VIII

Colonial Welfare Laws and Practices: Coping without an English Poor Law in Upper Canada, 1792-1837

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THE FIRST session of the first legislature that met in Upper Canada in September 1792 enacted enabling legislation providing that, in all matters relating to property and civil rights, the civil law of England was to be adopted in Upper Canada, with the exception of "the laws of England respecting the maintenance of the poor and bankruptcy."[1] The particular direction taken by Upper Canadian poor relief institutions and practices would be profoundly affected by this decision not to adopt the English poor law. It made the subsequent history of poor relief in Upper Canada very different from that of other British North American colonies that survived the loss of the American Revolution. Specifically, Upper Canada was quite unlike New Brunswick and Nova Scotia, where arriving Loyalist emigrés had decided in 1786 to continue to maintain poor relief systems based largely on the mother country's poor law.[2] It was also different from the pre-revolutionary American colonies before 1776, where the English poor law model was largely adopted.[3] What was most

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[1] Statutes of Upper Canada (1792), 32 George III, c. 1, *An Act Introducing the English Civil Law into Upper Canada* reproduced in *Documents Relating to the Constitutional History of Canada, 1791-1818*, A. Doughty and D. McArthur, eds., (Ottawa: Historical Documents Publication Board, 1914) at 83-84.

[2] Brereton Greenhous, "Paupers and Poorhouses: The Development of Poor Relief in Early New Brunswick" (1968) 1 Histoire sociale/Social History at 103–26; Charles Thomas, "The Administration of the Poor Law in Nova Scotia, 1749-1937" (M.A. thesis, Dalhousie University, 1938); James Whalen, "New Brunswick Poor Law Policy in the Nineteenth Century" (M.A. thesis, University of New Brunswick, 1968), and "The Nineteenth Century Almshouse System in Saint John County" (1971) 7 Histoire sociale/Social History 5; R. Williams, "Poor Relief and Medicine in Nova Scotia, 1749-1783" in S. Shortt, ed., *Medicine in Canadian Society: Historical Perspectives* (Montreal: McGill-Queen's University Press, 1981); Abdul Q. Lodhi, "Debt and Debt Sentences in 19th Century New Brunswick" in *Papers Presented at the Canadian Law in History Conference, Carleton University, 1987*, vol. 3. For a discussion of related later developments in Nova Scotia, see Jim Phillips, "Poverty, Unemployment, and the Administration of the Criminal Law: Vagrancy Laws in Halifax, 1864-1890" in P. Girard and J. Phillips, eds., *Essays in the History of Canadian Law, vol. III: Nova Scotia* (Toronto: University of Toronto Press, 1990).

[3] For example, see James W. Ely, Jr., " 'There are few subjects in political economy of greater difficulty': The Poor Laws of the Antebellum South" (1985) American Bar Foundation Research Journal 849; "Poor Laws of the Post-Revolutionary South, 1776-1800" (1985) 21 Tulsa Law Journal, 1; Adbram de Swaan, *In Care of the State: Health Care, Education and Welfare in Europe and the USA in the Modern Era* (New York: Oxford University Press, 1988); and Daniel Levine, *Poverty and Society: The Growth of the American Welfare State in International Comparison* (New Brunswick, N.J.: Rut-

anomalous about the Upper Canadian case was that the 1792 legislation explicitly connected bankruptcy and poor law.

A key feature of English bankruptcy law of the 1790s was that it aimed to alleviate the plight of insolvent debtors by enabling them to pay creditors a part of the debt owed, instead of being sentenced to a debtors' prison until they were able to pay the entire amount. The English poor law of the 1790s ostensibly tried to mitigate the suffering of the poor with a certain minimum level of public support. In the 1790s, the English practice of subsidising wages paid to labourers by means of the poor rates, known as the "Speenhamland system," came under increasing attack for the effect it had on discouraging "the able-bodied from working, finding a job, or providing for themselves and their families."[4] Specific historical events and circumstances of the 1790s were associated with the exclusion of the English poor law from Upper Canada.[5] It was closely tied to the debate on the poor law in England. Importantly also, the circumstances surrounding its exclusion revealed a great deal about the character of the political and legal culture of the colony in the 1790s. In particular, evidence suggested that the most likely reason resided in the fact that Upper Canada's earliest   "Tory-Loyalist" legislators, as the more well-off land-owners, refused to allow a poor law to be put into effect that would result in imposition of a tax on property earmarked specifically for maintenance of the poor.

Primary historical evidence from the 1790s suggests that this was the case, but alternative mechanisms and institutions were put into place in Upper Canada. Historical continuity marked the way in which Upper Canadians viewed the laws that existed in England, concerning maintenance of the poor. Upper Canadians emphasised both the "unreformed" Elizabethan English poor law that existed before 1834 and the poor law reforms put into place in England in the 1830s. This study will contribute to our knowledge about the reception of English law in the pre-1867 British North American colonies that later became part of Canada.[6] Secondly, the

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gers University Press, 1988).

