need to be considered. While it seems likely that an increasing concern among legislators for general public health was an underlying factor, there was a marked absence of medical and scientific input to the 1875 Act. For instance, the medical members

of the House, although active on certain public health matters, were not in evidence during debate on the Commons bill of 1874. Nonetheless, there was evidence of growing public concern about the health of the working class, especially at a time when the newly-industrializing economy required manpower, and the medical profession generally was concerned by poor levels of public health and by high rates of infant mortality in cities. In relation to the state, there was also the possibility of willingness by the new Reform Government to introduce "progressive" measures which were inexpensive to administer and non-controversial. The skill of Inland Revenue officials must be emphasised too in embracing and probably suggesting the development of new legislative measures as part of the operations of the Department.

What is evident is that the introduction of a new Inland Revenue amending act was initially influenced by economic considerations. Tariffs, customs and excise duties were all under discussion in the period around 1874, as the Canadian economy moved further into a lengthy depression and Government income from these sources declined sharply (Ch.3 2.1). The need to increase government revenues during a period of marked recession and declining state income was reflected in the proposal to tax liquor compounders. Some of the adulteration interventions too, specifically the provisions against adulterating liquor and against adulterating other dutiable substances (such as tea and coffee¹⁹) may have had a partial economic motivation, representing attempts both to minimise lost revenues, due to "fraud on the Revenue", and to placate legislators who claimed liquor was adulterated. As far as public health was concerned, the Inland Revenue bill of 1874

incorporated public health concerns at a late stage, picking up a discarded Senate bill and including its adulteration offence provisions (largely drawn from United Kingdom law) within the amending act. If any imperatives were met in this operation, they seem likely to have been those of public health proponents or "sanitarians" (Ch.3 6.2) and the Inland Revenue Department and its civil servants. The latter in one stroke took charge of public health related matters defined in a series of criminal offences. The intentions and the possible agents behind this legerdemain are discussed in detail in the final section of the chapter (Sn.6).

The adulteration sections of the 1875 Act had two immediate precursors when the bill was introduced in 1874: a Tory member's private bill of 1873²⁰ introduced by a Quebec lawyer, M. Matthieu, and a bill introduced by Senator Alexander in April 1874. Both bills had the same title, "An Act for the prevention of the Adulteration of Food and Drink and of Drugs." The 1874 Senate bill (Bill A, 13 April, 1874) contained three offence categories taken directly from the U.K. Adulteration Acts of 1860 and 1872, but lacked administrative provisions²¹ and contained no specific clauses dealing with liquor. The 1875 Inland Revenue Act, on the other hand, included the same offence sections but added a section imposing absolute liability on sellers of adulterated "liquors", and provided a detailed enforcement scheme based on sampling by Inland Revenue officers and analysis by analysts appointed by the Government.

Lack of information about the circumstances surrounding the introduction of adulteration offences into the 1875 Act means that interpretations

are necessarily based on conjecture²². In one published account, by Stieb (1972), the claim is made that adulteration legislation "rode into law on the coattails [sic] of a strong movement towards the prohibition of liquor". Stieb's argument here relies on evidence of a groundswell of public demand for prohibition during the mid-1870's and suggests that the liquor adulteration provision in the 1875 Act was the indirect result of pressing public demands for prohibition. Stieb's version states that a "small group" of legislators opposed prohibition "on the grounds that the basic problem was not with liquor, but with bad liquor." (ibid: 18) He does not explain how this group was able to prevail (over the majority favouring prohibition) and introduce legislation against adulteration of liquor as a priority within an Inland Revenue amending act²³. While the evidence for prohibitionist sentiment in the period is clearly strong - a parliamentary Select Committee "respecting a prohibitory liquor law" had received petitions to this effect with 113,455 signatures by late May 1874 (Journals Commons, 1874, App. 8:5) - effectively, Stieb places two empirical generalizations together and assumes a connection. The public was pressing for prohibition and there were widespread beliefs that liquor was adulterated and the two factors were sufficient to carry general adulteration legislation through Parliament.

Again the claim, that the public believed liquor (i.e. spirits, wine and beer) to be routinely adulterated, is substantiated in contemporary comments; despite evidence to the contrary, it apparently persisted in some quarters throughout the 1880's. When Senator Alexander's 1874

Senate adulteration bill was under consideration, one Senator supported it saying,

He thought that the petitions for a Prohibitory Liquor Law were owing in a great measure to the great adulteration used in the liquor trade ²⁴.

Hansard. Senate. April 24, 1874

Although the public analysts' annual reports to the Commissioner of Inland Revenue after 1875 found little evidence of adulterated liquor, Dr. Lesage M.P., an advocate of improved public health measures, still asked in his introduction of the consolidated adulteration legislation to Parliament in 1884,

...how is it that our ancestors, who took alcohol the same as we do, have been able to withstand this usage ... All the difference between that time and today is that in times of yore people drank their glasses brimful of alcohol, and now we drink our glasses brimful of poison.

Hansard. March 27, 1884

Even several years later, Senator Alexander (a persistent advocate of adulteration legislation) continued to ignore the analysts' findings and made adulteration of liquor a scapegoat for poor health generally:

I would punish the brewers who make unwholesome ale. I would have three-fourths of such brewers shut up. If the samples of beer were examined by competent men appointed by the Government, I am satisfied they would find in them strychnine and other poisonous articles. Look at the number of cases of delirium tremens and sudden death. Look at the number of poor creatures who walk down York, King and Queen Streets in Toronto with blighted health. We never saw that in the days of early settlement in 1832, when Canadian whiskey could be obtained for three York shillings a gallon. There was no delirium tremens then, no bad health.

Hansard, Senate May 2, 1888

If the belief was prevalent, prior to the 1875 Inland Revenue Act, that liquor was adulterated, then it was the Inland Revenue Department more than any other government department which had an interest in investigating allegations. All liquors were taxed, whether produced domestically or imported, and were of concern to Excise Officers of the

Inland Revenue and to Customs Collectors. Adulterated liquor - either watered down after payment of excise duty or containing prohibited or substitute ingredients - defrauded not only the customer but the Government²⁵. But it is important that the clause against selling adulterated liquor appeared only in the 1875 Act and was not taken from the 1874 Senate bill, for this supports the view that the introduction of the liquor provisions originated quite separately from the proposals for food adulteration provisions; probably from the Inland Revenue Department itself, or perhaps from legislators concerned by accusations of adulterated liquor, or even from liquor producers concerned about competitors' trade practices, rather than from a prohibitionist or public health lobby²⁶. Certainly neither the 1873 nor 1874 parliamentary Select Committees on Prohibition expressed concern with adulteration of liquor, as Stieb himself points out (1972: 20).

What is quite clear is that other social elements or fractions besides prohibitionists were concerned with the adulteration of foodstuffs and the general effects of adulteration on consumable substances and on public health: the medical profession for one (and their concerns are discussed in a later section on scientific discourse, Sn.4.2) and the revenue officers of the Government for another (Sn.6). An argument can be made that officials of the Inland Revenue Department may have seen the advantages by 1874 of incorporating adulteration offences into the Inland Revenue bill.

Stieb's analysis also treats liquor and food and drugs as dealt with similarly under the 1875 Act whereas it is significant, in our view,

that liquor was given a distinct legal treatment. Under the Act, s.24 dealt first with "knowing" fraudulent increases of weight or bulk but then with addition of specific named substances to liquor. Both were termed "adulteration" but, unlike the sections dealing with the adulteration of food, drink and drugs in which all offences included the element of *mens rea*, under s.24 adulteration of liquor was in part an absolute liability offence. Possession of any "deleterious ingredient" by compounders was deemed to indicate intent to adulterate (37V.,c.8,s.24; 48-49V.,c.67,s.24). Offences against Inland Revenue Acts and other regulatory statutes (such as Inspection Acts and Weights and Measures Acts) were usually absolute liability offences and the fact that adulteration of liquor was treated partly in the same way suggests that liquor adulteration was seen as a serious problem requiring state control. Adulteration of food, on the other hand, was dealt with under criminal law *mens rea* offences taken from English legislation, and most likely directly copied from the earlier private bills which had failed in the House and the Senate.

Can the argument be substantiated that social elements such as public health reformers or state officials were involved in the 1875 Inland Revenue Act? Firstly, the government's 1874 Inland Revenue bill (i.e. the Act of 1875) was almost certainly under consideration before Senator Alexander's 1874 adulteration bill was introduced in the Senate. When the House went into Committee on the Inland Revenue bill and proposed changes to license those who compounded liquor, the Committee reported favourably on licensing and fees, added a resolution on the adulteration of liquor and then included the phrase "food, drink and drugs" (Journ.

H. of C. v. 8., 1874, 210). This was the step which evidently broadened the proposed Inland Revenue Act amendments to incorporate general proposals from the earlier failed bills concerning the adulteration of foodstuffs.

The Committee of the House reported on May 8, 1874 at which time Richard Cartwright, Minister of Finance, announced the decision to assign the task of "detecting deleterious adulterations of food and liquor" to the Inland Revenue Department - to give them "the same powers as were possessed by the Inland Revenue Department of England" and this new approach could well have been proposed by the Inland Revenue Department itself (Hansard, Commons, May 8, 1884). Several developments had evidently occurred since Senator Alexander had introduced an adulteration bill in the Senate on April 13: his bill had received second reading on April 24, disappeared and then been resurrected through incorporation into Cartwright's Commons bill of May 8. Before the end of April, Letellier de St Just - the senior Reform Minister in the Senate - had been asked a question perhaps designed to commit the Government to action in relation to the Inland Revenue and adulteration of foods:

Whether it is the intention of the Government to establish a laboratory in connection with the Inland Revenue Department of the Dominion, and to employ a practical analytical chemist for testing the quality of gas, of drugs, and of articles of food and drink if required, and for determining questions which may arise respecting manufacturers subject to excise and in bond.

Senator Ryan. Hansard, April 27, 1874.

The question and Letellier's response, "that the Government would determine the mode by which the tests should be managed", implied that there was pressure on, or at least discussion within, the government

over a need for official Inland Revenue chemists or analysts. What the events suggest is that the Government decided to adopt Alexander's adulteration bill as part of its amendments to the Inland Revenue Act, to enlarge the functions of the Department to include a testing laboratory and, by May 1874, were claiming that United Kingdom Inland Revenue procedures provided a suitable model. It was irrelevant that the claim was partly misleading - the U.K. Adulteration Act was locally administered²⁷ - but it did provide a basis for increasing the criminal law responsibilities of the central state to include foodstuffs endangering public health.

What arguably occurred in relation to the 1874 bill was, therefore, that a small minority of reformers in Parliament successfully "piggybacked" broader adulteration legislation onto a general government Inland Revenue bill dealing with control of liquor compounding and liquor adulteration. The question of why such a move was a useful approach to adulteration in constitutional terms is discussed in the next section of the chapter, after consideration of further kinds of adulteration legislation.

Section 2.2

Farmers and the Fertilizer Legislation of 1884 and 1885

Turning now to legislation dealing with the adulteration of agricultural fertilizers, the position argued is that societal elements concerned in these legislative innovations used the existence of general adulteration legislation as a means to develop regulation of the commercial fertilizer industry. To begin with the farmers' concerns: in several

ways the 1870's were a period of transformation in farming methods in many parts of eastern Canada. Quebec and Ontario had both opened schools of agriculture (Ste Anne de la Pocatière, 1859; Gulph 1874). Canadian manufacturers were producing increasingly specialized farm implements and machinery (Can. Encyc.: 17-31); and farmers' concerns about failures in wheat crops and the deteriorating quality of soils were partly met by agricultural diversification, a new emphasis on scientific farming techniques and the use of fertilizers (Ch.3 1.3). But manufactured fertilizers, obtained from local seed merchants, were an expensive innovation for farmers and concerns about fertilizer ingredients became widespread in the 1870's, resulting in complaints to politicians representing agricultural constituencies and, eventually, in federal legislation. In the case of fertilizers, state intervention was a direct response to demands from farmers - a significant political element with strong parliamentary representation (Ch.3 4.4) but this does not explain why fertilizer regulation became linked to anti-adulteration legislation. In 1879 and 1880 a motion and a private bill were presented to the House "to prevent fraud in the manufacture and sale of Agricultural Fertilizer" but both were unsuccessful and, in 1883, a Quebec M.P., M. Massue, launched a campaign which resulted in the appointment of a Select Committee of the House to consider the alleged problem. The Committee reported and claimed to show "clearly that Agricultural Fertilizers are undoubtedly adulterated" (Journ. Commons. May, 8, 1883).

In fact the printed report showed almost the opposite, as it cited sixteen leading agriculturalists whose opinions ranged from the

statement "Have never heard of adulteration" to "would suggest the appointment of a reliable chemist to analyze" and the only logical conclusion was that there was some uncertainty among agricultural spokesmen as to whether the new agricultural technique of using manufactured fertilizers was working satisfactorily. But M. Massue persisted in his demands despite opposition from Sir John A. Macdonald who commented sagely

I do not think the House is in possession of the facts to enable them to discuss this bill intelligently. They do not know to what extent fraud has been practised in the manufacture and sale of agricultural fertilizers, and they have no means of knowing.
Hansard. Commons. March 8, 1883

In 1884, the Government finally attended to the demands of the farmers' spokesmen, for another private bill to prevent the adulteration of fertilizers was introduced and passed. M. Massue claimed that the measure it contained for labelling fertilizers would protect "the honest manufacturer" (Hansard. Commons April 10, 1884), and the same refrain was taken up in the Senate by Senator Reid:

I think a Bill of this sort would be in the interest of the manufacturers because it would give the purchaser confidence, as they would feel they were really getting a good article, so that the measure is really in the interests both of the manufacturer and the consumer.

Hansard. Senate. March 11, 1884

Some members of both Houses opposed the bill on the basis that the requirement for chemical analysis of fertilizers imposed an unacceptable burden on manufacturers and businessmen. Others were hostile because they believed the bill would apply to any fertilizer sold, including naturally-occurring or waste substances such as lime, potash and ashes. The bill was amended in committee in the Senate to exclude such products and then passed.

Then in 1885 the Government moved to assume complete responsibility for regulating the production of fertilizers: it first took over a new private member's bill - specifying minimum contents of certain chemicals and labelling provisions for fertilizers - as official fertilizer legislation; and then incorporated offences of adulterating fertilizer into an amended Adulteration Act (bill W, 1885). So whereas the 1884 Act had allowed civil penalties for incorrect labelling, the 1885 Act made incorrect labelling and false certificates of inspection absolute liability offences, and forging of labels a misdemeanour punishable by up to two years imprisonment. In addition, adulteration of fertilizers was now a *mens rea* offence. This change removed the onus for prosecution from the private purchaser of fertilizer to state officials; once again, the Inland Revenue inspectorate took on additional duties in relation to regulating the quality of fertilizers and policing the new scheme.

Was it only the farmers who were concerned about the content and purity of agricultural fertilizers? During the 1885 debates, Edward Blake argued that the adulteration bill was passed too rapidly as it affected "a number of trades." One group he certainly had in mind were the Canadian and foreign fertilizer manufacturers - the latter were already facing tariff barriers against their products; but the number of manufacturers was small. An 1888 analysis by Inland Revenue analysts of thirty-nine fertilizer samples submitted by nineteen manufacturers (as required by the new law) indicated that thirteen were Canadian, four American and two British²⁸. However, the Chief Analyst admitted in the Report for that year that there was a problem with an unspecified number

of manufacturers who failed to submit samples for Inland Revenue testing. As for the amount of adulteration, four of the samples were definitely below the standards set in 1885 and two more were questionable; but a rejection rate of ten per cent seemed less serious than farmers' spokesmen in Parliament had earlier feared²⁹.

The fertilizer legislation of 1884 and 1885 evidently originated with legislators representing farmers who first intervened on their behalf by means of private members' bills to regulate the importation and the manufacture of commercial fertilizers in Canada. Within a year, the state took control and provided for an official system of regulation through the Inland Revenue Department and for threats of prosecution against manufacturers and importers under both the Fertilizers Act and the Adulteration Act (in the form of absolute liability and *mens rea* offences) so that government efforts to assure the regulation of commercial fertilizer contents appeared to be serious. In order to explore how Parliament was persuaded the legislation was necessary and how it was used in practice, the discursive communications used by the farmers' representatives in advocating legislation and the application of threats of prosecution by the Inland Revenue Department are examined in two subsequent sections of this chapter. But first, reasons are pursued for state interventions in relation to butter adulteration and margarine production.

Section 2.3

Dairy Farmers and the 1878 and 1886 "Butter" Legislation

Following the development of substitutes for butter in France, in the late 1860's (Laskir 1960:319), butter imitations known as "butterine", "margarine" or "oleo-margarine" were manufactured and sold in Europe and then in the United States. In a defensive move, dairy farmers in the United States were quick to claim the cheaper substitutes were a serious threat to the butter industry - a view shared by Canadian farmers' representatives who supported anti-margarine legislation in 1878 and 1886. Were purely economic factors therefore the basis for Canadian state interventions to promote the purity of butter and prohibit the manufacture of margarine?

The dairy industry was a relatively powerful and fast-growing Canadian economic interest by the 1880's and butter and cheese-making were major components in the mixed farming economies of both Ontario and Quebec (see Ch.3, Sn.1.3; 4.5). For example, factory cheese-making was first introduced in Ontario in 1864 and, by 1900, Ontario supplied 60 per cent of the cheddar cheese consumed in the English market (Can Encyc.: 29). Mr Taylor, the M.P. for Leeds, who urged 1886 anti-margarine legislation in the Commons, claimed that "animals and their produce" were the most valuable Canadian exports in 1885, even greater than lumber exports or other agricultural produce, and that two-fifths of that amount came from the export of butter and cheese (Hansard. Commons. April 7, 1886)

The large-scale manufacture of margarine in countries including France, the United States and England in the late 1870's, coincided with an

expansion of butter-making in Eastern Canada and increased exports of butter. According to official export figures, cited in the House of Commons (Hansard. April 7, 1886), butter exports went from twelve million pounds per annum in 1874 to a peak of 18 million pounds in 1880 and then fell to 8 million pounds per annum by 1885; in monetary terms, exports fell from slightly over three million dollars in 1880 to about one and a half million dollars in 1886 - a fall which coincided with the wider impact of the Great Depression on agriculture and a move away from butter manufacture towards increasing production of cheese. What seems probable is that, under circumstances of declining exports, Canadian butter producers were particularly sensitive to any criticism of the quality of their product and to a threat from margarine to reduce an already shrinking market.

Product reputation was important in butter manufacture for export and Canadian dairy farmers and butter manufacturers had shown continuing concern for the quality of butter before the anti-margarine campaign of the late 1870's. Even in the pre-Confederation era, an early bill of 1848 had authorized the appointments of three inspectors of butter at Quebec and Montreal in a voluntary form of inspection and, after Confederation, demands arose for compulsory butter inspection³⁰. Ontario acceded to manufacturers' requests as early as 1868 in passing the bill "to Protect Cheese and Butter Manufactories" from adulterated milk ([S.O.] 31V.c.) and reenacted the bill in the 1870's and 1880's. There was also concern, in view of the economic importance of butter, for dissemination of correct methods of butter-making and pressure from members of Parliament for government involvement in such exercises³¹.

Increased butter exports in the 1870's may have initially encouraged Canadian dairy farmers and butter producers to turn a blind eye to the manufacture of oleo-margarine in the United States. In addition, analyses of Canadian butter samples by Inland Revenue analysts after 1876 showed that samples taken in Canadian cities were relatively pure. While frequently containing excess water or salt, they were rarely adulterated with non-dairy fats or with oils. The Chief Analyst wrote in 1885 that the problem was "careless manufacture" rather than deliberate adulteration but added a warning note

...for the present at least, the Dominion is free from importations of oleomargarines, butterines, etc., etc., so abundant in the United States. But it can scarcely be expected we shall long be left in this happy state of ignorance.

Sess. Papers. Inland Revenue Report (1886), suppl. #3: 4

But, by the late 1870's, farmers' concerns over margarine appeared to be mounting. Although events in other jurisdictions relating to butter and fertilizers (or all the foods suspected of being adulterated) cannot be investigated, it is important to emphasise that concern with butter was an international phenomenon linked to the production of forms of butter substitutes and legislation to prohibit or control the production of margarine had followed rapidly in different jurisdictions. In the United States, manufacture of oleo-margarine began in 1875, the state of Missouri banned production in 1881 and New York State prohibition legislation of 1884 became the model for six more states the following year (Ball & Lilly, 1982:489). An act to ban margarine was enacted in the United Kingdom only in 1887 but a protracted and heated debate was carried on there in the period preceding the legislation (Paulus, 1974: 39-40, 75-76).

The first Canadian federal legislative step to protect butter and distinguish it from margarine, the 1878 amendment to the Inland Revenue Act of 1875, was a mild anti-margarine measure requiring the labelling of butter containing non-dairy substances as "oleo-margarine" (41V.,c.11,s.2). The rationale for the amendment did not even derive from the Canadian experience; instead the bill was said to be a precautionary move against prospective margarine importation coming from the United States³², but the step suggested the dairy farmers' representatives were beginning to make a political impact. Eight years later, when margarine manufacture and importation were both completely banned under a stringent piece of federal legislation ostensibly enacted in the interests of public health, the preamble stated: "Whereas the use of certain substitutes for butter, heretofore manufactured or exposed for sale in Canada, is injurious to health..."(41V.,c.11). Unfortunately both these statements were untrue: there was no evidence that margarine was being manufactured in Canada and it was not necessarily a harmful product - that depended on the ingredients. But, as the culmination of three months of intense parliamentary discussion of the "margarine problem", the bill passed quickly in the House and the Senate³³.

The two legislative stages can be seen as a result of dairy farmers using their political strength and as the outcome of persuasive political methods adopted in Parliament. In light of the fact that butter exports were in decline in the early 1880's, that Eastern agriculture was suffering from the effects of the Great Depression and that farm incomes were dropping in Ontario and Quebec, farmers'

representatives' fears about margarine seemed to legislators to be a valid concern. In addition, farmers' representatives used a skilful political approach: spokesmen in the House and Senate argued, referring to Macdonald's National Policy, that Canadian agriculture needed a degree of "tariff protection" against U.S. margarine and Reform Party agriculturalists demanded that the kind of tariff protection accorded to manufacturing industries under the National Policy by the Tories should be extended to domestic agriculture. In the 1886 debate one Reform M.P. said

Hon. gentlemen opposite told us that times would be good under the National Policy, but the world seems to have been blessed with productive years and to have surpluses in every direction and to be sending them to the Mother Country. The result of all those surpluses finding their way there has been³⁴ unprecedentedly[sic] low prices for the products of the farm.

Hansard. Commons. April 16, 1886

A serious parliamentary discussion of economic policy was evident, beneath some political posturing, which (in a period when many members were not closely tied to party policies or checked by party discipline) effectively changed individual legislators' positions. Many of the minority who started out favouring the manufacture of oleo-margarine in Canada and some of the few M.P.'s who promoted it as the "poor man's butter" ended up voting in favour of banning production and importation. The reasoning which persuaded them ran as follows: margarine was cheaper than butter; if Canadian butter producers were to be given any protection, margarine would have to be taxed. But, as margarine prohibitionists contended, taxing margarine would either be an incentive to manufacturers to recoup profits using the cheapest ingredients available or it would make the product too expensive for the

poor to use. Therefore margarine should be prohibited altogether as an unhealthy substitute for butter.

One line of Tory government resistance to this argument was to propose a new policy using the services of the Inland Revenue to inspect imported margarines, and to license and inspect Canadian manufacturers, the suggestion being that not all margarine was inherently harmful and strict controls would maintain quality. Reform Party legislators argued back that it was contradictory to put high duties and taxes on the product to discourage production and at the same time institute an inspection scheme. Why not ban margarine altogether? The Minister of Customs at first defended the position that margarine manufacture should be allowed for export but was unable to meet varied criticisms - that it might compete with Canadian butter in the United Kingdom market, that it might be used to adulterate butter, or be sold fraudulently as butter in Canada. United States experiences with controlling margarine were referred to as "disastrous".

This short examination of several very lengthy debates establishes strong economic motives for the 1886 Act, but it would be too narrow to see margarine as purely an economic issue and one in which the state immediately adopted demands made on behalf of farmers. The state was, in a restricted sense, probably coerced into action by a set of discursive communications proffered by farmers' spokesmen, which hoisted legislators with the petard of established ideological perspectives concerning butter. The government was willing to act against adulteration of butter or against impure margarine but, in the course of

lengthy debates, took a stronger stance than Cabinet members seemed to consider necessary. Why they responded this way to the margarine "threat" is not a simple question: in part there was clearly an acceptance that margarine was a unique problem requiring drastic solutions; if the United States were unable to rid itself of margarine, then Canada would be advised to prevent the butter substitute gaining a foothold north of the border. At the same time, butter had strong symbolic significance - even a place in public ideology - as a pure and natural food³⁵ when correctly made, and the new substance margarine was represented by its parliamentary critics as impure and dangerous. The term "adulterated" was applied to margarine in the debate repeatedly with little evidence beyond lurid horror stories but, as a result, proponents of public health or advocates of margarine as "the poor man's butter" could not vote for the harmful compound described. In effect, the margarine issue slowly brought public health spokesmen and farmers' spokesmen into a shared legislative position under the aegis of a common analysis of the problem. The manipulative nature of the spoken discourse is discussed shortly (Sn. 4) but we can hear the strength of the viewpoint in a speech by a medical M.P., Dr Sproule - a speech which effectively transformed conjecture into certainty.

This article is manufactured from all kinds of fat, it matters not whether tainted or vitiated, because when it is purified it can be used for this purpose. In many instances it may be found upon close investigation that injurious diseases have been conveyed to the human economy through this source.

Hansard. Commons. April 7, 1886

Section Three

ORIENTATIONS TO CRIMINAL LAW SUSTAINED BY ADULTERATION LEGISLATION

The idea of legislating against adulteration was not new in Canada although adulteration was a new field of legislative interest for the Dominion. The prohibition of adulteration of foodstuffs as a crime found antecedents in British common law, but there were also precedents for anti-adulteration legislation in the provisions of Canadian pre-Confederation municipal by-laws limiting the adulteration of foodstuffs.

However, the content of the adulteration provisions enacted in 1874 was mostly borrowed from Britain: the offence sections in the Inland Revenue Act, 1875 took their precise forms from British statute law as the Act drew directly on English statutes of 1860 and 1872. Subsequent legislation also demonstrated borrowed features: the margarine amendment of 1878 was linked to developments affecting the dairy industry in both the United States and the United Kingdom and borrowed from United States legislation; the fertilizer legislation of 1884 was directly affected by farmers' concerns in the United States as well as in Canada. This section reviews these linkages in order to elucidate the nature of the legislative borrowing processes involved - which were neither direct nor simple - and to consider the conception of adulteration as a criminal offence - a legal orientation which was said to be constitutionally vulnerable throughout the period (despite the frequency of adulteration legislation) - and also the question of increasing reliance on absolute liability offences in the legislation.

Section 3.1

The British Background

Adulteration methods had been known and used in Europe from the earliest recorded times and legal techniques had later been developed to deal with the some of the more obvious deceptions³⁶. In England during the eighteenth century, adulteration was "rife", complaints were frequent and many specific laws were enacted, for instance, in relation to bread, tea, sugar and coffee (Paulus, 1974:15). But, even before this period, in the time of Coke, adulteration was an offence at common law; Coke's Fourth Institute stated "none shall sell corrupt victuals" (1644: 261). By 1847, Russell on Crimes said

The giving of any person unwholesome victuals, not fit for man to eat, *lucri causa* or from malice and deceit, is, in itself an indictable offence which may be classified whether as a public nuisance or as a common law deceit.

7th Ed.:1,503

However, apart from the common law offence, one author has concluded that in the British case "there was no general legislation aimed at the protection of the consumer in 1850." (Paulus 1974:15). Early English statutes had dealt with adulteration of single classes of substances and, when these were also dutiable substances, had treated adulteration as a fraud on the Inland Revenue (ibid: 16). In Paulus' assessment the 1860 statute (An Act for preventing the Adulteration of Articles of Food or Drink ([U.K.] 23 & 24V.,c.84)) was distinct from earlier statutes in its breadth of application to all food and drink for sale. While treating adulteration as a summary criminal offence, this Act specifically allowed for the continued power of proceeding by indictment (s.13). Paulus's thesis is that the English Act of 1860 and subsequent acts in 1872, 1875 and 1879³⁷ were the outcomes of pressures from

medical and scientific opinion, fuelled particularly by public outrage at the major poisoning incident in Bradford in 1858³⁸.

What can be suggested is that three legal approaches to adulteration emerge from the British experience: - an old common law conception of criminal liability for adulteration as an indictable offence, whether viewed as a public nuisance or a deceit; several later statutory prohibitions on adulteration of certain substances in which adulteration of dutiable substances was seen as fraud on the Inland Revenue; and the 1860 and 1872 Acts providing for punishment of those selling adulterated food and drinks as summary criminal offences (with drugs added in the 1872 Act.) The questions which concern us are how these developments affected the development of Canadian adulteration legislation.

Section 3.2

Adulteration as a Common Law Offence of Nuisance

The common law offence of "public nuisance" was incorporated directly into the colonial law of the North American colonies (as a result of the process of "reception" of English common and statute law³⁹, which took place during the eighteenth century in each of the four colonies first forming Confederation⁴⁰). The notion of "nuisance" was widely established in criminal, as well as civil, law. For instance, a Canadian magistrates' manual of 1884 explained that

The thing complained of must be such as in its nature or its consequences is a nuisance, an injury or damage to all persons who come within the sphere of its operation, though it may be in greater or lesser degree. (Lewis 1884:67)

and added that "public and common" nuisances coming before a J.P. were the kinds of cases which must be sent for trial as indictable offences. However, the common law offence appears not to have been in general use against adulteration in the Province of Canada - or at least no nineteenth-century case law has been found involving prosecutions for adulteration as a common law offence. What seems likely is that most prosecutions for adulteration during the pre-Confederation period took place under municipal by-laws for the regulation of markets for, as is discussed shortly (Sn.3.5), there is some evidence for such prosecutions. Despite the existence of local by-laws and the development of the Adulteration Acts after 1874, the common law offence was precisely the form adopted by the Canadian codifiers in the Criminal Code of 1892; under a section of the Code headed "Nuisances" ⁴¹ (Part XIV), a common nuisance was defined as

...an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, safety, health, property or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of any right common to all Her Majesty's subjects. 55-56V., c.129, s.191

while section 194 defined an offence of selling "unfit" foodstuffs

(1) Everyone is guilty of an indictable offence and liable to one year's imprisonment who knowingly and wilfully exposes for sale, or has in his possession with intent to sell, ⁴² for human food articles which he knows to be unfit for food.

According to Brown (1988), the legal minds principally involved in the pre-1892 codification process were those of Sir John Thompson, George Burbidge, Robert Sedgewick and Charles Masters. The provision they inserted in the Code against adulteration failed to cover drugs or possibly drink and it did not refer to the act of adulteration *per se* as an offence, only to selling "unfit food". The section (s.194) soon came

under attack from a hostile critic, Mr Justice H.E. Taschereau, of the Supreme Court of Canada. Taschereau asked, in a lengthy published critique of the Code in 1893, why adulteration was made an indictable offence when it should be a summary one. In his words

Any one who offers for sale a putrid carcass of mutton, or an obscene photograph, or a car conductor's fault of being drunk on duty must be prosecuted by indictment, whilst any one who entices one of Her Majesty's soldiers to desert from the service, or any one who personates a candidate at an examination in a college or university may be punished on summary conviction.

N.A. RG13/86-87/084/v.27/63/1894:3-4

Taschereau's argument was that, if the offence should be dealt with summarily, then why not rely on the Adulteration Act? "Then is not R.S.C. c.107 [the Adulteration Act] sufficient to cover that offence?"⁴³

The question of why Thompson and his fellow codifiers inserted incomplete provisions against adulteration in the Code and why they resurrected the indictable common law nuisance offence in 1892, over twenty years after federal adulteration legislation was in effect in Canada, can be approached here only indirectly. The draftsmen were clear that their Code would not incorporate all federal criminal law. They excluded, for instance, obsolete or rarely-used offences and a deliberate policy was adopted of leaving indictable offences "of so special a nature and so closely connected with branches of the law which have little or nothing to do with crime" in the associated statutes - and here the omission of the Customs Act was cited⁴⁴. While this decision appears to go some way towards explaining the omission of fuller provisions against adulteration, the Adulteration Acts - unlike

the Inland Revenue Acts - contained no indictable offences. However, the framers also excluded statutes from the Code containing "clauses of a penal nature intended to sanction their other provisions" which could have been considered to cover the Inland Revenue Acts and possibly the Adulteration Acts too.

The codifiers' decision flew in the face of Dominion claims, made in the debates of 1874 and repeated subsequently in Parliament, that adulteration offences were "criminal law". In this connection, when Burbidge (one of the codifiers and a former Deputy Minister of Justice) had published his analysis of Canadian criminal law in A Digest of the Criminal Law as late as 1890, he included an entire chapter on statutes relating to adulteration of food⁴⁵. Despite the federal government's constitutional position and Burbidge's opinion that adulteration statutes were criminal law, the drafters of the Code steered a different course in dealing with the question of the Adulteration Act, inserting one common law offence and omitting the statutory offences altogether⁴⁶. What seems likely is that the administrative processes for enforcing adulteration legislation through the Department of Inland Revenue, which largely removed adulteration offences from police purview, made adulteration ineligible for inclusion in the Criminal Code due to the very different procedures involved.

The fact that detailed adulteration provisions were excluded from the Code leads to a second related question of why the common law offence, equating selling unfit food to an indictable common nuisance, was included at all? This was the converse of Taschereau's point (above)

and the departmental reply, in an internal memo of 1893 responding to his open letter, was grudging⁴⁷, indicating a reluctance to make any changes:

There could I fancy be no objection to making the offence punishable on summary conviction if it were worth while to so do. I do not think that R.S.C.c.107 (Adulteration of food) should be relied upon as covered by this statement of the common law.

N.A. RG13/084/v.27/63/1894

The common law offence had not ceased to exist in England because of the statutory provisions introduced there; as the codifiers were aware, selling unwholesome provisions was still an offence at common law⁴⁸. One explanation for including the offence in the Code - and here again we speculate - is that although the codifiers did not want the full details of adulteration offences (including the established administrative processes) spelled out in the Code, they may have felt it wise to add some weight to the Dominion Government view that adulteration was a criminal offence falling under federal jurisdiction by not omitting adulteration offences altogether.

However, there were clearly elements of continuing uncertainty about the constitutional status of adulteration legislation, despite the arguments advanced in 1874. Sir John Thompson was not in the House of Commons until 1886 or he would have heard Sir John A. Macdonald and David Mills of the Reform Party take different positions on the question of constitutional powers over adulteration. Their statements were hardly reassuring for the 1892 draftsmen, as they both seized on non-criminal aspects of the Adulteration Acts; Macdonald argued (against Mills) in 1884 that adulteration fell under the trade and commerce power of the Federal Government, saying

This Bill is not one for the protection of the public health, but it is to prevent adulterated articles being sent from one Province to another, or from Canada, as a whole, to a foreign country.
Hansard. Commons. April 1, 1884

Macdonald appeared to be grasping for an alternative to the "criminal law" definition, using the trade and commerce provision of the B.N.A. Act, s.91(2) but this aspect was not mentioned again in the Adulteration Act debates. The Reform lawyer David Mills, however, although a member of the Party which had introduced the 1875 Act, consistently attacked the constitutional validity of the Adulteration Acts as ultra vires the Dominion Government altogether, arguing that adulteration lay within provincial jurisdiction. In the 1885 Fertilizer debates he said

This is not a measure for the preservation of peace and good order and good government, to prevent riots and bloodshed or the disturbance of the peace, but for the purpose of regulating the relations between vendor and purchaser, and is an attempt to protect the purchaser against fraud on the part of the vendor. That, I repeat, is purely a civil right and as such is within the jurisdiction of the Provinces.

Hansard. Commons June 11, 1885

Here Mills referred to provincial jurisdiction over civil rights and property under s.92(13) of the B.N.A. Act. His colleague Edward Blake took a less critical position on the legal question, evidently regarding "fraud" as a fit subject for criminal law, while seeing adulteration at the same time as a provincial matter. Blake had been Justice Minister in Mackenzie's government (although after the 1875 Act was passed) and he later argued for both federal and provincial jurisdiction over adulteration in the *R. v. Wason* (1889) appeal, distinguishing the federal jurisdiction as falling under the criminal law powers of s.91(27), and he appeared to stand by this contention in the House.

In the case of *R. v. Wason* the argument that adulteration laws were outside the jurisdiction of provincial governments was made by the accused in 1889, and accepted by the Ontario Court of Queen's Bench [17 OR 58]. But the Ontario Court of Appeal later that year [17 OAR 221] allowed the Crown's appeal and agreed with Edward Blake and Aemilius Irving - counsel for the Crown - that both provincial and federal laws in relation to milk supplied to cheese or butter manufacturers were valid under different heads of jurisdiction in the B.N.A. Act⁴⁹.

Although both Queen's Bench and the Appeal Court viewed the federal adulteration laws as "criminal law"⁵⁰, the recognition of provincial adulteration law as valid in the appeal case could have added to the concerns of the codifiers of 1892 that federal control of adulteration of foodstuffs and other substances might come under continuing threat of constitutional attack and could therefore use some buttressing.

Certainly Thompson, Sedgewick and Burbidge and Masters would have been fully aware of the *R. v. Wason* case and may have been persuaded that the insertion of at least one adulteration offence in the Criminal Code would strengthen the Adulteration Acts against future challenges by affirming the subject matter as a fit object of criminalization.

But, whatever the strength of the codifiers' reasons for including one adulteration offence, it would have been difficult to incorporate the latest federal statute against adulteration of food, drink and drugs (49V.,c.107) in the 1892 Code in its entirety: the draftsmen would surely have been obliged to dismantle the processes and procedures established within the Department of Inland Revenue for enforcing the statutes and to substitute provisions for administering the Adulteration

Acts as regular criminal law rather than Inland Revenue offences. At the same time, the subject of adulteration was becoming too technical to be dealt with as a "police regulation"⁵¹; professional analytical chemists were recognized as necessary experts and the use of government-appointed analysts lessened the potential complications of trials where private experts disputed against each other in court. In addition, making lesser forms of adulteration Criminal Code offences conjured up the spectre of the general public bringing a rash of complaints to local police and demanding the laying of adulteration charges. The policy adopted in 1892 may therefore have been a compromise, throwing a sop to the view that adulteration was "criminal" but leaving practical operation of the law to the Department of Inland Revenue - a compromise which left the Department squarely in charge of all anti-adulteration measures.

Section 3.3

English Adulteration Legislation

When the nineteenth-century Canadian statutory provisions against adulteration are examined, it is apparent (as stated) that Dominion adulteration offences were modelled largely on sections taken from English statutes; parts of the contents of the 1874, 1877, 1878 and 1884 Canadian Acts were taken directly from the United Kingdom series of 1860, 1872, 1875 and 1879⁵². However, the borrowing was selective, principally consisting of definitions of "adulteration" and categories of offences. To specify: the 1874 Act took three offence categories almost verbatim from the U.K. Act of 1872⁵³, although the Canadian statute contained additional provisions against adulterating liquor

(under s.24), an important point referred to earlier (Sn. 2.1). The Canadian amendment of 1877 added an expanded notion of adulterated or fraudulent articles ("not of the nature, substance or quality of the article demanded by such purchaser") which came directly from the U.K. Act of 1875⁵⁴ and it included provisions permitting the necessary addition of certain substances to drugs or proprietary medicines, taken from the same statute⁵⁵. Where the 1874 Canadian legislation differed from English statute law was in its rejection of the United Kingdom system of local administration of Adulteration Acts, relying on locally-appointed analysts and private citizen's complaints; in its place Canadian legislators substituted a highly centralized administrative system run by the public servants employed by the Department of Inland Revenue in Ottawa. In 1884, this centralized system of enforcement was modified to allow for appointments of local inspectors by municipalities. Despite the fact that municipalities were created under provincial legislation, they were given the powers of officers of the Inland Revenue under the Dominion statute including prosecutorial powers (47V.,c.34,s.6). This was done, evidently, to encourage local government participation in anti-adulteration measures; the municipalities were encouraged to appoint inspectors through the incentive of keeping any penalties collected under the Act.

In 1884, new substantive provisions of the Consolidated Adulteration Act borrowed, not only from the U.K. statute of 1875 but also for the first time, from a United States statute. The definitions of "food" and "drugs" introduced in 1884 were taken from the U.K. Act of 1875 and so too was an important defence, the defence of ignorance in cases where

the seller could prove absence of knowledge of adulteration⁵⁶. But the Canadian statute now added a spelling out of the meaning of "adulteration" in relation to food and drugs as harmful or not harmful, which came directly from a New York State statute of 1881, and it redefined the offence categories accordingly⁵⁷; both developments were not included in the U.K. Acts of 1875 and 1879. These developments represented a direct borrowing of British and United States concepts and definitions coupled with the specifically Canadian implementation of anti-adulteration measures, using an Inland Revenue administrative structure (itself taken from the British colonial experience). The Commissioner of Inland Revenue from 1883-1901, Edward Miall, who took on the task of consolidating adulteration legislation and rewriting the legislation in 1883, conceded the use of statutory borrowing when he claimed:

The best provisions of both the English and the New York State statutes have been, to a very large extent, appropriated⁵⁸.

What Miall did not mention was that the entire system for enforcing the increasing number of adulteration laws resulted in the addition of major functions to his Department's responsibilities - both increasing its budget and the number of officials (as discussed in Sn.6 of this chapter.)

Section 3.4

Adulteration approached through Inland Revenue Legislation

Although the notion of dealing with adulteration of dutiable substances as fraud on the Inland Revenue was well-established in eighteenth-century England (Paulus 1974:13), no evidence has been found that a

similar statutory approach was adopted in the North American colonies. Possibly governments did not consider adulteration of dutiable goods a serious problem or perhaps the conditions of North American settlement and, later, the lack of trained analysts, discouraged any early thought of schemes for detecting fraud on the Revenue. Whatever the reasons (and there are many plausible ones), measures for preventing adulteration in relation to dutiable substances seem to have been neglected until the mid-1870's. Nonetheless, the fact that provisions and processes for detecting and prosecuting fraudulent adulterations of dutiable substances existed within the British Inland Revenue Department must have been known to Canadian public service officials, particularly to Inland Revenue officials, and large post-Confederation increases in the numbers of officials carrying out Customs and Excise functions made a nation-wide staff available for carrying out these purposes.

The Canadian Legal Background to Adulteration Legislation

Turning to Canadian antecedents of adulteration legislation, two features of colonial legislative provisions were clearly significant for the later 1875 Act. Firstly there was the pre-Confederation provision for municipal by-laws against adulteration of foodstuffs; secondly, there were the general state administrative structures, initially set in place in the colonial period, and used after 1874 for the practical implementation and enforcement of anti-adulteration legislation. The relevance of both provisions to post-Confederation adulteration statutes is considered next.