[4] Rainer Baehre, "Pauper and Poor Relief in Upper Canada" (1981) *Canadian Historical Association: Historical Papers, supra* note 2 at 58. More detailed studies of the nature of late-eighteenth century English ideas on poverty and the debate over the adequacy of the "old" English poor law, are provided in M.A. Crowther, *The Workhouse System 1834–1929: The History of an English Social Institution* (Athens, Georgia: University of Georgia Press, 1982); Gertrude Himmelfarb, *The Idea of Poverty: England in the Early Industrial Age* (New York: Vintage Books 1985); Norman Longmate, *The Workhouse* (London: Temple Smith, 1974); and J.R. Poynter, *Society and Pauperism: English Ideas on Poor Relief, 1795–1834* (London: Routledge and Kegan Paul, 1969); William Apfel and Peter Dunkley, "English Rural Society and the New Poor Law: Bedfordshire, 1834–47" (1985) 10 Social History 37; Rosalind Mitchison, *Coping with Destitution: Poverty and Relief in Western Europe* (Toronto: University of Toronto Press, 1991); Mitchell Dean, *The Constitution of Poverty: Toward a Genealogy of Liberal Governance* (London: Routledge, 1991).

[5] Russell Smandych, "William Osgoode, John Graves Simcoe, and the Exclusion of the English Poor Law from Upper Canada" in L. Knafla and S. Binnie, eds., *Law, State and Society: Essays in Modern Legal History* (Toronto: University of Toronto Press, 1995).

[6] On the reception of English law, one question that has been asked most frequently by English-Canadian legal historians is why the English law pertaining to particular subjects was received in the manner that it was in the different British North American colonies (before 1867) and later in the different Canadian provinces. For examples of this type of research, see Simon N. Verdun-Jones, "The Evolution of the Defenses of Insanity and Automatism in Canada from 1843 to 1979: A Saga of Judicial Reluctance to Sever the Umbilical Cord to the Mother Country?" (1979) 14 University of British

study is relevant to concerns of historians and sociologists who in the past two decades have become increasingly interested in addressing more theoretically informed questions about the development of law, social welfare, and social control.[7] This 'neo-revisionist' approach, supplemented by a recent growth of interest in the study of legal pluralism,[8] has been extended to include concern with addressing questions about the development of law and social control in specific colonial societies.[9]

Consequently, the following study also contributes to the growing body of comparative research that is focusing on attempts to explain distinctive characteristics of systems of law and social control that have emerged historically in

Columbia Law Review 1; David G. Bell, "A Note on the Reception of English Statutes in New Brunswick" (1979) 28 University of New Brunswick Law Journal 195, and "The Reception Question and the Constitutional Crisis of the 1790s in New Brunswick" (1980) 29 University of New Brunswick Law Journal 157; John C. Bouck, "Introducing English Statute Law into the Provinces: Time for a Change?" (1979) 57 Canadian Bar Review 74; J.E. Côté, "The Introduction of English Law into Alberta" (1964) 3 Alberta Law Review 262. Several dozen other studies of this type are listed in Russell Smandych, Catherine Matthews, and Sandra Cox, *Canadian Criminal Justice History: An Annotated Bibliography* (Toronto: University of Toronto Press, 1987).

[7] Leading "revisionist" historians of the 1970s who undertook this type of theoretically informed historical research include: David Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Boston: Little, Brown, 1971), and *Conscience and Convenience: The Asylum and its Alternatives in Progressive America* (Boston: Little, Brown, 1980); Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution* (New York: Pantheon Books, 1978), and "State, Civil Society, and Total Institutions: A Critique of Recent Social Histories of Punishment" in M. Tonry and N. Morris, eds., *Crime and Justice: An Annual Review of Research*, vol. III (Chicago: University of Chicago Press, 1981) 153; Andrew Scull, *Museums of Madness: The Social Organization of Insanity in the Nineteenth Century* (London: Allen Lane, 1979); and Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Pantheon Books, 1977). Among the most significant 'neo-revisionist' histories of punishment and social control that have been written since the early 1980s are: John Beattie, *Crime and the Courts in England 1660–1800* (Princeton: Princeton University Press, 1986); David Garland, *Punishment and Welfare: A History of Penal Strategies* (Aldershot: Gower, 1985); Mitchell Dean, *The Constitution of Poverty: Toward a Genealogy of Liberal Governance* (London: Routledge, 1991), and " 'A Social Structure of Many Souls': Moral Regulation, Government and Self-formation" (1994) 19 Canadian Journal of Sociology 145.

[8] Sally Merry, "Legal Pluralism" (1988) 22 Law and Society Review 869, and "Law and Colonialism" (1991) 25 Law and Society Review 889.

[9] See for example: Philip T. Ahire, " Re-writing the Distorted History of Policing in Colonial Nigeria" (1990) 18 International Journal of the Sociology of Law 45; Paula J. Byrne, *Criminal Law and the Colonial Subject: New South Wales, 1810–1830* (Cambridge: Cambridge University Press, 1993); Jean-Marie Fecteau, "Between the Old Order and Modern Times: Poverty, Criminality, and Power in Quebec, 1791–1840" in S. Lewthwaite, T. Loo, and J. Phillips, eds., *Essays in the History of Canadian Law, vol. V: Crime and Criminal Justice in Canadian History* (Toronto: University of Toronto Press); Sidney L. Harring, " 'Please Send Six Copies of the Penal Code': British Colonial Law in Selangor, 1874–1880" (1991) 19 International Journal of the Sociology of Law 193; David Neal, *The Rule of Law in a Penal Colony: Law and Power in Early New South Wales* (Cambridge: Cambridge University Press, 1991); John Pratt, *Punishment in a Perfect Society: The New Zealand Penal System, 1840–1939* (Wellington, NZ: Victoria University Press, 1992); Russell Smandych, "Tory Paternalism and the Politics of Penal Reform in Upper Canada, 1830–1834: A 'Neo-Revisionist' Account of the Kingston Penitentiary" in L.A. Knafla, ed., *Criminal Justice History: An International Annual*, vol. 12 (Westport CT: Greenwood Press, 1991); Russell Smandych and Rick Linden, "Co-existing Forms of Native and Private Justice: An Historical Study of the Canadian West" in Kayleen M. Hazlehurst, ed., *Legal Pluralism and the Colonial Legacy: Indigenous Experiences of Justice in Canada, Australia, and New Zealand* (Aldershot: Avebury Press, 1995); Russell Smandych and Gloria Lee, "Women, Colonization, and Resistance: Elements of an Amerindian Autohistorical Approach to the Study of Law and Colonialism" 10 Native Studies Review (Spring 1995).

different colonial societies. Most importantly, the study of Upper Canadian views about poor laws and poor relief practices followed in England offers comparative data that can help to explain how social welfare laws, originating in the mother country, were received in various British colonies in the eighteenth and nineteenth centuries.[10]

I. Prevailing Moral Sensibility About Poverty

> Charity to the poor is a direct and obligatory duty upon all Christians, next in order after the payment of debts, full as strong, and by nature made infinitely more delightful to us [Edmund Burke, 1795].[11]

> From motives of interest and duty, we should individually and unitedly exert our influence to discourage idleness and intemperance and other usual causes of pauperism; and to recommend and promote habits of sobriety, frugality, industry and application to some honest employment for a livelihood—and in the mean time be willing to contribute our mite for the relief of those who are the real objects of charity [Thomas Markland, Kingston, Upper Canada, 1819].[12]

The development of a more comprehensive understanding of why Upper Canadians rejected the English poor law requires that we reconstruct the dominant moral sensibility about poverty that existed in Upper Canada. No attempt is made here to argue that Upper Canadians held a unique, or somehow different, attitude toward the poor because this was certainly not the case. Rather, as we will see, the views Upper Canadians held about the causes of poverty were widely shared by those living in the mother country and elsewhere.

Upper Canadian thinking on the subject of poverty encompassed two contrasting perceptions. On the one hand, Upper Canadians were fully prepared to accept the fact that human beings could fall victim to poverty through no fault of their own. However, 'Providence' set limits on the extent to which this occurred and in such cases it was the obligatory duty of all Christians to offer some form of relief. At the same time, and without the slightest feeling of self-contradiction, Upper Canadians often viewed poverty to be the product of some moral failure on the part of the

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[10] It is significant to note at the outset that although Upper Canada is unique in having explicitly rejected English bankruptcy and poor laws, there are other British colonies that did not adopt these laws. For example, neither English bankruptcy nor poor laws were adopted in Quebec prior to 1791 (Smandych, *supra* note 5), nor was the English poor law adopted in Newfoundland, which remained a British colony until it became the tenth province of Canada in 1949. See Stuart R. Godfrey, *Human Rights and Social Policy in Newfoundland 1832–1982: Search for a Just Society* (St. John's: H. Cuff Publications, 1985). Australia is another former British colony that never enacted an English-style poor law in the nineteenth century. See Robert Dare, "Paupers' Rights: Governor Grey and the Poor Law in South Australia" (1992) 25 Australian Historical Studies 220; and Stephen Garton, *Out of Luck: Poor Australians and Social Welfare, 1788–1988* (Sydney: Allen & Unwin, 1990).

[11] Cited in Himmelfarb, *supra* note 4 at 67.

[12] *Kingston Chronicle*, 18 June 1819.

individual. Although the manner in which Upper Canadians responded to the "morally blameworthy" poor also took different forms, these responses were typically aimed more at "correcting" the behavior of individuals than at extending "charitable relief." The tendency of Upper Canadians to separate the poor into two distinct categories was largely a product of the religious-based nature of the moral sensibility they shared concerning the causes of poverty. Indeed, the reasoning they used to explain the existence of poverty was rooted firmly in prevailing religious beliefs. In contrast to the secular world view, shared by many Canadians living in the late-twentieth century, Upper Canadians in the first half of the nineteenth century by and large shared a common Christian outlook. Despite the existence of ongoing religious controversies that divided the members of different Christian denominations,[13] "Upper Canada was almost exclusively a Christian community."[14]

Although other influences undoubtedly moulded Upper Canadian attitudes toward the poor, the social teachings of the Christian churches played a major role.[15] In the course of involvement as members of a "Christian community," Upper Canadians were routinely exposed to traditional Christian social teachings about the causes and amelioration of poverty. As a result, they developed what they felt was a clear understanding of both the circumstances that contributed to the existence of poverty and the manner in which they should respond to different categories of the poor. Most importantly, it was from this source that they learned that the causes underlying the poverty endured by the "worthy poor" differed significantly from causes underlying the poverty experienced by those who were "morally blameworthy." In addition, it was from this source that they learned of the need for responding differently to the poor who fell into these two categories.