Section 3.5

Adulteration and Municipal By-laws

While adulteration had a legislative history prior to Confederation, it was not dealt with directly by the colonial administration but, most likely, indirectly, through municipal by-laws. The Province of Canada's Municipal Corporations Act of 1849 gave local municipalities powers to enact by-laws for local markets including the prevention of fraudulent practices, regulating the assize of bread, and dealing with unwholesome foodstuffs:

...for seizing and destroying all tainted and unwholesome meat, poultry, fish or articles of food.

[P.C.] 11-13V.,c.81, ss.VII-VIII

In a study of the regulation of markets in Upper Canada, Matthews (1987) has documented the high degree of local autonomy in matters pertaining to markets and the sale of foodstuffs. The persistence of local regulation through by-laws can no doubt be seen as a reflection of the localised nature of production and trade in the colonial period⁵⁹ but how frequently such by-laws were enacted and how well they were enforced are different and more difficult questions. Matthews found petitions from licensed vendors in regulated markets in major towns complaining about lack of enforcement and he allowed rather inconclusively that enforcement of measures was at least sufficient to allow markets to continue operating (ibid: 304-5). The case law for the period includes one reported case in which a claim that by-laws for the sale of meat were ultra vires was rejected (Peters v. President and Board of Police, London, (1846) 2 U.C.Q.B. 543 (C.A.)). In Toronto, MacDougall reports that by-laws were enacted but not enforced due to corruption, "municipal parsimony in public health matters" and the fear of voters' adverse

reactions (1981: 94-125). The findings support the view that the Municipal Corporations Act of 1849 was at least translated by local authorities into rudimentary provisions for controlling market practices. Matthews has also argued that it was the vendors and merchants, rather than the consumers, who favoured the regulation of markets and has suggested that regulation benefitted the entrepreneurial class generally in Upper Canada, one effect being that regulation stabilized trade to the advantage of established traders as opposed to itinerant vendors (1987: 298).

Section 3.6

The Colonial Inspectorates

What is also relevant to later administrative provisions for adulteration legislation is the pre-Confederation establishment of colonial systems of state-appointed officials. By the 1840's the colonial government in Upper Canada had begun to appoint local inspectors for trade matters; as stated, in 1848 the colonial legislature empowered the Boards of Trade of Quebec and Montreal to appoint three inspectors of butter for each city; the preamble to the statute of the Province of Canada stated:

Whereas it hath become expedient to regulate the packing of Butter, and to provide for the inspection of the same at the Ports of Quebec and Montreal, such inspection being nevertheless optional with the parties interested: 11V.,c.11

Municipal levels of government were also involved in inspection processes including trade processes from an early date. The Municipal Corporations Act of 1849, in developing new forms of local government, delegated greatly increased powers to counties, towns and villages, including the right of counties and towns to appoint

...so many officers as may be necessary for carrying into effect...any By-law or By-laws of the Municipal County....
 (P.C. 11-13V.,c.81. XLI.6 & XXXI.5

Local governments also received the right to issue municipal licenses for such activities as the sale of liquor, hawking and peddling, auctioneering and keeping billiard tables. The office of Inspector of Licences became a usual one and other local officials were appointed in larger municipalities to enforce by-laws against nuisances, by-laws for the conduct of local markets and health by-laws⁶⁰.

Other official appointments were made at the level of the central colonial administration in Upper Canada: for instance, Curtis (1989) records that School and Penitentiary Inspectors were appointed by the Executive Council and, beginning in 1844 when a Customs Branch was established in the provincial Inspector General's Office, provincial Customs Officers were appointed to replace Imperial Officers⁶¹. The "outside service" of the Customs Branch carried out crucial functions in relation to government financial structures both before and after Confederation for, simply put, the duties collected by Customs officials were the principal source of government revenue⁶². Even if most officials were appointed for reasons of patronage and many were inefficient or corrupt, these official inspectorates provided the administrative basis for the Upper Canadian state. As Curtis has also suggested, the absence of any landed class in Upper Canada equivalent to the English squirearchy, precluded local administration by volunteer amateurs. Instead of the English administrative pattern, Upper Canada relied on a professional corps of officials from an early period. After Confederation, with the establishment of administrative officials from

the Province of Canada as the early federal public service (see Ch.3 Sn.5.1; 5.2), a rapid extension of regulatory administrative processes under the supervision of increasingly centralized inspectorates appears to have taken place⁶³; government-appointed officials took responsibility for regulatory areas ranging from staples inspection and weights and measures to steamship safety and the central state inspectorates expanded in direct relation to growing state interventions in the economy.

This existence of centralized official inspectorates established to enforce regulations and carry out administrative functions, well before Confederation, makes it less surprising that the idea of local enforcement against adulteration offences was first rejected in 1874 in favour of using a centralized inspectorate. In adopting adulteration offences from the English statutes of 1860 and 1872 to a newly settled and relatively underpopulated country, placing adulteration offences under the responsibility of an already established Inland Revenue inspectorate was rational, one could argue, even optimal, for several reasons. Both Customs and Inland Revenue were concerned with foodstuffs and alcohol, including imported and home-produced varieties. (For example, dutiable substances in 1867 included molasses, spices, sugar, coffee, butter, patent medicines, spirits and beer, while the Inland Revenue taxed tobacco, cigars, wine, spirits and beer produced in Canada⁶⁴ and a customs tariff was added on tea and coffee in 1872 (Farr, 1955:177-181)). The Inland Revenue Department had developed a separate "outside service" after its creation in 1868 and the officials of this service, namely Staples, Weights and Measures and Revenue officers, were

all named as officials for sampling for adulterated substances under the 1875 Act. As the Staples Inspectors provided a voluntary inspection system for products including not only leather, hides, skins and potash but foods such as pork, beef, fish, oil, flour, meal and hops (although the inspectors' concern was primarily with exports (Risk, 1981: 100-101)), some Inland Revenue outside officials were already accustomed to inspect and process foodstuffs. In addition, the "outside service" provided a ready-made and country-wide network of officers. In other words, an embryonic infrastructure for inspection and sampling of food and liquor was already in place.

Section 3.7

Mens rea versus Absolute Liability in relation to Adulteration

The Dominion Government treated adulteration as a criminal offence in the 1875 Inland Revenue Act by including the element of mens rea (Sn.1.1) and this approach was reinforced by the introduction of the defence of ignorance of adulteration under the 1884 Act (Sn.1.2). But, during the same period, the legislators took an absolute liability approach to selected substances. If absolute liability initiatives reflected a more determined state approach to controlling particular conduct or practices, then it is important to ask what this approach entailed and why certain substances were distinguished in this fashion.

Parliament enacted general criminal legislation first, to apply to all food and drink, and then, over the twelve years leading up to 1886, took more particular action for certain substances. False labelling of fertilizers and of canned goods were both treated as absolute liability

offences under discrete acts but fertilizers were soon moved into the Adulteration Act (in 1885) and their adulteration was then treated as a *mens rea* offence. Butter containing substitutes for milk and cream was dealt with under the Inland Revenue Act in 1878 and, while there was a absolute liability requirement here for accurate labelling, "knowingly" selling unlabelled adulterated butter was a *mens rea* offence. The stringent new Act of 1886 then forbade the manufacture or sale of margarine altogether making both absolute liability offences. What happened in these cases and what were the explanations for the movement between *mens rea* offences and absolute liability treatments of adulterative practices?

A major distinction between *mens rea* and absolute liability offences lay in the persistent notion that the criminal offence of adulteration contained some element of deliberate fraud by the producer or seller on the buyer. Absolute liability offences, used for mis-labelling of cans or fertilizers, held the seller responsible for accurate labelling and accurate contents regardless of the seller's knowledge or involvement; they prescribed conduct whose omission was an offence. The parallel here was much closer to regulatory statutes such as the Weights and Measures Acts than to the concept of fraud in criminal law.

Adulteration offences including criminal intent provided the accused with the defence of pleading ignorance or lack of *mens rea* to charges of adulterating, or selling, adulterated substances; and the higher standards of proof in such proceedings, as opposed to regulatory offences, meant the likelihood of fewer successful prosecutions.

Absolute liability offences were likely to be preferred for effective enforcement, as they removed the necessity to prove intent; for Inland Revenue officials, the very real threat of prosecution and conviction could provide an opportunity for persuasive measures to ensure improved compliance with the law (Carson, 1970). The danger here, however, in the Canadian parliamentary setting was that treating adulteration offences as breaches of a regulatory statute, in this case the Inland Revenue Act, could raise the question of why the federal Government claimed responsibility for adulteration in the first place. Such regulation could only be applied where measures came under the Dominion's powers under the B.N.A. Act and it was not clear at this time what branches of the new field of public health could be claimed to have a "federal aspect".

The Canadian situation was particularly complex in legal terms because, if adulteration and related offences were "decriminalized" and treated as regulatory offences, responsibility for such areas would not necessarily lie with the Federal Government. So questions of constitutional powers were important: if the adulteration of fertilizers or of butter or canned goods fell under the Dominion power over trade and commerce (as did the Weights and Measures Acts or the Inspection of Staples Acts), then there was no difficulty. But the Dominion trade and commerce power was limited to areas of interprovincial trade⁶⁵ and general regulation of trade affecting the whole Dominion (Hogg, 1977:268). The Federal Government was therefore on very tricky ground when it tried to control, say, butter production, for it could be accused of attempting to regulate a particular industry

within a province. The claim, in the preamble to the 1886 butter statute - that margarine was a danger to health - was presumably inserted to allow federal intervention on the basis of protecting the public from criminal behaviour.

The approach used widely in relation to adulteration, namely treating it as a criminal offence in order to bring it within federal jurisdiction, was under intermittent attack in Parliament, although it was clearly successful in 1875 and again in 1885 when fertilizers were included in the Adulteration Act. The Government was caught between the horns of a dilemma in any attempt to deal with adulteration. Any move towards non-criminal⁶⁶ regulatory offences could put at risk the Federal Parliament's ability to legislate in relation to adulteration unless other heads of federal power under the B.N.A. Act could be resorted to in place of the criminal law power. On the other hand, keeping adulteration as a *mens rea* offence meant that prosecutions failed due to the difficulty of proving intent (and continued to be the subject of constitutional attacks by lawyers such as David Mills). In part, this may help to explain the intricacies and proliferation of adulteration legislation between 1874 and 1886, as the federal government struggled with the legal dilemma of its statutory response to adulteration (although full details are difficult to establish in the absence of departmental records).

Section Four

THE DISCOURSE ASSOCIATED WITH ADULTERATION LEGISLATION

Adulteration was not, in most recorded instances in Canada, an immediate danger to the health of consumers. Why then did the Canadian Parliament spend considerable amounts of time between 1873 and 1892 discussing various forms of adulteration? Furthermore, parliamentary debates reveal the paradox that discourse and legislative outcome were not necessarily related in direct or self-evident ways; intensive parliamentary discourse might result in prompt legislative action and, conversely, relative silence could precede innovatory legislation. In effect, spoken parliamentary communications revealed a limited part of the processes underlying legislation⁶⁷. The essential question to be addressed, therefore, is what if anything can be deciphered both from the discourses and the silences relating to adulteration legislation; in other words, what role did communications play in relation to the development of state processes against forms of adulteration?

Three discourses are examined here and their relevance discussed in relation to ensuing legislation: the discourse around public health issues, apparently partly unsuccessful in terms of direct legislative effect; and two discourses relating to specific forms of adulteration, adulteration of agricultural fertilizers and adulteration of butter, both of which were directly connected to legislative innovation. Admittedly these discourses had fundamentally different characteristics; public health discourse derived from a broad set of moral and "sanitary"⁶⁸ perspectives, whereas the proponents of fertilizer and butter legislation spoke a more limited discourse seemingly based on

economic reason. While the moral and sanitary communications seemed to draw political support within Parliament, they failed to effect direct legislative innovation except in certain restricted fields of public health. Essentially Governments, whether Tory or Reform, invoked formal constitutional constraints against public health legislation, presenting questions of Dominion powers as seemingly impassable barriers but no such forms of legislative "outlawry" came into play in the case of fertilizer and butter legislation in the 1880's. By this later period too, adulteration legislation was relatively established as Dominion "criminal law" so that the new acts could to some extent ride on the coat-tails of the old (until new legal challenges arose).

Section 4.1

The Discourse around Public Health

The Canadian medical profession demonstrated an increasing interest in the topic of public health in the post-Confederation period. As outlined in Chapter Three (Sn. 6.2), Foucault (1980) sees such developments as a general phenomenon in societies experiencing the early stages of industrialization. Ignatieff has dated a concern with "institutional hygiene" in the United Kingdom to as early as the 1750's (1978: 45). But, in Canada, while concern for public health came much later, several factors may have prompted a high level of disquiet and even middle-class solicitude on the subject by the 1880's. Firstly (and in contrast to the European experience), there had rarely been a surplus of labour in the North American colonies, so that the provision of attractive or reliable living and working conditions for the labouring population was an economic imperative during periods of rapid industrial

development or labour shortages, and not simply an humanitarian or even a political concern. Once awakened, public health concerns had particular relevance in the Canadian setting. Secondly, the rapid development of public health measures in more developed capitalist states had established standards which left Canada behind and members of the medical profession (many of whom had trained abroad) were aware of Canada's poor standing; with respect to infant mortality, epidemics of disease, urban slums and other indicators, Canadian cities - Montreal in particular - lagged badly (Copp, 1981). By the Confederation period, the leaders of the Canadian medical profession were in the process of establishing medical doctors as scientific experts on problems of public health including adulteration, following the example set by medical professionals in Britain.

The approach here is to examine the scientific discourse on adulteration, as spoken by professional medical men in Canada in the period, and then to ask how this discourse related to, or was used in, the parliamentary debates on adulteration.

Section 4.2

Canadian Medical Discourse on Adulteration

Adulteration was rarely treated as an isolated topic in medical discourse but was more commonly included as one aspect of "Hygiene" - together with a number of subjects some of which were considered by the profession as possible federal responsibilities - such as Boards of Health, compulsory vaccination and registration of births and deaths. By the 1860's and 1870's, medical concern over adulterative practices

was evident in three of the Canadian medical journals: The Canadian Lancet in Toronto, and L'Union Medicale du Canada and The Canadian Medical Record in Montreal. All three professional journals included occasional items on adulteration; for example, in 1871 the Lancet published an article on the adulteration of lard used for pharmaceutical purposes (v.3: 439) and in the 1872-3 issues, several articles appeared on water purity and sanitary measures including sewage disposal and testing for sewage in water supplies. The Lancet called for laws against adulteration in 1874, in an article applauding a report of the State Board of Health of Massachusetts, and once again urged the introduction of local health boards⁶⁹ in Canada.

Adulteration and impurities of food should also be a matter for strict legislation, the two principal factors of⁷⁰ cholera infantum in cities being unquestionably foul air from imperfectly trapped waste pipes, sewers etc. and adulterated milk.
Lancet, vol.17:185

Professional medical concerns relating to adulteration and other public health issues appeared to continue to develop; by 1877 Dr Playter of Toronto had launched a publication called The Sanitary Journal⁷¹ and in 1884 meetings of the Canadian Sanitary Association followed immediately on the Canadian Medical Association (hereafter C.M.A.) meetings in Kingston, Ontario. Its objects were

To promote sanitary education, obtain joint legislative actions when necessary between the several governments; to prevent the spread of infectious diseases; to secure the mutual cooperation of the boards of health; to publish in a sanitary journal lectures on the laws of physiology, chemistry of sewage, water pollution etc.

Lancet, vol.16, 1883-84: 30

As suggested, medical concerns about adulteration practices as a threat to public health were shared in the pre-Confederation period by a few

middle-class reformers, including in Toronto Alfred Brunel, the former alderman and sanitarian, who became Commissioner of Inland Revenue in 1871. But, over the twenty-five years leading up to 1892, public health became a subject of much wider societal concern as evidenced by frequent newspaper articles publishing mortality figures from epidemics and discussing problems of infant mortality or the quality of water supplies. For instance, the city of Montreal suffered from infant mortality rates twice as high as New York's and Toronto's by the end of the century, despite milk inspection measures. Copp (1981) concludes that

The high mortality rate from gastro-intestinal disease seemed to point to impure food and water as the direct causes.

1981: 404

According to MacDougall, rapid urban growth in Toronto in the 1870's prompted greater awareness of the problems of public health, the latter being seen as "the price of urban growth" (1988: 79), and Robert argues for Montreal that health concerns spread from the medical profession (in the 1850's), to widely-shared notions of "sanitary reform" in the 1860's and prompted the establishment of a city Health Department in the 1870's (1988: 35). By the 1880's, public anxiety about illnesses and epidemics and about gastro-intestinal complaints leading to high infant mortality rates (especially in the summer months) became marked (Copp, 1981). The general public's concern with the quality of cow's milk during this period, now regarded as a food essential to children's health, encouraged the view that milk content must be regulated to protect the community and this was reflected in the introduction of local milk inspectors by several cities. By 1886 the Toronto Public

Health Department had instituted milk inspection, sharing an inspection system with the local Inspector of Licences (MacDougall, 1988: 83).

These medical communications around adulteration can be seen, in Foucauldian terms, as a scientific discourse which "medicalized" adulterative trade practices and exposed established practices in manufacturing and retailing as not only fraudulent, but as positively harmful to public health and costly to the economy and to the state. Medical communications not only emphasised the development of scientific techniques to identify and quantify adulterative practices but they placed a value on such precision and they promoted the use of trained scientific professionals to undertake detection procedures.

Section 4.3

Scientific Discourse in Parliament

Turning next to the specific role played in relation to public health by medical men in Parliament, medical opinion and the concerns expressed by the C.M.A. were evident in Dominion parliamentary proceedings by 1873, when a Select Committee of sixteen members was established to consider the subject of "Hygiene and Public Health" and "to enquire as to the best means of providing a remedy for the want of Vital Statistics." (Parl.Can.Journ. May 19,1873). The Select Committee's mandate closely paralleled that of a C.M.A. Committee of 1868 and the parliamentary committee included active C.M.A. members, including Dr. Charles Tupper⁷² and Dr Brouse⁷³ as well as other medical members of Parliament (Ch.3 Sn.6.2). The Committee under Dr Paquet⁷⁴ submitted a brief report (Sess.Papers 1873, App.#8) but their

discussion had apparently ranged widely over a variety of causes of disease including "the inferior quality of alimentary substances and liquors". Their recommendations paralleled C.M.A. proposals, in suggesting a Central Bureau of Sanitary Science to collect health data reported by local Boards of Health and in proposing that fact collection on varied aspects of public health should include working conditions, classroom size, contagious diseases and "alimentary substances and liquors..."

Despite their public health concerns, Paquet, Brouse and other medical members of Parliament were not visible contributors to debates or discussions of adulteration legislation either in 1874 or during debates on amendments in 1877 and 1878⁷⁵. Although their work may have provoked some parliamentary interest, no medical M.P. introduced the three anti-adulteration bills of 1873 and 1874 and none was reported as being actively involved by Hansard or by the Journals. One possibility is that the efforts of reform-minded medical M.P.'s were oriented towards more serious public health problems in the 1870's, in particular against epidemics of major illnesses; for the topics which occupied the reformer Dr. Brouse were the elimination of recurrent major outbreaks of smallpox, scarlet fever, cholera and typhoid through quarantine measures and public vaccination⁷⁶. Prevention of adulteration may have appeared a relatively minor goal in comparison with the above.

Although there was an absence of obvious medical input to the Adulteration Acts, medical and scientific discourse had begun to be

evident in parliamentary debates. What one sees in this period is the appearance in Parliament of a scientific discourse, shared by the international medical community, which increasingly identified adulteration of food as one source of harm to public health and therefore a threat to the population at large. In the 1870's, this perspective was not necessarily shared by the broad parliamentary membership but medical spokesmen helped to translate the scientific discourse into meaningful lay terms. Brouse, in an 1877 motion, spoke of the reductions possible in death rates from epidemics as a result of sanitary legislation; citing examples from England, the United States and France, he said

In France, it was estimated that the days of sickness averaged eight days per inhabitant....there would consequently be 32,000,000 days of sickness, representing ten millions of days which might be prevented by the adoption of proper sanitary measures....

He translated the figures into Canadian equivalents, couching his argument strictly in economic terms,

Ten million working days were yearly lost to the country, and, at the rate of half a dollar per day, this represented a loss of \$5,000,000. A life was calculated to be worth \$1,000 to the country, and, if we lost 20,000 inhabitants annually, at a valuation of \$500 each, we lost yearly \$10,000,000 and if the \$5,000,000.....were added this made a total annual loss of \$15,000,000.

Hansard. Commons. Feb.21, 1877

In response to reformers' analyses, political leadership in Parliament, whether Tory or Reform, dealt promptly, effectively and negatively with medical members' initiatives concerning public health, responding that these matters were ultra vires the Federal Parliament under the B.N.A. Act⁷⁷. Despite the repeated efforts of the medical reformers in

Parliament, little was apparently done in direct relation to public health and the medical M.P.'s may have recognized the futility of attempting to introduce general health measures in the federal Parliament, for they increasingly focussed on demands for the collection of Health statistics - a function which they claimed fell under the Federal government's jurisdiction over the Census and Statistics under the B.N.A. Act, s. 91(6).

But failure to establish broad public health legislation under Reform and Tory governments does not mean that parliamentary public health communications were necessarily unproductive. The suggestion is that use of public health language and concepts in Parliament by medical experts may have helped to produce acceptance of the new scientific discourse as the "correct" approach to certain areas of public concern. Adulteration was increasingly presented to parliamentarians after Confederation as a subject of international medical and scientific concern - as one practice (among many) harmful to public health - and the medical discourse achieved success in adding a scientific aura to the subject in Canada, adulteration becoming seen as a proper field of medical study and one subject to scientific pronouncements. Effectively, then, medical spokesmen in Parliament helped to channel new perspectives derived from international developments to Canadian parliamentarians. Unlike the discourses around butter and fertilizers, which needed little justification given their self-evident economic bases, discourse around food adulteration had to be constructed, and construction was a relatively slow process. Public health discourse was spoken by a small minority of members of Parliament in the 1870's but

was more clearly heard by the second half of the 1880's when, we argue, it was widely used to justify other state interventions against adulteration. For instance, in 1884, when the Tory Government introduced the consolidated Adulteration Act, the main government speaker was a medical M.P., Dr Lesage, who cited scientific evidence of adulteration of flour, milk, meat, cheese, liquor, tea, coffee and butter in a lengthy speech (Hansard. Commons. March 27, 1884).

Curiously such medical communications in Parliament did not, however, mean that legislators became aware of the operation of the Canadian adulteration legislation or the work of the Inland Revenue Department. It is ironic that in the period between 1874 and 1886, when approaches to adulteration adopted in other countries were looked to as exemplars, developments within Canada - especially the work of Canadian public analysts - were largely ignored. For instance, in the debates on the 1884 adulteration bill the Minister, Costigan, praised United States developments and failed to mention the work of his own Department. Judging from the records of debates before the mid-1880's, very few members of Parliament were informed of the public analysts' work or of the sums of money spent on efforts to reduce adulteration in Canada. Possibly the analysts were partly to blame for failing to promote their findings publicly but they were overworked professionals, few in number, spread across the country, and some working only part-time, and it may not have occurred to them that furthering the Department's professed goals was a necessary part of their task. It is striking how infrequently the Annual Reports on Adulteration (put out as an appendix to the Inland Revenue Annual Reports) were cited in parliamentary

debates and how rarely they seemed to be the object of reports even in specialised medical journals⁷⁸. The Annual Reports were not easily accessible, being buried in the Sessional Papers of Parliament, but the Department of Inland Revenue failed to publicize its own work by distributing them more widely.

As discussed later (Sn. 6), the Inland Revenue had a curious approach to public disclosure for, while its reports frequently urged publication of names of vendors and results of test as a deterrent measure and to inform the public which products were "pure", very little was done in practice in this respect. The contrasts between the medical profession's educative approach to public health and the Department's narrow concern with its mandate for detecting adulteration were marked. The profession accepted both a broad responsibility for proposing innovative action in the field of public health and a need to publicize the major problems perceived, while the Department largely ignored the field of public education altogether. The overwhelming impression received from the Annual Reports is that the analysts were more concerned with adopting new, more accurate, techniques for testing substances for purity and with setting standards than in taking action against adulterers. In essence, this may have reflected a major difference between the priorities perceived by reform groups and by civil servants; the latter saw their work as carrying out and perfecting existing regulatory measures and not as concerned with making radical changes in modes of operation. Perfection not change was their motto.

Section 4:4

Discourses Relating to Fertilizers

The agricultural fertilizer bills of 1884 and 1885 were received positively by both the Commons and the Senate; agricultural representatives in Parliament treated both as necessary pieces of legislation. M. Massue, who had campaigned for legislation for several years, spoke of the 1884 bill as designed "to protect the farmers against spurious fertilizers" (Hansard, Commons. Feb 14, 1885) and the Senate proposer, the Hon. M. Girard, said that the bill was "absolutely necessary in the interests of agriculture in this country" (Hansard. Senate. March 11, 1884). Senate speakers concurred in the view that returns of cereals from cultivated lands in Eastern Canada were falling off, that Ontario had exhausted soils, that elements in the soil were deficient and must be replaced, and that farmers would decline to use fertilizers if they did not produce prompt and visible results

...if the farmer finds himself deceived in the fertilizer he applies it is apt to lead him to form opinions entirely opposed to the use of artificial manure, and the consequence is that what might be a most beneficial thing to the agriculture of the country is neglected.

Hansard, Senate. March 11, 1884

English experience with fertilizers was invoked in these debates, apparently as a legitimating device:

For many years artificial fertilizers have been in use in England.
The great fertility and productiveness of the soil in Great Britain is due to the use of artificial manures.

and personal farming experiences were cited:

I have myself expended considerable sums of money for fertilizers, which I found, when I applied them to the soil, were comparatively useless. They did not possess the elements which the packages stated they contained, or they were not adapted to the soil on which they were used.

The discursive communications demonstrated that the basis for dissatisfaction with fertilizers was not that they were generally adulterated (in the sense, for instance, that coffee was adulterated with chicory), but rather that they might not function as anticipated due to unsatisfactory ingredients. The essence of the problem, as with some other 'adulterated' substances (including foodstuffs such as milk), was the lack of standards for fertilizer contents and this was exacerbated by considerable confusion and uncertainty over what chemical ingredients were desirable. Nonetheless, the desire for improved crop yields helped fuel the demand for "pure" fertilizers.

A few Senators attacked the 1884 bill for placing restrictions on the small commercial fertilizer industry establishing itself in Canada, arguing that controlling content would make fertilizers more expensive and reduce their use, thus harming manufacturers. But they were not a persuasive fraction by comparison with the large number of legislators representing agricultural interest groups in the House.

The use of the term "adulteration" in reference to fertilizers evidently meant that the discourse around them was in some ways misdirected, perhaps deliberately misleading, or even devious, from the outset. When M. Massue had urged the House in 1883 to establish a Select Committee on fertilizers and then claimed the Committee's findings showed fertilizers were adulterated, the phrase "adulterated" apparently meant only that they "might be unsatisfactory for the purposes envisaged". The Minister of Finance, Archibald McLelan, was asked during the 1885 debates what the factual basis was for including fertilizers and cattle food in the

Adulteration Act and had difficulty answering. Another member, Farrow, summed up the farmers' position when he said

We, being simple agriculturalists, cannot test these foods and we want the Government to see that there is no fraud practised on the farmers.

Hansard. Commons. June 11, 1885

Despite the uncertainty surrounding the new subject of fertilizers, as reflected in the parliamentary discourse, the Senate agreed with the general usefulness of the legislation, but reworked its provisions to apply only to manufactured fertilizer - thus protecting cheaper by-product fertilizers such as ash and bone-meal.

In 1885, Sir Alexander Campbell introduced the new fertilizers bill in the Senate with more accuracy as an attempt "to introduce some regularity and thoroughness in the sale of agricultural fertilizers" (Hansard. Senate. June 17, 1885) and the bill passed both Houses.

However fertilizers were also added to the Adulteration Act in 1885, as if adulteration was a common and serious problem and needed to be dealt with by criminal legislation. No parliamentary representatives took issue in the debate with the statement that fertilizers were "adulterated"; when the Minister of Finance was asked in 1885

Has it been brought to the attention of the Department that cattle food is largely adulterated, or is it proposed to take action to provide against adulteration?

The Minister replied

McLelan: It has been very frequently stated by parties that cattle food is adulterated; but I do not think any analyses have been made.

Hansard. Commons. June 11.1885

In the light of this rhetoric, it is significant that the results of Inland Revenue analyses from 1886 onwards showed relatively few problems

with agricultural fertilizers. Even in the first year of sampling, the Chief Analyst was able to state

.....Ontario and Quebec are supplied with fertilizers of good quality, and at reasonable rates, by our own manufacturers.

Sess.Papers 1886. #8(c):4

In 1893, when the Inland Revenue issued a special bulletin on fertilizers, the analysts reported on 131 samples of which only one was adulterated and four "doubtful" (Sess.Papers 1893 #6(b):5).

The 1885 Fertilizers Act was clearly an improvement over the 1884 Act in that it pinpointed the problem of lack of standards for fertilizer contents and then set minimum standards for the industry. The Act (which was an appropriation by the Department of Inland Revenue of legislation introduced by a private member in 1884) was opportunely designed in that fertilizer manufacturers were required to certify the contents of their own products. In this way the Department was relieved of setting industry-wide standards for different grades of fertilizer or testing fertilizers unless, or until, complaints of sub-standard products were received.

In sum, therefore, fertilizer legislation was a direct outcome of agriculturalists' political clamour based on persuasive, but partly misleading, discursive communications. Parliamentary spokesmen for farmers, alarmed about the contents of a relatively new and unknown product, were able first to obtain adulteration legislation (despite the absence of a strong evidential basis for their claims) and then, with the assistance of the Inland Revenue Department, develop a permanent system of regulation applied to the fertilizer industry.

Section 4.5

The Discourse relating to the Butter and Margarine Controversy

The "butter" discourse of the 1870's and 1880's accompanied processes at the political level which were in some ways similar to those underlying the fertilizer legislation. Dairy industry alarm anticipated problems potentially facing farmers due to competition from the new product - margarine - and succeeded in prompting legislation. Again the discourse was largely factually unfounded and luridly exaggerated but was clearly explicated in immensely long and detailed parliamentary debates in 1886.

The anti-margarine discourse first dominated parliamentary debate in 1878 when an amendment to the Inland Revenue Act, which required the labelling of butter containing any milk or cream substitutes as "oleo-margarine", was introduced as a preventative measure. While making this clear, the proposer, Mr Archibald, also emphasized the economic risks attached to permitting the use of margarine:

...he was informed that when properly made, it required almost an expert to detect the difference, in appearance, at all events between the genuine article and the substitute. This article had not been manufactured to any large extent in Canada as yet.....but its manufacture was growing in Canada.

....prevent the imposition of this article upon the consumer as genuine butterfraud ...

...a cheaper article than butter ...made from beef suet.

Hansard. Commons. April 16, 1878

By 1886, discussion of the Prohibition of Substitutes for Butter bill⁷⁹ demonstrated a strong and still growing anti-margarine rhetoric. Multiple complaints against margarine were each illustrated with examples supposedly taken from United States experience. Firstly, Canadian legislators were warned that margarine would not only compete

with butter but would be sold as butter. Mackenzie Bowell, Minister of Customs, said

Statistics in the United States show that of the vast amount of oleomargarine or butterine sold in that country only 1 per cent of it has been sold under its proper name. Of the 200,000,000lbs annually sold there⁸⁰ for the last few years, only about one-hundredth of it was sold as oleomargarine or butterine; all the rest was sold or consumed as butter.

Hansard. Commons. April 16, 1886

The House was also assured that United States efforts to control margarine manufacture and sales had failed:

Mr Platt. Twenty States of the Union have legislated on this subject for years and have exhausted the machinery at their command to regulate or suppress the nuisance, and they have given up in despair, and are at this moment asking Congress at Washington to come to their relief, acknowledging their utter inability to cope with this difficult subject.

Hansard. Commons. April 16, 1886.

The ingredients of margarine were described as bad and worsening: Mr. Taylor (Leeds) read extracts from unnamed U.S. newspapers ("in order that our people may know what they eat when they use this oleomargarine") including the following item:

Dairymen need not fear oleomargarine made of pure milk and beef suet, there is absolutely none of it made now. It costs too much. Cheaper grease must be employed - lard, oils of various kinds, gelatine and even vaseline. The Health Officer of this city recently analyzed a sample of bogus butter and found it to be composed largely of vaseline, a product of petroleum.

Hansard. Commons. April 7, 1886

A few days later, Taylor regaled the House with the tale that Mr. Charlton, the member for North-Norfolk, when visiting Wisconsin, had

... found that the hog cholera had been raging there for some time, and that the oleomargarine manufacturers sent agents through the county to buy up hogs that had been dead three weeks, to make them into oleomargarine.

Hansard. Commons. April 16, 1886

Furthermore, Taylor added rumours from the Canadian dairy scene: he told the House that he understood that "a large quantity [of margarine]

had been passed through the Customs in Montreal [from the U.S.] and that "three carloads have since been stopped on the way there" (April 7, 1886). He warned that:

... this bogus butter business not only threatens the butter business of this country but also the cheese industry, from the fact that they are making bogus cheese as the Secretary of the Gananoque Cheese Board informs me.

Hansard. Commons. April 7, 1886.

Rumours of an oleomargarine factory about to open in Montreal were repeated several times, despite the Minister of Finance's response that he knew nothing of such a manufacturing scheme.

The butter prohibitionists were successful in linking the manufacture of cheap blends of oleomargarine to unhealthy ingredients and thence to adulteration, so that the discursive linkages between margarine and the notion of "unhealthy", and butter and the notion of "wholesome" were reinforced. Slowly the parliamentary debate of 1886 shifted from consideration of ways to inhibit margarine production to ways of preventing it entirely.

Mr. Jenkins. The object of legislation has been not to license or to regulate the manufacture of adulterations in food, but to put a stop to them, and I do not see why the House should make any exception of oleomargarine. It is known to be a spurious and adulterated article, it is proved to be unwholesome; and it comes into competition with the wholesome product of the dairy.

Hansard, May 6, 1886

One member waxed explicitly lyrical on the subject of butter, treating it as a symbol of what has been termed the "pastoral genre" (Burke, 1979: 123).

Mr. Fairbank. Who would think for a moment of divesting the dairymaid of the Romance, the beauty, and the association that surround her, by encouraging the manufacture of oleomargarine? Perish the thought.

Hansard, Commons, April 16, 1888

In essence, these debates succeeded in juxtaposing and contrasting the supposedly inherent characteristics of butter and margarine. The former symbolized goodness, nature and health. The latter was characterized as representing a substandard, artificial and unhealthy product. Ergo, it should be prohibited in Canada.

Section Five

LINKAGES BETWEEN CRIMINAL LAW MAKING AND THE SOCIAL FORMATION

The broad question asked here is what were some effects of the burgeoning of federal adulteration statutes into diverse fields between 1875 and 1892; or, in more specific terms, how did the statutes impact on particular societal groups? For instance, did the provisions of the Adulteration Acts and the work of the Inland Revenue have effects primarily for the general public, alerting them to the risks of adulterated food, or for the manufacturers who feared prosecution and publicity, or were the provisions used against retailers and did the latter become increasingly concerned with the quality of food bought from producers or wholesalers and sold to the public? If the legislation had distinct impacts on certain groups, did effects come about through direct enforcement of statutes against manufacturers, importers or retailers, or did they lie in the more symbolic fields of educative or deterrent functions? Many of these questions, especially those relating to the symbolic effects of adulteration legislation and to prosecution procedures and practices,

are difficult to assess and cannot be addressed directly or fully, but they represent a crucial part of the possible effects of legislative innovation. The Department's practices with respect to public education are considered first (Sn.5.1) before turning to available sources on enforcement practices (Sn.5.2).

Section 5.1

Education

What were the Department's endeavours in the broad field of education, either in relation to the general public or to producers or sellers of foodstuffs? The Department of Inland Revenue did not develop a particular departmental educative role in relation to food adulteration - a point demonstrated by the contrast between the visible public health activities of the medical profession (Ch.3 Sn.6.2) and the low profile of the Department. The work of the chemical analysts in Inland Revenue was not published for the general public and many legislators were ignorant of the Annual Reports on Adulteration (printed in the sessional papers of Parliament). The names of manufacturers, importers or retailers whose products were tested for adulteration were "published" after 1878 in the Annual Reports of the Department, which remained accessible to few readers. So the public had no direct access to information on adulterated foodstuffs and could not be expected to follow public service developments or analytical findings.

In 1885, the new Commissioner of Inland Revenue, Edward Miall, proposed quarterly publication of analysts' results in local

newspapers (S.P.'s #4, 1885, vi) but there is no evidence that this became departmental practice before 1892. Judging also from professional medical publications, expert groups such as pharmacists and doctors, who might be expected to show interest in state enforcement activities, evinced little interest in the Department's work: pharmacists' journals largely ignored the inclusion of drugs in the first adulteration legislation (Stieb 1972: 23) and medical journals gave new statutes no more than a brief mention. Newspaper commentary in this period was increasingly concerned with broad public health concerns but adulteration received little attention in the press, either from professionals or the public.

On the question of legislators' awareness, M.P.'s (who had rarely been vocal on the issue of food adulteration), began to ask questions during the late 1880's about adulteration enforcement; several Members of the Senate demanded more rigorous application of the adulteration laws, especially those regarding liquor. In 1888, Senator Girard demanded of the Honourable Mr.J. Abbott whether the law was being enforced and referred to liquor adulteration.

I would ask the leader of the Government if any prosecutions have taken place to punish parties guilty of such abuses? ... If the provisions of the law are carried out, there would be a great deal to do in the way of punishing those who adulterate liquors.

Hansard. Senate. May 2, 1888

Abbott replied affirmatively but vaguely:

There have been, in several of those [Inland Revenue] districts, quite a number of prosecutions during the past year, many of which have been successful.

Two years later the government was under attack by Senator Power of Quebec who said:

Whatever the practice may be in this part of the Country, in the Lower Provinces I have not heard of a single case where any seller of an adulterated article has been prosecuted for contravention of the Act.

Hansard. Senate. March 21, 1890

In reply, another Senator resorted to the old theme of the value of educational effects:

Hon. Mr. Reesor. The Act has accomplished a great deal of good by putting dealers more on their guard against introducing adulterated articles than before, and the public are more on the watch to see that the goods they buy are what they are represented to be. ibid

Abbott responded that the Department was attempting to make the law more effective to ensure convictions but, a few days later, he appeared to be more fully informed on the situation. He now admitted frankly that the difficulty in carrying out prosecutions lay in the level of criminal proof required.

The hon. gentleman... cannot be aware of the extreme difficulty of procuring a conviction against a dealer for the sale of adulterated articles... I may say that most of the prosecutions have failed from the impossibility of proving that the man who sold the article had a knowledge himself of the adulteration of it.

Hansard. Senate. March 27, 1890

These parliamentary complaints demonstrate the difficulty of enforcing the Adulteration Acts but they also suggest that it was the late 1880's before legislators began to express concerns about lack of enforcement, that is, after the expansion of adulteration legislation in the mid-1880's and fifteen years after the original legislation. Overall, there is little evidence of an educative impact from the work of the Inland Revenue on legislators or on the general public before the 1884 Adulteration Act.

Section 5.2

Enforcement Processes

Enforcement of adulteration statutes might have also educated the public and the retailers to the dangers to health involved. The stringency of adulteration enforcement depended firstly on the form and content of legislation applicable to particular substances and this, in turn, was in our view dependent on the nature of the economic activity involved and its direct relevance for the state or powerful economic fractions. As suggested (Sn.1), the state intervened directly in the production of substances claimed to be economically-significant to major social fractions or to state revenues, including fertilizers, liquor and margarine, through strict adulteration legislation. As a result, the industries concerned (which had their activities closely monitored by the Department of Inland Revenue, where some or all prohibitions were framed as absolute liability offences and some of which were subject to licensing) appeared to show relatively few instances of adulteration. Liquor was prohibited from containing certain chemicals, while fertilizer contents had to meet minimum standards and margarine was prohibited; according to the Department's analysts, compounders and manufacturers showed considerable reliability in the quality of their products. Annual reports on adulteration contained self-congratulatory items in this connection; for instance, the Chief Analyst wrote in 1892,

There is a great improvement to be observed in the physical conditions of the samples [of fertilizers] for this year. The coarsely-ground bones have disappeared from among them, but still some of the fertilizers contain such an amount of moisture as to cause their particles to ball together if kept long in stock.

Sess.P.'s No.6(b)1893: 112

Similarly, in relation to the manufacture of butter substitutes, prohibition seems to have been successful. The Montreal analyst wrote in 1890:

It would appear from the results of analysis that oleomargarine and "filled cheese" are unknown on the Canadian market.

Sess.P.'s No.1(b)1890: 5

The legislators' decisions to adopt strict regulation through absolute liability offences and state licensing or supervision appear to have been crucial factors in these instances.

On the other hand, non-regulation was not necessarily the result of political decisions opposing intervention in an industry. In some instances, Inland Revenue officials and analysts considered regulation desirable but found the difficulties insuperable, e.g. in the case of the quality of milk sold or of water supplied to cities. Difficulties arose here for technical reasons, often because of the absence of scientific consensus on standards or because of problems with finding satisfactory testing methods. The Inland Revenue saw such scientifically-established standards as necessary adjuncts to regulation and, while logical, this position severely hindered the efforts of the Department to penalize producers, for example, those supplying adulterated milk.

Milk regulation and the even more difficult problem of improving water supplies remained thorns in the side of the Department throughout the period. In the case of milk, the Department faced the problem of controlling the activities of dairy farmers - a highly segmented industry producing a variable product - in the absence of established

standards for what constituted a satisfactory product. The Department's analysts attempted to fill this void by examining approaches adopted in other jurisdictions (Sess. P's No.7, 1877) and they also repeatedly tested samples of Canadian milk collected from different breeds of cows, from Prince Edward Island to the Prairies, under winter and summer conditions in attempts to develop suitable standards. In 1889, the analysts were still trying to establish standards for required fat and water content (Sess. P's No.1(b)1890: v-vi).

In the 1880's several Canadian cities introduced the office of "Milk Inspector" for sampling local milk supplies, acting either under the provisions of the Adulteration Act of 1884 or under local by-laws. By this date, some local councils may have given up waiting for practical federal standards and many were affected by raised public awareness of high infant mortality rates in urban areas - which were often blamed on impure milk and water (Sn.4.2). In 1890, Toronto, Montreal, Hamilton and London all had some form of official milk inspection under municipal inspectors. It was 1891 before the federal Chief Analyst was finally able to propose a series of practical standards for thirteen substances including milk, butter, coffee, spices, mustard and four particular varieties of liquor (Sess. P's No.6(b), 1892). But some cities later set lower standards for the contents of milk under local by-laws, finding the new Dominion specifications too demanding.

There is considerable evidence from Annual Reports that the regulation of certain commonly adulterated imported foods was especially difficult for the Inland Revenue. High value products such as coffee, tea, spices

and mustard were routinely (and easily) adulterated before sale⁸¹ to increase profits. As the Commissioner reported in 1879:

5... [condiments] are almost without exception adulterated - not with things injurious to health, but with things of inferior value, whereby the consumer pays for the ground refuse of grain and seeds, the price of articles which, if pure, would be of high value.