Upper Canadians displayed an openly paternalist attitude toward the "worthy poor." The most significant Christian precept that shaped this attitude was belief in the inevitability of poverty. Essentially, Upper Canadians were led to believe that, in any hierarchically ordered society, a certain number of individuals were destined by 'Providence' to suffer economic distress. The poverty endured by the "worthy poor" could never be entirely eradicated, requiring a "Christian duty" to provide that "the cutting edge of destitution ... be blunted by charity."[16]

That left those who fell victim to "the evil of pauperism" through their own making. Unlike the worthy poor, whose fate was ultimately determined by "Providence," the "morally blameworthy" poor had fallen prey to a combination of moral vices. Throughout the period to the mid-1830s, Upper Canadians who devoted

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13 John Gwynne-Timothy, "The Evolution of Protestant Nationalism" in P. LeBlanc, ed., *One Church, Two Nations?* (Don Mills, Ont.: Longmans, 1968); John Moir, "The Upper Canadian Religious Tradition" in E. Firth, ed., *Profiles of a Province: Studies in the History of Ontario* (Toronto: Ontario Historical Society, 1967).

14 Moir, *supra* note 13 at 189. See also William Westfall, *Two Worlds: The Protestant Culture of Nineteenth-Century Ontario* (Kingston: McGill-Queen's University Press, 1989).

15 William H. Elgee, *The Social Teachings of the Canadian Churches: Protestant, The Early Period Before 1850* (Toronto: Ryerson Press, 1964).

16 David Roberts, "Dealing with the Poor in Victorian England" (1981) 67 Rice University Studies 57; and *Paternalism in Early Victorian England* (New Brunswick, N.J.: Rutgers University Press, 1979) at 6–7.

attention to discussing "the causes of pauperism" argued that it most commonly stemmed from interrelated vices of "idleness," "intemperance," the lack of "frugality," and "the want of religion." Although ordering these vices, in terms of the extent to which they contributed independently of one another, varied among different commentators, the end product, a life of morally depraved pauperism, was invariably the same.

The religious-based moral reasoning that Upper Canadians applied to the subject of poverty had a profound influence in shaping the character of pre-segregative responses to the poor.[17] Throughout the decades prior to Confederation in 1867, and for many years after, private charitable agencies played the leading role in dispensing different forms of physical and spiritual relief to the poor in Upper Canada, and then in the province of Ontario.

II. Categorising the Poor, 1792–1829

Prior to 1819 the job of administering poor relief in Upper Canada was left largely to private charity and the churches. However, even though they lacked a legislative mandate to create a public poor relief system like the one that existed in England, a variety of 'public' and 'quasi-public' measures were also put into place by justices of the peace appointed in each district of local government. Owing to the absence of any clear enabling legislation, district magistrates were left with a great deal of discretionary power to decide who qualified as a worthy candidate for some type of public or quasi-public poor relief. Although no taxes were collected specifically for the purpose, prior to 1819 JPs had the power to use part of the general district funds generated in part from property owners. Through orders they passed while sitting as a panel in courts of quarter sessions, local JPs used district funds in a highly discretionary manner to support different forms of poor relief.

Evidence from the period prior to 1819 suggests that, like other Upper Canadians, local magistrates shared a dim view of the unreformed English poor law and the possible consequences that would result if it was followed in Upper Canada. However, also like other Upper Canadians, they accepted a duty to offer relief to the worthy poor, as revealed in the manner in which they set into place an administrative structure and method of funding for such relief.

A. Funding "Public" Poor Relief

Despite the many criticisms levelled at England's system, some early residents of the colony believed that a similar system should be set in place in Upper Canada. As early as 1787, magistrates in the district of Mecklenburgh in the old province of Quebec, which later became the Midland District of Upper Canada, wrote to the governor of Quebec outlining matters they felt had to be most urgently addressed in their area. The magistrates alluded to the need for an English-model, complete with

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[17] The term "pre-segregative" responses is used to refer to the different ways in which Upper Canadians responded to deviance and dependency prior to the establishment of segregative institutions like the penitentiary, the insane asylum, and the workhouse or house of industry. See generally, Russell Smandych, "The Upper Canadian Experience with Pre-Segregative Control" (Ph.D. dissertation, University of Toronto, 1989).

appointed "overseers of the poor" and the control of JPs. Specifically, the magistrates concluded

Humanity will not allow us to omit mentioning the necessity of appointing overseers of the poor, or the making of some kind of provision for persons of that description, who from age or accident may be rendered helpless. And we conceive it would be proper that the persons appointed to this charge as well as the road masters, should be directed to make regular reports of the state of their districts, to the courts, at their meetings, and be in all cases subject to their control.[18]

Although later residents of the Midland District and others did not have the system hoped for, this did not prevent them from setting up mechanisms for dispensing "public relief" to the poor. One of these was the appointment of local overseers of the poor, chosen from among residents who attended annual town meetings. As early as 1792, residents of Adolphustown in the Midland District held a town meeting at which they chose two officers to serve as "overseers of the poor."[19] This practice was also adopted in other townships.[20] The lack of extant records of proceedings of the annual town meetings makes it impossible to determine how widespread the practice was.[21] Nevertheless, it suggests that soon after the province was founded the residents of different townships began taking responsibility for dealing with the poor.

In 1819, a significant change occurred in the manner in which residents of the Midland District funded their poor relief efforts. Although this change was unique to the Midland District, it revealed a great deal about Upper Canadian views on the English poor law. Owing to the apparent growing problem of "pauperism" in the district, magistrates and inhabitants of various townships met on several occasions. The plan ultimately decided was based on a serious consideration of current views on the causes of pauperism and the widespread recognition that the existing practice of funding poor relief out of district funds was no longer adequate.

On 22 January 1819 the *Kingston Chronicle* published a lengthy editorial on the causes and prevention of pauperism. Written anonymously, it responded to a public notice of a meeting to be held in the Midland District "for the purpose of adopting some plan for the relief of the Poor." In it the author informed readers about existing views on the history of efforts undertaken to deal with the problem in England. Given that residents of the Midland District surrounding Kingston were going to be meeting

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18 "Letter from the Magistrates of New Settlements to Sir John Johnson, dated Cataraqui (afterwards Kingston)" 22 December 1787; cited in A. Shortt, ed., *Early Records of Ontario* (Kingston: The Daily News Office, 1900) at 4.

19 W.S. Herrington, *A History of the County of Lennox and Addington* (Toronto: MacMillan, 1913) at 60–61.

20 G.P. de Glazebrook, "The Origins of Local Government" in F.H. Armstrong, H. Stevenson, and J. Wilson, eds., *Aspects of Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1974); "Minutes of the General Quarter Sessions of the Peace for the Home District, 1800–1811" in *Report of the Department of Public Records and Archives* (Ontario: Government of Ontario, 1932) [hereinafter cited as "Home District Quarter Session Minutes"]; "Minutes of the Court of Quarter Sessions of the London District, 1800–1809, 1813–1818" in *Report of the Department of Public Records and Archives* (Ontario: Government of Ontario, 1933) [hereinafter cited as "London District Quarter Session Minutes").

21 Glazebrook, *supra* note 20.

shortly to consider policy changes, the author felt it important to learn from attempts made to deal with "the evil" of pauperism in England. Most importantly:

Every Christian country has necessarily attempted some plan for remedying this evil, and in every case, to a greater or less degree, such attempt has failed. England, in the present day, exhibits the most astonishing instance of a complete failure ....

 At first sight the whole scheme of the Poor Laws appears wise, just and humane. It had for its chief objects, the establishment of a fixed provision for those who were unable to provide for themselves; and the equal adjustment of the burthen [*sic*] of raising the necessary funds. But how has it operated? Not only continually to increase the evil which it sought to diminish, by holding out as it were a premium for idleness, but also to sever the tie of affection between the parent and the child, and to destroy all that spirit of independence, which characterized formerly the lower order of the English nation.

The mischief it appears, is not at its height [in Upper Canada]; and a new system is loudly called for. Warned thus by example, it would be little short of madness, for a new community, to have recourse to any similar expedients, for the support of its indigent members.

The most serious problem with the English system was that it was concerned with trying to control pauperism rather than prevent it. In this anonymous author's view, it was wiser to "check the growth" at an early stage, rather than "allow it to gain its height, and then seek a remedy for it." The author felt that "this maxim" was especially applicable to "the case of Pauperism" in Upper Canada, since it had "not yet assumed any very alarming appearance" in the colony, and if "prudent measures" were adopted, it would be "impossible that it should do so [for] many years to come."

The 19 February 1819 issue of the *Kingston Chronicle* contained the record of a subsequent "meeting of Magistrates and Inhabitants of the Midland District, held at Bath, in the township of Ernest Town" for the relief of the poor. The meeting produced the passing of thirty resolutions aimed at introducing new measures for the Midland District. In the published address, readers of the *Chronicle* were informed that new poor relief measures were thought to be necessary, and that they, as taxpayers, would have to decide. Most significantly, residents of the Midland District were told that:

Up to this period the poor of the District have received relief, from part of those funds, which are raised by a tax upon your rateable property. From various causes ... these funds have been found inadequate to the demands made upon them. By consequence it is no longer even possible to continue the system hitherto pursued, in making the necessary provisions, without having the sanction of the Legislature, for imposing an additional tax. It is for you to decide, whether this sanction is again to be applied for, in order that the old system may still remain, or whether it may not be better to have recourse to some other expedient.—It will be well for you to keep in remembrance, that mischiefs of every kind, have been produced in England, by the operation of Poor Laws, and therefore you cannot be too careful in avoiding the adoption of any system, which may have the least approximation to that which has been found so extremely pernicious.[22]

On 29 April 1819 "the Magistrates and Inhabitants of the Midland District" met and decided that each township in the district would take "upon itself the charge and maintenance of its own poor.'[23] The specific method that would be used to do this was spelled out at the meeting held in the Township of Kingston, presided over by

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22 *Kingston Chronicle*, 19 February 1819.

23 *Ibid.*, 14 May 1819.