6. The same may be said with reference to coffee, for of 48 samples examined only 12 were pure.

Sess. P's (No 6).1880

The economic motivation for adding relatively harmless adulterants to expensive consumables was clear, and food producers and importers were intransigent in taking the position that trade adulteration practices were "normal" and that the public did not expect products such as ground spices or ground coffee to be sold in pure form. Despite departmental requirements for labelling mixtures as such, producers and retailers continued to label adulterated substances as "pure coffee". The Department had operated on the assumption that "manufacturers and wholesale distributors" rather than petty retailers were to blame for adulteration of spices and condiments⁸². By 1886, when proportions of samples of coffees and spices adulterated were still high, the Department attempted to assign responsibility by inspecting samples from "all the spice grinders in the Dominion"; the results convinced the analysts that adulteration was being carried on by the producers or wholesalers "whether or not" the Chief Analyst added cynically "the retail vendor still further improves his spices etc. before retailing them" (Sess.P's No.5 1886:8).

Any attempts at both education or regulation by the Department were probably constrained in addition by geographical factors. The

routinized internal processes of the Department in relation to adulteration and its reliance on departmental officials (until specialized adulteration inspectors were appointed beginning in 1890) meant that sampling for adulterated substances was never designed to be a random or country-wide process. Sampling was carried out in major centres across Canada, usually in cities where both excise officers and departmental chemists were appointed, and Inland Revenue officers were not paid to travel outside urban centres to collect samples. The procedure was for Ottawa to instruct a Revenue Officer to collect a certain number of samples of a required substance from his area for testing and the focus of enforcement had thus been urban-centered from the outset. In 1880 the Montreal analyst, Dr Larue, volunteered in his annual report,

It would now, I think, be very desirable to extend the operation of the Act into the surrounding country districts where it is probable that a cheaper class of goods, especially groceries, find (sic) a market and are less closely scrutinized than those supplied to the city traders. Moreover, a larger proportion of adulteration has so far been found in the public markets than in the city stores.

Sess.P.'s No.4 1881:7

As a result of this reliance on Inland Revenue officials in urban centres, the Department's sampling in rural areas was, in all likelihood, non-existent before the 1890's and any impact on rural food supplies must have been largely indirect. After municipal milk inspectors were appointed in several major cities in the 1880's, the Chief Analyst commented in the report for 1891 that it seemed advisable "to collect samples of milk sold in some of the smaller towns of Ontario" and presented a special report on this project, implying that even by the 1890's this was a new departure (Sess. P.'s No.6(b) 1892. Bulletin No. 17).

Section 5.3

Prosecution

Inland Revenue supervision succeeded, in our view, in regulating areas of economic activity where legislators adopted direct intervention techniques, using licensing and testing procedures and absolute liability offences, for instance in relation to liquor and fertilizers. As suggested, there were, however, difficult areas where state intervention was hesitant due to the absence of agreed-on policy or lack of official standards for products. In addition there was the problem of proving intent in mens rea offences.

What can be established is that the Inland Revenue did not use the tool of prosecution to regularly or systematically enforce any of the mens rea provisions under the Adulteration Acts in the period from 1875 to 1892. There were no prosecutions after the passage of the 1875 Act until 1878. The Commissioner of Inland Revenue, Alfred Brunel, at first seemed willing to rely on general deterrence; he wrote in 1876:

It is not unreasonable to suppose that the knowledge that analysts have been appointed, and that samples have been submitted to them will have had its affect [sic] in the places where such appointments have been made.

Sess. P.'s V.10, No.4, 1877

Brunel appeared to count on publication of names of sellers in the Department's annual reports to "exercise a powerful influence" and he reserved prosecution for "the most flagrant cases". But the first three prosecutions in 1878 were uniformly unsuccessful for differing reasons⁸³; two were launched for refusal to supply samples to an Inland Revenue inspector and one for selling adulterated milk. These failures effectively removed the threat of prosecution for almost a decade, until the new Act of 1884.

Plans were made in the 1880's to revive prosecutions. The appointment of a Chief Analyst now allowed the Department to provide two independent analyses of adulterated substances and the new Commissioner, Edward Miall wrote:

It is also desirable that all cases of adulteration should at once be prosecuted.

Sess. P.'s No.4 1885: vi

However, plans for prosecutions were delayed until January 1887 due to technical defects in the 1884 legislation. Why did revision of the Act not improve the subsequent prosecution record? For one thing, the 1884 Act included the defence of ignorance of adulteration which allowed the accused to plead "ignorance" to most *mens rea* offences. In addition the 1884 Act had distinguished "harmless" and "injurious" adulteration, thereby creating a two-tier system of adulteration, with offences carrying markedly different penalties but both still requiring proof of mens rea (47V.,c.34, s's.26,27). As suggested earlier, few adulterations detected in Canada were palpably "injurious" and the most prevalent adulterations, e.g. of coffee, spices, mustard, etc., were relatively harmless trade practices. Enforcement in these areas was not worth the Department's trouble and Inland Revenue preferred instead to proffer vague statements about educating manufacturers and retailers - although the Department made few apparent efforts to carry out this task in practice. Furthermore, manufacturers were immune from prosecution if their products were labelled "mixture" or "compound" (s.1(2)c.4), a relatively simple precaution for manufacturers to take over labelling.

The Chief Analyst's assessments of the first disputed sampling cases in 1884 may also have been a factor inhibiting prosecution: initial

testing results from local analysts were checked by the Chief Analyst in Ottawa and were confirmed in only two cases out of twelve. This is not to condemn the Department's efforts entirely, as some procedures were made more effective: for instance, remarks made in 1885 implied that vendors had previously harassed analysts for results and samples were now labelled numerically to maintain anonymity and to protect the analysts:

The vendor being unknown to him as well as the source where the samples were obtained, he is relieved from the importunity of anxious vendors to know the results of analysis of their wares.
Sess. P.'s No.5: 1883 3

By 1887, prosecutions were still reportedly unsuccessful due to "the technical points almost constantly raised ... which it seems almost impossible to avoid, where the testimony of experts is required, ..." (Sess.P.'s No.16C,1888: 1). As a result, Commissioner Miall now proposed an amendment to the Adulteration Act requiring newspaper publication of names of all vendors and test results, adding "such a course would probably be more effective than any proceedings in courts of law." Provisions for publication were subsequently included in an amending act of 1890 but publication of names of vendors for the public was not mandatory, being left to "such times and in such manner as the said Minister directs", that is, to departmental discretion (53V.,c.26, s.5,).

The Department of Inland Revenue continued to carry out routine sampling and analysis of substances under the Adulteration Act while failing to solve the problem of enforcement of mens rea offences. In 1892, Chief Analyst MacFarlane, reporting on specialized studies of adulteration of

mustard and pepper, commented that prosecution was not a practical solution. Although remedies were "urgently called for" as over 80% of mustard samples contained adulterants as more than 1/3 of their contents, the 1884 Act positively hindered the process:

It will, of course, at once be remarked that the proper remedy is the prosecution of the offenders under the Adulteration Act, but that Act practically permits the admixture of substances not injurious to health, provided the mustard sold is labelled as a compound, which, ... is very generally done.

Sess. P.'s No. 6(b) 1892: 10

Even in the cases of adulterated pepper, where vendors did not usually label their product a mixture, MacFarlane hesitated over what course to take.

Legal proceedings could no doubt, therefore, be instituted against the vendors in question, but doing this would unduly tax the means at the disposal of this Branch, owing to the great number of delinquents.

Sess. Papers No.6(b) 1892: 105

(The curious assumption made here seemed to be that either all sellers in the industry should be prosecuted or none.)

Did the Department abandon prosecutions altogether after the abortive attempts of 1878 and the flawed legislation of 1884? There is evidence that some efforts were made and that these increased as municipalities became more interested in combating adulteration of foodstuffs by the late 1880's, but precise figures have not been established⁸⁴. For instance, following on Dominion analysis of coffee samples across the country in 1892, "twenty-seven of the most flagrant cases were selected for prosecution."; according to the Chief Analyst, fourteen delinquent coffee dealers agreed to pay costs of \$14.00 each for sampling and testing, thirteen were "sued", five convicted and the rest "still in litigation" (Sess. P.'s No.6(b), 1893: 90). But this was a curious form

of "prosecution" which relied on a departmental policy of obtaining costs and not on offence provisions under the Adulteration Acts; in fact, the Department had effectively abandoned attempts to prosecute offenders - deciding merely to penalize them by charging them for costs of analysis, under a provision of the 1890 Act (53V.,c.26,s.3).

Even in 1892, one of the Department's prime concerns was with the lack of standards for coffee. MacFarlane complained once more that coffee was sold with the words "compound" or "mixture" printed obscurely on the label

These "compounds" were very often remarkable for the very small amount of coffee they contained, and it would seem necessary that the public should be informed of their true character and origin, as well as of the names of the manufacturers and dealers who produce and sell a genuine coffee.

Sess. P.'s No.6b, 1893

How the public was to be informed was not, unfortunately, explained.

Section 5.4

Municipal Enforcement

If many manufacturers, importers and retailers were relatively immune from prosecution by the Inland Revenue under the Adulteration Acts, they were still open to prosecution by local officials. Municipal health policies constitute a topic in themselves: such policies were largely dependant upon local public willingness to fund health inspectors and on public concerns about health (MacDougall 1981: 282-3). But, after the quality of milk supplies became a public issue and municipal inspectors were appointed in some major cities, there is evidence of successful local prosecutions, at least in Montreal if not in Toronto. Montreal

appointed a new milk inspector in 1889 and re-appointed the local Dominion Public Analyst as "Civic Analyst"; the Inspector took almost 900 samples of milk in eight months and of these seventy suspected samples were sent to the analyst and fifty-seven found adulterated. Forty-two prosecutions were successful, with fines averaging ten dollars, and six cases dismissed "on technical grounds" (S.P.'s, 1890, #1B). However, these prosecutions were carried out under municipal by-laws and not under the Adulteration Act and the standards were those set under local by-laws.

In Toronto the General Inspector of Licenses, Robert Awde, had abandoned milk inspection under the federal Adulteration Act by 1884, complaining that the Dominion system was "cumbersome" and "so expensive that no municipality can afford efficiently to work it" (cited MacDougall 1981: 298). In 1886, Awde was formally appointed a municipal Inspector under the Dominion Adulteration Act and began testing milk supplies again, but prosecutions in Toronto under the Dominion Act were unsuccessful, again due to the defense of "ignorance of adulteration" (ibid: 299). The greater success of prosecutions under municipal by-laws, compared with the Dominion Acts, confirms the lesser workability of Dominion offence provisions in the period.

Section 5.5

Resistance to Prosecution

The nature of Inland Revenue enforcement of adulteration statutes, through a far-flung organization of "outside" public servants, raises questions of whether local agents met local resistance and whether they

were assiduous in attempting to enforce legislation. The first issue, of manufacturers' and retailers' resistance to prosecution, bears both on the broad question of whether legislation received acceptance from regulated industries and the narrower issue of whether specific opposition from producers and retailers prevented prosecution. Were there frequent attempts to prevent sanctioning processes and what could the industry or individual companies do in this respect? There is evidence in one instance indicating that powerful merchants complained about decisions to prosecute but the general absence of departmental records precludes us from establishing whether such interventions were routine or usually successful. In the protested cases, an Inland Revenue decision to investigate adulteration of condiments and spices in the mid-1880's brought a formal protest via a Montreal M.P. from three representatives of the coffee and spice manufacturers of Montreal, who objected to two of their number being prosecuted. But the protest was rejected outright in a Privy Council report⁸⁵

... after careful consideration of the case, ... they cannot see any reason why the prosecution should be stayed.

N.A.,RG 2-1,v.464, p.c.#564, March 16,1885

As far as the attitudes of local retail merchants to manufacturers' adulterations were concerned, they almost certainly preferred "non-injurious" instances of adulteration to be ignored rather than prosecuted. Merchants who were victims of wholesalers' adulterative practices were also likely to be reluctant to assist in criminal prosecutions for, as the Chief Analyst pointed out, the so-called victims were often willing buyers who bought goods wholesale at prices below normal, fully realizing that the products were adulterated (Sess.P.'s 1886 No.5: 11-12).

On the other hand, establishment of industry-wide standards had some advantages for manufacturers - who would now compete in a "level playing-field" situation. (Here Dominion standards were preferable to provincial or local ones because they would be uniform across the country.) The threat of price undercutting by producers willing to adulterate products would be reduced. The argument that some industries may have welcomed a degree of regulation (to remove or control the activities of "bad" elements in the industry) must be recognized. However the focus on the role of the state in this research has largely precluded examination of manufacturers' and producers' records, trade journals and their attitudes to adulteration as well as their reactions to federal controls.

On the subject of prosecution for adulteration and the Department of Inland Revenue, one writer has reached the conclusion that inactivity in relation to prosecution was part of the Department's "basic philosophy" (Stieb 1972: 20). If this were the case, failure to prosecute offenders might be interpreted as an example of general state reluctance to enforce criminal law against otherwise "respectable" manufacturers and merchants. This could be a correct account of some legislators' preferences, but the published evidence suggests convincing attempts by Inland Revenue officials and analysts to enforce relatively unworkable legislation. Our view is that Brunel's provisions, adopted from the United Kingdom, required too high a level of proof and the efforts of Inland Revenue public servants failed in the face of both legal and technical difficulties.

Were there underlying (and possibly unrevealed) reasons why the problems with legislation were not clarified. Was the will to prosecute and control adulterative practices, apparently demonstrated by the Department, not supported by legislators? Or were the Department's supposed policies and practices effectively masks to placate sanitarian reformers which allowed the adulteration division to continue its existence? Did the Department fail to have the necessary legislative amendments enacted because of the ineptness and political weakness of Ministers of Inland Revenue or because Brunel's successor was less effective or less entrepreneurial?

Many of these questions are unanswerable given the limited evidence available, but one which can be addressed in part is whether the nineteenth-century Adulteration Acts should be seen as essentially useless additions to the statute books. If, as is argued here, they were only effective in relation to particular economic activities, did they at least have broad "educative" functions in relation to adulteration of foods? If few sanctions were applied in practice, is it feasible that the law worked in what can be termed an "exhortatory" mode as opposed to an "exemplary" one? Claims of educative functions are hard to substantiate when (as described) departmental reports were published in relatively obscure Sessional Papers, names were not printed in newspapers, the testing system remained awkward and "cumbersome" and the public was ignorant of the inspectors' and analysts' work. On the other hand, the fact that some manufacturers' (or importers' or retailers') products were being sampled and tested cannot have gone unnoticed by the industries involved. Did the fact of occasional

testing have any impact on adulteration practices of producers? The only sources of information here are the analysts' reports which suffered from sampling biases and did not exclude the possibility of corrupt practices among local revenue officials. (Local inspectors had to select retailers or manufacturers, appear as witnesses in any prosecutions and gain the hostility of local retailers - so they may have been susceptible to local pressures⁸⁶.) The results of departmental sampling and testing do appear to show improvements in the quality of substances in the first few years of operation of the legislation (see Sn.6, Table 6.1), so either the Department was being misled by its own officials or some diminution in adulteration practices had occurred, at least in urban areas.

Whether such recorded improvements can be attributed to the work of the Inland Revenue Department or to other factors or whether claims of improvements were largely spurious remains obscure. Our conclusions concerning the direct impact of adulteration legislation on the Canadian social formation must necessarily be predominantly negative. There is little evidence that the food adulteration laws had direct impact on the public and the direct effects of legislation on manufacturers and retailers were limited to certain substances, these exceptions being the result of the regulatory work carried on by the Department in relation to prohibited or licensed substances including margarine, liquors, and fertilizers. The Department of Inland Revenue appeared not to attempt to become involved in general educative functions. So, if there was a general raising of public concern with quality of food stuffs, it seems more likely to have derived from the work of the medical profession and

other reformers in promoting general public health rather than from the Department's narrow and unpublicized activities. But, even if adulteration legislation had few immediate effects on the broader social formation, it had marked repercussions for what can be called a "central structure of the state", namely the Department of Inland Revenue, as discussed in the next section.

Section Six

PROCESSES OF CRIMINAL LAW MAKING WITHIN THE STATE

If the significance of the adulteration legislation of 1874 and succeeding statutes is to be grasped, the law needs to be viewed in relation to its effects on state institutions as well as its impacts on the social formation. For, unlike the Peace Preservation Act and the Blake Act, development of the Adulteration Acts as regulatory statutes had repercussions for the central state structure of Inland Revenue and for the inspectorates given responsibilities for the statutes. As discussed in the preceding section (Sn.5), the legislation was not markedly successful in awakening the broader public to the dangers of adulteration, sanctions against retailers and manufacturers through criminal prosecution usually failed and some Inland Revenue attempts during the period to alter wholesalers' and retailers' customary adulterative trade practices in favour of "pure foods" were ineffectual. Nonetheless, it is argued that the adulteration legislation was significant, as a minimum as a reflection of ideological shifts towards increased concerns for public health and - of more

immediate relevance - for the light it throws on the possible effects of criminal legislation for state institutions themselves.

Arguments have been put forward in support of the view that public servants in the Department of Inland Revenue favoured adulteration legislation and that they shaped its form at its inception in 1874 (Sn.2.1). This legislation had major effects for the Department, helping to allow its rapid growth during the period and the effects are examined in this section, beginning with the probable role of state agents in the formation of legislation and turning to the consequences of legislation for the Department itself.

Section 6.1

The Department's Role with Respect to Legislation

The task of establishing connections between the public servants of Inland Revenue in Ottawa and legislative innovations concerning adulteration in 1874 is necessarily circumstantial, due to lack of departmental records⁸⁷ and the absence of legislative debates or newspaper reports. The two considerations which are significant in our view are that there is some indirect evidence in favour of the claim that public servants were involved and there is little evidence to support alternative interpretations of the introduction of adulteration initiatives.

Firstly, Inland Revenue involvement is strongly indicated by the fact that adulteration legislation was placed under the aegis of the Department in 1874, after its unsuccessful introduction earlier in the

year as a Senate bill lacking specialized provisions for enforcement. At least two other factors point to the direct involvement of Inland Revenue public servants in designing the provisions of the 1874 government bill: in the first place, Inland Revenue Officials were more likely than other public servants or politicians to be aware of Inland Revenue procedures in other jurisdictions; they would have known, for instance, that the Inland Revenue in England employed analytical chemists to test suspected substances. And secondly, the Department harboured an ardent sanitarian in the person of the Commissioner of Inland Revenue, Alfred Brunel. Brunel had been an active public health reformer as an alderman in Toronto in the late 1850s; MacDougall describes Brunel as a leading proponent of public spending for improved public health, an enthusiastic "sanitarian" and a follower of Chadwick and the English Boards of Health (1981: 94-96, 108-110). As a sanitarian appointed to the position of Inland Revenue Commissioner in 1871, Brunel was in a position to influence developments within the Department. It seems likely that Brunel, if not a proponent of the first two adulteration bills, was at least aware of them and regarded them as a useful contribution to attacking public health problems in Canada. Once an adulteration bill was before Parliament, Brunel seems likely to have been able to encourage its withdrawal on the basis of reintroduction as an Inland Revenue matter.

Secondly and as discussed (Ch.3 Sn.5.3), during the period of introduction of the private member's adulteration bill of 1873, the Senate bill of 1874 and the government bill of 1874, the two Ministers of Inland Revenue respectively responsible were either disinterested and

inactive, or seriously ill⁸⁸. If the ministers directly responsible were absent or disinterested, the potential for public servants to intervene directly in legislative processes was likely to increase. The departmental Commissioner, Alfred Brunel, may have had the opportunity of assisting in drafting the 1874 Inland Revenue bill and of making suggestions about its contents (as his successor, Edward Miall, did in relation to the 1884 Adulteration Act).

Although Inland Revenue was a relatively new and small department at the time of the 1874 Bill, the Department's assumption of other duties suggests that officials in the Department were eager to accept growth. The prospect was probably inviting (or even essential) to the future of the new and third-smallest, ministry in Ottawa, and the Department had begun to enlarge its responsibilities during the session of 1874 (as a new General Inspection Act was before the House transferring the inspection of staples to the central state under the Department of Inland Revenue (37V.,c.45)). Whether or not Inland Revenue public servants took the step of suggesting incorporation of the adulteration bill into the Inland Revenue Amending bill, it seems certain that they would have encouraged a measure which simultaneously reflected Brunel's earlier sanitarian commitments and enlarged the Department's responsibilities⁸⁹.

In later years, Brunel's successor, Edward Miall, and other civil servants in the Department did not hesitate to make legislative recommendations relating to adulteration, which perhaps suggests that this was a usual practice in the Department: Miall drafted the 1884

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Adulteration Act himself, bringing together sections from both United Kingdom and United States statutes, and took a paternalistic interest in his own innovations. The 1884 Act permitted municipal prosecutions under the Adulteration Act and awarded fines to municipalities - encouraging them to exercise responsibility for adulteration (often already applying under local by-laws) under the Dominion statute. Miall, perhaps eager not to emphasise enforcement failures under the 1884 statute, commented favourably in the 1890 report:

It is a pleasure to note that the larger cities are beginning to avail themselves of the facilities offered by the Act, more especially as regards the inspection of milk. As simple methods of detecting frauds in respect of other articles of food are discovered, it is hoped that municipal action will be further extended...

Sess. Papers 1890 No.1(B) p. vi

Again, in 1890 MacFarlane, the Chief Analyst, proposed extending the Adulteration Act to milk supplied to cheese and butter factories and also proposed setting minimum standards for milk under the Act. Both of these recommendations were subsequently adopted in legislation. Admittedly not all of the public servants' proposals were implemented for, in 1891, Miall's recommendation that spice mills be licensed under excise supervision - an effective way of stopping manufacturers from adulterating spices and condiments - disappeared without action (perhaps due to the importers expressing their views in Ottawa?). But the impression established is that Inland Revenue officials customarily supplied proposals for legislative action and that these were frequently approved by Parliament. Overall, it is suggested that these circumstantial factors point to the view that Brunel and his officials

seized on the existence of two earlier reform parliamentary initiatives to incorporate adulteration offences into the Inland Revenue amending act of 1874.

Lastly - a negative point - there is no evidence of a direct impetus towards adulteration legislation deriving from external societal elements. As earlier discussion described (Sn.4.3), medical spokesmen in the House were inactive in debate and in Committee; they appeared to have a strong interest in general public health reform as distinct from a specific concern with adulteration legislation. One can suggest on the basis of the material in this chapter that legislators concerned about liquor adulteration along with proponents of public health measures were likely to support an adulteration bill but, at the same time, medical reformers were not likely to make adulteration a matter of high priority. The initial adulteration bills were proposed by a private member and then by a Senator, for whom liquor adulteration was a continuing concern; they were not put forward by legislators representing identifiable reform fractions.

Section 6.2

The Effects of Legislation on State Structure

The effects of adulteration legislation for the Department of Inland Revenue can be approached in two ways: firstly, by consideration of tangible effects on factors such as the departmental budget and departmental personnel; secondly, in relation to more intangible effects, such as "power and knowledge", to use a Foucauldian phrase⁹⁰.

What, for instance, were the effects of a marked degree of state monopoly on information about adulteration, for the Department?

On the first aspect, departmental structure, evidence from budgetary provisions for adulteration is set out over the page. (See Table 6.1.) Official records show a three-fold growth in dollar expenditure between the time operations were fully established and the end of the period, that is, between 1879 and 1892. In the same period the numbers of samples analyzed annually remained roughly constant or declined, so budgetary increases were not due simply to increases in sampling and testing - although sampling methods may have become more sophisticated and expensive. Much of this budgetary growth was due to two distinct increases in the Department's staff: firstly, to the creation of a specialized adulteration staff in Ottawa, including a Chief Analyst with five staff members in his laboratory by 1891 - three assistant analysts and two clerks; secondly, to the hiring of the Department's own "food inspectors" in the late 1880's with six positions filled between 1890 and 1891 (replacing local Revenue Collectors). The headquarters staff dealing exclusively with adulteration increased from zero to thirteen between 1875 and 1891 and the total salaries and travelling expenses for headquarters staff amounted to almost \$11,000 that year (Sess. Papers 1892, No. 6, Appendix B-5) - more than the annual budgets between 1876 and 1883.

What were the activities of the new headquarters staff? As the total number of samples analysed had not increased, their activities must have differed from those of the analysts appointed in the early years. In

TABLE 6.1 INLAND REVENUE ADULTERATION FIGURES, 1876 - 1892

<u>YEAR</u>	<u># SAMPLES TESTED</u>	<u>% ADULT- ERATED</u>	<u># ANAL- YSTS</u>	<u>ANNUAL COSTS COSTS OF ANALYSIS¹</u>	<u>TOTAL COST</u>
1876	180	52	1		2,601
1877	488	51	4		4,863
1878	813	33	4		5,947
1879	896	26	4		7,797/7,778 ²
1880	1,043	28	5		8,887
1881	1,041	26	5	6,485	8,149
1882	1,122	26	5	7,388	9,950/9,968
1883	1,243	24	6	7,216	9,696
1884	1,520	32	8	9,560	11,780/11,752
1885	1,072	--	8	7,500 ³	13,102
1886	1,142	18	8	8,166	19,987/19,934
1887	909	20	7	6,060	15,297/15,322
1888	977	22	7	4,603	24,817/24,581
1889	1,062	41	7	6,312/6,186	23,700/23,627
1890	573	21	7	8,173	23,259
1891	934	22	8	8,846	24,725
1892	829	24	7	8,622	24,838

1. Entries from 1876 to 1888 in this column record the costs of analyses based on fees paid to analysts (\$5 - \$10 per sample), retaining fees (\$200 p.a.) and an allowance for rent of premises (\$100) plus expenses. Average fees in 1892 were \$732. Beginning in 1889, the figures record salaries paid out of the adulteration budget.

2. Different totals are due to slight differences in government accounts - probably due to later inclusion of printing costs or other extra charges.

3. This figures excludes the Chief Analyst's salary which was \$1,633 in 1885 (and \$1,960 by 1892).

SOURCES: Sessional Papers - figures from the Annual Reports of the Commissioners of Inland Revenue.

general the Department's endeavours became relatively sophisticated by the 1890's: regional analysts were carrying out fewer tests but more complex ones; headquarters staff, in addition to issuing detailed bulletins on adulteration of particular substances, had begun to investigate alternative analytical methods, spending considerable time and effort on issues such as standards of milk and on the quality of municipal water supplies. The Chief Analyst's task was to supervise the group working in Ottawa and disseminate general approaches or specific methods to the seven or eight Dominion public analysts working in centres across the country.

Section 6.3

Inland Revenue "Power and Knowledge" in relation to Adulteration

The state had therefore developed a small group of scientific experts amongst its public servants, who included several of the most knowledgeable professionals working in the field of adulteration in Canada. By the 1890's, at least two of the seven or eight analytical chemists were working full-time in the Inland Revenue laboratory in Ottawa, while others worked part-time in regional centres across the country combining their work for the Inland Revenue with medical practices or scientific activities. If Inland Revenue retained the services of leading experts, this leads to the inference that one intangible effect of adulteration legislation was that the state, or the state agency, acquired a relative monopoly of information on adulteration.

Admittedly municipalities retained a concern with adulteration, but few local inspectorates had the resources to develop the specialist expertise demonstrated after 1885 by the Dominion Inland Revenue in Ottawa. Even in Montreal and Toronto, where municipal inspection systems retained local experts to conduct precise testing (as opposed to local inspectors using rough indicators), few local experts could match the expertise of the Federal Government's permanent staff (although occasionally municipalities cross-appointed federal analysts). In addition municipalities had a distinctive focus on adulteration, differing from the Inland Revenue; they were more concerned with local intervention to prevent major and obvious health hazards and less interested in carrying out research to detect the precise nature and degree of fraudulent trade practices. The result was that specialized concern for "pure" foods and interest in complex analytical problems of detecting adulteration were left largely to the chemists of the Department of Inland Revenue; adulteration was a specialized area within the field of analytical chemistry in which the state retained many of the experts.

Other state departments came to rely on the Inland Revenue chemists over time, with the Department's expertise in chemical analysis increasingly seen as a useful state resource. In 1886, Commissioner Miall reported that over 60 substance samples of "diverse descriptions" had been submitted to Inland Revenue for analysis by government departments, many from the Customs Department (S.P.'s 1887, # 8, vi). In effect, therefore, the Inland Revenue's success in obtaining government funding to hire expert staff and to set up testing laboratories resulted in an

effective monopoly of expertise - certainly in skills unmatched elsewhere in the Federal Government or at the level of municipal or provincial governments.

What is perhaps most intriguing about these developments is that the knowledge acquired was put to relatively little practical use and was not applied "to strike fear into the hearts" of manufacturers and retailers adulterating foodstuffs. Having acquired the task of controlling adulteration, the Department appeared to become increasingly absorbed in internal and scientific processes as opposed to aiming at impact on trade practices and public awareness. The Inland Revenue adulteration experts appeared to prefer to perfect scientific methods, not to press strongly for new legislation which would have been more effective against adulteration practices. Whether this pattern was the result of repeated frustrations in attempts to prosecute and to improve legislation or the cause of failure to improve the Department's results in either area is not entirely clear, although we tend to adopt the former explanation. While it has been argued that the Department's senior public servant from 1871 was strongly "sanitarian" by commitment and that there was a distinct pressure and calculated initiative in relation to adulteration by the Commissioner and his staff in 1874, the Department's failure to improve its performance against adulteration in later years suggests a loss of initiative and perhaps a decreased entrepreneurial role in relation to legislation. The Department possessed a near-monopoly of knowledge but not, apparently, the means to change legislation in order to make it enforceable.

It is possible that constitutional difficulties now appeared insurmountable and the public servants may no longer have regarded themselves as prime players in the political game of initiating new legislative measures, leaving this to later Ministers. Perhaps too, by the late 1880's, attempts to change the fundamental basis of adulteration legislation away from criminal law were too threatening to survival of the adulteration division in Inland Revenue and perhaps Commissioner Miall, discouraged by the ineffectiveness of his legislative reforms of 1884, preferred the frustrations of the status quo to the prospect of more efforts at legislative change (which might risk destroying the organizational structure of the agency built up over the past fifteen years). Without changes in the law relating to foodstuffs, the statutes persisted largely unenforced in this field and the Department continued to hope for compliance with its largely unenforceable adulteration of food laws.

Section Seven

CONCLUSIONS

Adulteration legislation proved relatively difficult to explore, the principle problem being the absence of departmental records. What was clear was that the legislation was very different in kind from other criminal law statutes; adulteration statutes were distinguished both in principle and practice by differences in the areas of offence provisions, application provisions and enforcement practices. The legislation demonstrated not only unusual procedures but also a lack

of uniformity among the various statutes in major features pertaining to form and content.

In addition, adulteration legislation was far more abundant than other statutory areas. In its sudden appearance in 1874 and its rapid growth, the new field of federal law represented something of a statutory cuckoo in the legislative nest; for adulteration statutes grew quickly in number and widened in application to cover a range of offences far broader than the designers of the first legislation could have expected.

Questions of legislative origins and growth have been explored in this chapter, referring to the concerns and ambitions of both the so-called parliamentary "sanitarians" and Inland Revenue officials, and specific statutes have been examined in relation to the ways in which other groups, especially farmers' representatives, were able to seize on early adulteration legislation and expand it for their own purposes. What has been emphasised in addition were the ways in which discursive communications - some using sanitarian moral formulations - were relied on to legitimate and justify later innovations, in particular the farmers' anti-margarine and fertilizer statutes.

One difference in form between adulteration offences and many other criminal law statutes lay in the state's partial reliance on absolute liability offences in the legislation and the mixing of these with mens rea offences. The issue of why absolute liability offences were used in some instances and not others was linked in the research to

questions of Dominion jurisdiction in the field; the Dominion relied on the claim that adulteration was a "criminal" offence in order to bring behaviour which threatened public health within federal jurisdiction. Offences in the early legislation (relating to food adulteration) were defined on the basis of criminal intent; however, given that the approach via intent proved largely ineffectual in terms of prosecutions, absolute liability offences were adopted - primarily in instances of adulteration of serious economic concern to the state or to producers. By the 1880's, the substantive content of adulteration statutes had been modified due to further legislative borrowing processes, with the introduction of enactments from both the United States and Britain, but these innovations did not necessarily operate to encourage the use of absolute liability offences. Instead the borrowing processes resulted in a disparate mix of definitions, offence provisions and regulations which tended to frustrate enforcement even further.

Part of the difficulty lay in the fact that the application provisions for adulteration in the 1875 Act embodied a taking-over of English *mens rea* offence provisions by a Canadian state agency set up to collect excise duties and enforce regulatory measures. An unhappy alliance of criminal offences and bureaucratic enforcement translated into a set of "crimes" which could not be prosecuted by victimised consumers or by local law enforcement officials but (at least in the early years) only by Inland Revenue officials. One result was considerable growth of the state department, but the expansion did not translate into effective enforcement. There is no suggestion that non-

enforcement was the outcome envisaged or desired by Inland Revenue public servants but rather that it was a result of policy errors in the Department's adoptions of legislative provisions from other jurisdictions coupled with particular jurisdictional issues involved in the Canadian setting.

Enforcement processes were bureaucratically delegated to local revenue inspectors but reliance on local collection of samples of substances for analysis, by a notoriously venal inspectorate, may have encouraged corrupt practices. Overall these procedures reflected the assumptions of Inland Revenue officials that control of anti-adulteration measures must remain vested in the Department, its officials and analysts; there was a marked disinclination to allow public involvement (the pattern used in the English model), although enforcement by municipal inspectors was eventually encouraged.

Overall the federal production of adulteration legislation needs to be set in the context of increasing societal interest in, and concern over, levels of public health in the period but, at the same time, related to constitutional legal issues (over the limits of federal powers) and to legislative borrowing practices. All three factors help to explain the developments in policy.

As to how public health concerns were involved in these legislative developments, parliamentary communications in the period relating to sanitary issues began to draw on an international sanitarian discourse, disseminated in the Canadian context primarily by the

medical profession. While the ideology of improved public health influenced parliamentary thinking, the legislation failed to have a major impact on adulterative practices, either through enforcement of sanctions or through public education. Although the ideology was shared by at least one leading official in the Inland Revenue service, the Department's activities were never highly visible to the public eye. The research suggested that over time the work of the Department grew increasingly technical, becoming essentially research-oriented rather than enforcement-oriented as the Department took on an "expert" function in relation to adulteration as opposed to a public education or enforcement function.

Given the difficulties of examining the development of adulteration legislation, we suggest that several aspects of the legislation require further clarification. For example, one area includes questions around manufacturers' attitudes to regulatory controls: were the statutes seen as a means of outlawing unfair competition or, at the other extreme, as unwarranted intrusions by the state into customary trade practices? Which capitalist elements took what approaches in relation to particular legislative proposals? Did the state effectively act in any overall way "in the interests of capital" or were there few uniform or parallel interests within the capitalist classes, even in the "longer run"? If the state stipulated standards and provided penalties which were rarely enforced, what message did this send to producers and to retailers? Finally, in terms of state institutional structures, why was the Department of Agriculture not actively involved in farmers' concerns over adulteration instead of

the Department of Inland Revenue? In the face of these unresolved questions, further efforts are evidently needed to unravel the early history of adulteration legislation.

CHAPTER SEVEN

THE USES OF CRIMINAL LAW

This chapter takes the form of two distinct but related parts: first an assessment of the research findings in terms of the five thematic areas stipulated at the start of the thesis and then a discussion of the findings, in relation to the sociological concepts employed in the analysis of legislation, with a view to examining theoretical utility. In the first part of the chapter we therefore review answers in relation to the questions posed for each legislative development and in the second we discuss the overall findings and the approaches taken, attempting to clarify the forms of the "contextualized social processes" (supra:2) established for the law and society relationship.

REVIEW OF RESEARCH FINDINGS

To reiterate again, the five broad thematic areas selected at the start for analysis of the federal state's role in the development and application of nineteenth-century criminal law were (1) the reasons for state interventions, (2) the legal orientations of social actors, (3) the nature of discursive communications, (4) the linkages between criminal laws and the social formation and (5) criminal laws and internal state processes. In line with their use to develop further questions for historical analysis in the three fields of legislative development (Chapter Two: 35-41), these themes are utilized here to compare historical findings, an approach which is intended to

establish similarities and differences both between aspects of the three statute series and within series.

I The Reasons for State Intervention

The first thematic issue of social conflict posed the question of the relationship between the state's economic role, its role in resolving societal conflicts, and state interventions in the form of the introduction and application of legislation. Attempts were made throughout the research to suggest underlying factors relevant to societal conflicts as well as possible explanations for state interventions via legislation and these attempts were related to broader focuses - the latter including class and racial or sectarian conflicts as well as major economic transformations in the period.

One general, but not unexpected, finding was that specific statutory initiatives differed widely in terms of sources of demands and forcefulness of initiatives for legislative change. Moreover, while such demands were not necessarily expressed in economic terms or economically-determined, state interventions through criminal law frequently responded in the cases studied to economic crises or depended on economic considerations; the forms of conflict addressed in lawmaking were often economically-related. Nonetheless, in some instances state interventions responded to the concerns of non-economic elites or of internal state agents. In sum, while economic concerns appeared to dominate legislation, they were not a unique source of legislative interventions.

To specify these underlying conflicts: the passage of the Blake Act can be understood as a direct consequence of sectarian conflict - a case in which urban violence and unrest eventually led to legislative innovation. Conflicts in Montreal were primarily based on religious and ethnic divisions although the economic depression, beginning in 1873-74, almost certainly exacerbated Protestant/Catholic relations in the late 1870's. Middle-class concerns for the "reputation" of the city, as well as legislators' disquiet over the extent of violence, were added to a climate of general public anxiety and Montreal members persuaded federal parliamentarians to support a legislative solution, namely the Blake Act.

In the same year, economic "hard times" increased job rivalry between French and Irish labourers working in the port of Quebec and further ethnic hostility in 1879 led to proclamation of the Blake Act in that city. In sum, the backgrounds to both these proclamations suggest that religious and ethnic divisions within the working class were sufficiently deep in major cities for economic hardship to exacerbate sectarian hostility to the point of violence between rival elements and for legislative solutions to be seized on by Ottawa.

In contrast, the Winnipeg proclamation of the Blake Act was a direct outcome of major economic transformations leading to local concerns and a demand for law enforcement, but an invocation of the Act based on little factual evidence of disorder or violence. Local authorities' fears resulted directly from population migration westwards on an unprecedented scale, which accompanied the economic

boom years of the 1880's (a migration fuelled by the economic depression in the East). Winnipeg authorities were unnerved by the combination of the rapidity of growth of the town, the rumours of arrival of "undesirable elements" presenting a danger to public safety and an outbreak of arson. The incidents of arson were doubly threatening in the context of massive overcrowding in Winnipeg; the authorities' fears of a threat to newly-found economic prosperity and of loss of control over the influx of population led to their demands for imposition of the Blake Act.

The Peace Preservation Act of 1869 was in all likelihood based on Prime Minister Macdonald's recognition of the statute's potential utility in relation to the economic priority afforded in his government's policies towards railway building, but it cannot be seen as a hastily conceived solution responding to the immediate labour concerns of railway contractors. The statute had a lengthy legislative history in relation to labour unrest and labour-capital conflicts during canal and railway construction in the pre-confederation Province of Canada. Railway contractors continued to depend on a large supply of unskilled labour at relatively low wages in the post-Confederation period and liquor sales were considered to threaten the productivity of labour. Given the structured economic disadvantages of labour, the adverse conditions for navvies working on the Pacific Railway during the Great Depression and entrepreneurial attempts to lower wages, labour/capital conflicts were probably exacerbated in the period of the late 1870's and early 1880's. The

strength of underlying conflicts was demonstrated in withdrawals of labour over wage disputes.

Demands for recreational services, principally for liquor sales and prostitution, were to be expected in frontier construction areas but sales of liquor remained anathema to contractors and prohibition led to endemic local conflicts over liquor. Prohibition of liquor sales was imposed by Cabinet proclamation, usually after contractors' requests; as a result, navvies sought liquor supplies, while a small number of state-appointed judicial officials attempted to enforce criminal legislation against liquor sellers.

Societal conflicts underlying use of both the Blake Act and the Peace Preservation Act took violent forms but remained relatively localized in character, taking place in particular cities or in railway construction areas. The antagonisms were also essentially class or sect-specific - that is, limited to elements defined by class (railway navvies versus capitalist entrepreneurs) or sect and race (French and Irish Catholics versus Irish Protestants in Montreal). The adulteration legislation, however, presented major contrasts: the initial food legislation of 1875 attacked common trade practices affecting all classes and class fractions, as the state attempted to regulate general economic relations between buyers and sellers in specific new ways. These conflicts between buyers and sellers were structured in terms of market relations in different fields of the economy, for adulteration of food took place in relation to production and retailing, adulteration typically distorting the terms of the

implied contract between the parties involved. In most cases, adulteration caused a degree of economic harm but was not physically dangerous to consumers or users in the short-run. In a major contrast with other criminal statutes, adulteration legislation was directed against producers, manufacturers or retailers, and not necessarily against members of the working class; the actions of employers rather than the actions of employees were to be controlled by criminal legislation.

In the case of later instances of adulteration legislation, as distinct from early legislation and from the Peace Preservation Act and the Blake Act, concerns over economic frauds by sellers were coupled with pronounced political struggles over the necessity for legislation. Although manufacturers, unlike farmers, were not directly represented by spokesmen in parliamentary debates, the government may have spoken partly for manufacturing interests when Ministers resisted or questioned proposals in the mid-1880's for regulation of fertilizers and banning of margarine production.

What was, surprisingly, rarely in question was the propriety of state interventions using criminal law to control the quality of foodstuffs in order to improve the state of public health. While federal statutes already regulated export markets and other economic transactions, adulteration had effectively been a local responsibility before 1874. The turning point in achieving legislative intervention in Canada lay in the success of sanitarian reform elements in reformulating economic and political issues by the 1870's in

ideological terms pertaining to the relatively new issue of public health and in introducing public health legislation as a federal responsibility under the guise of criminal law.

In most instances of adulteration legislation, conflicts between buyers and sellers were grounded in economic and political issues including what means producers and sellers should be permitted to use to maximize profits, whether adulteration practices affected trade adversely in the longer run, and what degree of state intervention was desirable. In the case of food, drink and drugs legislation, the state's role was to produce a legislative solution to the problem of how health concerns, arising from the specific ideology of food purity and the more general ideology of improved levels of public health, should be weighed against economic ideologies relating to trade and profit. In later instances involving agricultural fertilizers in 1884-85 and margarine producers in 1886 the state played a different role; it mediated more directly between sellers and buyers in particular markets, and eventually gave way to farmers' political representatives in both instances at the apparent expense of manufacturers and producers - at least in the short-run.