Thomas Markland on 15 June 1819. Having made the point that "a reasonable support for the Poor is the duty of every Christian community," he pointed out that, because the use of district funds for this purpose had been discontinued, it was "recommended to the Inhabitants of the several Townships to associate and make voluntary provision for their own Poor." In spelling out details of the proposed method of "voluntary" fund-raising, Markland noted that:

[Since] Kingston, Pittsburg & Wolfe Island [are] united in one assessment list, it is thought proper for them to unite in this association. For the sake of equalization, reference is had to the list of rateable property, as the most certain and equitable rule of apportioning the contribution. The rate limited is very moderate. To avoid expense, it is proposed that it be collected by the Township Collector, to be placed as a fund for the Poor, in the hands of a Treasurer appointed for that purpose, and to be applied to the proper objects of relief by Wardens, under the direction of Magistrates. This has been adopted as the most simple, safe and economic mode, which under existing circumstances could be devised.[24]

At the meeting held on 15 June to agree on a district plan, Thomas Markland also expressed his view of the problems in the English poor law and the reason why it was excluded from Upper Canada. A declaration signed by Thomas Markland, as chair of the meeting, stated:

We are but stewards of the property entrusted to us respectively in this life, and are justly accountable to the great proprietor and bestower of all, for the use we make of it. As some of our fellow men are left destitute, it is evidently the intentions of Providence that those of us who are blessed with the means shall contribute thereforth to the relief of the distressed, the comfort of the sick and the support of the helpless. This being a world of vicissitudes, as well as inequalities of fortune, any of us, our friends, or children, however easy at present in circumstances, may by some unexpected revolution be brought to a state of indigence, and in our turn need the hand of charity to relieve our distresses, or supply our wants. Benevolence, therefore is a common cause. A reasonable support of the Poor is the duty of every Christian community. In most civilized countries provision is made for it by law. But, the English system of laws on the subject having been found to be attended with serious evils, our Provincial Legislature in their general adoption of the laws of England, excepted the Pauper Laws, and have not yet provided any substitute.

What essentially occurred in the Midland District in 1819 was that district magistrates relinquished previous welfare responsibilities, while setting up a new township-based "voluntary" system of providing poor relief. Specifically, at the meeting of 15 June, it was agreed that in the future one farthing on the pound on the rateable property of every individual within the townships of Kingston, Pittsburg and Wolfe Island would be collected for maintenance of the poor. Those who attended the meeting also acknowledged, however, that each landowner should have the option of deciding whether or not to "allow his property to be so taxed."[25] Significantly, after 1819 financial support for the poor relief efforts undertaken in various townships of the Midland District was obtained through "voluntary contributions," while throughout the following decade much of the actual work was left to voluntary charitable societies. What was most significant about changes in the Midland District in 1819, and the published views on pauperism and poor relief in the *Kingston Chronicle*, was that they showed serious efforts to inform Upper

24 *Ibid.*, 18 June 1819.

25 Margaret Angus, "Health, Emigration and Welfare in Kingston, 1820–1840" in D. Swainson, ed., *Oliver Mowat's Ontario* (Toronto: MacMillian, 1972) at 127.

Canadians about "evil" consequences that could grow from adopting an English-style poor law. In addition, they revealed that at least some individuals, such as Thomas Markland, had a rationale for the decision made in 1792.

Contrary to notions that "pragmatic considerations" weighed heavily on the legislators of 1792,[26] Upper Canadians writing thirty years later believed the English poor law was rejected for inherent flaws. However, it is equally difficult to accept the argument that the decision of 1792 represented an "emphatic rejection" of "the principle" of public support for the poor.[27] Although in the 1820s an increasing portion of the burden would come to be assumed by voluntary charitable societies, this did not bring about an end to the earlier established structures and methods of funding. The changes introduced in the Midland District were not adopted in other districts. Unlike the Midland District, where local magistrates recognised the need for a more "voluntary" township-based system, justices of the peace in other districts continued throughout the 1820s and 1830s to make use of district funds for poor relief purposes. In addition, JPs residing in other districts continued to assume a major role in overseeing various 'public' and 'quasi-public' efforts.

B. "Worthy Poor": The Role of Justices of the Peace

One consequence of the rejection of the English poor law in 1792 was that the responsibility for dispensing public poor relief was left largely to the discretion of JPs. They could adapt the law which existed in the mother country to deal with specific public welfare concerns that arose in their districts. In addition, other forms of legislation would facilitate the role played by JPs in dispensing various kinds of poor relief.[28]

An indication of this variety can be gained from examining available courts of quarter sessions records.[29] While providing only a glimpse of the manner in which they responded to the problem of poverty, these court records nonetheless reveal key aspects of the role assumed by district magistrates. Most significantly, quarter

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26 Greenhous, *supra* note 2; Richard B. Splane, *Social Welfare in Ontario, 1791–1893: A Study of Public Welfare Administration* (Toronto: University of Toronto Press, 1966).

27 J.C. Levy, "The Poor Laws of Upper Canada" in D. Bercuson and L.A. Knafla, eds., *Law and Society in Canada in Historical Perspective* (Calgary: University of Calgary Studies in History No. 2, 1979).

28 Examples of such enabling legislation include: an act passed in 1792 which provided for the building of gaols and court houses in every district of the province (33 George III, c. 8); an act passed in 1799 which provided for "the education and support of orphan children" (39 George III, c. 2); an act passed in 1805 which provided for "the relief of insolvent debtors" (45 George III c. 7); and an act of 1810 which declared that the district gaols of the province were to be used as "houses of correction for certain purposes" (50 George III, c. 5).