Another area for consideration in relation to the social conflict theme is the role of specific societal elements in the introduction of legislative solutions. How were problems and conflicts brought to the political level for attention in development of these three series of statutes; what classes, class fractions or other elements were successful in terms of their concerns becoming part of the state's

agenda? One noticeable feature of the question of participation was the variation between groups of agents active in lawmaking, even for different statutes within the same series. The Peace Preservation Act was introduced during a post-Confederation period of bureaucratic unification of colonial criminal law, apparently at the Prime Minister's specific behest; but subsequent amendments were not developed by the government. Instead, one came about directly through the demands of a Reform Party lawyer, a member of the capitalist and entrepreneurial elite, and another as a result of complaints from two groups of provincial enforcement officials.

The passage of different adulteration statutes again demonstrated diverse elements at work, ranging from state bureaucrats and medical members of Parliament to farmers concerned about adulteration of dairy products or the purity of agricultural fertilizers. What we suggest is that the reformers' initial adulteration legislation made the Department of Inland Revenue the effective state structure responsible for adulteration and then allowed the "piggybacking" of subsequent issues onto early adulteration statutes. Farmers' concerns were brought to the political level through their parliamentary representatives and argued publicly by means of a manipulative political discourse. On the other hand, earlier anti-adulteration reformers, the so-called sanitarians, operated discreetly, behind parliamentary scenes (perhaps as a result of the rejection of an adulteration bill the previous year and the approach of their probable internal state advocate, the Commissioner of Inland Revenue).

In terms of the actions of particular societal elements vis-à-vis lawmaking, the Blake Act was relatively exceptional in the breadth of its public political support. Montreal liberal Catholics initiated the legislation and, relying on Blake's parliamentary leadership, made their measure appear an acceptable parliamentary innovation for ending violence. Blake introduced the bill in Parliament and, as a private member's bill prepared by a highly-respected lawyer and previous holder of high office, the legislation received widespread endorsement as a deliberately non-sectarian, non-racial, bipartisan attempt to end violence in Montreal.

II Orientations to Law

Orientations to law was used to apply to legislators' approaches to a "repertoire" of already known or applied legislative measures. In a broad sense, "orientations" encompassed attitudes towards legal alternatives, applying to both new legislative forms or to existing solutions to problem-situations either available within state legislation or used in other jurisdictions.

Sources of legislation were established for the statutes examined in the three series; most enactments drew on earlier provisions or on legislation passed in other jurisdictions. The Peace Preservation Act represented a borrowing of two pre-Confederation Province of Canada statutes; the Blake Act combined part of the content of an anti-weapons statute enacted at Westminster (for application to Ireland) with the specific form of the Peace Preservation statute; while the

Adulteration Acts borrowed heavily from English, and later from United States, anti-adulteration legislation. In effect, only a small proportion of the legislation drafted was at all original in form.

Judging from the public and parliamentary discussions of the statutory enactments examined, "new" statutes were not necessarily developed in conjunction with public debate. When there was parliamentary debate, established legislative alternatives were explored and rejected before innovative statutes were introduced. In this way the impression was given that new legislation was necessary because existing provisions were inadequate or unsatisfactory or because the Canadian setting could profit from the use of statutes tried in other jurisdictions.

Little public debate was recorded on the Peace Preservation Act; the suggestion made here is that the statute was seen as an alternative and suitable measure of direct social control for use against navvies and as a measure which could be used on a continuing basis in preference, for instance, to emergency use of the Riot Act. The Riot Act had been recognized long before Confederation to be too blunt, expensive and forceful an instrument for most problems of labour unrest on railway construction; but, at the other legislative extreme, parliamentarians could not contemplate prohibition by local option as a suitable legislative alternative for problems of unrest in districts inhabited by unruly railway navvies.

Debate around passage of the Blake Act specifically recognized the ineffectiveness of Canadian anti-weapons legislation enacted the

previous year. The chronological development of weapons and firearms legislation (see Appendix D) suggests a possibility of considerable parliamentary ambivalence towards weapons control but an ambivalence set against recognition of the threat to public order from the use of arms, especially in urban areas characterised by sectarian unrest. Blake's bill represented a further but limited attempt at controlling the carrying of arms, although only in specific settings. Alternative and simpler legislative solutions to the Montreal disturbances, such as banning religious processions, were rejected in Ottawa as politically unacceptable or unworkable.

Adulteration legislation, following on innovations in British criminal statute law and evidence of increasing concerns in Western countries for the purity of foodstuffs, filled an evident lacuna in Canadian federal legislation. The inference drawn here is that lack of Canadian anti-adulteration measures became apparent to reform-minded state officials in the light of developments in other jurisdictions. The few reform-minded individuals in the public service and in Parliament urging the passage of public health measures in the 1870's saw adulteration legislation as a small but useful gain in the direction of sanitary reform. Federal jurisdiction with respect to adulteration of food was evidently questionable in light of the division of powers under the B.N.A. Act but little parliamentary criticism was voiced over the jurisdictional issue of the "criminal" nature of adulterative practices before the 1880's; English statutes treating adulteration as a criminal offence probably had a bearing on this silence, helping to overcome any initial jurisdictional queries.

(Alternative federal legal treatments of adulteration - as a public health matter or as a question of trade practices - might have been based on weaker jurisdictional grounds and immediately disputed by the provinces.) Under the provisions of the B.N.A. Act, the federal Parliament's powers extended to few possibilities which could be introduced in response to the medical profession's urging of improved measures of public hygiene. Population measures (the Census and demographic statistics) and anti-adulteration legislation were two of the elements of sanitarian policy which could be implemented by the federal state in the period after Confederation.

The argument made in the thesis is that several of the legislative initiatives must be understood, in fact, in terms of the orientations towards the initiatives taken by legislators and legal actors; and the orientations were themselves linked in differing ways to fundamental, underlying ideological positions. It was suggested that these widely-shared positions included dominant perspectives on liquor consumption, on labour and poverty, and on sectarian and ethnic identifications, as well as less commonly-held views on the imperatives of improving standards of public health, and these ideological stances are discussed next.

III Discursive Communications

The third thematic field, discursive communications, examined the articulation of communications around conflicts, legislation and legislative enforcement. The research demonstrated that large variations occurred in apparent levels of parliamentary and public

discussion of different legislative proposals, ranging from relative silence in the case of the Peace Preservation Acts and the early adulteration legislation to large amounts of parliamentary and newspaper debate over the Montreal riots, the Blake Act and two later adulteration measures.

To try to unwrap these differences, it is suggested that discursive silences around the Peace Preservation legislation, its proclamations and applications reflected implicit but widely-shared anti-labour ideologies; such ideologies were rarely formulated in Parliament - in this research they found expression only in private correspondence between members of the entrepreneurial elite or occasionally in the press. In addition the silences around enactment of Peace Preservation legislation may have reflected a lack of middle-class knowledge and concern over the situation of railway navvies; and this passivity, coupled with pro-temperance sentiment, probably allowed legislation proclaiming prohibition to be enacted and applied without objections, even from the few spokesmen sympathetic to labour. Prevailing ideological structures tended to render public discussion and analysis superfluous - in effect the statute needed no justification. For the minority of the public concerned with its practical operations, the Peace Preservation Act was a reasonable exercise of state legal power.

The Montreal riots which led to development of the Blake Act, attracted considerable attention across the country in 1877 and 1878, far more so than subsequent problems in Quebec or Winnipeg which

resulted in later proclamations of the Act. The Montreal unrest of 1877-78 was viewed with alarm by parliamentarians and treated as a major crisis because, we suggest, it appeared to build on a series of escalating episodes of violence in Canadian cities, because the Montreal violence grew worse (in terms of casualties) despite attempts by leaders of national societies to heal differences between segments divided by religion and race, and because the riots made the maintenance of public order uncertain in the principle city of Canada. Given the prospect of the city of Montreal split by insoluble cleavages, its streets unsafe due to mob violence, coupled with the public's perception of local and central authorities as unable to find solutions to control the violence or to heal the divisions, there were reasons for parliamentary concern.

But the solution of the Blake Act in some ways ran counter to popular political practices and ideas. Political ideology not only accepted societal cleavages as useful sources of political support but took sectarian and ethnic identifications (such as "the Orange and the Green") as the appropriate primary loyalties for Canadian citizens. The parliamentary acceptance of Blake's bill rested on a recognition that, in a time of unrest approaching the proportions of a national crisis, a new mode of state intervention must be mobilised. The compromise view was accepted in Ottawa that sectarian activities should not necessarily be directly restricted or controlled but that participants should be prohibited from carrying arms in order to prevent incidents of urban violence and disorder escalating into

murder (although the form of such control was not easily settled - resulting in lengthy delays in imposing any solutions).

The Montreal disturbances of 1877 suggested a failure of, what we have termed, hegemonic order - a crisis where one or both of the local elements involved was unwilling to end the violence or to heed its own local leadership or the central authorities. The 1878 debates on the Blake Act demonstrated a mood of parliamentary apprehension followed by a near-palpable sense of relief at the production of a legislative solution acceptable to representatives of sectarian elements.

In later episodes of violence or threatened violence where the Blake Act was invoked, communications around the incidents were more limited and local in nature. While this was partly an artifact of whether or not Parliament was in session at the time of crisis, we suggest that concerns were reduced when the city involved was not Montreal and when sectarian hostility was replaced by overt economic rivalry, as in the case of Quebec City in 1879. In this view it was the threat to hegemony presented by major sectarian conflict in Montreal which allowed the legislators to support an Act prohibiting the carrying of firearms and interfering in individual liberties, in order to lessen the risks associated with violence and unrest.

There was little public discussion of early adulteration measures in Parliament. The few public communications relating to adulteration legislation consisted of official material put out by state officials within the Department of Inland Revenue or occasional newspaper

articles by concerned sanitarians. When public debate became more frequent in the 1880's during parliamentary readings of bills to extend adulteration legislation to farm products - it pitted farm lobbyists against producers of agricultural fertilizers and dairy farmers against producers of margarine, in other words, parties caught in economic conflicts over the necessity or desirability of state control over standards of production. In both instances, farmers' parliamentary representatives produced lengthy and effective broadsides of discursive rhetoric designed to overpower opposing stances.

What appears significant here is the relative development in discursive communications in the two periods; in the decade after the introduction of Canadian adulteration legislation in 1874, sanitarians and medical doctors had helped to establish the discourse of public health as the appropriate regime of discourse for analysis of adulterative practices, and this discourse was now relatively common both within Parliament and among the broader public. The initial adulteration legislation was linked to a Canadian variant of a broad international perspective on public health, which was carried by relatively few Canadian sanitarians in the decade after Confederation (by only a small number of adherents among members of parliament, the medical profession and the public service). In contrast, the significance of discursive communications for the later parliamentary margarine debates was marked, for the debates were now conducted largely in sanitarian terms. Farmers' representatives spoke using a sanitarian discourse which made supporters of margarine production

appear to be in favour of adulterated production measures likely to undermine public health. The approach effectively masked the fact that the real basis for conflict was an assumed economic threat to the butter industry.

In theoretical discussion (in Chapter Two) concepts of "organic" and, more specifically, "ruling-class" intellectuals were introduced, together with discussion of earlier sociological analyses of legislative developments and the concept of "moral entrepreneurship". The research provided some evidence concerning both approaches. The roles of Sir John A. Macdonald and of the lawyer-capitalist, J. D. Armour, in relation to the Peace Preservation Act as well as Edward Blake's participation in developing the Blake Act, might be termed "moral entrepreneurship" except for the fact that there was little evident organization or public leadership exercised by these individuals in the initiatives mentioned. They are better described as agents who undertook roles as ruling-class intellectuals. One must turn to anti-adulteration measures for events more appropriately termed "moral campaigns", to the introduction of the first food and drugs legislation in 1874, and to the fertilizer adulteration campaign of 1884-85 and the anti-margarine campaign of 1886.

On the subject of the Peace Preservation Act, neither Sir John A. Macdonald's nor J. D. Armour's proposals amounted to "moral campaigns"; (one view would suggest that the Tory Party was too closely allied with railway interests to make any campaign necessary). The Tory government's determination to develop a national

transportation infrastructure probably underpinned the decision to reintroduce pre-Confederation anti-labour legislation. In the other case, Armour's demand for extension of the Peace Preservation Act to apply to private works, while directly in the interests of private capital, was based on a personal interest in the problems of a particular enterprise. Blake's role in 1878 too was scarcely "moral entrepreneurship", for Blake acted as a facilitator and figurehead for those directly concerned in the Montreal unrest, serving both as an "honest broker" figure acceptable to both sides of the sectarian conflict and as a highly-respected political and legal leader who might be expected to carry an innovatory proposal through Parliament. Blake felt a personal moral obligation to assist in providing a legislative solution (due to his Irish family origins and his continuing interest in Irish affairs) and the part he played fitted a ruling-class intellectual role closely, giving leadership and behind-the-scenes expression to moves towards a legislative solution. The legislative campaign itself was orchestrated largely by Reform Catholic political elements from Montreal, both Irish and French, so Blake was not the moving force behind the proposals for a legislative solution, providing instead the legal form and the political credibility.

The notion of ruling-class intellectual fits well too with the approach to adulteration which we surmise was undertaken by the Commissioner of Inland Revenue, Alfred Brunel, and other sanitarians in Ottawa. Brunel was a reformer and sanitarian by inclination; in his years as Commissioner of Inland Revenue, he and his officials were

aware of British approaches to adulteration and able to envisage how similar anti-adulteration measures could be operated from within the Inland Revenue department in Canada. Sanitarian elements in Parliament - including a backbench M.P., a Senator and some medical men - probably together with Brunel, succeeded in including an earlier failed anti-adulteration private member's bill in a government Inland Revenue bill in a form depending for enforcement on the Inland Revenue bureaucracy. Brunel established an anti-adulteration section within the Department which grew rapidly over time and took charge of applying all subsequent adulteration legislation; this move ensured that adulteration did not fall into the sphere of police enforcement as a common criminal offence but took on a more regulatory character, as part of the responsibilities of the excise officers, while remaining a criminal offence in legal terms.

But in relation to moral entrepreneurship, the most striking and visible public campaigns were those mounted by the dairy farmers' lobby against butter substitutes and by the farm lobby against the adulteration of fertilizers. As evidenced by parliamentary debate, the margarine campaign was the more effective of the two in terms of altering government approaches. While the farmers' fertilizer demands distorted evidence on the so-called adulteration of fertilizers, opponents of margarine succeeded in grossly manipulating communications in a strategy aimed at banning the manufacture and importation of margarine altogether. Farmers' demands were successfully managed and turned into a government measure through a

discourse identifying margarine production with adulterated ingredients and butter with "purity".

IV Linkages between Legislation and the Social Formation

The effects of the production and application of legislation on the broader social formation, the fourth thematic issue, designated a relatively obscure area, given our prime focus on actions by the state and its agents and not on the broader social formation. A limited beginning can be made here while recognizing that "effects" concerned economic, political and ideological levels of society and had possible ramifications and repercussions at all levels. First, setting the applications of the statutes in perspective, one distinctive feature of all three series was their shared nature in defining offences which were effectively "victimless" crimes, that is, which depended on state agents to identify behaviour constituting an offence, to initiate prosecution and to act as witnesses. (It would be interesting to establish the degree to which most "minor" federal criminal legislation enacted in the period shared this characteristic, whether, for instance, the period was one of marked initiatives with respect to new victimless crimes.)

Questions of the effects of statute series on the social formation can be approached via specific and more general linkages. In specific terms, the Peace Preservation Act was used routinely to enforce prohibition and applied by agents of the central state or local magistrates along designated construction sections of the Pacific railway line. The sections were selected by Cabinet not on the basis

of demonstrated labour troubles but in direct response to contractors' or to CPR requests for legislative proclamations. Judicial appointments and local policing, and therefore the direct effects of the statute, were a function of central state resources in the field and were limited by state parsimony in appointing judicial officials and in permitting officials to appoint police constables along stretches of the line.

The Blake Act on the other hand - being rarely proclaimed (only three times in all) and operating in only two cities (Montreal and Quebec) - had relatively few direct effects. Official federal licencing of firearms was under the control of local judicial figures in the cities involved but the licencing method does not appear to have been widely used; no reports were found of charges being laid by local police for offences under the Blake Act. The adulteration legislation of 1875 was also relatively unused, its *mens rea* offences being virtually "unenforceable". Enforcement efforts lessened after 1884 when the defence of "ignorance" of adulteration was added to the statute. Only the 1875 offence sections pertaining to alcohol and other sections defining absolute liability offences were relatively useable. The adulteration legislation pertaining to foodstuffs was inoperative in practical terms as a punitive deterrent against adulterative practices and, as an unused sanction, the legislation could hardly serve an exemplary function. On the other hand, later adulteration statutes pertaining to agricultural fertilizers and margarine and relying on absolute liability, appear to have had more impact.

In general, some of the direct effects of legislation were deliberately planned for and foreseen by those devising initial statutes, but others were not anticipated precisely and many were unexpected because they were contingent on later developments in other fields. For example, in certain instances opportunities created by initial legislation were seized on by elements not involved in earlier developments; alternatively, general social transformations took place and remade enforcement contexts, with the result that outcomes were far removed from initial intentions and could scarcely have been anticipated by any of the agents involved. Into which categories did the effects of the legislation studied here fall?

In terms of direct effects, there is little doubt that the appointments under the Peace Preservation Act had some of the impacts anticipated by government and by railway contractors. The presence of magistrates and peace commissioners affected railway construction workers by cutting off legitimate alcohol supplies; in making alcohol more difficult to obtain, the Peace Preservation legislation directly benefitted contractors and other entrepreneurs. At the same time, application of the statute created an illegal trade in liquor and, in the absence of determined state enforcement, it opened the risks and profits entailed in prohibition to whiskey traders. The statute had wider ramifications too, for one result of proclamations was to furnish a federal policing presence along proclaimed sections of the Pacific line, a presence which effectively strengthened what might otherwise have been weak or absent policing in some frontier areas.

Admittedly, local federal police strength was inadequate to the task of enforcing criminal laws against large numbers of railway labourers but it did provide a semblance of a system of formal justice during railway construction. On the other hand, the legislation demonstrably added forms of, what has been termed, log cabin justice to the already inequitable relationship of employer and employee. In some areas log cabin justice greatly strengthened the hands of contractors who seized on the opportunity to play direct roles in criminal justice by accepting commissions as magistrates or by organizing policing.

In terms of indirect effects, the research showed that the extension of direct federal state administration of justice to railway navvies, whiskey traders and others did not go uncontested by the provincial authorities concerned. The state's incursion into the provincial field of administration of justice and the statute's effects in preventing the municipal licensing of liquor suppliers brought about a "backlash" in the form of provincial protests and, as a result, enforcement officials loyal to federal and provincial levels of government clashed in certain localities. Provincial authorities emerged victorious from these encounters, as the federal state was forced to recognize proclamations of the Peace Preservation Act were temporary measures and, in some instances, to withdraw them in the face of opposition from provinces and local towns. So the statute had implications for broader federal-provincial relations.

The Blake Act presented a major contrast in terms of effects; while it was welcomed with considerable relief at the political level in

Ottawa, it was scarcely applied in practice. (Indeed only one instance of enforcement was established in the research, when Mayor Beaudry of Montreal ordered special constables to search Orange Order members arriving by train in Montreal in 1878.) Sectarian tensions seemed to have eased in Montreal by 1879 and no more serious riots occurred. This could have been the result of firm new directives from local political leaders to members of national societies (recognizing how potentially serious the affrays of 1877 and 1878 had been and attempting to avoid recurrences) but, as such directives were largely ignored in 1877 and 1878, we need to look further afield, probably to improvements in the economic situation of the working class in Montreal. In either case it is difficult to see how the Blake Act had any impact in reducing violence between Protestants and Catholics in the city. (Routine searches of persons for weapons had not been instituted and searches of houses were excluded from the Canadian statute.) Even Blake, its draftsman, commented in a later debate that the statute had very restricted application.

The utility for the state of both the later proclamations in Quebec and in Winnipeg was that the Act served as a viable step for the Dominion Cabinet and for local authorities and one which was both more specific and less extreme than relying on the Riot Act. But the Blake Act proclamations had few effects besides symbolic ones; invoking the statute was little more than a formality - a move in the direction of official control of arms but a measure with few apparent teeth. In the case of the Montreal riots and probably in the Quebec riot too, the statute remained a federal gesture; the proclamations were a

statement of Ottawa's readiness and its powers in case of future repetitions of unrest.

Early adulteration statutes, although also ineffectual, presented a very different example of criminal legislation. Firstly, adulteration legislation was directed at relatively "respectable" elements, including retailers, wholesalers, producers and importers, not at railway navvies or Catholic and Protestant workingmen fighting in the streets of Montreal. Secondly, state applications of adulteration statutes were less than forceful, not because the state lacked enforcement resources (as with the Peace Preservation Act) but perhaps because policing the legislation might offend political opinion (as with the Blake Act) and also because, it seems, of the nature of enforcement procedures treating adulteration as an Inland Revenue offence. In other words, problems arose due to the classes of citizen against whom the statutes were to be used and the legal impediments to successful prosecutions. When this became clear, by the late 1870's, there was no sign of parliamentary willingness to make all adulteration offences absolute liability offences. Instead absolute liability was reserved in subsequent statutory developments for forms of adulteration which had strong economic significance, either for the state or for politically dominant elements, that is, for offences such as adulteration of alcohol or of fertilizers and for mislabelling of canned goods or production of margarine.

If the Department of Inland Revenue was exceptional in not lacking procedures or staff to enforce the adulteration statutes, were the

public servants occupied in other functions besides enforcement? Did legislation have broader effects? Was the Department's role to re-educate elements who routinely relied on adulterative methods or was there an effort to use other methods to change trade practices? Did the Department inform the public of the frauds being practised? Although the evidence considered does not support the contention that inactivity was part of the Department's "philosophy", and a few attempts at enforcement were made, none of the efforts was strikingly successful. In the field of public education, the Department made detailed findings available on the variety and extent of adulteration but they were not widely circulated; it used a method of deterrence in threatening to publish the names of vendors of adulterated products in local newspapers - but this threat was not carried through. Even official collecting of samples might have been salutary initially in this regard but, once retailers recognized that no prosecutions resulted, its effectiveness disappeared.

V Criminal Law and Internal State Processes

Internal state processes are reviewed by touching on three distinct facets of state process in relation to legislation: the activities of central state agencies in Ottawa; the roles played by state agents in the field; and the effects of legal developments for internal state structures.

Although all three statute series were to some degree directly administered by the federal state, our examination of internal state processes revealed that the degree of involvement of central state

agencies in their practical applications varied considerably. As would be expected, infrequent use of the Blake Act meant that it occasioned very little central state activity; the Cabinet proclaimed the legislation on three occasions and the Department of Justice provided an occasional opinion on the statute and routinely paid several Quebec appointees.

The Peace Preservation legislation, on the other hand, resulted in frequent requests by contractors for proclamations which necessitated routine processing by state officials, usually followed by Cabinet proclamations; these requests occurred sufficiently frequently for the political procedure of forwarding applications to become settled in the Department of Railways and Canals while judicial appointments were processed through the Department of Justice. Justice officials took on routine tasks relating to appointments, including overseeing a total of about twenty judicial appointees in the field (although appointments - as minor forms of patronage - remained a political matter).

Adulteration legislation had entirely different effects for the internal processes of the state; the statutes furnished a significant area of work for the Department of Inland Revenue and for its outside service. In addition adulteration was an area of specialization for chemical analysts, appointed both across the country and in Ottawa to investigate samples and methods of detecting adulterants. Despite the the early legislation's lack of direct impact on the social formation, adulteration was a field of growth for Inland Revenue, marked by new

statutes and increased staffing and budgets - a form of successful "empire-building" in a purported field of public health, which we attribute partly to the behind-the-scenes entrepreneurial role of the Commissioner of Inland Revenue. In terms of internal state structures, adulteration represented the legislative field with greatest impact on state structures and processes - allowing the development of an entire new division within Inland Revenue and the eventual hiring of adulteration inspectors across the country.

THE FINDINGS AND THE SOCIOLOGICAL PERSPECTIVE

The intention underlying this research was to attempt an "informed reading of law" or, more precisely, a reading of new minor criminal legislation in the light of theoretical approaches taken from certain neo-marxist orientations, and including such concepts as class, economic conflict, the state and coercion. From the outset the approach recognized the likelihood of uncovering contradictions in the findings, suggesting both that no simple single schema would take account of the full range of legislative developments and that a fully adequate theoretical approach to lawmaking might neither be available nor even necessarily possible. Thus, instead of accounting for complexities and contradictions, the emphasis lay in beginning to develop means for examining and comparing the passage and application of diverse criminal laws and for approaching criminal legislation in terms of fundamental elements of social theory.

Our initial orientation insisted that earlier accounts of legal development, especially those based on notions of economic determinism or on liberal pluralism, were inadequate for an approach to legislation via social theory. At this stage of analysis, we can suggest that the findings as interpreted are consistent with these claims. To investigate the alternative positions briefly: taking an economistic stance, one would have anticipated full and forceful application of the Peace Preservation Act, especially in periods of surplus supplies of labour, as a coercive state measure against unorganized labour in the interests of capital and in pursuit of state economic policies. Instead the state administered the Act relatively weakly, appointing too few Commissioners and appearing parsimonious and even reluctant to provide adequate policing.

Again from an economistic position, the urban riots of the 1870's, which disturbed the middle classes of major cities and disrupted trade and business, might have been dealt with promptly and efficiently through strict firearms legislation or by means of state reliance on a national police force, a force independent of sectarian affiliations. Instead the state continued to rely on local, sectarian militia forces, ineffectual and sectarian local policing and on a weak new piece of criminal legislation. In the case of adulteration statutes, an economistic interpretation could suggest that legislation for the prevention of adulteration of foodstuffs be viewed as an instance of state intervention in the market economy in the "longer-term interests" of manufacturers and producers; that is, as an example of the state stepping in to regulate industries in furtherance of state

goals of maintaining and facilitating capitalism. But this is not a view at all clearly sustained in the evidence considered. In fact the nature of the "markets" concerned shifted fundamentally during the period - from domestic production of foodstuffs to large-scale production or manufacturing of many items. In the absence of manufacturers' demands for regulation, we have identified early federal actions to regulate markets as partly a state initiative; one could also suggest that regulation was a standard form of state intervention but only possible in Canada in later periods, once markets were organized, rationalized and to some degree integrated. (Evidently the question of the possible proponents underlying specific adulteration regulation require further exploration.)

On the other hand, an alternative approach from a pluralist perspective - emphasising competing interests - falls in our view to provide an adequate account of these legislative initiatives. A pluralist account tends to have difficulty explaining state actions if it declines to accord autonomy to the state itself and sees the state as merely a neutral arbiter of competing demands. For example, our examination of both Macdonald's reintroduction of the Peace Preservation bills in 1868 and 1869 and of the adoption of early adulteration legislation in 1874 failed to reveal clear or powerful political groups actively seeking legislation; it is not clear how such instances can be approached from a pluralist schema.

Where a traditional pluralist account might be more relevant is perhaps in relation to later adulteration statutes where the reading given here suggests that the farmers' lobby pressed adulteration legislation relating to fertilizers and to margarine onto the state at the expense of manufacturers. However, the approach does not fully explain the reluctance of the state in these examples. An economic account could argue that the expense of legislative regulation to manufacturers was low in practice because many adulteration statutes were not enforced; it could also claim that the approach was deliberately ineffectual in many areas (although our evidence does not support this position).

If we reject such approaches to legislative development, what remains to be said about the perspectives underlying the theoretical grid used in the research? We need to return here to the empirical evidence outlined in the previous sections of the chapter and to consider late nineteenth-century Canadian lawmaking in the light of the theoretical positions adopted at the outset, moving to raise questions about how useful these theoretical positions proved to be.

State "production" of criminal law as a concept in itself raises significant questions for, while it is clear that state institutions and state agents participated in the production of items of legislation under study and initiated some legislative innovations, there was little evidence of, what can be termed, consistent state "policies" with respect to criminal law. There was no master plan or shared sense of state policy underlying the developments studied.

While this is hardly surprising (given the relatively low significance attached to criminal legislation by comparison with major state economic goals), what remains important is to attempt to decipher the legislative process, not to view these innovations as either a set of non-directed results or as random outcomes of political processes.

Firstly, even if criminal legislation was not dictated by specific state policy, major political directions adopted by the state did affect criminal legislation, albeit only indirectly. State political interventions producing criminal law were at times guided by state policies relating to more general fields of state concern. For example, considerations of economic development and transportation policy were paramount for the state in relation to the Peace Preservation legislation, while concerns around hostile sectarian relations produced the Blake Act. Such instances of minor criminal legislation were shaped, in our view, by state policy directions but by directions in divergent fields holding greater overall significance for the central state. The outcomes of state processes concerning criminal law, what Ignatieff has termed, "the erratic line of policy" (1981: 95), should therefore be seen as a deliberate line dictated by broader political considerations, but a line probably outside the view of the criminal justice system and its agents.

Secondly and more importantly, whether or not specific legislative initiatives can be interpreted in the light of broader state political policies, instances of legislative initiatives and applications were clearly developed and contextualized in relation to the social

formation which produced or applied them. The production of minor criminal statutes was patterned, in our view, in sometimes subtle ways, and at every level of the social formation - economic, political or ideological - and such patterning processes were what the research examined. While the forms of such patterning were not necessarily fully explicated, we can at least comment on some possibilities and emphases suggested in the dissertation research.

The significance given theoretically to the concept of the economic base was paralleled in the research by an empirical emphasis on the material foundations of the newly independent Canadian formation, and on the notion of societal transformations as major changes underlying developments in the period, including developments in substantive criminal law. In our view, societal transformations impacted differentially on specific fields of legislative change but all developments studied were affected by one or more fundamental changes in the economic base. To specify, shifts in modes of production from domestic to factory manufacture and the development of new products significant to farmers underlay political demands for regulation of manufacture via adulteration legislation; increasing economic dependence on urban working-class labour for production, manufacture and services arguably affected bourgeois concerns for general improvements in public health measures and for specific improvements in the quality of foods; thirdly, state policies for development of transportation in frontier areas underlay re-enactment of the Peace Preservation Act and, lastly, population shifts to urban areas coupled

with economic declines in the trade cycle helped to produce urban violence and ensuing proclamations of the Blake Act.

At the political level, the state was considered to have furnished an arena for political struggles and political outcomes set patterns of allocation of resources and societal priorities in areas including criminal legislation. If the state, as personified in the form of legislators, public servants and other agents, produced certain political decisions concerning criminal law measures, can one identify the impact of class structures as well as of sectarian and ethnic rivalries at the political level? Some practical interventions were clearly made by class agents demanding legislative provisions to apply against other elements; thus we saw how railway contractors were active at the political level as well as state enforcement agents (both demanding legislation against railway labourers), and farmers were active against manufacturers. These class dualities took their places, however, alongside ethnic and sectarian divisions, represented for instance in the Montreal national societies, the Catholic Church and the Orange Order. In relation to urban violence and the Blake Act, Montreal Catholics were arrayed politically against the Orange Order, not against other class elements.

What is suggested, however, is not that the state provided an arena for political struggle and then "bowed out" leaving the contestants to fight out conflicts which were essentially economic-based. The conclusion is rather that the state provided a political arena only in certain cases and did not necessarily remove itself from the struggle;

in other instances, formal state processes were in practice largely symbolic exercises legitimizing already-settled issues. Many political struggles, we suggest, occurred outside the formal political sphere in the form of struggles for access to political resources and to political means. These struggles involved questions of organization and of membership for fractions and groups, and political decisions to align with one or other of different class, ethnic and religious elements.

Our analysis suggested that the parliamentary forum was actively used in instances of legislation only where two or more organized political elements were in marked disagreement. Major debates occurred between religious elements, such as the Orange order and moderate Montreal Protestants and Catholics, and between economic groups, the farmers and Tory Cabinet Ministers in later adulteration legislation (where the latter perhaps spoke for manufacturers), but much of the legislation examined was not publicly disputed at the parliamentary level.

Turning to the question of ideological factors in legislation, we suggest that there was an identifiable and ordered character to the discursive communications in legislative fields, which implies that ideological interpretations were crucial enabling factors in the production of legislation. In our view, the linkage of legislative orientations to more fundamental dominant ideologies carried the legislation studied into the body of existing law, allowing enactment without, necessarily, public debate.

Use of the concept of discursive communications in the research attempted to recognize the exchange and dissemination of complex, constructed viewpoints, viewpoints which contained within them attempts to interpret sets of societal "facts" in relation to the goals of particular elements. These discursive formulations were often broadly accepted and, when used in formal parliamentary debates could be highly effective in delimiting communications in relation to the task at hand (as defined by dominant parliamentary groups); the content of debate was constrained and outcomes legitimated in our view through linkages between discourse and underlying ideological positions.

In terms of "ruling-class intellectuals" and their reliance on discursive communications, reform spokespersons who pressed for legislative changes in the field of public health were defined by shared intellectual and moral beliefs rather than necessarily by shared positions with respect to major societal cleavages. However, in practice, public health reformers belonged to professional elites and occupied similar class positions - in the case of adulteration, medical doctors and "sanitarian" bureaucrats or senators were all educated members of the bourgeoisie or "urban gentry", in Stedman Jones' phrase. While sharing common class backgrounds, they were not necessarily united by race or religion but by the discursive communication patterns they had adopted around particular issues.

Turning to state approaches to criminal law enforcement, under the B.N.A. Act the federal state did not control enforcement (although

Ottawa played a major role in defining how applications of provisions should be carried out). In the three statute series studied, the state had a direct impact on practice because Ottawa retained control over implementation of offence provisions; this is a surprising finding, given the small, almost embryonic state form and the agricultural and primary industrial nature of the economic base at the time of Confederation. (To say, therefore, that the Dominion made the criminal law and the provinces enforced it would be inaccurate in relation to the instances studied and conceals a great deal of detail.) In these cases, the conceptual distinctions suggested between lawmaking, law application and law enforcement are useful for illuminating the limits of central state involvement, which fell at points between methods of application and actual enforcement, but closer to enforcement than for most criminal laws.

If we recognize that enforcement by local authorities was usually the case but that newly-created victimless minor offences proved exceptions to this pattern, can we suggest why this was so? In our view the central state felt it imperative to maintain control of remedies in criminal law for forms of lawbreaking, including selling liquor to navvies and carrying guns in Montreal, because local authorities were seen as incapable of effective enforcement. (No evidence was found, for instance, of powerful fractions demanding Dominion enforcement in these cases, or of provinces declining to enforce criminal law.) On the other hand, in the case of adulteration, Dominion intervention assured uniformity of standards and

enforcement across the country, a significant consideration for a state attempting to rationalize trade practices.

CONCLUSIONS

If we try to summarize what has been achieved in this dissertation, then a primary emphasis must be placed on the efforts made to link nineteenth-century law creation to the contextualizing, newly-emergent Canadian social formation. For most readers, nineteenth-century laws in statute books remain obscure writings; they appear as formal pieces of legal drafting unless and until they can be situated in relation to societal structures, linked to aspects of specific and changing societal contexts and understood in terms of their effectivity. We have argued that the significance of legislation included not only its practical and symbolic effects for particular social actors or contexts and for the broader formation but, also, the effects of societal processes underlying or surrounding law creation or application, as well as the part legislation played in developing and maintaining broader ideological frameworks.

A second principle emphasis must be recognition of the role played by the newly-emergent Canadian capitalist state in federal lawmaking processes and the attempts made to locate and identify details of the state's role in particular legislative processes. State processes in the late nineteenth-century produced laws in patterned ways and the development and application of law in turn helped to sustain emergent social relations in a quasi-colonial, mercantile and agricultural

social formation, under the aegis of an embryonic form of federal state. Furthermore the state and state institutions were involved in attempts to create hegemony relying in part on structures of thought and communication which helped to shape particular social relations of domination.

These claims do not underestimate the difficulties of achieving a full and clear understanding of processes of lawmaking, nor do they suggest such goals have been fully met in this project. What has been attempted is an initial formulation of and search for linkages between law and societal contexts in terms allowing recognition of the significance of theoretical concepts including modes of production, societal cleavages, class, politics and ideological perspectives. The problem of discursive communications has also been approached (although not resolved in any way), and recognition given to the part played by communications associated with lawmaking.

We started from the perspective that law is produced through ordered social processes, and we have begun to attempt to decipher law creation in societal contexts on certain further assumptions including the primacy of economic structures, a degree of autonomy of the state and the importance of ideological interpretations and communications relating to and embodied in legislation. In other words, we have begun to "unwrap" legislative processes in relation to social theoretical positions.

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FOOTNOTES

CHAPTER ONE. INTRODUCTION

1. The first statutes enacted in each series were: the Peace Preservation Act of 1869 (32-33V.,c.24); the Inland Revenue Act of 1875 (37V.,c.8); and the Act for the Better Prevention of Crime - the Blake Act of 1878 (41V.,c.17)
2. The state, civil society and the economic base (which furnishes the material foundations of society) constitute the "social formation" in our version of Gramsci's terms. While this interpretation could be disputed, Gramsci's use of the terms was not always necessarily consistent. See Hall, 1977: 47.
3. Both the processes of selecting statutes for study and of developing theoretical ideas for application to empirical analysis are discussed in Chapter Two.

CHAPTER TWO: SOCIOLOGICAL APPROACHES TO LAW AND RESEARCH STRATEGIES

1. This use of concepts from neo-marxist theory is evident in the work of both Canadian historians and lawyers working in the field of legal history: to give two examples, in a recent article on a major law practice in mid nineteenth-century Montreal, lawyer and historian Blaine Baker used concepts including "political ideology" "lawyerly statecraft" "state institutional frameworks" "institutionalization of values" "intellectual and ideological orientations" and "Gramscian ...intellectual" (1990); another legal writer, discussing "Law, Ideology and Corporate Crime...", wrote of "ideological discourses", "moral hegemony", and "legal ideology" (Sargeant, 1989).
2. Revisions to traditional economistic theoretical Marxism beginning in the 1960's included a move away from instrumental theories of the state and had led by the 1980's to debates between divergent schools of neo-marxist non-instrumental analyses of capitalist state development.
3. The two theoretical schools which they represent are termed here "cultural" and "structural" marxism (Hall, 1981), with cultural marxists represented by Gramsci (1891 - 1937) and by contemporary theorists including Stuart Hall, and structuralists by Louis Althusser (1918 - 1990) and Nicos Poulantzas (1936 - 1979).
4. The notion of regions, levels, or instances of structures within the social formation was derived from Marx's work, developed by Balibar and drawn on by Althusser. (See Benton, 1984)
5. The primacy of the economic base refers to the architectural metaphor of base and superstructure developed by Marx and to the view that the structure of the economic level of society underpins other levels and also determines which structural level of the society is dominant. (Craib, 1984: 134)

6. The "relative autonomy" of the state in structuralist use is the "correlate of 'determination in the last instance' by the economic". "Relative autonomy" was used by Poulantzas to refer more specifically to a "disparity between the economic-corporate interests of a class and the requirements of its hegemonic dominance in the context of complex patterns of political allegiance". For Poulantzas this meant that state action could not be reduced to the pursuit of the economic interests of the dominant class or class fractions (Benton, 1984: 18, 148, 198). In effect the notion of relative autonomy implies that the economic base allows elements of independent change in the superstructure.

7. The proposal developed by Jessop in The Capitalist State (1982) is for "an adequate marxist account of the state in capitalist societies" according to the following guidelines

- a. The state is a set of institutions that cannot, qua institutional ensemble, exercise power.
- b. Political forces do not exist independently of the state: they are shaped in part through its forms of representation, its internal structure, and its forms of intervention.
- c. State power is a complex social relation that reflects the changing balance of social forces in a determinate conjuncture.
- d. State power is capitalist to the extent that it creates, maintains or restores the conditions required for capital accumulation in a given situation and it is non-capitalist to the extent that these conditions are not realized. (1982: 221)

8. Although the notion of social control persists in the historical sociology of law, recent critiques of the approach have been harsh: Chunn and Gavigan (1988) suggest that social control perspectives tend to lack a theory of the state and are frequently determinist while Cohen (1989) argues that the approach assumes the rationality of state action in pursuit of state goals.

9. In the period under study, political parties were only beginning to develop into their later national forms - a point discussed in detail in Chapter Three.

10. Unlike European states, Canada had no standing army or central police to call on in aid of the civil power, relying instead on local militia and on two battalions of the British army stationed at Halifax and Esquimaux, after the smaller British garrisons across the country were all withdrawn by 1871. This point is discussed further in Chapter Three.

11. See, for instance, Kealey's work on the Orange Order (1988) and the literature on religious tensions in Ontario in the period (Oliver, 1982). The importance of ethnic and religious cleavage was almost certainly increased by the absence of a politically significant working class political movement until late in the period. This absence may have also been partly a result, as Palmer has argued, of the prevalence of religious and ethnic cleavage (1983: 19, 183). Economic factors could play a part too in prompting or maintaining ethnic or religious

rivalry - for example, where conflict arose within a segmented labour force over scarce job opportunities. So the position has a certain circularity.

12. Gramsci's well-known distinction between "organic" and "traditional" intellectuals differentiated intellectuals tied to fundamental classes from those linked to classes reflecting earlier modes of production.

13. In an exploratory piece of research the selection of elements necessarily develops in association with fieldwork and in the present study theoretical elements were refined at the writing stage in an effort to clarify an approach which could be generalized in relation to criminal law but also specified to the particular instances under study.

14. "True discourses", like several of Foucault's terms, remains undefined in The History of Sexuality. One commentator implies that true discourses are supported by "an apparatus of knowledge and power" (Poster, 1984: 135). In other words, a true discourse is one which receives public recognition and institutional support (although this says nothing about whether the discourse is accurate or "truthful").

15. It would be an error to underestimate the extent to which criminal offences were distributed throughout the statute law prior to the codification of 1892. For example, the Post Office Act of 1867 defined numerous felonies (31V.,c.10, s's 77-78), the Railway Act of 1868 included the offence of manslaughter (31V.,c.68, s.74), and passenger acts relating to steamship safety (Steamboat Inspection Acts) included penalties as high as four hundred dollars (31V.,c.65, s's 5-37). The evident point is that much of this legislation attempted, by means of state intervention, to establish standards of responsibility for owners, operators and employees, in an apparent effort to avoid the consequences of carelessness or negligence for users and to discourage those working in such fields from neglecting their "duties". Why else are the penalties so high for relatively minor offences? For instance stealing a letter from the mails was a felony punishable by a penitentiary sentence of three to five years (s.77.1).

16. Considered as any statute defining a felony or a misdemeanour or an offence for which a possible sentence of imprisonment was provided, an offence requiring *mens rea*, an offence carrying a heavy financial penalty or one traditionally regarded as "criminal" in common law jurisdictions.

17. Although no doubt interesting material could be found in both these areas.

18. As one early commentator on colonial laws pointed out, while colonies "received" English statutes, laws passed prior to the date of reception did not apply if "not suited to the state of society in the new settlement" and British statutes "passed since the establishment of such constitution do not ... apply, unless expressly or by necessary inference extending to the colonies..." (Clark, 1834: 54). Clark

characterised the British approach in the second case by saying: "As Parliament has rarely had any motive to make laws for the interior government of the colonies, except in cases relative to navigation or trade, the instances of acts extending to them in other cases are not extremely numerous." (ibid: 74) This description of the British parliamentary approach to colonial legislation does not of course preclude efforts at direct imitation by elements in the colonies.

19. A point suggested early in the research by thesis committee member Professor Patrick Fitzgerald.

20. We know these statutes were adopted in Canada in 1869 (Brown 1981) and that they covered coining, forgery, larceny, offences against the person and malicious injuries to property. Comparison of these Acts with their English originals shows very close identity of wording with only some minor changes to fit the statutes to the Canadian setting, such as removal of irrelevant offences including breaching of fish-ponds and deer-hunting and the addition of a number of offences relating to lumber and the theft of timber, trees etc..

21. Clearly, there could be major studies to be made of how penalties associated with offences under such statutes compared one with another and how they were modified over time, but it was not the study proposed here.

22. So too do many theorists arguing from a capital-logic or state-derivation perspective.

23. Max Weber used the terms "economically relevant" and "economically conditioned" in his analysis in Economy and Society (1968: 382, 389, 333) and distinguished "economic" positions in society from those falling in the other two categories - an approach which can usefully be applied here.

24. "Functionalist" is used here in relation to Althusser's sense of the contribution of law to the persistence or "reproduction" of capitalist social relations (1969: 127-134). The criticism relates to how adequately the notion of prerequisites for a social formation can be established in theoretical terms and how it might be possible to differentiate between societal sources (such as law, the family or religion) contributing to different reproduction processes. As Benton points out, the question is how responses to functional needs are "distributed among institutional complexes" in the way they are. Benton writes "Even granted a 'need' for a 'factor of cohesion' in the social formation, for example, why should the satisfaction of this need fall to the state, in particular?" (1984: 223). As Jessop has written in relation to capital-logic analyses of functions of the capitalist state "...[they] take the functionality of the state for granted and essentialise its form as an adequate expression of this functionality." (1982: 120).

25. In this sense, hegemony and coercion are dialectically related in capitalist societies; the state undertook "positive, civilizing

activity" (i.e. the ethical and educative role which helped to manufacture consent).

26. Among the series of statutes studied, it might be argued that the Adulteration Acts were not primarily "criminal law", but the early Adulteration Acts were designed as criminal legislation - most offences included a *mens rea* element - and the nature of the Acts only shifted over the longer term to a distinctly regulatory nature.

27. These three statute series were chosen out of a range of possible subject areas (some of which may be pursued further). Consideration was given to the following criminal law statutes: legislation relating to Violence, Threats and Molestation (35V.,c.31) and legislation concerning Telegraph Operators (44V.,c.26); statutes relating to Explosive Substances (48-49V.,c.7) and criminal law regarding Holes in Ice (49V.,c.53), statutes concerning Cruelty to Animals (32-33V.,c.27), legislation relating to Betting and Gambling (38V.,c.41), and laws against Prize Fighting (44V.,c.30). The Vagrant Act was another possibility (32-33V.,c.28) and so were statutes controlling the use of firearms (40V.,c.30).

28. Preservation of the peace was dealt with under Part VI which concerned "explosive substances and offensive weapons - sale of liquors", as sections 117-118; and one adulteration offence was included under Part XIV "Nuisances" as s.194, "Selling things unfit for food."

CHAPTER THREE THE BACKGROUND

1. The term "summary" is a major understatement. Considering the large amounts of material available on Canada's economic history, together with the uncertainties still to be resolved and the existence of fundamental interpretative disagreements (based on divergent theoretical perspectives), the goal of brevity is daunting and risks a highly superficial account. Our point is that this is nonetheless a necessary starting-point if we are to attempt to unravel social forces underlying specific instances of criminal legislation.
2. The mercantile pattern was the colonial trading system adopted by Great Britain and other European powers in relation to their colonies. The metropole exported manufactured goods to the colony, sending out officials to govern it as well as traders and, possibly, settlers. In return the colonies shipped raw materials or domestic products back to the imperial power.
3. As Firestone (1960) demonstrates, agriculture contributed at least one-third of total value added to economic production throughout the second half of the century. Agriculture had replaced forest products as the main source of exports but, together, in 1860-65, they provided four-fifths of exports from the Province of Canada (Rowell-Sirois, [1978]: 23). The exception was New Brunswick where forest products and ship building dominated the economy in the period.
4. An exodus of rural population from Quebec has been documented as early as the 1820's (Pentland, 1981: 73).
5. The population of Manitoba, as reported in Canadian censuses, rose from twenty-five thousand in 1871 to sixty-two thousand in 1881 and one hundred and fifty-three thousand in 1891. Settlement in the areas of present-day Alberta and Saskatchewan only reached these kinds of levels by the turn of the century. Saskatchewan had eighteen thousand inhabitants by 1881 and ninety-one thousand by 1901; Alberta had seventy-three thousand people by 1901 (Pomfret, 1981: 50; Can. Encyc. 1985: 1637, 37).
6. However Laxer emphasises that Canada was distinct in terms of the high degree of state investment in economic infrastructure as contrasted with greater reliance on private capital in other "late-follower" countries such as Japan and Sweden.
7. "Agriculture" includes value of wheat products while sawmilling is included under "manufacturing" in Firestone's analysis. In Bertram's work, both milling and wheat products are included as primary manufacturing fields.
8. We will not discuss Canadian protectionism here, except to say that the view that the Tory's National Policy promoted the construction of "branch plant" manufacturing businesses (in which foreign manufacturers, usually American or British, opened factories within Canada to avoid tariff barriers) and thereby speeded up industrialization processes in

Canada is debatable. Dick (1976), for instance, has argued that the effects of the policy have been overestimated by economic nationalists and suggests that the costs for Canadians may have outweighed benefits.

9. The figures for Toronto were as follows:

	Number of establishments	Number of employees
1871	561	9,400
1881	870	12,708
1891	2,109	24,470
1901	847	42,500
1911	1,100	65,000

Source: Canada censuses. (Cited Kealey, 1982: 50 and Johnson, 1983)

10. "Food products" refers in Bertram's analysis to cheese, meat products, wheat flour and canned or cured fish.

11. The inputs for the industry including iron ore were imported from the United States.

12. It was based on the British system, which was modified in the United Kingdom after the repeal of the Corn Laws. When the British removed tariffs on staples such as wheat (in an attempt to relieve the Irish famine) the Government introduced an income tax in the late 1840's to replace lost revenues. In Canada, the income from duties amounted to over seventy per cent of all public monies in New Brunswick and Nova Scotia before Confederation (including municipal revenues) and over fifty-six per cent in the Province of Canada. Duties and excise taxes provided over ninety per cent of federal revenue as late as 1913 (Can Encyc. 1986). Canada introduced an income tax in 1917 to finance First World War costs.

13. As Rowell-Sirois notes, "as compared with the total debt of \$93 million accumulated by all the colonies in their century of existence before Confederation." ([1978]: 61). Of this amount, \$40 million had been raised by the colonial and municipal governments for railway development and almost another \$20 for constructing canals (ibid: 22).

14. As late as 1881 most of the Canadian population was rural. Waite reports that 75 per cent of the population lived outside "any incorporated city, town or village of any size." (1971; 8)

15. A figure which represented four per cent of the estimated population of all the colonies in 1851 (Pomfret, 1981: 50)

16. As Johnson (1983) points out, this means that more Europeans were emigrating to Australia and Argentina than to Canada.

17. Places of birth of Upper Canadians in the 1851 census were recorded as Ireland 18%, England and Wales 9%, and Scotland 8% (Johnson, 1983).

18. "...an industrial reserve army, kept in misery in order to be always available to capital;" (Marx, 1906: 33). Although the canal labourers or "navvies" were not industrial employees, they were engaged

in building the transportation infrastructures relied on by an industrializing economy.

19. Richard Preston, who baked bread to sell to the Irish canallers on the St Lawrence, wrote in 1846 that they "live in shanties generally their own property, value nine or ten dollars. They are in no regular order but scattered about every where,.....A good many of them speak the Irish language." (1974: 89). As the deck fare from Montreal to Kingston at this time was three dollars, the shanties seem likely to have provided minimum shelter. ("Shanty" is an Irish term meaning hut or mean dwelling (Ogilvie, 1879).)

20. For instance, in the strike at Cross Lake, near Kenora in 1879 (described in Chapter Four), the *Winnipeg Daily Times* reporter in Cross Lake wrote that "Numbers of navvies [labourers] are hourly arriving from Winnipeg seeking work...." (May 12). It is noticeable that the arrested strikeleaders' names were all Irish or British: Patrick Ryan, Edward McHale, John Murphy, Thomas Donavon and William Sinclair.

21. In her research for the period 1840-1880, Bleasdale mentioned German workers being introduced by contractors as early as 1858 (1984: 262) and Italian workers brought in as labourers on the Welland Canal in 1876 (ibid: 264).

22. In part these stipulations may have been prompted by a report from the Immigration Agent of the Government at Toronto, J. A. Donaldson, submitted to the Minister about the same date and describing the situation of Irish immigrants in Toronto. Winter times were especially difficult due to high levels of seasonal unemployment in most cities and the cost of fuel. See Fingard (1988) on conditions in Halifax.

23. According to Johnson, strikes were frequent in Ontario in the late 1880's as a result of employers lowering wages or laying off workers (1983).

24. Although entrepreneurs claimed that prices of basic foodstuffs and clothing had lessened by the 1880's and improved the conditions of working life, the cost of shelter and fuel in cities seems to have remained high (Bliss, 1972; Bradbury, 1979; Palmer, 1983).

25. It is interesting to note that, as both Careless and Pentland point out, the Canadian policy of financing the development of transportation (in which state revenues from tariffs were linked to state subvention of major public works, with such spending resulting in even higher duties) was well established in the pre-Confederation period. (Careless 1967: 146; Pentland 1981: 158). Pentland writes:

The "National Policy" of the 1870's of building a Canadian national economy with the aid of protective tariffs is still discussed readily as if there had been no policy of building a national economy with the aid of protection in the 1860's, 1850's and 1840's. (1981: 158).

26. Although the 1869 Peace Preservation Act specified "public work" to mean "Canal or Railway", the Act was never applied to canal

construction after Confederation (32-33V., c.24, s.1). J.-L. Beaudry, Mayor of Montreal, appealed to Mackenzie to proclaim the Act during the Lachine Canal strike of December 1877 but Mackenzie refused because the Canal was in a city and the Act was therefore inapplicable. (N.A. R.G. 11 Vol 473 M/f #T900 C3D1 Files 71436, 71442, 71452, and 71457). Precisely one Order-in-Council was found pertaining to canal labourers: in 1878 the Rev. W. Brethour was paid a sum of six hundred dollars for "spiritual services rendered to Protestant labourers engaged in the construction of the Beauharnois Canal" (R.G. 2, o.c.#250, 1878). The sum was recommended by the Lieutenant-Governor of Ontario, authorized by the Dominion Government and payment charged against the Province. (It is not clear why Ontario paid for a Protestant cleric to work on a canal constructed in Quebec but the situation suggests a parallel with the use of priests and clergymen by railway contractors in Britain. See Cohn (1981).)

27. The railway's route, along the Baie des Chaleurs, made little sense in economic terms but as it travelled along the sparsely populated North Shore of New Brunswick, it passed through no less than fourteen federal constituencies en route. (Thomson 1960: 106)

28. British Columbia was protesting strongly against the failure of the central government to begin construction of a railway within the promised two years, before Macdonald's government fell in the Pacific Scandal of 1873. In 1874 the Premier, Walkem, was in England protesting "the non-fulfillment of the terms of Union" (Thomson 1960: 207). Mackenzie's new agreement with B.C. resulted in the allocation of approximately one-quarter of the 1874 federal budget (\$6 million) for the Pacific Railway project (ibid: 228). Although Edward Blake still strongly opposed the project, factors such as fear of further West Coast annexation by the United States if B.C. separated and the Imperial Government's continuing insistence on the vital necessity of including B.C. in Confederation forced Mackenzie's hand. (Naylor, 1987 :363)

29. This led to continual struggles between the Board and Sanford Fleming as Chief Government Engineer during the construction of the Intercolonial Railway (Waite, 1971: 56).

30. Several levels of government engineers were responsible for the quality of local work and materials; district engineers, resident engineers, and chief and superintending engineers. The chief engineers were required to report satisfactory completion of construction, and payments to contractors were conditional on such reports (Bleasdale, 1984: 43-61).

31. On the Intercolonial Railway no remedies were taken by the Government even against defaulting contractors or their sureties (Bleasdale, 1984: 61-64).

32. This includes the first section built, the Pembina Branch south from Winnipeg to Emerson on the border to link up with George Stephen's St. Paul, Minneapolis and Manitoba Railway.

33. A Royal Commission on government construction of the Pacific Railway (which sat after Sanford Fleming was fired as Engineer-in-Chief) reported in 1882 that construction of the railway as a public work was a waste of "money, time and efficiency" (Cited in Waite, 1971: 130, 105). Fleming was highly critical of the construction work done under government contract by Onderdonk in B.C. in 1883. It is certainly significant that Onderdonk was building sections which would be handed over to the CPR on completion. However, the B.C. sections were particularly expensive and difficult to construct and Onderdonk was a highly experienced and skilful engineer. When the CPR took over sections of the eastern government-built line from 1881 onwards, the Company found the line "unfinished" in its opinion. The CPR demanded a sum of almost one million dollars for necessary additions and improvements (Van Horne Letterbooks N.A. MG 28 III 20)

34. The CPR was initially reluctant to build the route North of Superior (the "North Shore" route), preferring to build from Callander to Sault Ste. Marie and connect there with American railroads (Waite, 1971: 113).

35. Creighton wrote that the CPR was "building a railway for the future" (1955: 344). This was true but, more precisely, they were building a railway which the Company itself would run; poor construction was unacceptable for that reason.

36. Minister of Railways and Canals 1885-1889.

37. This was the period when western elections were held at a later date and results from the east, and therefore the party likely to form the Government, were known before the dates of the elections in the west. Reid tells us that Manitoba first voted at the same time as the east in 1882 and by 1908 most western constituencies voted simultaneously with the east (1932: 187).

38. In terms of the debate over the class status of farmers in capitalist economies - whether farm-owners should be classified as capitalist entrepreneurs or members of the petite bourgeoisie - lack of evidence on the frequency and numbers of hired hands employed on nineteenth-century Canadian farms makes resolution difficult. One writer has argued recently that a figure of five person years of wage labour should now be used to distinguish a capitalist farming unit and that, using this criterion, only 0.7 per cent of Canadian farms qualified as "capitalist" in 1981 (Ghorayshi, 1987: 368). As even fewer hired hands were likely in the last century, given the smaller size of farms and greater availability of family labour, it may not be possible to make any such distinction in a Canadian setting.

39. In 1875-76, at the peak of popular demand for a retaliatory tariff, the American farmers' union, the Grange, obtained 5,000 responses in favour of protection from its Canadian membership, which represented one-third of the members.

40. See Canada, House of Commons, Index to Journals, 1867-72 (8), for petitions from farmers' associations, including one from the Quebec Council of Agriculture.
41. Ibid, Index to Journals, February 13, 1889 and 1890, p.193
42. The Toronto Tory newspaper, the *Leader*, referred to the printers striking against George Brown and the *Globe* in 1872 as "the hardworking mechanics" (Ostry, 1960: 100-101).
43. The provincial and federal franchise evidently excluded all women. Some women received municipal suffrage during the nineteenth century; for example widows and unmarried women meeting property qualifications were allowed to vote in municipal elections under Ontario legislation of 1884 (Morton, 1973: 9). The federal franchise bill of 1885 included provisions for women voters but these sections were taken out of the final version of the bill (Waite, 1971: 141-142)
44. One of Macdonald's reasons for opposing provincial regulation of suffrage was that several Liberal (or Reform) provincial legislatures had gone so far as to disenfranchise federal employees by the 1880's (Mallory, 1984: 199). This was a response to the fact that federal civil service appointments were given as forms of political patronage by the party in power in Ottawa.
45. One estimate is that national membership was as high as 200,000 in 1878 (Waite, 1971: 87) a figure which the author admits would represent almost 1/3 of all adult protestant males in Canada. Research for Toronto shows that its past membership was as large as its current membership in the 1880's and in the range of 2,500 to 4,000 (Kealey 1988: 78) (in a city of over 150,000 residents by 1891).
46. For instance, during the 1878 House of Commons debate on the Blake Act, John White, M.P. for East Hastings, spoke as a high official in the Order, "the Grand Master for East Ontario". (White was the politician whom Donald Akenson has recently claimed was a transvestite prostitute from Ireland. See At Face Value: The Life and Times of Eliza Cormack/John White (1990).)
47. As Rogers (1984) points out, most policemen and firemen in Toronto were Orange Order members and several Federal Departments in Toronto were staffed entirely by members of Orange Lodges. In 1885 only six percent of city positions in Toronto were filled by Catholics although they represented over fifteen per cent of the population (ibid: 84, 72).
48. Kealey's only comment here is "The rapid growth of Orangism in Toronto may have been precipitated by a combination of national and local issues of sectarian strife..." (1988: 83). However, Baker, in analysing sectarian strife in Belfast in this period, attributed increased levels of sectarian violence directly to periods of economic hardship in Ireland (1973).

49. The politicization of the Catholic Church in Quebec responded in part to increasing attacks on the Church in Europe, where political liberalism was allied with anti-clericalism.

50. "Ultramontane" meaning favourable to the absolute authority of the Pope in matters of faith and discipline (Oxford Illus. Dict. 1962)

51. Jetté defeated Cartier in Montreal West in the 1873 federal election.

52. The Senate had been set up as a non-elective Chamber at the insistence of Quebec and the Maritimes to balance Ontario's preponderance of population; senators received ministerial appointments to balance representation of regions, and ethnic or religious segments in Cabinet.

53. Both the number and designations of federal departments were altered over time. For instance, Macdonald added a Minister for the Interior in 1873 (Creighton, 1955: 246) and the post of Secretary for the Provinces disappeared. As of 1868, the government departments were the Privy Council Office, Department of Justice, Militia and Defence, Secretary of State, Secretary for the Provinces, Receiver-General, Finance, Customs, Inland Revenue, Public Works, Post Office, Agriculture, Marine and Fisheries. In addition the Audit Office under the Auditor-General and the Governor-General's office were also staffed by the federal civil service - a total of about 255 employees in 1868.

54. Hodgetts estimates the total of federal civil servants in 1867 as 2,660, while emphasising that his sources are "not always consistent" (1973: 89fn.).

55. Stewart (1986: 68-73) details Macdonalds's development and use of methods of bestowing patronage and describes them as having become "a characteristic feature of Canadian party development" (ibid: 71).

56. The mandate of the Royal Commission on the Civil Service 1868-9 extended to the outside service but its First Report concentrated on the Ottawa departmental staff, while commenting cautiously that there seemed to be suspicious financial behaviour on the part of some Customs Inspectors (Can.CSRC 1868-9: 40)

57. As Hodgetts remarks,
 Political patronage is by no means a monopoly of one country;
 it is the natural concomitant of the emergence of parties
 competing for votes and power. 1973: 52

58. The inside service of the Inland Revenue was marked by nepotism in 1891. Two of the clerks in the Department were George Brunel and J. Brunel - presumably relatives of Alfred Brunel who had now retired to the United Kingdom (Sess. Papers 1892 No. 2 Appendix B) - and one food inspector appointed in 1881 was named J.J. Costigan, perhaps a relative of the Minister (ibid Appendix B, No. 5) while another

Costigan, H.A. claimed expenses for food samples purchased in 1888-1889.

59. Brunel Senior had not yet had his relatives appointed to Inland Revenue (by the Tories) when he commented to a select committee of the House of Commons in 1877 (under a Reform Government)

I was appointed under the administration of Mr Sandfield Macdonald, and I have been treated well by both political parties. It is a matter of perfect indifference to me which is in power.

Can. Jours. H of C., 1877, appendix 7: 90

60. It may be argued that total expenditure is a better gauge of ministry activity than numbers of employees and there are some figures for the amount of departmental "work". Edward Blake's scrap book for 1877 (Ont. P.A. MU 227 B-14, v. 89: 28-29) includes newspaper comments and reports on Blake's claim that the Department was more economical under his supervision than under Macdonald's. According to the *St Thomas Journal*, correspondence had increased from 3,000 pages during fourteen months in 1872-3 to 9,000 pages during thirteen months in 1875-76 (Nov. 6, 1877). However, the *Tory Journal* could not resist pointing out from Blake's figures that postage costs had simultaneously decreased by one-third! Blake also reported reducing salaries from \$13,500 to \$10,750 (*Montreal Herald*, Nov 6, 1877); this reduction is explained in a memo from the Deputy-Minister Zebulon Lash to Blake in 1878 in which Lash sets out total salaries for 1876 as \$16,575 and for 1878 as \$10,900, the difference being due to four senior positions left unfilled (N.A. RG 13 A2, v.419, Miss. Corrs. 1877-81). Contingencies for the Department fell from \$9,470 in Macdonald's last year (1873), to \$5,000 under Reform Ministers and then to \$2,800 under Blake (*Montreal Herald*, Nov 6, 1877). The reduction lay not only in postage but in a reported 94 per cent decrease in cab and telegraph costs; the *Herald* commented on Macdonald that "this clean-handed, disinterested statesman was virtually keeping a carriage at the public charge, at an expense of \$1,000 a year..." (ibid)

61. Justice Ministers from 1867 to 1892 were as follows:

1867-73	Sir John A. Macdonald
1873-74	Antoine-Aimé Dorion
1874-75	Telesphore Fournier
1875-77	Edward Blake
1877-78	Rodolphe Laflamme
1878-81	James McDonald
1881-85	Sir Alexander Campbell
1885-94	Sir John Thompson

62. The Hon. Isaac Burpee, a merchant of St John, New Brunswick, who was said by Mackenzie to "know his own business, nothing more" and who was taxed with "Burpeeism" when accused of selling Crown land in New Brunswick to his brother. (Thomson 1960: 171,230,301-4)

63. The records of the Inland Revenue Department were largely destroyed in the burning of the Parliament Buildings in 1916. Neither the

Commissioners or any of the Ministers appear to have left papers relevant to the Adulteration Acts of the 1870's.

64. Of the Ministers of Inland Revenue, whose dates were as follows, Fournier 1873-1874, Geoffrion 1874-76, Laflamme 1876-77, Cauchon 1877, Laurier 1877-1878, Laurier appears to have been the only responsible minister. Fournier was forced out of public life after a drinking spree in 1875; he was said by the *Montreal Gazette* to dislike "the slavery of Department work and prefers amusing himself to looking after the affairs of state" (cited Burke 1960:141). Geoffrion was ill in 1875 and 1876 and according to Mackenzie "Geoffrion's Department has been without a head for 15 months" (ibid: 143), while Cauchon is described by Burke as "a controversial figure whose questionable dealings with public contracts had never been cleared up" (ibid: 142). In the Blake Papers, a letter from Mackenzie quotes a conversation with Holton concerning Laflamme: "Laflamme's looseness of talk and his insensitivity were now so notorious that no one believed nor cared for what he said or promised. That he was also idle and never made any effort to make himself a Parliamentary Leader. That last session he was a notorious failure in a small office [i.e. Inland Revenue]...." (O.A. Blake Papers M.s. 20, Reel 5)

65. In 1869, the majority report singled out a practice of the outside service for criticism when it revealed that an excise Inspector had received over three thousand dollars the previous year as additional fees for seizing goods under the Inland Revenue Act. The Commissioners felt moved to comment that Inspectors should be supervising subordinates carrying out such activities rather than accumulating fees by seizing goods themselves (1869: 43).

66. Wicksteed, Gustavus W. was a long-serving and respected public servant; born in 1799, he joined the administration in 1828, acting first as assistant law clerk and then law clerk to the Legislative Assembly of Lower Canada, then Law Clerk to the Province of Canada and, finally, as Law Clerk to the House of Commons from 1867 to 1887 (Morgan, 1898: 1081). Wicksteed worked as a Commissioner revising the Statutes of Lower Canada and the Province of Canada, respectively, in 1841 and 1856.

67. Bernard, Hewitt, born in Jamaica in 1825, became Macdonald's private secretary from 1858-66 and was secretary of the Quebec Conference on Confederation in 1864. He was Deputy-Minister of Justice from 1867-76. His sister married Macdonald in 1867. (*Encyclopaedia Canadiana* [no date given]). In 1868, Macdonald and his wife, Bernard and his mother lived in a *menage à quatre* in Ottawa (Creighton, 1951: 8).

68. Perhaps not in the second half of 1867, as Brown states in his recent book (1989: 93), although some preliminary discussion must have taken place that year.

69. The total relevant material amounted to 581 printed pages (N.A. RG 13, 1986-87/ 361/ 16/1868: 4)

70. The sixteen areas (as set out by the Commissioners) were Acts relating to:-

Riots,
Desecration of the Sabbath,
divers Offences against good Morals and public decency,
Lotteries,
Slander and Libel, Vexatious Indictments and Estreats,
Newspapers and like publications,
Cruelty to Animals,
Recognizances,
Unlawful Oaths, the sale of Prisons, Limitation of penal actions, and
qui tam Actions,
Illegal Enlistments in Foreign Service, Illegal Combinations of
Workmen,
Writs of Habeas Corpus,
Proceedings to Outlawry, Coroners inquests, Gaols, the Removal of
prisoners,
The celebration of Marriage,
The Army and Navy,
Extradition of Criminals.

71. The Imperial Criminal Law Amendment Acts of 1861 comprised six Acts, U.K.[24-25V.,c. 94, c's 96-100]. They dealt respectively with Accessories and Abettors, Larceny, Malicious Injuries to Property, Forgery, Offences relating to the Crown and Offences against the Person. Wicksteed and Bernard reported that C. S. Greaves, Q.C. "one of the working men employed ... was himself employed nine years on the work."

72. In practice, the Acts were slightly modified at least as to detail if not in relation to general approach. Taschereau's comment that the 1868 bills were "taken almost textually from ... the Imperial Criminal Law Amendment Acts of 1861," appears to be a slight overstatement (cited Brown 1989: 93). If the Imperial and Canadian Acts are compared, it is noticeable that certain traditional English offences have been omitted. For instance in the Larceny Act, offences such a breaching fish ponds and deer hunting are cut out; instead we find more attention in the Canadian statute to thefts relating to lumber, timber, trees etc.. We have not established whether or not these changes were present in the bill on first reading or were later amendments.

73. This bill dealt with outlawry and extended a pre-Confederation Upper Canada statute to all provinces (Bill 75, 1869). The bill disappeared but it leaves unanswered the question of why Macdonald who introduced the bill favoured the old procedure, including writs of exigent and forfeiture of goods, for outlawry? Curiously, in 1875, Prime Minister Mackenzie announced in the House that Louis Riel was now an "outlaw". According to Bourinot, Mackenzie "laid on the table the exemplification of the judgement roll of outlawry, and then moved 'that it appears by the said record that Louis Riel, a member of this house, has been adjudged an outlaw for felony.'" (1884: 151). The United Kingdom maintained forfeiture of chattels for outlawry under the

Forfeiture Act of 1870 (Plucknett, 1956: 431); did Canada enact similar legislation and, if so, when?

74. The six Imperial Acts appeared as bills of the House of Commons, numbers 58-63 and the six bills referred to here were numbers 75, 76, 77, 78, 79 and 99. (Library of Parliament records). The Treason bill and the Execution of Sentence of Death bill were both suggested to the Canadian Government by the Colonial Secretary's Office - see Sn 5.9.

75. Criminal law bills covered matters as diverse as the Trial and Punishment of Juvenile Offenders, the Police of Canada, Penitentiaries and the Execution of Sentence of Death in Public (bills # 97, 133, 43 and 25 1/2). Procedural matters were dealt with in at least two bills referring to the duties of Justices of the Peace out of Sessions (66 and 74).

76. Macdonald may have decided to spread the burden of introducing so much criminal legislation (or perhaps give the Senate more work). In any event, he introduced the six major bills in the House but some more minor legislation, including the Peace Preservation Act, was reintroduced first in the Senate. (Hansard, April 30, 1869).

77. The letter was introduced by a Mr Morris, who had introduced the Act to prevent public executions the previous session. It did not reach second reading in 1869, perhaps because the Offences Against the Person Act [1869] contained provisions dealing with sexual offences. Rules for the conduct of executions were made in 1870 under the Criminal Procedure Act of 1869 (32-33V.,c.29).

78. Vagrancy had been an offence in Canada West before Confederation and was a very old component of English statute criminal law. See for instance Chambliss' account of the development of English vagrancy law (1964). Was it possible that the Commissioners considered that this offence might be dealt with under other federal criminal legislation, in some kind of omnibus bill, were they contemplating alternative provisions, such as provincial poor laws or possibly municipal by-laws, or did they omit vagrancy in error?

79. The absence of a Riot Act in the Consolidated Statutes of Lower Canada [1861] is puzzling, considering the inclusion of parallel adaptations of the English statute (1G.1, c.5) in the statutes of Upper Canada, New Brunswick and Nova Scotia (CSUC [1859],c.97; CSNS [1864],c.162; CSNB [1854], c.147). Provisions under the Riot Act had been in use in Lower Canada, however, as demonstrated in official responses to the Beauharnois riots of 1843 and repeated militia interventions in civil strife in Montreal in the 1830's, 40's and 50's (Kyte Senior, 1988).

80. Predictably, as the Minister of Justice and Prime Minister were one and the same person under Macdonald's Tory administration from 1867-73.

81. See Todd (1880: 146-151), and Underhill (1938) on Edward Blake and

the Supreme Court Act, for details of this process with respect to the Oaths bill and the passage of the Supreme Court Act.

82. Statutes to which the Governor-General withheld assent on the grounds that they were possibly ultra vires the Dominion Government included Extradition Acts (31V.,c.94; 36V.,c.127) and legislation relating to naval matters or seamen (36V.,c.128).

83. Both were introduced in the House of Commons and the treason legislation was enacted as 31V.,c.69; but the capital punishment statute, designed to prevent public executions and introduced by a private member in December 1867, disappeared after second reading. See fns 74 & 75 supra.

84. An amending act was introduced and passed in 1870 as 33V.,c.26.

85. Files containing copies of the material submitted after each session can be found in Department of Justice records for most years - for instance in file #23 in 1869.

86. In principle imperial disallowance remained a possibility until the imperial conference of 1930 (Hogg, 1977: 14, 151).

87. See Chapter Two, Section three

88. Such reformers are referred to by Stedman Jones, in speaking of nineteenth-century United Kingdom reformers, as "urban gentry" (1971)

89. Although Cook has made a major study of the role of evangelical religion "the social gospel" in the period (1985).

89. Cook (1985) sees this orientation and the many reform movements of the period as symptoms or results of secularization of religious impulses which resulted in practical "social gospels".

91 The association of "statistics" with "hygiene" was common at this period; by the mid-1860's public health and vital statistics were seen to have a logical connection. Better information on the incidence of disease as well as on birth and mortality rates would allow some advance warning of epidemics (such as cholera) and, more generally, permit the efficacy of new methods in halting the spread of disease to be assessed.

92. It included William Hingston as Chairman, and William Caniff of Toronto as two of the five members.

93. See an article by the Medical Officer of Toronto, Dr Tempest, May 5, 1869.

94. For instance, the city of Montreal suffered from infant mortality rates twice as high as New York's and Toronto's by the end of the century, despite milk inspection measures. Copp (1981) concludes that The high mortality rate from gastro-intestinal disease seemed to point to impure food and water as the direct causes.

CHAPTER FOUR: THE PEACE PRESERVATION ACT

1. The full title was "An Act for the better preservation of the Peace in the vicinity of Public Works (32-33V.,c.24); the Act was also referred to as "The Public Works Act", although this short form correctly applied to the act setting up the Department of Public Works, passed in 1867 (31v.,c12). The customary title, which is used in this chapter, was the Peace Preservation Act or the Preservation of Peace Act.
2. "Navvy"; the term is explained in the Shorter Oxford Dictionary (1986) as an abbreviation of the word "navigator" meaning a labourer employed on the work of excavating and constructing a canal, or, in later use, any kind of earthwork. "Navvy" was in use in England by 1832 to apply to labourers employed in the construction of earthworks, such as canals, railways and drains.
3. Journals of the Legislative Assembly. (See Index 1841-1851 under Public Works, Police and Select Committees.) While we accept Pentland's argument that use of the relevant Acts (concerning liquor and firearms on Public Works and the Mounted Police Force) was established and accepted by politicians and contractors before Confederation, there has been no systematic research into how the statutes were applied. Bleasdale's (1984) research for this period, although detailed and relevant, examines incidents of violence reported in the Press rather than all proclamations of the statutes.
4. In addition the Commons, considering the bill from the Senate in Committee, made a minor change by taking out a clause which allowed any Commissioner of Police appointed under the Dominion Police Act (31v.,c.73) to act as a Commissioner under the Peace Preservation Act, if directed to do so by order of the Governor in Council (Hansard. Commons. May 21, 1869). The Dominion Police Act did not provide for Mounted Police, as the pre-Confederation Acts had done, so the Dominion Police could have been seen as supplementing policing under the Peace Preservation Act but not as replacing the pre-Confederation provision for Mounted Police in 8V.,c.6 [P.C.]
5. Armour became Chief Justice of Ontario in 1887 and went to the Supreme Court of Canada in 1902. (N.A. Aud MG 30 D1 v. 2, 409-414). It is not surprising to find that, politically, he moved to the Reform party from the Tories (Morgan, 1878).
6. N.A. RG 13/index v. 451/1074/1875. The dispute was significant in relation to the Peace Preservation Act and is referred to again later in this section in relation to applications of the Act. Keewatin lay between Manitoba and Ontario. The Province of Manitoba had been created in 1871 as a small part of the land ceded by the Hudson's Bay Company, around the Red River Settlement. See Map A. Another part of the North West Territories became the separate District of Keewatin in 1876. See Map E. Ontario's claims for this and other territory and the Dominion's refusal to concede it, were submitted to arbitration in 1878 but the Dominion refused to accept the arbitrators' award and ceded part of the District of Keewatin to Manitoba in 1881. In 1884, the Judicial

Committee of the Privy Council upheld the 1878 award and the matter was finally settled in 1889 when Ontario's boundaries were considerably enlarged under an Imperial Act. See Kerr (1975).

7. Justice files show that concern about the Act had been expressed in Ontario and that the Deputy Attorney-General of Ontario, Scott, was involved in correspondence with Burbidge, Deputy-Minister of Justice in Ottawa in 1885. Harry Abbott, a CPR engineer and Peace Commissioner had written to the Department of Justice in February, 1885, from Biscotasing (on the line, 80 miles north-west of Sudbury) concerning the cases of "Dolittle and Starr charged with illegally having liquor in their possession". No further reference to this case has been found but, by April, Burbidge sent a draft amending bill to Conrad Schreiber, now Chief Engineer for the Canadian Pacific Company, for comment. Schreiber's comments are not recorded but Burbidge mentioned to him the "difficulties experienced in the B.C. section as well" and added "now offenders have found out the weak places in the Act, that difficulty [of securing convictions] will be greatly increased (N.A. RG13: A3/v.617/April 7, 1885 and #'s 153 & 154, v.471, 1885)

8. This seems surprising considering a number of outbreaks of violence during construction of the Intercolonial, as reported by Bleasdale (1984), unless it was felt that police and local magistrates along the railway were able to deal with the navvies working in Nova Scotia and in New Brunswick.

9. The line proclaimed in B.C. covered the Onderdonk sections, contracted by the Government before the Canadian Pacific Company came into existence. An earlier attempt at proclamation in B.C. in 1881 appears to have been unsuccessful (R.G.2, P.C. #301, 1881).

10. The request for the weapons sections of the Peace Preservation Act to be proclaimed was not acceded to but then these sections had not been used since the 1870 Amending Act. Van Horne's request concerning the Michipicoten Road was sent on May 3, 1884 and a proclamation issued on May 27. The Sudbury Junction - Thunder Bay proclamation was issued ten days before the date of van Horne's letter, indicating either errors in dates or possibly that his engineer, James Worthington, who suggested an application in conversation with the General Manager, had already applied before van Horne's letter was written.

11. It would be preferable to collect accounts of a much larger number of incidents for this kind of analysis. The difficulty is that unrest among railway labourers was not necessarily reported or recorded unless an incident was exceptional. Even quite major strikes or riots could pass without official or public notice being taken. Bleasdale found the same problem in her research on railway and canal labourers for an earlier period (1984). Incidents relied on here were either widely reported in newspapers or recorded in official Department of Justice records.

12. See discussion of wages under "Pay Rates" in Chapter Three s.2.4.

13. This account of the government response to the Lachine Canal strike is taken from records of the Department of Public Works. (N.A. RG 11 B1(a), v.473 s.8 [Nf 73313 002413-02431]).

14. Beaudry was a successful Canadien merchant who knew something about canalliers, having worked as a young man for a merchant supplying navvies on the Rideau Canal. He was politically radical, a Patriot in 1837 and thereafter a nationalist; he was defeated as a provincial candidate by the English vote in Montreal. As mayor of Montreal from 1862-66 and 1877-79, he turned a relatively powerless position into a significant role despite opposition from the English press. He defeated a popular English liberal, William Workman, for mayor in 1877 (D.C.B. 11, 59-62).

15. Joseph Whitehead 1814-1894 was a Yorkshireman and United Kingdom railway man and contractor who came to Canada in 1849. He worked on building the Grand Trunk and built railways in Ontario and Manitoba. He sat in the House of Commons from 1867-1872 as a Liberal and eventually became Mayor and a leading contractor and miller in Clinton, Ontario. (Canadian Directory of Parliament N.A. 1968.)

16. Wood (1820-1882) was Chief Justice of Manitoba from 1874-1882 and "a controversial figure on the Manitoba bench". In the 1850's Wood was a successful lawyer and railway manager in Brantford, Ontario. In the 1860's he sat in the Provincial Legislative Assembly as a moderate reformer. His career as a Provincial Reformer was damaged by his close association with Conservative politicians. He sat in the House of Commons as a Reformer in 1873. Rejected by Mackenzie for his Cabinet, Woods reportedly accepted the post of Chief Justice of Manitoba for its salary of \$5,000 per annum. His reputation declined as he became involved in local political disputes and federal-provincial railway controversies (D.C.B., v.11).

17. Bain, the Honourable John Farquhar, went from Ontario to Winnipeg and practiced law there from 1873 onwards. Appointed to the Manitoba Court of Queen's Bench in 1887 (Morgan, 1898).

18. Two dollars per diem less four dollars per week board and lodging.

19. The first official appointments of Dominion stipendiary magistrates to the North West Territories were only made in 1876 when Macleod (who later became Commissioner of the NWMP) and Ryan were appointed under the 1873 North West Territories Act; Ryan was dismissed in 1881.

20. An Act respecting the administration of criminal justice in the territory in dispute between the Governments of the Province of Ontario and of the Dominion of Canada (43V., c.36). The 1880 Act recognized the joint jurisdiction of Ontario and Manitoba in the disputed section of Keewatin and the authority of judicial officials appointed federally or provincially. But note that the Dominion disallowed an Ontario Act "respecting the Administration of Justice in the northerly and westerly parts of Ontario" (42V., c.19) in 1879 and the Tory Minister of Justice, James McDonald, was highly critical of the legislation as ultra vires

the province, especially where the appointment of judges was concerned (Sessional Papers, Ont., 47V, 1884, #39).

21. These appointments of J.P.'s were all coupled with appointments as Commissioners of Police and most of the individuals were appointed to act in Ontario and Manitoba as well as in Keewatin, and were thus able to act anywhere in that large territory.

22. This section of the Railway Act dates from 1860 when, according to Professor Paul Craven, it was drafted by Aemilius Irving, Counsel to the Grand Trunk Railway, and introduced as an amendment to the Railway Act ([P.C.] 23V., c.29). Salaries of constables were to be paid by the Company, as s.4 of the 1860 Act made provision for deducting fines for neglect of duty from salaries.

23. The phrase "whiskey trader" or peddler was in standard use; the term "bootlegger" seems to have been a later development.

24. Accounts relied on here are taken principally from the Globe which drew from local papers such as the Port Arthur Sentinel; the Globe also sent a correspondent to Michipicoten and later conducted interviews with some of those involved on the side of the law.

25. There was obviously a causal connection between the Act and the intensity and profitability of the liquor trade at Michipicoten. The Globe reported the Michipicoten magistrate as saying that "A gallon of whiskey, which costs \$2 at the Sault, is retailed for \$30 at Michipicoten ...". (November 13, 1884).

26. The Toronto police inspector in charge of a detachment sent to Michipicoten in October 1884, reported finding and destroying 120 gallons of rye in a week and impounding a sailboat.

27. The Globe reporter travelling with the police seemed surprised to discover that most residents of Michipicoten sided with the unlawful element and argued for the "right" to bring in and sell whiskey, keep gambling houses and "maintain bagnios". The Globe reporter commented "The unwillingness of all to give evidence in any case is remarkable.". (November 1, 1884)

28. The Toronto Police Inspector was amazed by the speed of local justice:

I tell you they do things quick up there. A man named Olsen was arrested for selling liquor. It was his first offence and it was a very short time before he was fined twenty dollars and costs. (The Globe, November 4)

29. McCabe was relatively experienced, having been appointed in 1880, but is not mentioned in relation to Michipicoten in 1884. He had probably resigned, or been transferred, in 1883 (see Section 5.3).

30. The figure was cited by Sudbury's magistrate McNaughton in an interview (The Globe, October 29, 1884).

31. Moberley appeared to be an active Commissioner. At the time of the Michipicoten Riot he had been in neighbouring Peninsular Harbour with a posse from Port Arthur attempting "to put down the lawless gang that had possession of the Place" (The Globe, November 4). As a result of Moberley's sweep of Peninsular Harbour "the worst place in the world", a group of thirty prostitutes arrived from there by steamer to Michipicoten only to find it occupied by Toronto's "finest"; they left on the same steamer for Port Arthur. (The Globe, November 8)

32. As the weapons sections of the Peace Preservation Act were never proclaimed in force and no discussion of reasons was found during the research, we postpone discussion of criminal law measures in relation to weapons until the following chapter on the Blake Act.

33. Fines under the Act ranged from fifty to one hundred dollars and imprisonment for up to six months was also a possibility. But, the Customs Act could be circumvented in the Territories by obtaining a permit to bring in liquor issued by the Lieutenant-Governor. According to Gray (1986), permits were "dispensed ... with a free hand" (59).

34. Evidently, the Peace Preservation Act was never declared in force along the line of the Pacific Railway across the Prairies - it was not needed because liquor was prohibited under the 1873 Customs Act.

35. In practice, as stated, existing federal criminal statute laws were applied to new provinces as they entered Confederation, although not every Act was extended immediately. Some statutes were considered inapplicable to certain Provinces in their current state of development: for example, certain statutes dealing with higher courts or penitentiaries were not extended to Manitoba, B.C. or P.E.I..

36. In contrast to the usual form of "delegated legislation", this Act did not simply empower the Cabinet to decide a date of general proclamation or to make regulations under the Act but allowed the Government to apply the statute at any time to any specific geographical area (outside a "city"). The closest parallel with the discretion allowed here is perhaps in emergency measures legislation such as the later War Measures Act (1914) which, although far more extensive, shared the same element of law-making power accorded to Cabinet as the Peace Preservation Act. From a twentieth-century constitutional perspective, a Dominion statute of this kind would have to fall under the peace, order and good government provisions of the B.N.A. Act rather than under the criminal law provisions if it were to be valid at all (Hogg, 1977, Ch 14).