29 The specific courts of quarter sessions records drawn on in the following section include the published "Minutes of the Courts of Quarter Sessions of the Mecklenburgh (Midland) District (1789–1818)" in Shortt, *supra* note 18; "Home District Quarter Sessions Minutes (1800–1811)," *supra* note 20, and "London District Quarter Sessions Minutes (1800–1809, 1813–1818)," *supra* note 20, which have been examined by the author, along with the Niagara District courts of quarter sessions records referred to by David Murray, "The Cold Hand of Charity: The Court of Quarter Sessions and Poor Relief in the Niagara District, 1828–1841" in W. Pue and B. Wright, eds., *Canadian Perspectives on Law and Society: Issues in Legal History* (Ottawa: Carleton University Press, 1987), which the author has been unable to examine first hand.

sessions records reveal the unmistakably "paternalist" attitude that JPs displayed toward individuals perceived to fall within the category of the "worthy poor." The recorded proceedings indicated that district magistrates found numerous ways to provide relief to those whom they considered to be worthy of public support.

One of the earliest practices was the ordering of unwilling fathers to pay for support of their "bastard" children. Despite the absence of enabling legislation which authorised this practice, magistrates apparently took it upon themselves to pass orders aimed at ensuring that illegitimate children received support. As early as 1790, magistrates of the district of Mecklenburg, presiding over a court of quarter sessions held at Kingston, ordered Henry Bird to pay the complainant Katherine Brown ten shillings a month "for the maintenance of a Bastard Child by her," until the child reached the age of one year old.[30]

Another early instance of JPs taking action to provide for maintenance of "bastard" children occurred in the Eastern District in 1795. On 15 July 1795, magistrates presiding at the Eastern District Quarter Sessions heard arguments from the attorney of one John Loucks, the father of an illegitimate child. The attorney argued that rejection of the English poor law in Upper Canada, which contained provisions concerning the maintenance of bastard children, made the Court incompetent to deal with a case of bastardy. The Court rejected this argument and ordered Loucks to pay 2s. 6d. a week for support of the child. Three years later the same court ordered another father of a bastard child to pay 1s. 3d. a week to the "churchwardens" of Osnabruck for support.[31]

A second type of quasi-public poor relief practice in place in the 1790s was that giving judicial authority to the "binding out" or indenturing of children as apprentices. Magistrates were also given the responsibility of dealing with legal disputes that arose from this practice. At the quarter sessions of the District of Mecklenburgh held on 13 July 1790, presiding magistrates responded to a representation from an indentured servant by the name of Fredrick Cromer, complaining of ill treatment he had received from his master, John A. Dingman. Evidently the magistrates decided that there was no substance to this complaint, because they stated that they were "unanimously of the opinion, that the said Fredrick Cromer can or ought to live with the said Dingman."[32]

A similar case was brought before the Midland District Quarter Sessions in April 1799 at Kingston. The case heard by the presiding magistrates involved the "application of James Cannon, a bound apprentice to Emmerson Busby a hatter of the town of Kingston, praying to be discharged from his indenture for want of sufficient food, and that he is employed as a servant and not at the trade of a hatter." After hearing arguments presented by both sides, the case was decided in favour of the apprentice. The decision by the four sitting Tory magistrates (R. Cartwright, W. Atkinson, T. Markland, and T. Thomas) was based on their opinion that James Cannon was

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[30] "Minutes of Court of Quarter Sessions for July 13, 1790" in Shortt, *supra* note 18 at 12.

[31] J.M. Aitchison, "The Development of Local Government in Upper Canada, 1783–1850" (Ph.D. dissertation, University of Toronto, 1954) at 644–45.

[32] Cited in Shortt, *supra* note 18 at 12–13.

employed by his master "rather as (a) domestic drudge than in learning his trade, and further because he does not appear to have been provided with sufficient food."[33]

The practice of "binding out" orphan and destitute children to work as apprentices preceded the 1799 legislation which explicitly allowed for it.[34] The *Act* of 1799 gave town wardens the power, subject to the consent of two JPs. Males could be bound out to the age of twenty-one, females to the age of eighteen. In addition, the *Act* gave the mother of a child abandoned by its father the power to have the child indentured, provided it was countersigned by two justices. An exception recognised family relatives who were able and willing to support the child. And in cases where the child was more than fourteen years of age, his or her consent to the apprenticeship was required.[35] The *Act* of 1799 simply gave legislative authority to a poor relief measure already commonly used. It also formalised the legislative framework for dealing with such cases in the future.

As in the Midland District, justices of the peace in the London District engaged in the practice of "binding out" children whose parents were unable to provide for them. One of the cases dealt with by magistrates in the London District involved a certain Sarah Van Cleg and her common law husband, John Emmins, who were brought to answer "contempt of court" charges. On 3 May 1817, presiding magistrates ordered that a bench warrant be issued "to bring John Emmins and Sarah Van Cleg of Burford to answer to what may be brought against them and further abide by the Law." The court also ordered that certain citizens and local Town Wardens be subpoenaed to give evidence, and that Sarah Van Cleg's children be brought before the court at the same time. At its sitting on 10 May 1817, the court heard the case of *"R. v. Jn. Emmins & Sarah Van Cleg"* and issued an order to authorise the "binding out" of her children. Although it is not known what happened to Sarah Van Cleg's other children, at its sitting on 16 May 1817, the London District Quarter Sessions ordered that "David Van Cleg" be bound out by the Townwardens of Woodhouse to Major George C. Salmon, one of the JPs who presided over the court on that day.