37. As late as 1883 the North West Mounted Police were urging the extension of the Vagrant Act to the North West Territories. Requests came to the Minister of Justice from Suptd. Walsh of Regina of the NWMP, backed by his chief in Ottawa, Colonel Richardson, and from troubled citizens, concerned by the inability of the police to deal with "fast women" in Regina. [N.A. R.G. 13/86 - 87/084. File 27/1883]. The Vagrant Act was declared in force in the North West Territories in 1883 by Order-in-Council #893, on April 25.

38. Settling outside town boundaries was a common phenomenon in the early history of the Canadian West; houses of ill-repute were often established outside town limits on the Prairies to avoid local censure of inmates and clients as well as local law enforcement (Gray 1986: 31). An entertaining account of such a situation is provided in one Department of Justice file which records complaints to the Mounties from a local clergyman in Medicine Hat who objected to a brothel outside the town limits situated near the local Protestant cemetery. The Minister described in detail a funeral procession along a track out to the cemetery; the mourners and coffin were accompanied all the way by a wagon load of noisy prostitutes and drunken companions.

39. One of the earlier Acts of the Province of Canada respecting the Sale of Intoxicating Liquors near Public Works (C.S.C. c.30) had been repealed at the time of the enactment of the federal Peace Preservation Act in 1869 (under 32-33V.,c.36). So its reintroduction appears to be a deliberate assertion of provincial jurisdiction over the sale of liquor at or near public works especially as the 1877 Ontario Act stipulated all public works. There are no comments in the Ontario Hansard in relation to the 1877 Act or to an amended version in 1885.

40. While the sources on the proclamation of the Ontario Act are not conclusive, there are no entries in the volumes of indexes to Ontario Orders-in-Council before 1912, when the Act was proclaimed along two railways under construction in Ontario (o.c.# 591/68 and 100/70); neither could the Ontario Privy Council Office find any record of proclamations (before 1915).

41. It is also possible that the statute was reintroduced to apply to railways constructed strictly within the Province and that the Dominion Act was seen as *intra vires*, even by Ontario, when applied to inter-provincial railways.

42. Even for the North West Territories where its enactment appeared to be superfluous given the existence of statutory Prohibition. For Manitoba under 34V.,c.14,s.1; for the N.W.T. under 36V.,c.34 Schedule A and 38V.,c.49 Schedule B; and for British Columbia under 37V.c.,.42 Schedule A.

43. Both the local M.P., S. Dawson, and W. H Plummer were "faithful Tory war horses" based in the District of Algoma, which included the Sault, and both were elected as Tory members in the Dominion Government. They were intimately involved with Sir John A. Macdonald over election plans for that part of the country (N.A. Morgan MG 29, D61: v.7 2273-78; v.17 6611-6616)

44. The administrative error placing the town geographically in Keewatin was no doubt embarrassing to the Government, and Macdonald wrote to Burbidge from Rivière du Loup directing him to have the order amended (ibid, July 30) but for some reason changed his mind and telegraphed on August 6 instructing him to "let the error in proclamation remain unchanged". Note that the fall election in 1883 produced more friction in Rat Portage and militia were summoned from Winnipeg in September (Pariseau, 1973: 37-38, 81).

45. Huch McKay Sutherland was the sender of this telegram. A Tory lumberman (who had been superintendent of Dominion Public Works in the North-West in the 1870's), he was living in Winnipeg at this date and investing in North-West enterprises including railways, mines and lumber (Rose, 1886).

46. Johnston was persuaded to appear in Court, at which time the prosecutors agreed to lay lesser charges of assault and the magistrate fined him ten dollars on each charge.

47. Both official and unofficial accounts suggest that labour force problems were endemic on all railway and canal construction. Commentators such as Pentland (1981), Palmer (1983), and Bleasdale (1984) all concur in the view that violence at public works was grossly under-reported in the press of the period. For the Pacific Railway, even works as highly researched and reliant on anecdote as Berton's accounts, can only list a handful of recorded incidents.

48. This claim is directly substantiated by material in the early records of the federal Department of Justice which explains the process by which the criminal law of the four colonies was adapted for the Dominion. It was dealt with in detail in Chapter Three under the subject of civil service involvement in legislation (see s. 5.5 to 5.8).

49. An Act to Prohibit the sale of Intoxicating Liquors on or near the line of Public Works in this Province ([P.C.] 16V., c.164).

50. Some penalties under the Act were increased: a first fine for selling liquor was doubled from twenty to forty dollars (48-49V., c.80, s.12); secondly, search warrants for liquor could now be issued on the oath of one person instead of "three credible persons" (s.14); and thirdly, a new section lessened the burden of proof. Under s.4, it was not necessary in any prosecution under the Act to provide evidence of a precise description of liquor or personal knowledge of sale.

51. Significantly too, there was no discussion of whether "riots" on public works might be the outcome of justifiable grievances among labourers. The assumption that any behaviour in opposition to employers must necessarily be a "riot" was still strongly entrenched, despite the passage of the Trade Unions Act, 1872, by John A. Macdonald's government and the Breaches of Contract Act, 1877, by Mackenzie's government. In 1877, the Secretary of the Toronto Trades Assembly, D.A. Macneil, wrote to Edward Blake, Minister of Justice, sending a resolution of thanks for the "Breach of Contract Bill". He pointed out, however, that the bill was flawed as it excluded railway companies and he spoke of the Assembly "regretting that the Minister of Justice could not see his way clear to place railway and municipal companies in the same position as the workman or other persons committing breaches of trust". Blake Papers, MS20, Reel #9, Letter #1134.

52. This consensus is all the more startling because, as indicated earlier, prohibition had recently been granted to all areas of the country by the same government as a local option. Only in the cases of the natives and residents of the North West Territories and the navvies

on public works did Parliament appear to think that no right existed to make choices in the matter.

53. Demands for labour reforms had been heard in the early 1870's, when the nine hour day movement had achieved success. However, the Great Depression of the 1870's had discouraged labour movement formation (Palmer: 89-95).

54. Dempsey's Magistrates' Manual of 1860 did not mention the Peace Preservation Acts and Kerr's of 1871 was concerned with procedure and only mentioned them briefly (355, 356); Lewis' of 1884 cites the Dominion Acts (68). Neither of the latter, however, mentions the Ontario Acts although both manuals were published in Toronto.

55. The Blake Act is discussed in the following chapter, Chapter Five.

56. Although the wording of the Act stipulated "railway or canal".

57. A letter of protest to the Deputy Minister of Justice from a Mattawa resident on August 5, 1881, suggesting that Mattawa should be exempted from the Act as a Town Plot possessing "a number of licensed hotels and shops", went unheeded (R.G. 13/86-87/084/Box 6 327/1881)

58. Unfortunately, few petitions have been examined as most petitions were not included in records of the Privy Council or the Department of Justice. Applications were retained in the originating Departments (such as Public Works or Railways and Canals) and it would be an useful project to attempt to track them down.

59. This is interesting in light of Macdonald's attempts to make the Tories "the party of the working man". Macdonald appeared to have succeeded in 1872 when working class opinion became hostile to the Reformers as a result of the Toronto printers' strike against the Globe. The Mail supported the Tories' position, including the passage of An Act respecting Trade Unions in 1872 (35V., c.30), and, according to Palmer, "Tory hegemony" was complete among labourers in Southern Ontario in the 1870's (1983: 93-94). By the 1880's, both political parties were courting the working class and Palmer tells us that Mowat in Ontario had usurped or overtaken Macdonald in making overtures to the working class (1983: 124).

60. However, we can trace their activities through official records and this is done in the following section of the Chapter, section 4.

61. Appointments Under The Act

Early applications of the Peace Preservation Act between 1869 and 1873 did not result in appointments of Commissioners by Order-in-Council, but, after 1878, Tory governments began to make regular appointments. The appointments corresponded to the areas proclaimed under the Act, usually sections of the railway line. In the years 1878 and 1879 four men received Dominion appointments along Ontario sections of the Pacific line - Brereton, Bent, McDonald and Taylor. The first three were appointed as Commissioners of Peace and Commissioners of Police in Manitoba, Keewatin and Ontario, while Brereton and Taylor were also

appointed as Justices of the Peace for the District of Keewatin. (Presumably because of the lack of an equivalent to provincial government in Keewatin with the authority to appoint J.P.'s.)

By 1880 Bent had been dismissed, to be replaced by McCabe (a J.P. from Nova Scotia). In practice the Government depended on Brereton, McDonald and McCabe to police the Eastern Section of the Pacific Railway. Taylor may have retired or been given a permanent appointment as a magistrate in Keewatin as his name does not reappear in Orders-in-Council. The Government made provision firstly for building a lock-up at Rat Portage and appointing a jailer, secondly for providing the three Police Commissioners with suitable rented rooms for use as courts and thirdly for supplying handcuffs and leg-irons for the prisoners and revolvers for the constables (N.A. RG 2, p.c.# 469, 715 1/2, 1975, 1880).

In January, 1881, Brereton was transferred to B.C. and appointed Commissioner of Peace and Commissioner of Police (in advance apparently of the proclamation of the Act along the Railway). In an unusual move the Dominion requested the local government to build a log hut at Whitemouth B.C. as a temporary prison. (N.A. RG 2, p.c.#215, 1881). In 1882 a second Commissioner was appointed in B.C., Elliott, a retired judge from Victoria.

In Eastern Canada, the CPR bought out the Canada Central Railway running from Callander to Ottawa and Brockville in 1881. The Peace Preservation Act was proclaimed along the line in the same year and Commissioner John Judge of Ottawa appointed (N.A. RG 2, p.c.#952). (An application the previous year from the Canada Central had been referred back to the Minister of Railways and Canals for "further enquiry" (RG2, p.c.1439, 1880)). In 1882 a new Commissioner, Dr. John Smith, was appointed for the section of the Pacific line from Algoma Mills to Callander and in 1883 Newton Flannigan was appointed on the Eastern Section of the North Shore line. By this time, some construction sections were nearing completion and the Government was able to extend Brereton's jurisdiction to new sections in B.C. and McCabe and Macdonald's similarly in Ontario. In late 1883, Macdonald's services were ended (for unstated reasons) and he was replaced on the North Shore section between the River Pic and Michipicoten by a new Commissioner J.C. Gough. Gough's jurisdiction was extended in 1884 as construction moved along the North Shore. Harry Abbott, chief engineer on the C.P. North Shore eastern section was also appointed a Peace Commissioner (N.A. RG 2, p.c.#734, 1174, 1257 and 1226). Two more appointments were made for Ontario in 1884 but cancelled soon afterwards: - one was given to magistrate Lewis Hill of Falmouth, Nova Scotia and another to Raymond Bruyere. In the fall, Frank Moberley, possibly another engineer for the CP, was appointed in place of Gough to take "vigorous action on the part of law along this supply road" at Michipicoten (N.A. RG 2, p.c.# 1980, 1884).

In the same year in B.C., magistrate Elliott of Yale requested placement on the pension list of the Government (probably on the basis of his earlier services as a judge) and was replaced by Charles Todd (N.A. RG 2, p.c.# 80, 1487, 1766, in 1884) for Onderdonk's section of the railway. In the interior of B.C., along the Railway to the boundary with the North West Territories, the Government relied (exclusively at

first) on NWMP officers to enforce the Peace Preservation Act. This made the Mounted Police responsible for controlling liquor sales right across the Prairies and in large areas of B.C.. Formal appointments were made for B.C., naming Lt.-Cols. Herchmer and Irvine and Major Sam Steele as commissioner (#985, #1233, 1884) with a fourth officer Antrobus added in 1885 (#1345, #1815, 1885). One civilian magistrate, George Hope Johnston, was appointed a Commissioner of Peace and of Police along this section of the line (N.A. RG 2, p.c. #777, #1236, 1885). [These proclamations are a useful source of information on appointments but, unfortunately, do not provide information on resignations.]

62. Harry Braithwaite Abbott had a long career in railway building and worked for the CPR from 1882 - 1897; he was put in charge of transporting troops from the east to suppress the Riel Rebellion in 1884. Abbott was a brother of Sir J.J. Abbott MP, legal counsel for the CPR syndicate (Morgan, 1898).

63. Possibly, requests for government patronage or judicial positions did not equate in their minds with serving in a remote area among large numbers of railway construction labourers.

64. Contrast this with the descriptions of letters written in relation to prized positions such as Customs Collectors. See, for instance, Edmund Meredith's attempts to obtain a Collector's post at Toronto in 1868, recounted in Gwynn (1984: Ch.8), and the letters to Macdonald on the same subject (filed in his papers for 1868, v. 340 and 341).

65. Peninsular Harbor was an entrepôt on the North Shore of Lake Superior which, like Michipicoten, was used to supply the railroad. It lay at the junction of the River Pic and Lake Superior, ten miles from the railway line.

66. Armstrong is in error here, perhaps over the date, as the Act was not proclaimed on Section 15 until December 1878.

67. Shay, the accused, came out of the trial well; immediately after conviction, he announced his intention of appealing and this so confused the novice bench that they sent him back to the blacksmith's shack and released him after a few days, minus the whiskey. Armstrong Papers N.A. MG 30 B26: 97-101.

68. The term "log cabin" justice parallels the phrase "back parlour" justice used to describe justice dispensed informally by English local J.P.'s in the late medieval and early modern periods.

69. Brereton, the first appointee had his salary set at \$1,000 p.a. in 1878 (R.G. 2, P.C.#298, 1878) with a travelling allowance that year of \$100; the salary was increased to \$1,200 in 1880 (R.G.2, P.C.# 1943). Elliott of B.C. received the most generous treatment - his salary was set at \$2,000 p.a. with a travel allowance of \$5 per diem whenever he was absent from home. (R.G. 2, vol 3031-3, #1070, 1882). Smith's salary was the lowest at \$800 p.a. (R.G.2, P.C.139, 1882). Some Commissioners, such as the four NWMP officers, received no salary under

the proclamations; presumably they were still paid as Mounted Police Officers.

70. No attempt has been made to search for financial records in relation to Treasury Board and the Departments of Justice and of Railways and Canals, but such records could clarify a number of aspects of policing on the Pacific and other railways.

71. The contractor in the partnership Manning, McDonald, McLaren & Co. was John H. McDonald (who had been involved in bribing a Public Works employee in 1879 in an unsuccessful attempt to get the contract for section 42 (Berton, 1970: 281)) The Peace Commissioner named in O.C. #748, 1879 was "John MacDonald of Picton Esquire". In O.C. #1943, 1880, the reference was to Commissioner McDonald and in 1882 again to John MacDonald (O.C. #2126, 1882). The Commissioner's appointment in 1882 to the River Pic - Prince Arthur section of the Pacific line makes it clear that this was not contractor McDonald.

72. An Order-in-Council (#715 1/2, April 19, 1880) and a report in the Winnipeg Daily Times, Nov. 8, 1880.

73. The Department of Justice took the precaution of sending the contractors' claim back to the local magistrate, McCabe, for confirmation before approving it (N.A. RG 13/Reg. 1881/#1025).

74. Brereton may have been something of a martinet or, at least, more assiduous in applying the law than other peace officers. In November 1881 he complained to the Department of Justice that "certain officers of the CPR had been drunk at a Reception on the 2nd inst.". Justice officials exercised their discretion and filed the complaint away (N.A. RG 13/v. 465-7/Reg. 1881/#1626).

75. This was unusual, but some railway engineers were also accompanied by their families. Harry Armstrong, a young Company engineer, married and took his wife to live in a log cabin on Section 14 and later on Section 15 between 1875 and 1881 (N.A. Armstrong Papers: MG30 B26).

76. One wonders whether contractors still prosecuted offenders; perhaps local constables took over this task.

77. The path of requests can be traced from the notes on records of draft Orders-in-Council proclaiming the Act in force.

78. Much later, in the 1890's, the Minister of Justice from 1885-1894, Sir John Thompson, expressed concern about the state of the magistracy, especially outside Ontario. Thompson took the Premier of Ontario, Oliver Mowat's, suggestions for criminal law reform seriously and, in a discussion about one of Mowat's proposals, Thompson criticised J.P.'s:

If all our J.P.'s were professional men thoroughly imbued with a sense of the responsibility of their office and able properly to discharge judicial functions, an Act of this kind might be worked out properly. It might probably also be all right in your Province where for the most part persons are summarily convicted before Police or Stipendiary Magistrates and where I

am told it is comparatively a rare thing for a person who is a Justice of the Peace and nothing more to exercise criminal jurisdiction in any way. RG 13/ 86-87/084/Box 18/64/1890: 766-67

79. The Province of Ontario reported that an Ontario magistrate, Mr Laird, had held court in the area around Rat Portage in 1879 and 1880 and that in June 1879 Ontario had appointed a Stipendiary Magistrate, Mr W.D. Lyon, to "act chiefly" at Fort Francis and Rat Portage. The Ontario statement gave an innocuous version of the province's activities:

At Rat Portage ... our officers were denied the use of the Dominion lock-up, a very insufficient building but the only one for the purpose in the locality; and the usefulness of our stipendiary magistrate in repressing offences was thereby diminished, the nearest gaol or lock-up in the territory being at Port Arthur, a distance of several hundred miles. The Ontario Legislature therefore appropriated funds for the building of a new lock-up at Rat Portage,.....On its completion a small constabulary force was organized by Ontario for police duty in the locality

O.A. RG 75,v.16,486

80. White was a close friend and intimate of Macdonald's, who was with him during his final illness in 1891 (Creighton 1955: 573). He had been a first-class government clerk in the Department of Justice in 1876 (RG13/A2/v.419/ Pay List) and, according to Macleod (1976:41), had responsibility for the NWMP and came to know Macdonald through Hewitt Bernard, Deputy Minister of Justice and Macdonald's brother-in-law. In 1880 Macdonald appointed him Comptroller to supervise the NWMP's financial affairs and he held this post until 1912.

81. John Shields was a Torontonion, born in Scotland, who had begun his career as a teacher and then a public servant but made a fortune first in oil in the 1870's, then in building railways in Ontario, and then in other public works. He later diversified into lumbering in Manitoba and north-west Ontario. While little is known about his relationship with the Prime Minister, he and his family were living in Rat Portage in the early 1880's (Rose, 1888).

82. He was described in a Department of Justice draft recommendation for suspension as "now discharging his duties at Rat Portage, Keewatin." (RG2-1, v.3011, pc#1261, 1880).

CHAPTER FIVE. THE BLAKE ACT

1. Called in its final form "An Act for the better prevention of crimes of violence in certain parts of Canada, until the end of the next Session of Parliament" (41V.,c.17). The re-enactments were 42V.,c.41; 43V.,c.5; 44V.,c.9; 45V.,c.38; 46V.,c.33.
2. Mackenzie responded to Blake's bill by saying that "the Government would gladly take charge of the measure which his hon. friend had prepared..." Hansard. Commons. May 1, 1878. While Blake had presumably discussed the matter with Mackenzie, no records of written communications between Blake and the Prime Minister, or other correspondents, have been found.
3. Defined as any of a large variety of weapons ranging from guns to "skull-crackers"; the list was very close to the listing of weapons in the Offences against the Person Act, 1869.
4. In the pre-Confederation era, rivalries were illustrated in the fighting of the Irish factions working on the canals in the 1840's - the Connaught party versus the men from Cork - (Bleasdale, 1982: 1984; Pentland, 1948; 1981); in Orange Order activities such as parades in Toronto and St John's - and reprisals from Irish Catholics' (Rogers, 1982; Kealey, 1980); in rioting in Quebec and Montreal between Irish Protestants and French Catholics (Cross, 1969) and between Protestant Tories and an alliance of Reformers and French Canadians in the Rebellion Losses Riots in Montreal in 1849 (Careless, 1967). Bytown (Ottawa) too was known for French-Irish fighting over lumbering jobs in the Ottawa valley during the period of the Shiners' War in the 1830's and for Scottish Protestant and Irish Catholic riots in the 1840's (Cross M., 1969; 1971).
5. The resolution must wait for more complete evidence on the effects of the Great Depression on the urban labour force; according to Palmer "the price exacted by the depression of the 1870's can not yet be understood fully, for basic data (such as the extent of unemployment) is lacking" (1983: 94). Both Baker (1973) and Pariseau (1973) among others, have pointed out that unrest and sectarian violence increased in nineteenth-century cities during economic depressions.
6. The Canadian West became a significant destination only in the early 1880's, after the Canadian Pacific Railway was completed. On the other hand, the city of Montreal grew in size from about 57,000 inhabitants in 1851 to 115,000 by 1871 (Wade, 1975: 334).
7. "Ultramontane": favourable to the absolute authority of the pope in matters of faith and discipline. (Oxford Illus. Dict. 1962)
8. Dufferin added
I saw in the papers that the coffin was of stone and cemented
in a bed of concrete.
Jan 1, 1876
Others questioned how the Bishop had deconsecrated the site within the Cemetery (which was the Church's response to the reburial) without

deconsecrating the soil holding the remains of Madame Guibord, who had died during the prolonged affair and been buried in the grave-site with the remains of her husband later placed above her own.

9. After 1878 only four more riots were reported, all occurring in the late 1880's (1988: 88). Our account here is drawn from Greg Kealey's paper "The Orange Order in Toronto: Religious Riot and the Workingclass" reprinted in Piva, ed. 1988 and, originally, in Toronto Workers Respond to Industrial Capitalism (1980).

10. Rossa was an Irish revolutionary who had fled Ireland and, as an exile in the United States, had become a focus for Fenianism. Orangemen were determined to prevent Rossa from speaking in Toronto; Rossa succeeded in speaking but was forced to hide to escape Orange pursuers, the Toronto police being unable to hold off the crowd of hostile Protestants (Rogers, 1984: 131).

11. On July 12, 1876 - the anniversary of the Battle of the Boyne - Orange Order members were attacked and fired at, reportedly by Irish Catholics, not Canadiens (MDW, July 11, 1877). The Battle of the Boyne (in 1690) was the decisive victory in Ireland for the Protestant colonizers and a final defeat for the Irish.

12. Canadiens deeply resented the Riel affair and, given the eventual condemnation of Lepine for the murder of Thomas Scott by a largely Métis jury, they also resented what was considered the Protestant failure to punish Protestant attacks on Canadiens. In addition Canadiens compared the relatively privileged treatment accorded to Protestants in Quebec with the withdrawal of rights from the Catholic minority in New Brunswick.

13. For instance, these issues are all referred to in an editorial in *La Minerve* (July 16, 1877) as contributing to "les troubles orangistes" in Montreal. An account of an Orange demonstration at Lachute on July 12, 1877 included a collection of \$25 "on behalf of the persecuted Indians of Oka", thus demonstrating the Protestant-Oka link (MDW, July 13, 1877). (The events at Oka are detailed in a trial report in the *Gazette*, July 28, 1877.)

14. The Union comprised the St Patrick's Society, the St Patrick's Benevolent Society, the Catholic Young Men's Society, the St Patrick's Total Abstinence Society and the St Bridget's Temperance Society.

15. The events described in this section are taken from Montreal newspapers whose titles are abbreviated using the following designations: *La Minerve* (LM), *Le Franc-Parleur* (LFP), the *Montreal Gazette* (MG) and the *Montreal Daily Witness* (MDW).

16. He was subsequently described in newspaper accounts as of Irish extraction and speaking English but with French as his first language (MDW, July 11; LM, July 12, 14). According to his sworn statement, he had joined the militia about seven weeks before (MG, July 17, 1877).

17. The Mount Royal officers, perhaps moved by these details, raised a subscription for M'Keown's funeral.

18. This was a man called Elliott who was reportedly chased and shot in the back when he fell behind the crowd following Hackett's funeral procession. Three Irish-Catholics were arrested and charged with the shooting (MG, July 24, 26, 27, 1877).

19. This restrained federal intervention may have been an outcome of direct complaints by the Governor-General; the Earl of Dufferin wrote to the Colonial Secretary on October 22 from Quebec saying,

...the Dominion government seem to be in a very shilly-shallying and supine mood on the subject [of Guibord's reburial] and are inclined to declare that it is a matter which only concerns the Provincial Executive, but as soon as I reach Ottawa I will take care to disabuse them of this notion.

De Kiewiet & Underhill, 1955: 158

20. It is probably significant that Blake kept a copy of the Mowat-Medcalf correspondence in his (carefully organized) personal records and legal papers (O.A. MU 188 B-8-G. Box 50. #18). Blake resigned as Minister of Justice in June 1877 and was replaced by Laflamme - the radical Quebec Rouge lawyer who had acted for Guibord's widow in the Guibord affair. Laflamme was considered "neglectful of his office" (Ch. 3, fn.65) and it is noticeable that Mackenzie dealt directly with Mayor Beaudry over events in Montreal in 1877 and 1878.

21. This strike was eventually suppressed by municipal action undertaken by the mayor of Montreal, J-L. Beaudry, who called for volunteers and swore them in as special constables (see Ch.4, s.1.5)

22. Compare official reactions in the 1870's with reactions to the Beauharnois Riot of 1842 or the Pre-Confederation Montreal riots described by Kyte Senior for the period 1832 to 1853 (1988), when the British garrison (in the 1830's) and, later, the local militia had fired on crowds on several occasions, killing some rioters.

23. Rogers (1984) for instance, reports that only 28% of the Toronto police were native-born in 1881 and many "were British, principally Irish Protestants" (129).

24. Records of financial disputes between militia officers, who had paid out of pocket for local expenses, and the local authorities who called them out appear in Department of Justice records on several occasions when the federal government was drawn into such arguments.

25. Two of whom were Cabinet members: Antoine-Aimé Dorion was Minister of Justice until he became Chief Justice of Quebec in 1874 and Rodolphe Laflamme was in the Cabinet from 1876 to 1878.

26. N.A.RG 2, o.c.#480; the Order is missing from Privy Council records.

27. No correspondence on the subject of the Blake Act has been found in Mackenzie's or Blake's papers.

28. Bernard Devlin (1824-1880) was the most active of the Montreal Catholic M.P.'s in this debate. He was a popular Montreal lawyer and member for Montreal West from 1875 to 1878 (supported by Irish Catholic voters) and a previous President of the St. Patrick's Society (D.C.B. v.10: 229-230). He was active in efforts to prevent disorders in 1877 in Montreal.

Louis-Amable Jetté was a lawyer, Laflamme's brother-in-law and "a moderate Rouge though a fervent Catholic" (Wade, 1975: 346). Jetté had defended the Church by representing the parish of Notre Dame des Neiges in the Guibord affair; later founder of the Parti National, he had defeated Cartier for the federal seat in Montreal East in 1872.

Rodolphe Laflamme did not participate in the debates although Minister of Justice (appointed on Blake's recommendation to succeed him in 1877 (Thomson, 1960: 307)). Langevin suggested postponing debate on Blake's bill because of Laflamme's absence, but Laflamme may have been advised to stay away as a controversial liberal Rouge.

29. Although Blake put up a reward of \$5000 for the capture of the murderers of Thomas Scott (when Premier of Ontario in 1872), and although he followed Irish affairs very closely, he stood up to other Orange demands. For instance, in 1884, as a matter of principle, he spoke strongly in the Dominion House against a bill allowing Dominion incorporation of the Orange Order, saying

I do not care how good their purposes, or what their objects may be, ... I think secret oath-bound societies ... are contrary to the spirit of English Law ... It is in the nature of these societies to become tyrannical and despotic.

Cited Waite 1970: 212

As a result, he was that rare creature, an Ontario Protestant acceptable to Catholic factions in the federal House.

30. Blake's involvement fits with J. Daniel Livermore's assessment that "...Blake tried to attain a position of prominence and independence similar to the positions in British politics once held by Edmund Burke or John Bright, men ... above the normal party fray and assuming in public life a moral rather than a political leadership of the nation." 1975, 55

31. An Act respecting Riots and Riotous Assemblies, 1868 (31V.,c.70) and an Act to make provision against the improper use of Firearms, 1877 (40V.,c.30).

32. Riot had been made a statutory offence in England in 1714 (1G1, st.2, c.5) and the English statute had been adopted in Upper Canada and re-enacted in 1868 as a federal criminal statute.

33. One Montreal M.P., DesJardins, had complained in 1877 that his municipality, Côte St Paul, "... had not enough means to go to the expense of maintaining a body of constables sufficient to act in such

emergencies". During an 1877 debate on the Militia Act, DesJardins had requested Blake to extend the Militia Act amendment to apply to the costs of policing Dominion public works in cities and Blake refused, presumably not wanting to involve the Government in taking direct responsibility for costs. A serious strike began on the canal the following December (1877); DesJardins was certainly aware of current unrest on the canal when he spoke the previous spring, but Blake and the Government refused to listen. (Hansard: Commons, April 4, 1877).

34. Legislation banning secret societies in Canada had been passed as early as 1843; Careless tells us that Robert Baldwin's attempt to ban all secret societies except the Freemasons was successful in 1843 but the Imperial Government disallowed the Bill (1979: 82).

35. For instance, during the 1878 House of Commons debate on the Blake Act, John White, M.P. for East Hastings, spoke as a high official in the Order, "the Grand Master for East Ontario". One estimate is that national membership was as high as 200,000 in 1878 (Waite, 1971: 87) a figure which the author admits would represent almost 1/3 of all adult Protestant males in Canada. Research for Toronto shows that current membership in the 1880's was in the range 2,500 to 4,000 (Kealey 1988: 78).

36. William Baldwin had advocated "a bill banning religious processions" as early as 1823 (Romney 1986: 156). In 1843, a statute entitled "An Act to Provide for the Calling and Orderly Holding of Public Meetings in this Province, and for the Preservation of the Public Peace thereat" was passed (7V., c.7). A further statute banned religious processions for eight years from 1843, after the 1841 election riots, until 1851 (Rogers, 1984: 118-9)

37. The Act was not listed in an Ontario government publication of Acts in force in the province and the Dominion in 1876 (Notman, 1876). Almost 30 years later, in 1886, sections of another pre-Confederation Act of 1859 dealing with Justices disarming persons attending public meetings were suddenly reintroduced, appearing as c.152 of the Revised Statutes of Canada under the title "An Act Respecting the Preservation of Peace at Public Meetings". The timing here raises questions, for the Blake Act expired in 1884. The 1886 statute is notable for its strong provisions against battery committed near a meeting place, coming near a meeting place armed, and for lying in wait for persons returning from a meeting. (The fines were up to \$100 and \$200 and the Act included prison terms of up to 3 or 6 months.) Did the Dominion legislators decide to replace the specific seizure of arms powers under the Blake Act with a general country-wide provision for Justices of the Peace to disarm persons attending "public meetings" using force if necessary (R.S.C., c.152, s.1), making such offences misdemeanours carrying heavy fines or prison sentences?. The coincidence at least needs consideration.

38. Sir Francis Hincks (1807 - 1885) was an Upper Canada Irish Protestant politician who by 1877 had retired from politics and become President of the City Bank of Montreal. He had been Prime Minister in

the Hincks-Morin Reform coalition of 1851 - 1854 and later Minister of Finance in Macdonald's (Tory) Cabinet from 1869 to 1873 (Macmillan DCB, 1963).

39. In 1855, a commission under Sir Allan MacNab's government proposed a provincial force; in 1869, Sandfield Macdonald put forward a similar proposal (Romney, 1986: 236 - 238). A motion in 1856 in relation to the proposed police force stated: "that while the House is prepared to consider any measure for the prevention of crime, it will regard with regret and alarm the introduction of any measure to create a National Police Force" ([P.C.]Index to Journ. L.A.:650)

40. A Mounted Police of one hundred men had been established by statute in the Province of Canada in the 1840's to maintain order among the workers building canals (see, for instance, [P.C.] 14 & 15 V., c.76 & c.77). A police force had been deployed in both Upper and Lower Canada for this purpose (Kyte Senior, 1988: 88; Kelly & Kelly, 1976: 17-18; Stenning, 1981: 42-43). A second national police was the Dominion Police established in 1868 in Ottawa; the history of this small force (which merged with the R.C.M.P. in 1920) remains obscure but one of its nineteenth-century functions was the protection of federal buildings and installations (Kelly & Kelly, 1976: 18-19).

41. They were not considered a permanent force until the 1890's despite the enlargement of the Force to 1,000 men during the Rebellion of 1885 (Macleod 1988: 163).

42. Bowell was M.P. for Belleville, had been present during the Grand Trunk strike and knew from experience how ineffectual both the local police and the militia had proved to be (Morton, 1977). Bowell had stated during a debate on the Militia after the Grand Trunk strike that
...if they had a Dominion or Provincial police force, it would be ten times more efficacious in putting down a riot of that kind, than volunteers with files in their hands...

Hansard. Commons, April 4, 1877

43. Firearms were included in the Offences Against the Person Act, 1869 (32-33V., c.20, s's 72-76). The Firearms Act (40V., c.30).

44. For instance, the majority of legislators considered the introduction of powers of search for firearms an excessive measure. However, opponents of the Firearms Act had suggested that the lack of powers of search was a serious fault; ordinary citizens would obey the spirit of the law and not carry arms, while "lawless characters" would continue to do so, knowing that they need not fear being searched.

45. The full title was The Peace Preservation (Ireland) Act, 1870. This statute ([Imp.] 38V., c.14) was one of several penal laws enacted during the 1870's by the British in continuing attempts to control unrest and violence in Ireland.

46. Like most draftsmen of Canadian parliamentary legislation, Blake relied on existing statutes to furnish the components of his 1878 Bill. This reliance on pre-existing forms may have helped to assure proposers of easier acceptance of bills than if the contents were entirely novel. However, even Blake's stature in the House of Commons was not sufficient for him to obtain serious consideration on every occasion. He was defeated in 1880 when he tried to introduce a bill modelled on another English penal statute into the House of Commons. Blake moved first reading of a "Prevention of Crime" bill on February 23, 1880 (Bill No. 19), modelled on the U.K. statute "An Act for the more effectual Prevention of Crime" ([Imp.] 34 & 35V., c.112). This statute was designed to "prevent the repetition of crime" by those holding licences under the British Penal Servitude Acts (See Harris 1881: 282). In this instance Canadian M.P.'s felt the legislation was inappropriate to the Canadian setting.

47. The new Act provided for more severe penalties than its predecessors as carrying a weapon without a licence was a misdemeanour liable to a term of imprisonment for up to twelve months. Under the Peace Preservation Act, the penalties for carrying weapons were forfeiture of the weapon and a fine of \$2.00 - \$4.00 and for concealing weapons, \$40.00 - \$100.00. The Firearms Act of 1877 provided for penalties of \$20.00 - \$50.00 or imprisonment of up to three months for having a pistol when arrested and \$50.00 - \$200.00 or up to six months for carrying a pistol "with intent to injure anyone".

48. The only exceptions here were Justices of the Peace, Constables, Soldiers, Sailors, etc. who did not require licences to carry arms. In the fifth section of this chapter, the question of how this discretion was exercised in practice is discussed.

49. The riots of these decades included election riots in the 1830's (Kyte:1988,85), the Rebellions in Lower and Upper Canada in 1837, the riots against the Rebellion Losses Bill in 1849 (Careless: 1979, 123-126) and the Gavazzi riot between Catholics and Protestants in 1853 (Cross,D:1969,168).

50. If the reference was to the suspension of *habeas corpus* in relation to the Fenian Raids of 1866, it was hardly a close parallel with the Montreal disturbances of 1877 (See Romney, 1986: 228). On the other hand, it might have been to the suspension of *habeas corpus* in Lower Canada after the 1837 Rebellion (Wade 1975: 180, 192).

51. When Orangemen paraded, they customarily wore the regalia of their Order and were accompanied by a band playing tunes offensive to Irish Catholics. Some tunes referred to in the debate included "Croppies Lie Down", "Lillie Burlero" and "Kick the Pope". ["Croppies" meant a short red-haired Irish person, a revolutionary of the 1789 period.]

52. That is, trial procedure was now governed by 32-33V., c.31 instead of by 32-33V., c.32. See Appendix "A".

53. "Whereas, in consequence of the prevalence of crimes of violence in certain parts of Canada, it is necessary to make temporary provision for the better prevention thereof".
54. Jetté was one of the proponents of the bill in the House of Commons in 1878.
55. This was a Dominion scheme for rebuilding the city walls which had been brought about by the Earl of Dufferin and was a favourite project of his. See references in the Dufferin-Carnarvon Correspondence (De Kiewiet & Underhill, 1955).
56. N.A. RG2, May 25, 1878 #480 (but note, Order-in-Council is missing from Privy Council records).
57. N.A. RG 2, August 8, 1878. #688.
58. Plans to recruit a British General to command Canadian forces are detailed in the Dufferin-Carnarvon letters. Smyth was not the first choice and had to be persuaded to take on the task by Carnarvon. (de Kiewiet & Underhill, 1955)
59. The order is not listed in the index or register of Orders-in-Council for the year, nor could the order be found in dormant files or other Privy Council records.
60. The move westwards to Winnipeg in 1882 was part of a much broader, general movement of population occurring throughout the north-west in both Canada and the United States. By mid-March, more than a thousand immigrants a day were passing through St Paul's, Minnesota, bound for Minnesota, Dakota, Montana and Manitoba (WDFP March 17, 1882).
61. The Department of Justice sent a memorandum to the Privy Council accepting the Lieutenant-Governor's recommendation to appoint Lt-Col. Adam Peebles, Police Magistrate for the City of Winnipeg, as commissioner of licences but no appointment was made by Order-in-Council and no payments recorded to Peebles.
62. However, no returns were found in the records of the Department so that the number of licences issued remains unknown.
63. Zebulon Lash was Deputy Minister from 1876 to 1882 and subsequently joined Edward Blake's law firm in Toronto.

CHAPTER SIX. ADULTERATION LEGISLATION

1. The incidence of adulteration practices must have varied considerably with time and place but some relevant factors might have included economic developments, including the growth of markets (in place of direct barter or exchange) and the range of foodstuffs for sale, as well as controls over sellers, demand for high value products, and the availability of cheaper substitutes (which could be used to deceive buyers).
2. See Leadley (1982) and Thompson (1981). Engels, writing in The Condition of the Working Class in England in 1845, complained bitterly about English adulteration practices and their impact on the working class (1971: 81-85) and James Greenwood attacked the ineffectiveness of U.K. adulteration legislation in The Seven Curses of London (1869) (1981: 99-107).
3. The first statute was introduced as an amendment to the Inland Revenue Act (37V.,c.8)
4. The term "absolute liability" is used in the contemporary Canadian sense of offences which require no proof of *mens rea* and the older term "strict liability", which it replaces, is reserved for offences for which the defence of due diligence is acceptable.
5. First offences under s.22 and s.23 carried penalties of a one hundred dollar fine and costs. A second selling conviction received a two hundred dollar fine and a second adulterating conviction was a misdemeanour carrying a prison sentence of up to six months with hard labour. To put these penalties in perspective, average annual wages for a labourer stood at about four hundred dollars (Palmer, 1983:83) and the penalty for a vagrancy offence was a maximum fine of fifty dollars or up to two months in jail, under the Vagrant Act (32-33V.,c.28,s.2).
6. Inland Revenue offences were, for the most part, absolute liability offences which carried stringent penalties. Under the 1867 Act, fines ranged from fifty to five hundred dollars (31V.,c.8, s's 139-149) and they had been equally high under the Acts of the Province of Canada of 1862 and 1864.
7. A "compounder" was defined in s.1 of the Act to "mean and include every person who by himself or his agent compounds or mixes for sale by wholesale any of the articles enumerated in the first schedule to this Act, or which may be added to such schedule by order of the Governor in Council".
8. The Act, entitled "An Act to prevent fraud in the manufacture and sale of Agricultural Fertilizers" but, despite the use of the term "fraud", it did not provide for public prosecution of retailers, manufacturers or importers of falsely labelled fertilizer, nor did it set standards for the contents of artificial fertilizers. (47V.,c.37)
9. For comparison with fertilizer specimens bought by government inspectors and analysed by official analysts.

10. R.S.C. 49V., c.107, c.108 [1886] and 53V., c. 24, c.26 [1890].
11. The offences defined in the amendment were possession with intent to sell and knowingly selling such unmarked butter, and both carried a heavy penalty of \$100 (s.3).
12. But adulteration of butter by other fats would have been an offence under the new Act.
13. The ban on oleomargarine manufacture or importation was temporarily withdrawn in 1917 but then reimposed after the First World War. Its constitutionality was tested by the Margarine Reference Case of 1951 (Can. Federation of Agriculture v. A.-G. Que. [1951] A.C. 179) which limited the scope of federal criminal law to legislation involving "a typically criminal public purpose" (Hogg, 1977: 280).
14. The Act provided for summary trial by two or more justices of the peace on several charges and allowed for fines of \$1 to \$50.
15. Curiously, without repealing the 1868 Act.
16. Failure to carry out either of these requirements was a summary offence resulting in a penalty of \$2 per can.
17. Admittedly such findings refer to the years after introduction of legislation against adulterative practices. No systematic testing was carried out before 1874. Reliance on alternatives such as evidence of adulteration in other jurisdictions or public complaints of suspected practices would have even less validity. The public analysts' findings are drawn from the annual reports of the Minister of Inland Revenue, published as appendices to the Inland Revenue returns in the Sessional Papers of the House of Commons. Evidently the findings had certain inherent limitations: sampling was directed, not random, and took place only in relation to selected foods, drinks and drugs; and the results were restricted by the available microscopic and analytical chemical techniques. Any such limitations did not inhibit the analysts, some of whom struggled for years with analyses of water supplies or milk as a result of their concern for improving the purity of these substances as supplied to the general public.
18. The victims were poisoned through eating adulterated lozenges and the case became known as the Bradford incident. Occasional Canadian poisonings due to adulterated food or poor canning techniques were reported but did not necessarily result in public outrage. In 1883 several incidents of poisoning occurred near St John, N.B. after residents ate canned beef; lead acetate (which dissolved from a container into the vinegar it contained) nearly caused a death in Carp, Ontario in 1884; and adulterated ice cream caused a number of deaths in 1890 in Montreal. (See reports of local analysts in Inland Revenue Sessional Papers.)
19. Tea and sugar imported into Canada for re-exportation into the United States had duties imposed upon them by the federal government in

1872 in retaliation for U.S. tariffs on certain Canadian imports (Farr, 1955).

20. The content of the 1873 bill (introduced by a Quebec lawyer M. Matthieu) is unknown and a copy has not been found; the session ended abruptly, due to the Pacific Scandal, possibly before the bill was printed. Given the identical titles, it may have had the same content as the 1874 bill introduced in the Senate by Senator Alexander.

21. The U.K. Acts depended on local administration by local inspectors and analysts and allowed for public complaints and public use of the analysts' services.

22. There was little parliamentary discussion reported on the 1874 bill and almost no newspaper or journal reaction to the Act. Inland Revenue records for the period appear to have been destroyed in the burning down of the Houses of Parliament in 1916.

23. Stieb comments: "Given the impetus of the drink issue, food and drugs seemed a natural corollary issue." (ibid: 18)

24. Stieb quotes this statement and it is his only evidence of a connecting thread between the prohibitionist and anti-adulteration positions. The point here surely is that M.P.'s holding such views may have been able to support the Commons bill of 1874 but Stieb does not explain why the liquor provisions and general adulteration provisions were included in the bill in the first place.

25. Either the producer, importer or seller paid tax on a smaller quantity and then sold a larger amount through dilution; or the producer used cheaper ingredients and made excessive profits. A number of scams on the Revenue were carried on in the United Kingdom, including paybacks of excise on re-exported liquor, wine etc., which was diluted during bottling or processing in the U.K.. It is not known on what scale such practices were carried on in Canada.

26. This is not to deny that both these lobbies existed and could affect legislation in general ways; in a sense they are treated as Gramscian "structural", as opposed to "contingent", features.

27. The Board of Inland Revenue in England did employ chemists to test dutiable substances and this may have been the similar "powers" Cartwright mentioned in the House.

28. Sess.Papers Commons. 1889. No. 4(c): 103

29. Fertilizers sold at prices ranging from twelve to forty-two dollars per ton and, under the 1885 Act, exemption from labelling with precise contents applied to those selling at less than ten dollars per ton. Manufacturers who failed the analysts' tests could therefore opt to sell their product at this low price or continue to sell at their usual price and face prosecution. The Chief Analyst wrote in his 1888 annual report: "Fertilizers Nos 73, 77, 91 and 96 do not come up to standard

and consequently their sale at any higher prices than \$10 per ton is illegal" (ibid:108).

30. Parliament received two petitions on the matter in 1877 from the President of the Ottawa Board of Trade (Journ. Commons 1877: 162,232).

31. W.H.Lynch of Danville, Quebec, a noted authority on butter making published a book entitled Scientific Butter Making which the Ontario Government had distributed to dairy farmers. In 1885, nearly one hundred federal M.P.'s signed a petition to the Secretary of State pressing for the publication and free distribution of a revised edition by the Dominion Government. The petition mentioned that one hundred thousand copies of a pamphlet entitled "Butter and Cheese", printed by a Parliamentary Committee, had already been distributed. (NA. RG2-1, vol. 5135 P.C. 1147 (1885)).

32. The M.P. (Archibald) who introduced the 1878 bill said the great dairy State of New York had found the evil so great that it was necessary to take some steps to guard and protect not only the consumers, but also the producers of butter. He had introduced the clause making this provision from the New York law into this bill,...

Parl.Can. Hansard, April 16,1878

Archibald, an Ontario Grit, admitted that little margarine was being manufactured in Canada in 1878 but warned that "the manufacture of it had grown to some considerable proportions in the United States;" and the bill passed with little debate.

33. The 1886 legislation had taken several forms before this final version was settled. First a private member's bill demanded regulation of the manufacture and sale of all butter substitutes; then the Minister of Finance proposed imposing taxes and excise duty on margarine (thus bringing the price closer to that of butter); next the Minister of Inland Revenue proposed licensing and inspecting margarine manufacturers and charging license fees; then the original proposer introduced a further private bill to ban importation and manufacture of margarine and, lastly, this bill was dropped in favour of a Government bill prohibiting production and importation.

34. Tory protectionists got their revenge when the general tenor of debate later swung towards total prohibition of margarine imports into Canada; they sarcastically welcomed those usually in favour only of a "revenue tariff" aboard the prohibitionist bandwagon.

35. Claude Levi-Strauss himself had suggested that butter was not only good to eat but "good to think". (Cited Ball & Lily, 1982:492)

36. Cf., for example, the Assize of Bread (1265) - repealed in 1818. Magistrates' manuals such as Richard Burns Justice of the Peace [1755] (1814) mention specific laws against trading practices relating to foodstuffs.

37. Earlier English statutes can be traced in The Chronological Table and Index of Statutes (1881). The British Adulteration Acts were [U.K.] 35 & 36V.,c.74 (1872); 38 & 39V.,c.63 (1875); 42 & 43V.,c.32 (1879).

38. See fn.17 above.

39. In Nova Scotia and New Brunswick in 1758, in Ontario in 1792, and in Quebec where, after 1774, French civil law and English criminal law were adopted. See Fitzgerald and McShane (1982) for details of the reception process.

40. In all cases therefore, the date of reception preceded the 1860 U.K. Adulteration Act and this Act did not expressly apply to any colonies. As no adulteration acts were passed in the North American colonies, Canada in 1867 had no acts to incorporate into federal statute law.

41. This "nuisances" portion of the Code dealt with a range of offences, from keeping a common bawdy house or betting house to offering indignities to human remains, and appeared to be a "rag-bag" or residual category of offences (inserted between morals and vagrancy offences).

42. It can be suggested that two features of these definitions are curious from a legal perspective: firstly the use of the term "common nuisance" as opposed to "public nuisance" - the definition is that usually given for a public nuisance so perhaps the terms were considered synonymous at this time. Secondly, the offence of selling "unfit" food under s.194 required *mens rea* but the common law offence of public nuisance traditionally did not. According to Cross and Jones (1959), it was no defence to a charge of nuisance to say it was not intended or the creator was unaware of the consequences (4th Ed.:83). Thus public nuisances offences were absolute liability offences. Under the Nuisances section of the 1892 Code, certain offences, such as keeping a common gaming house or a bawdy house, were dealt with as absolute liability offences. Was the *mens rea* element deliberately inserted by the Codifiers to allow a defence of lack of intent or ignorance to the charge of selling adulterated food?

43. H.E. Taschereau, in an open letter to Sir John Thompson, Minister of Justice, dated Jan. 20, 1893, p.5 (N.A.RG13 86-87/084/v.27/63/1894)

44. In an unsigned memo dated February 3, 1893, and probably written by Sedgewick (Deputy Minister of Justice until March 1893, or one of his officials), responding to Taschereau's critique of January 1893 outlining the general principles underlying the 1892 Code. (NA RG13 86-87/084 vol.27 63/1894:2)

45. Chapter 50. Burbidge included drugs and liquor as well as food in his analysis of the criminal law but omitted the law dealing with agricultural fertilizers saying, in a footnote, "The provisions are, however, so special that it is not necessary to embody them in the text." (1890:498)

46. One argument advanced by Rod MacLeod and others (in relation to the passage of federal narcotics legislation in 1908) is that the Codifiers of 1892 deliberately excluded all absolute liability offences from the Code (1988: 153). But such a policy would not explain the exclusion of most adulteration offences - only offences relating to liquor, butter, canned goods and milk contained absolute liability offences.

47. The officials involved probably resented Taschereau's critique; the general tone of the internal memo responding to it was dismissive and hostile.

48. Harris (1881), while recognizing the treatment of adulteration in the 1875 [U.K.] Sale of Food and Drugs Act, also defined adulteration as an offence against public health which was regarded as a cheat at common law (1881: 137,238).

49. Blake and Irving had their argument in the appeal case privately printed as "a very slight contribution to the long discussion of the meaning of the Constitutional Act." (O.A. Blake Papers MU266 C-2 Box 128 #31)

48. The Ontario Act of 1868 could arguably have been considered criminal law and therefore *ultra vires* the Provincial Government, but no legal attention appears to have been paid to its constitutionality until the 1880's. The new Ontario legislation appeared less akin to criminal law but the prosecution under it in *R. v. Wason* 1889, produced an appeal by the Crown against an acquittal, one line of argument by the defence being that the statute was *ultra vires* the Provincial Government (17 O.A.R., 221). The case brought the status of the Dominion Adulteration Act as "criminal law" into question and much of the argument for the Crown (made by Edward Blake) related to distinguishing the purposes of the federal Adulteration Act of 1884 from those of the Ontario Act. In Blake's analysis the federal act was criminal law under s.91(27) of the B.N.A. Act, being designed to address "a wrong against the community" (*ibid*:225), whereas the Ontario Act related "to property and civil rights in the Province and for enforcing the same by fine, penalty and imprisonment." (Osler J.A. *ibid*: 238-9). The Ontario Appeal Court allowed the Crown's appeal, agreeing that the provincial act was *intra vires*.

51. David Mills, the Reform M.P. and later Minister of Justice, used this phrase during his repeated arguments in Parliament that adulteration was a local matter pertaining to property and civil rights.

52. See footnote 1 in adulteration statute listing in Appendix D.

53. Section 22,23 and 24 of the Canadian Act (37V.,c.8) were taken from [U.K.] 35-36V.,c.74, ss. 1, 2, and 3 (which were identical to the offence sections in the U.K. Act of 1860).

54. Section 1 of the Canadian Act (41V.,c.11) was taken from ss. 2 and 6 of the U.K. statute, "An Act to repeal The Adulteration of Food Act and to make better provision for the Sale of Food and Drugs in a pure state" (38&39V.,c.63).

55. From s.6 of the U.K. statute of 1875

56. See 47V.,c.34,s.1 for definitions taken from [U.K.] 38&39V.,c. 63,s.2 and the same act s.27(c) for the defence of ignorance.

57. The 1884 Act was more rational in its treatment of adulteration than previous Canadian legislation; the statute attempted to distinguish harmful from harmless adulteration. The Canadian Act of 1874 had only referred to the sale of "any deleterious ingredient or material injurious to the health of persons eating or drinking such article" and the U.K. Acts failed to distinguish between potentially harmful and harmless adulteration. The 1884 Act included itemizations of forms of adulteration of food and drugs: drugs were to be assessed according to British and U.S. pharmacological standards so that "adulterated" referred to drugs differing "from the standard of strength, quality or purity laid down." The Act provided far less serious penalties for adulteration "deemed non-injurious to health" which might include substitution of substances or selling under the name of another article as opposed to adulteration injurious to health such as poisonous ingredients added to foods. The range of penalties for the same offence of adulteration was ten to fifty dollars for an offence injurious to health and up to \$30 for a non-injurious offence. The distinction, although rational, provoked annoyance among constitutionally-minded legislators in the Reform Party. Edward Blake, for instance, pointed out that an offence of "non-injurious" adulteration could hardly be criminal. Mills continued to argue that adulteration lay under provincial powers for the regulation of property matters or municipal police powers. (April 1, 1884).

58. The New York and New Jersey statutes of 1881 were based on a model act (drafted by a prominent member of the British Society of Public Analysts, G.W. Wigner), which won an award from the U.S. National Board of Trade in 1880 (Stieb, 1972:21 and 1976).

59. As political economists and historians from Innis to Clement and Pentland to Careless have suggested, Upper Canada was a series of distinct hinterlands based on small towns as their centres before rail transportation opened up trade and commerce in the 1850's.

60. By the 1880's, a large city such as Toronto had a full-time General Inspector and a corps of sanitary inspectors (MacDougall, 1981: 283, 298-300) but, even before the Ontario Health Act of 1884, municipalities employed inspectors, such as the butter, staples and weights and measures inspectors, and they appear to have been paid on a fee-for-service basis by those requesting inspection.

61. Weights and Measures inspectorates were local until after Confederation.

62. See Rowell-Sirois, 1978:48

63. A parallel development has been documented for the United Kingdom by Arthurs (1985,Ch 4) among others, but between about 1830 and 1870.

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64. See schedules to the Customs Act and the Inland Revenue Act of 1867 (31V., c.7 & c.8). These foodstuffs were all subject to excise in eighteenth-century Britain (together with other substances including salt (Burns, 1814: 77-402))

65. As a result of an 1881 case, *Citizens' Insurance Co. v. Parsons* (7 App Cas. 96)

66. The butter legislation of 1886, however, survived until in the famous Margarine Reference, the Privy Council ruled that the prohibition of margarine was invalid. (See fn.13 above.) It was not a health hazard and the Federal Government could not assume jurisdiction over any subject by declaring certain actions "criminal" (*Can Fed of Agriculture v. A.-G. Que.* [1951] A.C. 179)

67. This is not surprising; if one thing was learned from critiques of conventional analyses of political processes (Bachrach et al. 1970), it was the importance of analysing the (long-ignored) silences and absences in public political communications.

68. The term "sanitarian" was in use to denote medically or scientifically-trained professional men with a strong interest in public health problems. For instance, in 1868 the ex-President of the College of Physicians and Surgeons of Canada, W. Marsden, wrote that the International Sanitary Conference held in 1866 in Constantinople (which was concerned with "the efficacy of quarantine and isolation for the arrest of infectious and contagious diseases") "was composed of the most distinguished sanitarians of this age."

69. The idea of public health boards under Dominion legislation was still being promoted by the C.M.A. Hygiene Committee, now led by Dr Caniff, in the 1880's - having met with repeated rejections since 1868, partly due to the jurisdictional question of responsibility for health under the B.N.A. Act.

70. Note that the germ theory of disease was not fully established by 1874 and that rival theories, principally "miasmatic" explanations involving "noxious exhalations", competed for predominance. The work of Lister and Pasteur did not monopolize medical viewpoints until the 1880's.

71. Dr Playter solicited a subscription in 1877 from the Department of Justice for the new journal but the answer was "None wanted." (N.A. RG13, Index 1877 vol.545 file 605).

72. Charles Tupper, the most prominent Canadian medical man in political circles, a member of Macdonald's Cabinet from 1870 to 1873 and 1878 to 1884, he was Macdonald's "right-hand man" (Macmillan 1967:758). He was President of the C.M.A. from 1867-1868.

73. Dr Brouse was active in the C.M.A., being sent as a C.M.A. representative to the American Medical Association meetings in 1876. He was an inveterate parliamentary campaigner for a central health bureau and was backed by the C.M.A., which voted in 1876 to send a memorial to

the Government "to strengthen Dr Brouse in his desire to induce the Dominion Government to take the matter up." (Lancet 1876, v.9:13)

74. Paquet was appointed to the Senate where he proposed harsher adulteration legislation in the late 1880's, citing the annual Inland Revenue reports as evidence. (Hansard. Senate. April 2, 1889)

75. According to the Hansard records of the early debates in the Commons and the Senate, none of the members of the 1873 Committee on Hygiene and Statistics were active in discussion of these bills.

76. In 1877 Brouse was working on the question of vital statistics in relation to public health and persuaded the Commons to appoint a Select Committee on the subject, to include himself as Chair and Charles Tupper as a member (Journ. Feb 21, 1877)

77. Mackenzie used this response in the 1877 debate, against Brouse's motion, while Tupper supported Brouse's claim that "statistics" as opposed to public health, were a federal responsibility (Hansard. Commons Feb 21, 1877). Tupper took the same stance in the course of an explanation in 1881 that matters of public health presented a jurisdictional problem. See Caniff Papers. (Ont.A. Ms7 63 reel 1, Series D-2.)

78. In 1877, for instance, The Canada Medical Record prefaced its only editorial of the period dealing with adulteration, by stating "We have received through the politeness of Dr.J.Baker Edwards, the Public Analyst under this Act for the City of Montreal, a copy of the First Report [on the Adulteration of Food Act]." Stieb similarly found an lack of attention to adulteration in pharmaceutical journals of the period and commented "The medical and public press seemed even less concerned." (1971:23)

79. Introduced by Taylor, Leeds, as a private members' bill, Bill 149.

80. If Howell's claim was as accurate as his figure for sales it was probably misleading. He appears to have multiplied the margarine production of the U.S. by a factor of ten.

81. Percentages of samples of "condiments" adulterated varied between a high of 89% (in 1876) and a low of 51% (in 1881).

82. This assumption may have served to influence departmental reluctance to prosecute petty retailers.

83. The latter case was dismissed on a technicality; one of the former was appealed successfully; and the other person was convicted but "left the country" (Sess.P's No.6, 1878, ix)

84. Figures were not provided in departmental Annual Reports after the 1878 failures and departmental records were destroyed in 1916. Available Department of Justice records made little mention of prosecutions under the Inland Revenue Act. There is one case in Department of Justice records in 1880 when M. H.A.Turcott[e] of Quebec

asked permission to use the Attorney-General's name in suing a party for selling adulterated milk to him. (N.A. RG 13 A3, v.599, Mf c14325). Two months later Turcotte was granted permission contingent on submitting a bond indemnifying the Government against any claims for costs.

85. While this was the only petition against adulteration in twenty-five years of Privy Council records, other manufacturers could have made their complaints known directly to Cabinet Ministers or through their local M.P.'s. In this case Mr. M. H. Gault M.P. probably forwarded the petition from Messrs. A.S.Ewing, Alex Wills and J.J.Duffy to the Cabinet.

86. The Journals of the House refer occasionally to accusations of venality against revenue collectors and a bill had been introduced in 1871 to prevent "corrupt practices in relation to the collection of the Revenue" (34V., c.11)

87. As pointed out, internal departmental records were destroyed in the burning of the Parliament buildings in 1916. As far as can be ascertained, neither the Commissioners nor the Ministers in the period left significant collections of private records.

88. See Ch.3, fn 64, *supra*. Probably as a result, neither Fournier (1873-74) nor Geoffrion (1874-76) spoke on Inland Revenue bills or Adulteration bills in the House. The Inland Revenue amending bill was introduced in the House by Richard Cartwright, the Finance Minister, and in the Senate by other reliable Reform ministers including the Minister of Agriculture (Letellier de St. Just) and the Secretary of State (Richard Scott).

89. As City Engineer in Toronto in 1859, Alfred Brunel had repeatedly expressed concern to Council about the quality of water supplies to the City and the need for improved sewage systems. His continuing sanitarian interests were demonstrated in the 1870's when similar interests re-emerged during his tenure as Commissioner of Inland Revenue. For example, he proposed testing water supplies for cities, starting a program for this purpose in the late 1870's.

90. "Power and knowledge" are concepts intrinsic to Foucault's work. Unlike his emphasis on the production of knowledge ("how relations of power delineate fields of knowledge and produce objects of knowledge" (Cousins and Hussain, 1984: 250)) we use the terms to refer to a monopoly of knowledge possessed by Canadian analytical experts - a knowledge appropriated from the international scientific community.

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APPENDIX A

LISTING OF CANADIAN FEDERAL STATUTES ANNOTATED FOR RESEARCH INTO
LEGISLATION RELATED TO CRIMES, OFFENCES AND THE ADMINISTRATION OF
JUSTICE, 1867-1892.

REGNAL YEAR AND CHAPTER	FULL TITLE OF STATUTE AND SHORT TITLE
<u>1867</u>	
31V.,c.5	An Act respecting the collection and management of the Revenue, the Auditing of Public Accounts, and the liability of Public Accountants.
31V.,c.6	An Act respecting the Customs.
31V.,c.8	An Act respecting the Inland Revenue.
31V.,c.9	An Act to impose Duties on Promissory Notes and Bills of Exchange.
31V.,c.10	An Act for the regulation of the Postal Service. ("The Post Office Act 1867.")
31V.,c.11	An Act respecting Banks.
31V.,c.12	An Act respecting the Public Works of Canada.
31V.,c.14	An Act to protect the inhabitants of Canada against lawless aggressions from subjects of Foreign Countries at Peace with Her Majesty.
31V.,c.15	An Act to prevent the unlawful training of persons to the use of arms and the practise of Military evolutions; and to authorize Justices of the Peace to seize and detain arms collected or kept for purposes dangerous to the public peace.
31V.,c.16	An Act to authorize the apprehension and detention of such persons as shall be suspected of committing acts of hostility or conspiring against Her Majesty's Person and Government.
<u>1868</u>	
31V.,c.29	An Act to continue for a limited time the several Acts therein mentioned.
31V.,c.33	An Act respecting the Governor General, the Civil List, and the Salaries of certain Public Functionaries.
31V.,c.37	An Act respecting the security to be given by Officers of Canada.

- 31V.,c.38 An Act respecting Inquiries concerning Public Matters.
- 31V.,c.39 An Act respecting the Department of Justice.
- 31V.,c.40 An Act respecting the Militia and Defence of the Dominion of Canada.
- 31V.,c.42 An Act providing for the organisation of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands.
- 31V.,c.45 An Act respecting the Currency.
- 31V.,c.46 An Act to enable Banks in any part of Canada to use Notes of the Dominion instead of issuing Notes of their own.
- 31V.,c.47 An Act respecting the Manufacture or Importation of Copper Coins or Tokens.
- 31V.,c.48 An Act respecting Insurance Companies.
- 31V.,c.49 An Act constituting the Department of Inland Revenue.
- 31V.,c.50 An Act to increase the Excise Duty on Spirits, to impose an Excise Duty on Refined Petroleum, and to provide for the inspection thereof. {"The Inland Revenue Act, 1868."}
- 31V.,c.51 An Act for better securing the payment of the duty imposed on Tobacco manufactured in Canada. {"The Act respecting Raw Tobacco."}
- 31V.,c.52 An Act respecting certain Penalties in respect of Stamp Duties.
- 31V.,c.53 An Act for the Organization of the Department of Agriculture.
- 31V.,c.54 An Act respecting Copyrights. {"The Copyright Act of 1868."}
- 31V.,c.55 An Act respecting Trade Marks and Industrial Designs. {"The Trade Mark and Design Act of 1868."}
- 31V.,c.58 An Act respecting the Navigation of Canadian Waters.
- 31V.,c.59 An Act relating to Light-Houses, Buoys and Beacons.
- 31V.,c.60 An Act for the regulation of Fishing and protection of Fisheries. {"The Fisheries Act."}
- 31V.,c.62 An Act respecting Harbor Police.

- 31V.,c.63 An Act relating to Quarantine and Public Health.
{"Quarantine and Health Act of 1868."}
- 31V.,c.65 An Act respecting the Inspection of Steamboats, and for
the greater safety of passengers by them.
- 31V.,c.66 An Act respecting Aliens and Naturalization.
- 31V.,c.68 An Act respecting Railways. {"The Railway Act, 1868."}
- 31V.,c.69 An Act for the better security of the Crown and of the
Government.
- 31V.,c.70 An Act respecting Riots and Riotous Assemblies.
- 31V.,c.71 An Act respecting forgery, perjury, and intimidation in
connection with the Provincial Legislatures and their Acts.
- 31V.,c.72 An Act respecting Accessories to and Abettors of
indictable Offences.
- 31V.,c.73 An Act respecting Police of Canada.
- 31V.,c.74 An Act respecting persons in custody charged with n
Treason or Felony.
- 31V.,c.75 An Act respecting Penitentiaries and the Directors
thereof, and for other purposes. { "The Penitentiary Act of 1868." }
- 31V.,c.94 An Act respecting the Treaty between Her Majesty and the
United States of America, for the apprehension and surrender of
certain offenders.

1869

- 32-33V.,c.6 An Act for the gradual enfranchisement of Indians, the
better management of Indian affairs, and to extend the provisions of
the Act 31st Victoria, Chapter 42.
- 32-33V.,c.8 An Act to amend the Act thirty-first Victoria, chapter
thirty-three, and to make further provision with respect to the
salaries, and travelling expenses of the Judges.
- 32-33V.,c.10 An Act respecting Immigration and Immigrants. {"The
Immigration Act, 1869."}
- 32-33V.,c.11 An Act respecting Patents of Invention. {"The Patent
Act of 1869."}
- 32-33V.,c.12 The Canada Joint Stock Companies Clauses Act. {"The
Canada Joint Stock Companies Clauses Act, 1869."}

32-33V.,c.13 An Act respecting Joint Stock Companies Incorporated by Letters Patent. {"Canada Joint Stock Companies Letters Patent Act, 1869."}

32-33V.,c.16 An Act respecting Insolvency . {"The Insolvency Act 1869."}

32-33V.,c.17 An Act to remove doubts as to legislation in Canada regarding offences not wholly committed within its limits.

32-33V.,c.18 An Act respecting offences relating to the Coin.

32-33V.,c.19 An Act respecting Forgery.

32-33V.,c.20 An Act respecting Offences against the Person.

32-33V.,c.21 An Act respecting Larceny and other similar offences.

32-33V.,c.22 An Act respecting Malicious Injuries to Property.

32-33V.,c.23 An Act respecting Perjury

32-33V.,c.24 An Act for the better preservation of the Peace in the vicinity of Public Works.

32-33V.,c.25 An Act respecting certain offences relative to Her Majesty's Army and Navy.

32-33V.,c.26 An Act for the better protection of Her Majesty's Military and Naval Stores.

32-33V.,c.27 An Act respecting Cruelty to Animals.

32-33V.,c.28 An Act respecting Vagrants.

32-33V.,c.29 An Act respecting Procedure in Criminal Cases, and other matters relating to Criminal Law.

32-33V.,c.30 An Act respecting the duties of Justices of the Peace, out of Sessions, in relation to persons charged with Indictable Offences.

32-33V.,c.31 An Act respecting the duties of Justices of the Peace, out of Sessions, in relation to summary convictions and orders.

32-33V.,c.32 An Act respecting the prompt and summary administration of Criminal Justice in certain cases.

32-33V.,c.33 An Act respecting the trial and punishment of Juvenile Offenders.

32-33V.,c.34 An Act respecting Juvenile Offenders within the Province of Quebec.

32-33V.,c.35 An Act for the more speedy trial, in certain cases, of persons charged with felonies and misdemeanors, in the Provinces of Ontario and Quebec.

32-33V.,c.36 An Act respecting the Criminal Law, and to repeal certain enactments therein mentioned.

32-33V.,c.37 An Act respecting Contagious Diseases Affecting Animals. {"The Animal Contagious Diseases Act, 1869."}

32-33V.,c.38 An Act respecting inquiries and investigations into shipwrecks and other matters.

32-33V.,c.39 An Act to amend the Act respecting the Inspection of Steamboats, and for the greater safety of passengers by them.

1870

33V.,c.1 An Act to authorize the apprehension and detention of such persons as shall be suspected of committing acts of hostility or conspiring against Her Majesty's Person and Government.

33V.,c.11 An Act respecting Banks and Banking.

33V.,c.14 An Act respecting the Coasting Trade of Canada.

33V.,c.16 An Act to make provision for discipline on board of Canadian Government vessels. {"The Canadian Government Vessels Discipline Act."}

33V.,c.17 An Act respecting Certificates to Masters and Mates of Ships.

33V.,c.18 An Act to amend the Act relating to Light-Houses, Buoys and Beacons.

33V.,c.21 An Act respecting the First Census. {"The Census Act."}

33V.,c.22 An Act to facilitate the signing of Militia Commissions.

33V.,c.25 An Act to amend the Act respecting the Extradition of certain offenders to the United States of America.

33V.,c.26 An Act to amend the Act respecting Perjury.

33V.,c.27 An Act to amend the Act respecting the Duties of Justices of the Peace out of Sessions in relation to summary Convictions and Orders.

33V.,c.28 An Act to amend an Act for the better preservation of the peace in the vicinity of Public Works.

- 33V.,c.29 An Act to amend "An Act respecting Cruelty to Animals."
- 33V.,c.30 An Act to amend "The Penitentiary Act of 1868."
- 33V.,c.31 An Act for the better protection of the Clothing and Property of Seamen in Her Majesty's Navy. { "The Queen's Seaman's Clothing Act, 1870". }
- 33V.,c.32 An Act to empower the Police Court in the City of Halifax to sentence juvenile offenders to be detained in the Halifax Industrial School.
- 33V.,c.33 An Act to continue and make permanent certain Acts and parts of Acts of the Province of New Brunswick, relative to the Police Force in the Parish of Portland, in the City and County of Saint John.
- 33V.,c.34 An Act to remedy the inconvenience which would arise from the expiration of the Acts and parts of Acts herein mentioned,⁴ before the passing of the Act of this Session to continue the same.
- 33V.,c.36 An Act respecting the Marking of Timber.
- 33V.,c.37 An Act to amend the Law relating to the Inspection of Raw Hides and Leather.

1871

- 34V.,c.5 An Act relating to Banks and Banking.
- 34V.,c.6 An Act to provide additional facilities for depositing savings at interest with the security of the Government, and for the issue and redemption of Dominion Notes.
- 34V.,c.7 An Act respecting certain Savings Banks in the Provinces of Ontario and Quebec.
- 34V.,c.11 An Act for the prevention of corrupt practices in relation to the Collection of the Revenue.
- 34V.,c.13 An Act respecting the force and effect of the Acts of the Parliament of Canada, in and in relation to the Province of Manitoba, and the Colony of British Columbia when it becomes a Province of the Dominion.
- 33V.,c.14 An Act to extend to the Province of Manitoba certain of the Criminal Laws now in force in the other Provinces of the Dominion.
- 34V.,c.17 An Act to extend the Act respecting the Militia and Defence of the Dominion of Canada. { "The Militia and Defence Acts 1868 and 1871." }
- 34V.,c.20 An Act to make temporary provision for the Election of Members to serve in the House of Commons of Canada. { "The Interim Parliamentary Elections Act, 1871." }

34V.,c.26 An Act to authorize the sale or lease of the Rockwood Asylum to the Province of Ontario.

34V.,c.30 An Act to make provision for the detention of Female Convicts in Reformatory Prisons in the Province of Quebec; and for other purposes relating to Prisons in that Province.

34V.,c.32 An Act for more effectively preventing the desertion of Seamen in the Port of Quebec.

34V.,c.33 An Act to provide for the appointment of a Port Warden for the Harbor of Quebec.

34V.,c.43 An Act to enable certain Railway Companies to provide the necessary accommodation for the increasing traffic over their Railways and to amend The Railway Act, 1868.

1872

35V.,c.20 An Act forther to amend the Act 31 Victoria, Chapter 33.

35V.,c.21 An Act to amend the Act 32 & 33 Victoria, Chapter 8.

35V.,c.23 An Act respecting the Public Lands of the Dominion. {"The Dominion Lands Act."}

35V.,c.24 An Act to remove doubts under the Act respecting the Public Works of Canada.

35V.,c.25 An Act respecting Bridges.

35V.,c.26 An Act respecting Patents of Invention. {"The Patent Act of 1872."}

35V.,c.27 An Act relating to Quarantine.

35V.,c.28 An Act to amend the Immigration Act of 1869. {"The Immigration Acts of 1869 and 1872."}

35V.,c.30 An Act respecting Trade Unions

35V.,c.31 An Act to amend the Criminal Law relating to Violence, Threats and Molestation.

35V.,c.32 An Act to amend the Law relating to the fraudulent marking of Merchandise.

35V.,c.33 An Act for the avoidance of doubts respecting Larceny of Stamps.

35V.,c.34 An Act to correct a clerical error in the Act respecting malicious injuries to property.

35V.,c.35 An Act to amend the Law relating to Advertisements respecting Stolen Goods.

35V.,c.39 An Act respecting the Shipping of Seamen in Nova Scotia.

1873

36V.,c.3 An Act to amend the Act respecting procedure in criminal cases.

36V.,c.7 An Act to suspend for a limited time the operation of certain Acts relating to the Inspection of Steamboats, in British Columbia.

36V.,c.8 An Act with respect to the Carriage of Dangerous Goods in Ships. {"The Carriage of Dangerous Goods Act, 1873."}

36V.,c.9 An Act to provide for the appointment of Harbor Masters for certain Ports in the Provinces of Nova Scotia and New Brunswick.

36V.,c.10 An Act to add to the number of the Members of the Corporation of the Trinity House of Quebec, and to increase the powers thereof.

36V.,c.11 An Act to amend the Acts relating to Port Wardens at Montreal and Quebec.

36V.,c.12 An Act to amend the Act to provide for the appointment of a Harbour Master for the Port of Halifax.

36V.,c.27 An Act to make Temporary Provision for the Election of Members to serve in the House of Commons.

36V.,c.28 An Act to make better provision respecting Election Petitions, and matters relating to Controverted Elections of Members of the House of Commons. {"The Controverted Elections Act, 1873."}

36V.,c.34 An Act further to amend the "Act to make further provision for the government of the North West territories."

36V.,c.35 An Act respecting the Administration of Justice and for the establishment of a Police Force in the North West Territories.

36V.,c.39 An Act to make further provision as to Duties of Customs in Manitoba and the North West Territories.

36V.,c.40 An Act respecting the admission of the Colony of Prince Edward Island as a Province of the Dominion.

36V.,c.46 An Act to amend "An Act respecting the Militia and Defence of the Dominion of Canada."

- 36V.,c.47 An Act respecting Weights and Measures. {"The Weights and Measures Act, 1873."}
- 36V.,c.48 An Act to provide for the Inspection of Gas and Gas Meters. {"The Gas Inspection Act, 1873."}
- 36V.,c.49 An Act to amend and consolidate, and to extend to the whole Dominion of Canada, the Laws respecting the Inspection of certain staple articles of Canadian produce.
- 36V.,c.50 An Act to amend the Act respecting Offences against the Person.
- 36V.,c.51 An Act further to amend the law respecting certain matters of procedure in criminal cases.
- 36V.,c.52 An Act to extend the Act passed in the 33rd year of Her Majesty's Reign, intituled: "An Act to amend the Penitentiary Act of 1868."
- 36V.,c.54 An Act respecting Pilotage. {"The Pilotage Act, 1873."}
- 36V.,c.55 An Act respecting Wreck and Salvage. {"The Wreck and Salvage Act, 1873."}
- 36V.,c.57 An Act to provide for keeping order on board Passenger Steamers.
- 36V.,c.58 An Act to amend the Acts for more effectually preventing the Desertion of Seamen; and for other purposes.
- 36V.,c.61 An Act respecting the Trinity House and Harbour Commissioners of Montreal.
- 36V.,c.62 An Act further to amend the Acts to provide for the management and improvement of the Harbour of Quebec.
- 36V.,c.63 An Act respecting the Harbour of Pictou, in Nova Scotia.
- 36V.,c.65 An Act for the better protection of Navigable Streams and Rivers.
- 36V.,c.69 An Act respecting "The Central Prison for the Province of Ontario."
- 36V.,c.127 An Act to make further provision respecting the Extradition of Criminals. (Act missing in statutes - reserved by Governor General but later approved and referred to in subsequent Extradition Acts, e.g. 40V.,c.25.)
- 36V.,c.128 An Act relating to shipping and for the registration, inspection and classification thereof.

36V.,c.129 An Act respecting the Shipping of Seamen. {" The Seamen's Act, 1873."}

1874

37V.,c.7 An Act to amend "An Act to make further provision as to Duties of Customs in Manitoba and the North West Territories," and further to restrain the importation or manufacture of Intoxicating Liquors into or in the North West Territories.

37V.,c.8 An Act to impose License duties on Compounders of Spirits; to amend the "Act respecting the Inland Revenue;" and to prevent the Adulteration of Food, Drink and Drugs. {"The Inland Revenue Act of 1875."}

37V.,c.9 An Act Respecting the Elections of Members of the House of Commons. {" The Dominion Elections Act, 1874."}

37V.,c.10 An Act to make better provision for the trial of Controverted Elections of Members of the House of Commons, and respecting matters connected therewith. {" The Dominion Controverted Elections Act, 1874."}

37V.,c.21 An Act to amend certain Laws respecting Indians, and to extend certain Laws relating to matters connected with Indians to the Provinces of Manitoba and British Columbia.

37V.,c.22 An Act to amend "An Act respecting the Administration of Justice, and for the establishment of a Police Force in the North-West Territories."

37V.,c.27 An Act to extend certain Acts therein mentioned to the Province of Prince Edward Island.

37V.,c.29 An Act for the removal of obstructions, by wreck and like causes, in Navigable Waters of Canada, and other purposes relative to wrecks.

37V.,c.30 An Act further to amend the "Act respecting the Inspection of Steamboats."

37V.,c.32 An Act to provide for the appointment of Port Wardens at certain Ports of the Dominion.

37V.,c.33 An Act further to amend the "Act to provide for the appointment of a Port Warden for the Harbor of Montreal."

37V.,c.35 An Act to amend the Acts respecting the Militia and the defence of the Dominion of Canada, and to extend the same to the Province of Prince Edward Island.

37V.,c.37 An Act for the suppression of Voluntary and Extra-Judicial Oaths.

- 37V.,c.38 An Act respecting the Crime of Libel.
- 37V.,c.39 An Act to extend certain Acts relating to the prompt administration of justice in criminal matters to the Province of Manitoba.
- 37V.,c.40 An Act to amend the Act respecting the prompt and summary administration of criminal justice in certain cases, as respects the Provinces of Nova Scotia and New Brunswick.
- 37V.,c.41 An Act for avoiding doubts as to the application of the Act 32-33 Victoria, chapter 35, to the district of Algoma.
- 37V.,c.42 An Act to extend to the Province of British Columbia certain of the Criminal Laws now in force in other Provinces of the Dominion.
- 37V.,c.43 An Act to amend "An Act respecting Vagrants."
- 37V.,c.45 An Act to make better provision, extending to the whole Dominion of Canada, respecting the Inspection of certain Staple Articles of Canadian produce. {"The General Inspection Act, 1874."}

1875

- 38V.,c.2 2 An Act to continue for a limited time the Acts therein mentioned.
- 38V.,c.7 An Act to amend and consolidate the Statute Law for the regulation of the Postal Service. {"The Post Office Act, 1875."}
- 38V.,c.8 An Act to amend the Dominion Militia and Defence Acts.
- 38V.,c.10 An Act to amend the Acts respecting Controverted Elections.
- 38V.,c.11 An Act to establish a Supreme Court, and a Court of Exchequer, for the Dominion of Canada.
- 38V.,c.16 An Act respecting Insolvency. {"The Insolvent Act of 1875."}
- 38V.,c.20 An Act to amend and consolidate the several Acts respecting Insurance, in so far as regards Fire and Inland Marine business.
- 38V.,c.21 An Act respecting Life Insurance Companies and Companies doing any Insurance Business other than Fire and Inland Marine.
- 38V.,c.24 An Act further to amend the General Acts respecting Railways.

- 38V.,c.25 An Act to extend and amend the Law requiring Railway Companies to furnish Returns of their Capital, Traffic and Working Expenditure.
- 38V.,c.27 An Act to amend "An Act respecting the Coasting Trade of Canada."
- 38V.,c.29 An Act to extend certain provisions of "The Seamen's Act, 1873," to vessels employed in navigating the Inland Waters of Canada. {"The Seamen's Agreement Act, 1875."}
- 38V.,c.30 An Act to amend the Acts thirty-sixth Victoria, chapter nine, and thirty-seventh Victoria, chapter thirty-four, respecting the appointment of Harbor Masters.
- 38V.,c.34 An Act to amend the Act Chapter forty-six of the Consolidated Statutes of Canada, intituled "An Act respecting the Culling and Measuring of Timber."
- 38V.,c.36 An Act to compel persons delivering certain Merchantable Liquids in casks to mark on such casks the capacity thereof.
- 38V.,c.38 An Act to amend the Acts for the Better Preservation of the Peace in the Vicinity of Public Works.
- 38V.,c.39 An Act to amend the provisions of "An Act to Amend the Criminal Law relating to Violence, Threats and Molestation."
- 38V.,c.40 An Act to amend the Act intituled "An Act respecting Larceny and other similar offences."
- 38V.,c.41 An Act for suppressing Gaming Houses, and to punish the keepers thereof.
- 38V.,c.42 An Act to prevent Cruelty to animals while in transit by Railway or other means of conveyance within the Dominion of Canada.
- 38V.,c.43 An Act to amend the Act respecting Procedure in Criminal Cases and other matters relating to Criminal Law.
- 38V.,c.44 An Act respecting Penitentiaries and the Inspection thereof, and for other purposes. {"The Penitentiary Act of 1875."}
- 38V.,c.45 An Act to amend the Act for the more speedy trial, in certain cases, of persons charged with Felonies and Misdemeanors in the Provinces of Ontario and Quebec.
- 38V.,c.46 An Act to make further provisions respecting the Central Prison for Ontario.
- 38V.,c.47 An Act for the more speedy trial before Police and Stipendiary Magistrates in the Province of Ontario of persons charged with Felonies or Misdemeanors.

38V.,c.48 An Act to Repeal certain provisions of an Act of the Legislature of Nova Scotia respecting petty offences, trespasses and assaults.

38V.,c.49 An Act to amend and consolidate the Laws respecting the North-West Territories. {"The North-West Territories Act, 1875."}

38V.,c.50 An Act further to amend "An Act respecting the Administration of Justice, and for the establishment of a Police Force in the North-West Territories."

38V.,c.54 An Act to extend to the Province of Manitoba the Act for the more speedy trial, in certain cases, of persons charged with Felonies and Misdemeanors in the Provinces of Ontario and Quebec.

1876

39V.,c.9 An Act to make more effectual provision for the administration of the law relating to corrupt practices at Elections of Members of the House of Commons.

39v.,C.10 An Act to provide for more effectual Inquiry into the existence of Corrupt Practices at Elections of Members of the House of Commons.

39V.,c.12 An Act to amend the Acts therein mentioned, respecting the Militia and the Defence of the Dominion of Canada.

39V.,c.13 An Act to make provision for the Collection and Registration of the Criminal Statistics of Canada.

39V.,c.18 An Act to amend and consolidate the laws respecting Indians. {"The Indian Act, 1876."}

39V.,c.21 An Act respecting the North-West Territories, and to create a separate Territory out of part thereof.

39V.,c.22 An Act to amend the Acts therein mentioned as respects the importation or manufacture of intoxicants in the North-West Territories.

39V.,c.23 An Act to supply an omission in the Act 37 Vict., chap.42 extending certain Criminal Law of Canada to British Columbia.

39V.,c.24 An Act to provide for the appointment of Assistant Inspectors of Penitentiaries in Manitoba and British Columbia.

39V.,c.26 An Act to make further provision in regard to the Supreme Court, and the Exchequer Court of Canada.

39V.,c.28 An Act to extend the provisions of the Act 31V.,c.33, respecting the retiring allowances of the Judges, to the Chief Justice and Justices of the Court of Error and Appeal for the Province of Ontario.

39V.,c.29 An Act to provide for the Salaries of County Court Judges in the Province of Nova Scotia and for other purposes.

39V.,c.30 An Act to amend "The Insolvent Act of 1875".

39V.,c.36 An Act respecting the attendance of Witnesses on Criminal Trials.

39V.,c.37 An Act to amend the Criminal Law relating to Violence, Threats and Molestation.

1877

40V.,c.4 An Act to extend to the Province of Prince Edward Island, certain Criminal Laws now in force in other Provinces of Canada.

40V.,c.7 An Act to amend the "North-West Territories Act, 1875." {"The North-West Territories Acts, 1875 and 1877."}

40V.,c.10 An Act to amend and consolidate the Acts respecting the Customs.

40V.,c.12 An Act to amend "An Act respecting the Inland Revenue."

40V.,c.13 An Act to amend "An Act to Impose License Duties on Compounders of Spirits, to amend the Act respecting the Inland Revenue, and to prevent the Adulteration of Food, Drink and Drugs."

40V.,c.14 An Act to provide for the Inspection of Petroleum.

40V.,c.15 An Act to amend the Act respecting Weights and Measures.

40V.,c.16 An Act to amend the Act respecting the Culling and Measuring of Timber.

40V.,c.18 An Act to amend the Acts relating to the Inspection of Steamboats. {"The Steamboat Inspection Acts, 1868-1877."}

40V.,c.22 An Act to amend the Act to make further provision in regard to the Supreme and Exchequer Courts.

40V.,c.23 An Act to amend the Act respecting the Salaries of certain Judges.

40V.,c.24 An Act to provide for the payment of travelling allowances to the District or County Court Judges in the Province of British Columbia.

40V.,c.25 An Act to make provision for the Extradition of Fugitive Criminals.

- 40V.,c.26 An Act respecting Procedure and Evidence in Criminal Cases.
- 40V.,c.27 An Act to amend the law respecting appeals from convictions before, or orders by Justices of the Peace.
- 40V.,c.28 An Act to amend the Act respecting Offences against the Person.
- 40V.,c.29 An Act to amend the Act respecting Larceny and other similar offences.
- 40V.,c.30 An Act to make provision against the improper use of Firearms.
- 40V.,c.31 An Act for the Repression of Betting and Pool-selling.
- 40V.,c.32 An Act for the prevention of Gambling Practices in certain Public Conveyances.
- 40V.,c.33 An Act to amend the Act for the suppression of Gaming Houses.
- 40V.,c.34 An Act to amend the Post Office Act, 1875.
- 40V.,c.35 An Act to repeal certain laws making Breaches of Contracts of Service criminal, and to provide for the punishment of certain Breaches of Contract. {"Breaches of Contract Act, 1877."}
- 40V.,c.36 An Act to provide for the employment without the walls of Common Gaols, of prisoners sentenced to imprisonment therein.
- 40V.,c.37 An Act to provide for the safe custody of prisoners in places where the Common Gaols have become temporarily insecure.
- 40V.,c.38 An Act respecting the transfer of Rockwood Asylum to the Province of Ontario, and to amend "The Penitentiary Act of 1875." {"The Penitentiary Amendment Act, 1877."}
- 40V.,c.39 An Act to make provision for improvement in Prison Discipline.
- 40V.,c.40 An Act to make further provision for the payment of the Active Militia when called out in certain cases in aid of the Civil Power.
- 40V.,c.41 An Act to amend the Insolvent Act of 1875, and the Act amending the same.
- 40V.,c.42 An Act to amend and consolidate certain Acts respecting Insurance. {"The Consolidated Insurance Act, 1877."}
- 40V.,c.51 An Act to amend the Acts to provide for the management and improvement of the Harbour of Quebec, and "The Pilotage Act, 1873."

1878

- 41V.,c.2 An Act to amend "The Post Office Act, 1875."
- 41V.,c.5 An Act further securing the Independence of Parliament.
- 41V.,c.6 An Act to amend the Act respecting the Elections of Members of the House of Commons.
- 41V.,c.7 An Act to provide for the better Auditing of the Public Accounts.
- 41V.,c.10 An Act to amend the law relating to Stamps on Promissory Notes and Bills of Exchange.
- 41V.,c.11 An Act to amend the Act thirty-seventh Victoria, chapter 8, intituled "An Act to impose license duties on compounders of spirits; to amend the Act respecting the Inland Revenue, and to prevent the adulteration of Food, Drink and Drugs." {"The Inland Revenue Acts of 1867, 1874 and 1878."}
- 41V.,c.16 An Act respecting the Traffic in Intoxicating Liquors. {"The Canada Temperance Act, 1878."}
- 41V.,c.17 An Act for the better prevention of Crimes of Violence in certain parts of Canada, until the end of the next Session of Parliament.
- 41V.,c.18 An Act to provide that persons charged with common assault shall be competent as witnesses.
- 41V.,c.19 An Act respecting persons imprisoned in default of giving sureties to keep the peace.
- 41V.,c.20 An Act to amend section sixty-eight of "The Penitentiary Act of 1875."

1879

- 42V.,c.3 An Act to provide for the salary of one additional Judge of the Supreme Court of New Brunswick, and for the salary of any future Judge in Equity of the Supreme Court of Nova Scotia.
- 42V.,c.4 An Act respecting the salaries of the County Court Judges of Prince Edward Island.
- 42V.,c.6 An Act to amend "An Act to provide for more effectual inquiry into the existence of Corrupt Practices at Elections of Members of the House of Commons."
- 42V.,c.9 An Act to amend and consolidate "The Railway Act, 1868," and the Acts amending it. {"The Consolidated Railway Act, 1879."}

- 42V.,c.16 An Act to amend and consolidate the laws relating to Weights and Measures. {"The Weights and Measures Act of 1879."}
- 42V.,c.17 An Act to amend and consolidate the laws respecting duties imposed on Promissory Notes and Bills of Exchange.
- 42V.,c.18 An Act to provide for the inspection, safe-keeping and storage of Petroleum, and the products thereof.
- 42V.,c.19 An Act to amend the Act of the present Session, intituled "An Act to provide for the inspection, safekeeping and storage of Petroleum, and the products thereof."
- 42V.,c.20 An Act to amend "The Post Office Act, 1875."
- 42V.,c.21 An Act Respecting Census and Statistics. {"The Census and Statistics Act."}
- 42V.,c.22 An Act respecting Trade Marks and Industrial Designs. {"The Trade Mark and Design Act of 1879."}
- 42V.,c.23 An Act to provide against Infectious or Contagious Diseases affecting Animals. {"The Animal Contagious Diseases Act, 1879."}
- 42V.,c.27 An Act to amend " The Seamen's Act, 1873."
- 42V.,c.29 An Act to amend the "Act respecting the Harbour of Pictou, in Nova Scotia."
- 42V.,c.30 An Act respecting the Harbour of North Sydney in Nova Scotia.
- 42V.,c.31 An Act to amend and consolidate the several Acts respecting the Public Lands of the Dominion. {" The Dominion Lands Act, 1879."}
- 42V.,c.34 An Act to amend "The Indian Act, 1876."
- 42V.,c.35 An Act further to amend the Acts therein mentioned respecting the Militia and Defence of the Dominion of Canada.
- 42V.,c.36 An Act to amend and consolidate as amended the several enactments respecting the North-West Mounted Police Force.
- 42V.,c.37 An Act to amend "An Act Respecting Police of Canada."
- 42V.,c.38 An Act respecting the safe-keeping of dangerous Lunatics in the North-West Territories.
- 42V.,c.39 An Act further to amend "The Supreme and Exchequer Court Act".

- 42V.,c.41 An Act to continue in force for a limited time "The better Prevention of Crime Act, 1878."
- 42V.,c.42 An Act to amend "The Penitentiary Act, 1875."
- 42V.,c.43 An Act respecting the "Andrew Mercer Ontario Reformatory for Females."
- 42V.,c.44 An Act to Amend "An Act for the more speedy trial, in certain cases, of persons charged with felonies and misdemeanors, in the Provinces of Ontario and Quebec" and the Act respecting summary convictions before Justices of the Peace.
- 42V.,c.45 An Act to amend the Act relating to Banks and Banking, and the Acts amending the same.
- 42V.,c.50 An Act to remove doubts as to the true intent and meaning of certain provisions of "The Canada Temperance Act, 1878," and to make certain amendments thereto in so far as the said Act relates to Manitoba.

1880

- 43V.,c.1 An Act to repeal the Acts respecting Insolvency now in force in Canada.
- 43V.,c.2 An Act further to amend the Acts therein mentioned respecting the Militia and Defence of the Dominion of Canada.
- 43V.,c.4 An Act to provide for the salaries of two additional Judges of the Supreme Court of British Columbia.
- 43V.,c.5 An Act further to continue in force for a limited time "The better Prevention of Crime Act, 1878."
- 43V.,c.6 An Act respecting Dorchester Penitentiary.
- 43V.,c.12 An Act to authorize making certain investigations under oath.
- 43V.,c.19 An Act to consolidate and amend the Acts respecting the Inland Revenue. {"The Inland Revenue Act, 1880."}
- 43V.,c.21 An Act to amend the Act respecting the Inspection of Petroleum.
{"The Petroleum Inspection Act, 1880."}
- 43V.,c.25 An Act to Amend and Consolidate the several Acts relating to the North-West Territories. {"The North-West Territories Act, 1880."}
- 43V.,c.28 An Act to amend and consolidate the laws respecting Indians.

43V.,c.29 An Act to make better provision respecting the navigation of Canadian waters.

43V.,c.30 An Act to amend the law respecting the removal of obstructions in navigable waters, by wrecks.

43V.,c.34 An Act further to amend "The Supreme and Exchequer Court Act."

43V.,c.35 An Act to amend the law of evidence in Criminal Cases, as respects the taking and use of depositions of persons who may be unable to attend at the trial.

43V.,c.36 An Act respecting the administration of criminal justice in the territory in dispute between the Governments of the Province of Ontario and of the Dominion of Canada.

43V.,c.37 An Act to amend the Act intituled "An Act respecting offences against the person," and to repeal the Act intituled "An Act to provide that persons charged with common law assault shall be competent as witnesses."

43V.,c.38 An Act further to amend the Act respecting Cruelty to Animals.

43V.,c.39 An Act respecting the Ontario Reformatory for Boys.

43V.,c.40 An Act respecting "The Industrial Refuge for Girls," of Ontario.

43V.,c.41 An Act respecting the Reformatory for Juvenile Offenders in Prince Edward Island.

1881

44V.,c.5 An Act to provide for the salaries of an additional Judge of the Court of Queen's Bench, and an additional Judge of the Superior Court, in the Province of Quebec.

44V.,c.6 An Act to increase the salaries of the Judges of the Supreme Court of Prince Edward Island.

44V.,c.11 An Act to amend the Act fortieth Victoria, Chapter ten, intituled "An Act to amend and consolidate the Acts respecting the Customs."

44V.,c.13 An Act respecting Naturalization and Aliens. {"The Naturalization Act, Canada, 1881."}

44V.,c.14 An Act to provide for the extension of the boundaries of the Province of Manitoba.

44V.,c.15 An Act to continue in Force for a limited time the Act forty-third Victoria, chapter thirty-six.

44V.,c.17 An Act to amend "The Indian Act, 1880."

44V.,c.19 An Act further to amend the Acts therein mentioned respecting the Militia and the Defence of Canada.

44V.,c.21 An Act in amendment of the Acts respecting Steamboats.

44V.,c.25 An Act to amend and consolidate the Laws relating to Government Railways. {"The Government Railways Act, 1881."}

44V.,c.26 An Act to prescribe a declaration to be taken by employees of telegraph lines under the control of the government and to provide for the punishment of telegraph operators and employees who divulge the contents of certain telegrams.

44V.,c.27 An Act to amend "The Insolvent Act of 1875, and amending Acts."

44V.,c.28 An Act to amend the Law respecting Documentary Evidence in certain cases.

44V.,c.29 An Act further to continue in force for a limited time "The better Prevention of Crime Act, 1878."

44V.,c.30 An Act Respecting Prize Fighting.

44V.,c.31 An Act to remove doubts as to the power to imprison with hard labour under the Acts respecting Vagrants.

44V.,c.32 An Act with reference to the Andrew Mercer (Ontario) Reformatory for Females, and the Central Prison for the Province of Ontario.

1882

45V.,c.8 An Act to amend the Inland Revenue Act, 1880. {"The Inland Revenue Amendment Act, 1882."}

45V.,c.10 An Act to amend the Acts respecting the Militia and Defence of the Dominion of Canada.

45V.,c.11 An Act to fix and provide for the payment of the salaries of the Judges of the Supreme Court of Judicature of Ontario and of certain Judges and County Judges in Manitoba and New Brunswick.

45V.,c.12 An Act respecting County Court Judges.

45V.,c.20 An Act to amend "The Extradition Act, 1877."

- 45V.,c.21 An Act respecting fugitive offenders in Canada from other parts of Her Majesty's Dominions. {"The Fugitive Offenders Act, (Canada) 1882."}
- 45V.,c.23 An Act respecting Insolvent Banks, Insurance Companies, Loan Companies, Building Societies, and Trading Corporations.
- 45V.,c.28 An Act to remove certain doubts as to the effect of "The North-West Territories Act, 1880" and to amend the same.
- 45V.,c.29 An Act to amend "An Act to amend and consolidate as amended the several enactments respecting the North-West Mounted Police Force."
- 45V.,c.30 An Act further to amend "The Indian Act, 1880."
- 45V.,c.31 An Act to amend and further to continue in force, for a limited time, the Act Forty-third Victoria, Chapter Thirty-six.
- 45V.,c.32 An Act further to amend "The Pilotage Act, 1873," and the other Acts therein mentioned.
- 45V.,c.33 An Act further to amend "The Seamen's Act, 1873."
- 45V.,c.35 An Act to amend and consolidate the Acts respecting the inspection of Steamboats, and the examination and licensing of Engineers employed on them. {"The Steamboat Inspection Act, 1882."}
- 45V.,c.38 An Act further to continue in force for a limited time "The better Prevention of Crime Act, 1878."
- 45V.,c.39 An Act to amend the Act fortieth Victoria, chapter thirty, intituled "An Act to make provision against the improper use of Fire-arms."
- 45V.,c.41 An Act respecting the Sale of Railway Passenger Tickets.
- 45V.,c.42 An Act concerning Marriage with a Deceased Wife's Sister.
- 45V.,c.43 An Act to amend the Act respecting the Trinity House and Harbour Commission of Montreal.
- 45V.,c.45 An Act to amend and consolidate the Acts relating to the office of Port Warden for the Harbour of Montreal.
- 45V.,c.48 An Act respecting the Harbour and River Police of the Province of Quebec.
- 45V.,c.51 An Act relating to the Harbour of Saint John, in the Province of New Brunswick.

1883

- 46V.,c.4 An Act to amend "The Dominion Elections Act, 1874."
- 46V.,c.9 An Act to provide for the salaries and superannuation and travelling allowances of certain Judges of certain Provincial Courts.
- 46V.,c.10 An Act respecting the High Court of Justice for Ontario.
- 46V.,c.11 An Act consolidating and amending the several Acts relating to the Militia and Defence of the Dominion of Canada. {"The Consolidated Militia Act of 1883."}
- 46V.,c.12 An Act to amend and consolidate the Acts respecting the Customs. {"The Customs Act, 1883."}
- 46V.,c.15 An Act to consolidate and amend the several Acts respecting the Inland Revenue. {"The Consolidated Inland Revenue Act, 1883."}
- 46V.,c.16 An Act to make further provision respecting the Regulation and Collection of Tolls on Government Timber Slides and other Works constructed to facilitate the transmission of Timber, Lumber and Saw-logs.
- 46V.,c.17 An Act further to amend and to consolidate, as so amended, the several Acts respecting the Public Lands of the Dominion therein mentioned. {"The Dominion Lands Act, 1883."}
- 46V.,c.18 An Act to amend "The Post Office Act, 1875."
- 46V.,c.20 An Act further to amend an Act intituled: "An Act relating to Banks and Banking," and the several Acts amending the same.
- 46V.,c.24 An Act further to amend "The Consolidated Railway Act, 1879," and to declare certain lines of Railway to be works for the general advantage of Canada.
- 46V.,c.28 An Act respecting certificates to Masters and Mates of Inland and Coasting Ships.
- 46V.,c.30 An Act respecting the sale of Intoxicating Liquors, and the issue of licenses therefor. {"The Liquor License Act, 1883."}
- 46V.,c.32 An Act for the better prevention of fraud in relation to contracts involving the expenditure of public moneys.
- 46V.,c.33 3 An Act to continue for a limited time the Acts therein mentioned.
- 46V.,c.34 An Act to amend the Acts respecting procedure in Criminal Cases, and other matters relating to Criminal Law.

46V.,c.35 An Act to make provision for the taking of evidence in relation to Criminal matters pending in Courts of Justice in any other of Her Majesty's Dominions or before Foreign Tribunals.

46V.,c.36 An Act to amend the law respecting Lotteries.

46V.,c.37 An Act to amend and consolidate the Laws relating to Penitentiaries.

1884

47V.,c.11 An Act further to amend "The Consolidated Railway Act, 1879," and the Acts amending it.

47V.,c.12 An Act to provide for the salary and travelling allowances of the Judge of the County Court of Cariboo, in the Province of British Columbia.

47V.,c.13 An Act to provide for the salary and travelling allowances of an additional Puisné Judge of the Court of Queen's Bench, in the Province of Manitoba.

47V.,c.19 An Act to amend "An Act respecting certificates to Masters and Mates of Shops," and "The Seamen's Act, 1873."

47V.,c.23 An Act to amend "The North-West Territories Act, 1880."

47V.,c.24 An Act respecting the Territory in dispute between the Dominion of Canada and the Province of Ontario.

47V.,c.25 An Act to amend "The Dominion Lands Act, 1883."

47V.,c.27 An Act further to amend "The Indian Act, 1880."

47V.,c.28 An Act for conferring certain privileges on the more advanced Bands of the Indians of Canada, with the view of training them for the exercise of Municipal powers. {"The Indian Advancement Act, 1884."}

47V.,c.29 An Act to amend "The Customs Act, 1883."

47V.,c.32 An Act to amend "The Liquor License Act, 1883."

47V.,c.34 An Act to amend and consolidate as amended the several Acts respecting the Adulteration of Food and Drugs. {"The Adulteration of Food Act, 1884."}

47V.,c.35 An Act to amend the Acts respecting the Inspection of Gas and Gas Meters.

47V.,c.36 An Act to amend the "Weights and Measures Act of 1879."

47V.,c.37 An Act to prevent fraud in the manufacture and sale of Agricultural Fertilizers.

47V.,c.38 An Act for the better prevention of Fraud in connection with the Sale of Patent Rights.

47V.,c.39 An Act further to amend the Act forty-fifth Victoria, chapter twenty-three, intituled "An Act respecting Insolvent Banks, Insurance Companies, Loan Companies, Building Societies and Trading Corporations."

47V.,c.41 An Act to amend the Act thirty-eighth Victoria, chapter fifty-four, intituled "An Act to extend to the Province of Manitoba the "Act for the more speedy trial, in certain cases of persons charged with felonies and misdemeanors, in the Provinces of Ontario and Quebec.""

47V.,c.42 An Act to amend the Act thirty-seven Victoria, chapter forty-two, intituled "An Act to extend to the Province of British Columbia certain of the Criminal Laws now in force in other Provinces of the Dominion."

47V.,c.43 An Act to further amend "An Act respecting the duties of Justices of the Peace out of Sessions, in relation to summary convictions and orders."

47V.,c.44 An Act to authorize the transfer of prisoners from one gaol to another in certain cases.

47V.,c.45 An Act respecting a Reformatory for certain Juvenile Offenders in the County of Halifax, in the Province of Nova Scotia.

1885

48-49V.,c.3 An Act to provide for the taking of a Census in the Province of Manitoba, the North-West Territories and the District of Keewatin.

49-49V.,c.7 An Act respecting Explosive Substances. {"The Explosive Substances Act."}

48-49V.,c.40 An Act respecting the Electoral Franchise. {"The Electoral Franchise Act."}

48-49V.,c.49 An Act to modify the application of "The Consolidated Insurance Act, 1877."

48-49V.,c.51 An Act respecting the administration of justice, and other matters, in the North-West Territories.

48-49V.,c.₃52 An Act to continue for a limited time the Act therein mentioned.

48-49V.,c.53 An Act to authorize the augmentation of the North-West Mounted Police.

48-49V.,c.54 An Act respecting the North-West Mounted Police Force.

48-49V.,c.55 An Act to provide a salary for an additional County Court Judge in the Province of Manitoba.

48-49V.,c.56 An Act the amend the Act forty-sixth Victoria, chapter nine, intituled "An Act to provide for the salaries and superannuation and travelling allowances of cer ain Judges of certain Provincial Courts."

48-49V.,c.61 An Act to amend the sevaral Acts relating to Duties of Customs and Excise.

48-49V.,c.62 An Act to amend "The Consolidated Inland Revenue Act, 1883."

48-49V.,c.63 An Act respecting Canned Goods.

48-49V.,c.64 An Act further to amend the Acts relating to Weights and Measures.

48-49V.,c.65 An Act further to amend the Acts relating to the Culling and Measuring of Timber in the Provinces of Ontario and Quebec.

48-49V.,c.66 An Act further to amend "The General Inspection Act, 1874," and the Acts amending the same.

48-49V.,c.67 An Act respecting the Adulteration of Food, Drugs and Agricultural Fertilizers. {"The Adulteration Act."}

48-49V.,c.68 An Act respecting Agricultural Fertilizers. {"The Fertilizers Act, 1885."}

48-49V.,c.70 An Act respecting Infectious or Contagious Diseases Affecting Animals. {"The Animal Contagious Diseases Act."}

48-49V.,c.71 An Act to restrict and regulate Chinese Immigration into Canada. {"The Chinese Immigration Act, 1885."}

48-49V.,c.74 An Act respecting "The Liquor License Act, 1883."

48-49V.,c.78 An Act to amend the Acts respecting the appointment of a Harbor Master at the Port of Halifax.

48-49V.,c.79 An Act to amend⁴an Act respecting "The Central Prison for the Province of Ontario" .

48-49V.,c.80 An Act further to amend "An Act for the better Preservation of the Peace⁵ in the vicinity of Public Works," and the Acts in amendment thereof .

48-49V.,c.81 An Act to amend the Act intituled "An Act to provide for the employment without the walls of common goals, of prisoners sentenced to imprisonment therein"⁶ .

48-49V.,c.82 An Act further to amend an Act intituled "An Act respecting offences against the person".

1886

49V.,c.4 An Act respecting the Revised Statutes of Canada.

49V.,c.6 An Act to amend the law relating to the salaries of certain Judges of the Supreme Court of Judicature for Ontario.

49V.,c.24 An Act respecting the representation of the North-West Territories in the Parliament of Canada. {"The North-West Territories Representation Act, 1886."}

49V.,c.25 An Act further to amend the law respecting the North-West Territories.

49V.,c.26 An Act respecting Real Property in the Territories. {"The Territories Real Property Act."}

49V.,c.34 An Act further to amend "The Steamboat Inspection Act, 1882."

49V.,c.36 An Act respecting the protection of Navigable Waters.

49V.,c.39 An Act in amendment of "The Consolidated Inland Revenue Act, 1883" and the Act amending the same.

49V.,c.41 An Act to amend "The Adulteration Act."

49V.,c.42 An Act to prohibit the Manufacture and Sale of certain substitutes for Butter.

49V.,c.45 An Act respecting Insurance. {"The Insurance Act, 1880."}

49V.,c.47 An Act to amend the law respecting Crown Cases reserved.

49V.,c.48 An Act respecting the application of certain Fines and Forfeitures.

49V.,c.49 An Act to make further provision respecting Summary Proceedings before Justices and other Magistrates.

49V.,c.50 An Act further to amend the law of evidence in certain cases.

49V.,c.51 An Act to amend "An Act respecting Offences against the Person."

49V.,c.52 An Act to punish seduction, and like offences, and to make further provision for the Protection of Women and Girls.

49V.,c.53 An Act to amend the Criminal Law, and to declare it a misdemeanor to leave unguarded and exposed certain holes, openings and excavations.

49V.,c.54 An Act to amend An Act respecting a Reformatory for certain Juvenile Offenders in the County of Halifax, in the Province of Nova Scotia.

1887

50-51V.,c.14 An Act to make provision for the appointment of a Solicitor General.

50-51V.,c.15 An Act to amend chapter one hundred and thirty-eight of the Revised Statutes respecting the Judges of Provincial Courts.

50-51V.,c.16 An Act to amend "The Supreme and Exchequer Courts Act," and to make better provision for the Trial of Claims against the Crown.

50-51V.,c.33 An Act to amend "The Indian Act."

50-51V.,c.35 An Act to amend "The Chinese Immigration Act."

50-51V.,c.37 An Act to confer certain powers on Boards of Trade as to the Licensing of Weighers.

50-51V.,c.44 An Act to provide for the payment of a yearly allowance to Godefroi Laviolette, late Warder of the Penitentiary at St. Vincent de Paul.

50-51V.,c.45 An Act respecting Public Stores. {"The Public Stores Act."}

50-51V.,c.46 An Act respecting the conveyance of Liquors on board Her Majesty's Ships in Canadian Waters.

50-51V.,c.47 An Act respecting the Defacing of Counterfeit Notes and the use of Imitations of Notes.

50-51V.,c.48 An Act to amend the Act respecting Offences against Public Morals and Public Convenience.

50-51V.,c.49 An Act to amend the Revised Statutes, Chapter one hundred and seventy-three, respecting Threats, Intimidation and other offences.

50-51V.,c.50 An Act to amend the law respecting Procedure in Criminal Cases.

50-51V.,c.51 An Act to amend "The Speedy Trials Act," chapter one hundred and seventy-five of the Revised Statutes.

50-51V.,c.52 An Act to amend the Penitentiary Act.

1888

- 51V.,c.11 An Act to amend "The Dominion Elections Act," chapter eight of the Revised Statutes of Canada.
- 51V.,c.12 An Act to amend "The Civil Service Act," chapter seventeen of the Revised Statutes of Canada.
- 51V.,c.14 An Act to amend chapter thirty-two of the Revised Statutes, respecting the Customs
- 51V.,c.19 An Act to amend the Revised Statutes of Canada, chapter fifty, respecting the North-West Territories.
- 51V.,c.22 An Act further to amend "The Indian Act," Chapter forty-three of the Revised Statutes.
- 51V.,c.24 An Act to amend "The Adulteration Act," chapter one hundred and seven of the Revised Statutes of Canada.
- 51V.,c.25 An Act to amend the Weights and Measures Act as respects the contents of packages of salt.
- 51V.,c.29 An Act respecting Railways. {"The Railways Act."}
- 51V.,c.31 An Act respecting the International Convention for the Preservation of Submarine Telegraph Cables. {"The Submarine Telegraph Act, 1888."}
- 51V.,c.35 An Act in amendment of "The Canada Temperance Act." {"The Canada Temperance Amendment Act, 1888."}
- 51V.,c.37 An Act further to amend "The Supreme and Exchequer Courts Act," chapter one hundred and thirty-five of the Revised Statutes of Canada.
- 51V.,c.38 An Act to amend the Act respecting the Judges of Provincial Courts, chapter one hundred and thirty-eight of the Revised Statutes.
- 51V.,c.40 An Act respecting the advertising of Counterfeit Money.
- 51V.,c.41 An Act to amend the Law relating to fraudulent marks on Merchandise. {"The Merchandise Marks Offences Act, 1888."}
- 51V.,c.42 An Act respecting Gaming in Stocks and Merchandise.
- 51V.,c.43 An Act further to amend the Law respecting Procedure in Criminal Cases.
- 51V.,c.44 An Act further to amend "The Criminal Procedure Act."
- 51V.,c.45 An Act to amend Chapter one hundred and seventy-eight of the Revised Statutes of Canada. "The Summary Convictions Act."

51V.,c.46 An Act further to amend "The Speedy Trials Act," Chapter one hundred and seventy-five of the Revised Statutes.

51V.,c.47 An Act to amend the Revised Statutes of Canada, Chapter one hundred and eighty-one, respecting Punishments, Pardons and the Commutation of Sentences.

1889

52V.,c.14 An Act further to amend "the Customs Act," chapter thirty-two of the Revised Statutes. {"The Customs Amendment Act, 1889."}

52V.,c.15 An Act further to amend "The Inland Revenue Act," chapter thirty-four of the Revised Statutes.

52V.,c.20 An Act to amend "The Post Office Act," chapter thirty-five of the Revised Statutes of Canada.

52V.,c.22 An Act to amend the Revised Statutes, chapter seventy-seven, respecting the Safety of Ships. {"The Shipping and Cargoes Amendment Act, 1889."}

52V.,c.23 An Act further to amend "The Steamboat Inspection Act," chapter seventy-eight of the Revised Statutes.

52V.,c.25 An Act to amend the Revised Statute respecting the North-West Mounted Police Force.

52V.,c.26 An Act to authorize the granting of Pensions to members of the North-West Mounted Police Force.

52V.,c.33 An Act to make further provision respecting enquiries concerning Public Matters.

52V.,c.35 An Act respecting the Harbor of Belleville, in the Province of Ontario.

52V.,c.36 An Act to extend the provisions of the Extradition Act.

52V.,c.37 An Act further to amend the Supreme and Exchequer Courts Act.

52V.,c.39 An Act to amend the Revised Statutes, chapter one hundred and thirty-eight, respecting the Judges of Provincial Courts.

52V.,c.40 An Act respecting Rules of Court in relation to Criminal Matters.

52V.,c.41 An Act for the Prevention and Suppression of Combinations formed in restraint of Trade.

- 2V.,c.42 An Act respecting corrupt practices in Municipal Affairs.
- 52V.,c.43 An Act to provide against frauds in the supplying of Milk to Cheese, Butter and condensed Milk Manufactories.
- 52V.,c.44 An Act to permit the Conditional Release of First offenders in certain cases.
- 52V.,c.45 An Act to amend "The Summary Convictions Act," Chapter one hundred and seventy-eight of the Revised Statutes, and the Act amending the same.
- 52V.,c.46 An Act to amend "The Summary Trials Act."
- 52V.,c.47 An Act to make further provision respecting the Speedy Trials of certain indictable offences. {"The Speedy Trials Act."}

1890

- 53V.,c.10 An Act to prevent the Disclosure of Official Documents and Information. {"The Official Secrets Act, 1890."}
- 53V.,c.15 An Act to provide for the collection and publishing of Labour Statistics.
- 53V.,c.17 An Act to amend "The Steamboat Inspection Act," chapter seventy-eight of the Revised Statutes.
- 53V.,c.20 An Act to amend the Acts respecting the Duties of Customs.
- 53V.,c.23 An Act further to amend the Act respecting the Inland Revenue, chapter thirty-four of the Revised Statutes.
- 53V.,c.24 An Act respecting Agricultural Fertilizers. {"The Fertilizers Act, 1890."}
- 53V.,c.25 An Act to amend "The Gas Inspection Act," Chapter one hundred and one of the Revised Statutes.
- 53V.,c.26 An Act further to amend the Adulteration Act, chapter one hundred and seven of the Revised Statutes.
- 53V.,c.29 An Act further to amend "the Indian Act," chapter forty-three of the Revised Statutes.
- 53V.,c.31 An Act respecting Banks and Banking. {"The Bank Act."}
- 53V.,c.32 An Act respecting certain Savings Banks in the Province of Quebec.
- 53V.,c.33 An Act relating to Bills of Exchange, Cheques and Promissory Notes. {"The Bills of Exchange Act, 1890."}

53V.,c.36 An Act to amend An Act concerning Marriage with a Deceased Wife's Sister.

53V.,c.37 An Act further to amend the Criminal Law.

1891

54-55V.,c.19 An Act further to amend "the Dominion Elections Act."

54-55V.,c.20 An Act further to amend "the Dominion Controverted Elections Act."

54-55V.,c.22 An Act to amend the Acts respecting the North-West Territories.

54-55V.,c.23 An Act respecting Frauds upon the Government.

54-55V.,c.25 An Act to amend Chapter one hundred and thirty-five of the Revised Statutes, intituled "An Act respecting the Supreme and Exchequer Courts."

54-55V.,c.27 An Act further to amend chapter one hundred and thirty-eight of the Revised Statutes, respecting the Judges of Provincial Courts.

54-55V.,c.28 An Act with respect to certain matters affecting the Administration of Justice.

54-55V.,c.30 An Act further to amend "The Indian Act."

54-55V.,c.32 An Act in restraint of Fraudulent Marking.

54-55V.,c.36 An Act respecting the Shipping of Live Stock. {"The Live Stock Shipping Act."}

54-55V.,c.37 An Act respecting the Inspection of Ships. {"The Inspection of Ships Act."}

54-55V.,c.38 An Act to amend Chapter seventy-seven of the Revised Statutes, respecting the Safety of Ships.

54-55V.,c.39 An Act further to amend "The Steamboat Inspection Act."

54-55V.,c.40 An Act to provide for the Marking of Deck and Load Lines.

54-55V.,c.42 An Act to amend Chapter ninety-six of the Revised Statutes, intituled "An Act to encourage the development of the Sea Fisheries and the building of Fishing Vessels."

54-55V.,c.43 An Act further to amend "The Fisheries Act, chapter ninety-five of the Revised Statutes."

54-55V.,c.46 An Act further to amend "The Inland Revenue Act."

54-55V.,c.47 An Act to make further provision respecting Weighers of Grain.

54-55V.,c.53 An Act further to amend the Act thirty-sixth Victoria, chapter sixty-one, respecting the Trinity House and Harbour Commissioners of Montreal.

54-55V.,c.55 An Act respecting certain Female Offenders in the Province of Nova Scotia.

1892

55-56V.,c.11 An Act to readjust the Representation in the House of Commons.

55-56V.,c.15 An Act further to amend the Dominion Lands Act.

55-56V.,c.19 An Act further to amend the Steamboat Inspection Act.

55-56V.,c.22 An Act further to amend the Inland Revenue Act.

55-56V.,c.23 An Act further to amend the General Inspection Act.

55-56V.,c.25 An Act further to amend the Chinese Immigration Act.

55-56V.,c.26 An Act to amend "The Canada Temperance Amendment Act, 1888."

55-56V.,c.27 An Act further to amend the Railway Act.

55-56V.,c.29 An Act respecting the Criminal Law. ("The Criminal Code, 1892.")

1. Continues in force acts of the Province of Canada including 28V.,c.1 ("An Act for the prevention and repression of outrages in violation of the Peace on the Frontier of this Province, and for other purposes.") and several other acts concerning Bankruptcy and Savings Banks.

2. Continues 32-33V.,c.16 re Insolvency and some sections of 36V., c.40 re admission of PEI to Confederation.

3. Continues 43V.,c.36, as amended by 45V.,c.31 and 47V.,c.24.

4. Repeals part of 36V.,c.69.

5. Amends 32-33V.,c.24, 33V.,c.28 and 38V.,c.38.

6. Amends 40V.,c.36.

7. Amends 32-33V.,c.20.

APPENDIX B

POSSIBLE LEGISLATIVE SUBJECT AREAS

Adulteration of food, drink, drugs and fertilizers.
 Animals, cruelty to, shipping and contagious diseases.
 Bankruptcy and insolvency.
 Bank acts, savings banks, bills of exchange, stamp acts, currency etc.
 Coinage offences.
 Control of firearms.
 Copyrights, trade marks, patents of invention and fraudulent marks.
 Courts.
 Customs and inland revenue acts.
 Dominion Lands acts.
 Election and controverted elections acts, municipal corruption, public contracts and public accounts, frauds on government.
 Extension of criminal laws to provinces entering Confederation.
 Extradition acts.
 Female convicts, detention of.
 Fisheries acts.
 Forgery.
 Gaming, betting, gambling, prize fighting, lotteries.
 Harbour masters, port wardens, pilots etc..
 Immigration, quarantine and naturalization acts.
 Injuries to Property.
 Inspection of timber, hides, staples, gas, etc., weights and measures.
 Insurance acts, Companies' acts, Combination acts.
 Judges: numbers, salaries, travelling allowances, pensions etc..
 Larceny.
 Militia and defence; naval and government ships, stores, seamen etc..
 Navigation, wrecks, buoys etc., pollution of rivers.
 Offences against the person.
 Passenger safety, steamboat inspection, masters' certificates.
 Penitentiary acts.
 Perjury.
 Police, federal and North-West Mounted police.
 Post Office acts.
 Prisons.
 Procedure re indictable offences.
 Procedure re summary offences.
 Procedure re juvenile offenders.
 Procedure, speedy trials acts.
 Procedure, evidence, witnesses in criminal trials etc..
 Procedure, appeals from summary convictions.
 Public works acts.
 Punishment, conditional release, pardons and commutation of sentences.
 Railways and bridges.
 Riots.
 Temperance acts, Liquor acts, Indian acts
 Trades unions, breaches of contracts of service.
 Treason, sedition and official secrets
 Violence, Threats and Molestation acts and Better Prevention of Violence.
 Vagrancy.

APPENDIX C

LISTING OF MINOR OFFENCE STATUTES CONSIDERED FOR RESEARCH

- 32-33V.,c.27 An Act respecting Cruelty to Animals
- 32-33V.,c.28 An Act respecting Vagrants
- 35V.,c 31 An Act to amend the Criminal Law respecting Violence,
 Threats and Molestation
- 38V.,c.41 An Act for Suppressing Gaming Houses, and to punish the
 Keepers thereof
- 40V.,c.30 An Act to make Provisions against the Improper Use of
 Firearms
- 44V.,c.26 An Act to prescribe a declaration to be taken by
 employees of telegraph lines under the control of the
 government and to provide for the punishment of
 telegraph operators and employees who divulge the
 contents of certain telegrams
- 44V.,c.30 An Act respecting Prize Fighting
- 48-49V.,c.7 An Act respecting Explosive Substances
- 49V.,c.53 An Act to amend the Criminal Law and to declare it a
 misdemeanor to leave unguarded and exposed, certain
 holes, openings and excavations.

APPENDIX D

STATUTES FOR THE BETTER PRESERVATION OF THE PEACE NEAR PUBLIC WORKS

- 1867 31V.,c.12 An Act respecting the Public Works of Canada.
- 1869 32-33V.,c.24 An Act for the better preservation of the Peace in the vicinity of Public Works.
- 1870 33V.,c.28 An Act to amend an Act for the better preservation of the peace in the vicinity of Public Works.
- 1875 38V.,c.38 An Act to amend the Acts for the Better Preservation of the Peace in the Vicinity of Public Works.
- 1885 48-49V.,c.80 An Act further to amend "An Act for the better Preservation of the Peace in the vicinity of Public Works," and the Acts in amendment thereof.
- 1886 R.S.C.c.151 An Act respecting the Preservation of Peace in the Vicinity of Public Works
- 1892 55-56V.,c.29, The Criminal Code, ss.117-118
- 1906 R.S.C. c.146, ss. 142-154
- 1927 R.S.C. c.36, ss. 142-154

Pre-Confederation Statutes of the Province of Canada

- 1845 8V.,c.6 An Act for the Better Preservation of the Peace and the Prevention of Riots and Violent Outrages at and near Public Works while in progress of Construction.

8V.,c.6 continued by:

- 1849 12V.,c.17
- 1851 14&15V.,c.76
- 1859 22V.,c.29

- 1853 16V.,c.164 An Act to prohibit the sale of Intoxicating Liquors on or near the line of Public Works in this Province

16V.,c.164 continued by:

- 1859 22V.,c.30

Ontario Statutes

- 1877 R.S.O. c.31 An Act respecting Riots near Public Works
- R.S.O. c.32 An Act respecting the Sale of Intoxicating Liquors near Public Works
- 1887 R.S.O. c.35 An Act respecting the Sale of Intoxicating Liquors near Public Works

APPENDIX D

STATUTES FOR THE BETTER PREVENTION OF CRIMES OF VIOLENCE

- 1878 41V.,c.17 An Act for the better prevention of Crimes of Violence in certain parts of Canada, until the end of the next Session of Parliament
- 1879 42V.,c.41 An Act to continue in force for a limited time "The better Prevention of Crime Act, 1878."
- 1880 43V.,c.5 An Act further to continue in force for a limited time "The better Prevention of Crime Act, 1878."
- 1881 44V.,c.29 An Act further to continue in force for a limited time "The better Prevention of Crime Act, 1878."
- 1882 45V.,c.38 An Act further to continue in force for a limited time "The better Prevention of Crime Act, 1878."
- 1883 46V.,c.33 An Act to continue for a limited time the Acts therein mentioned

STATUTES CONTROLLING USE OF FIREARMS

- 1867 31V.,c.15 An Act to prevent the unlawful training of persons to the use of arms and the practise of Military evolutions; and to authorize Justices of the Peace to seize and detain arms collected or kept for purposes dangerous to the public peace.
- 1869 32-33V.,c.20 An Act respecting Offences against the Person: (ss.72 & 73 forbade the carrying of "offensive weapons".)
- 1877 40V.,c.30 An Act to make provision against the improper use of Firearms.
- 1882 45V.,c.39 An Act to amend the Act fortieth Victoria, chapter thirty, intituled "An Act to make provision against the improper use of Fire-arms."
- 1886 R.S.C. c.148 An Act respecting the improper use of fire-arms and other weapons
- 1886 R.S.C. c.149 An Act respecting the seizure of Arms kept for dangerous purposes

APPENDIX D

STATUTES RELATING TO ADULTERATION, 1867-1892.¹

1867

31V.,c.8 An Act respecting the Inland Revenue.

1867

31V.,c.49 An Act constituting the Department of Inland Revenue

1874

37V.,c.8 An Act to impose License duties on Compounders of Spirits; to amend the "Act respecting the Inland Revenue"; and to prevent the Adulteration of Food, Drink and Drugs. { "The Inland Revenue Act of 1875." }

1877

40V.,c.13 An Act to amend "An Act to Impose License Duties on Compounders of Spirits, to amend the Act respecting the Inland Revenue, and to prevent the Adulteration of Food, Drink and Drugs."

1878

41V.,c.11 An Act to amend the Act thirty-seventh Victoria, chapter 8, intituled "An Act to impose license duties on compounders of spirits; to amend the Act respecting the Inland Revenue, and to prevent the adulteration of Food, Drink and Drugs." {"The Inland Revenue Acts of 1867, 1874 and 1878."}

1880

43V.,c.19 An Act to consolidate and amend the Acts respecting the Inland Revenue. {"The Inland Revenue Act, 1880."}

1883

46V.,c.15 An Act to consolidate and amend the several Acts respecting the Inland Revenue. {The Consolidated Inland Revenue Act, 1883.}

1884

47V.,c.34 An Act to amend and consolidate as amended the several Acts respecting the Adulteration of Food and Drugs. {"The Adulteration of Food Act, 1884."}

1884

47V.,c.36 An Act to amend the "Weights and Measures Act of 1879".

1884

47V.,c.37 An Act to prevent fraud in the manufacture and sale of Agricultural Fertilizers.

1885

48-49V.,c.63 An Act respecting Canned Goods.

1885

48-49V.,c.67 An Act respecting the Adulteration of Food, Drugs and Agricultural Fertilizers. {"The Adulteration Act."}

- 1885
48-49V.,c.68 An Act respecting Agricultural Fertilizers. {"The Fertilizers A. 1885."}
- 1886
49V.,c.41 An Act to amend "The Adulteration Act".
- 1886
49V.,c.42 An Act to prohibit the Manufacture and Sale of certain substitutes for Butter.
- 1886
49V.,c.107 An Act respecting the Adulteration of Food, Drugs and Agricultural Fertilizers. (Revised Statutes of Canada, 1886)
- 1886
49V.,c.108 An Act respecting Agricultural Fertilizers. (R.S.C. 1886)
- 1888
51V.,c.24 An Act to amend "The Adulteration Act," chapter one hundred and seven of the Revised Statutes of Canada.
- 1889
52V.,c.15 An Act further to amend "The Inland Revenue Act," chapter thirty-four of the Revised Statutes.
- 1889
52V.,c.43 An Act to provide against frauds in the supplying of Milk to Cheese, Butter and condensed Milk Manufactories.
- 1890
53V.,c.24 An Act respecting Agricultural Fertilizers. {"The Fertilizers Act, 1890."}
- 1890
53V.,c.26 An Act further to amend the Adulteration Act, chapter one hundred and seven of the Revised Statutes.
- 1892
55-56V.,c.29 The Criminal Code, 1892, section 104.

1. The principal United Kingdom adulteration statutes for this period were [U.K.] 23 & 24V.,c.84 (1860), [U.K.] 35 & 36V.,c.74 (1872), [U.K.] 38 & 39V.,c.63 (1875) and [U.K.] 42 & 43V.,c.32 (1879).

2. Ontario had passed a series of similar Acts prior to this date: An Act to Protect Butter and Cheese Manufacturers S.O. 31V.,c.33 (1868) and R.S.O. [1887] c.159; An Act to Prevent Fraud in the Manufacture of Cheese and Butter R.S.O. [1887] c.207; and An Act respecting Creameries 51V.,c.31 [1888]

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