The practice was apparently quite common in the London District. On 16 October 1817, the London District Quarter Sessions issued a general order requiring that "The Town Wardens in each and every Township throughout the District, shall at the request of any Magistrate in the District, visit any Indented apprentice within their Township and report to such Magistrate, the situation of the apprentice." In addition, the magistrates ordered the clerk of the peace to send out a notice to town wardens notifying them of this added responsibility.

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[33] *Ibid.* note 18 at 37–38. In judicial proceedings, contemporaries distinguished "trade" apprentices from "pauper" apprentices but the two cases cited here do not make clear which status applied. I am grateful to Professor Charlotte Neff (Laurentian University) for bringing this to my attention: "Pauper Apprenticeship in Pre-Confederation Ontario", paper presented at the Learned Societies' meeting, Montreal, June 1995.

[34] Statutes of Upper Canada (1799), 39 George III, c. 2, "An Act to provide for the education and support of orphan children."

[35] 39 George III, c. 2 (1799); M.K. Strong, *Public Welfare Administration in Canada.* Social Service Monographs, no. 10 (Chicago: University of Chicago Press, 1930) at 24.

At the same sitting of the London Court of Quarter Sessions, magistrates dealt with the case of Alexander Wedge, "a boy of about Six Years of age, abandoned by his father and left without an adequate provision by his mother." The Court responded to the boy's "helpless situation" by ordering that he be apprenticed to James Mitchell, who also happened to be one of the presiding magistrates. Specifically, the court order read that:

... the said Alexander Wedge shall be duly indented and apprenticed to James Mitchell Esquire, his heirs and assigns untill *[sic]* he shall have completed his Twenty first Year, He the said James Mitchell his heirs and assigns furnishing the said Alexander Wedge with sufficient wearing apparel and victuals and teaching him or causing him to be taught, to read and write and at the expiration of his apprenticeship to furnish him with two suits of wearing apparel, a Yoke of Oxen worth Fifty Dollars with a Yoke and chain.[36]

The role played by justices of the peace extended beyond the strictly public sphere. They stood at the juncture separating public and private efforts made to deal with "innocent" victims of poverty. A telling sign of this was the personal commitments that George C. Salmon and James Mitchell made to take on responsibilities for raising abandoned children. Another revealing indication was the role that magistrates played in approving the payment of accounts owing to private individuals, for efforts they undertook in caring for the destitute and the insane.

The role played by justices of the peace extended beyond the strictly "public" sphere. They stood at the juncture separating "public" and "private" efforts made to deal with "innocent" victims of poverty. A telling sign of this was the personal commitments that George C. Salmon and James Mitchell made to take on responsibilities for raising abandoned children. Another revealing indication was the role that magistrates played in approving the payment of accounts owing to private individuals, for efforts they undertook in caring for the destitute and the insane.

As early as 1797, magistrates in the Midland District ordered that district funds be paid to private individuals to compensate them for taking on the responsibility of providing poor relief. At their sitting on 26 April at Kingston, they approved a list of accounts to be paid to individuals for agreeing to "board" destitute persons in their homes. This list noted the fact that a sum of £1 10s. was paid "to the widow Angus Taylor being so much of her account allowed for boarding Terence Dunn," while the sum of £6 1s. 8d. was paid "to Philip Swick, being the amount of his account for Boarding David Vanderheyden."[37]

Magistrates in the London District were also apparently prepared on occasion to allocate district funds for the purpose of maintaining the poor in the homes of willing individuals. On the 13th of June, 1815, at a sitting of the London District Quarter Sessions held at Charlotteville, the court ordered "that Fredrick Steinhoff be allowed the Sum of Seven shillings and sixpence Currency per week for the maintenance of George Fisher a pauper." Evidently, Mr. Steinhoff continued to maintain this pauper in his household until at least the autumn of 1815, for at the September 13th sitting of the London District Quarter Sessions the presiding magistrates authorised the

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[36] "London District Quarter Sessions Minutes", 16 October 1817.

[37] Cited in Shortt, *supra* note 18 at 32.

payment of £4 17s. 6d. to him "for Keeping Geo. Fisher a pauper." At this sitting, magistrates also authorised the payment of 17s. 2d. to a "Mr. Wm. Underwood" for taking in a pauper by the name of Christ Hartsought.

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The practice of offering financial compensation to charitably-minded private citizens included those willing to care for the insane. One documented case of this occurred in the Home District in 1802. On 14 July 1802, the Home District Quarter Sessions ordered that the District Treasurer make a payment of 10 pounds to William Hunter, a blacksmith, for giving board, lodging and care to Mary Day, a pauper and insane woman, for a six week period. Significantly, however, the Court also ordered that "a further allowance...be appropriated by the District Treasurer, for the purpose of conveying the said Mary Day to the Province of Lower Canada, from hence she came." Although the magistrates were apparently willing to pay for the "boarding out" of an insane woman who lacked any other means of support, they were not willing to continue paying for the care of someone who belonged in Lower Canada. Contemporary accounts written during the 1820s and 1830s indicated that while JPs were occasionally willing to spend district funds for "boarding out" their own insane and mentally disabled residents, this was done only when such individuals did not have family or friends for support.[38]

In addition to authorising payment of funds for boarding-out the destitute and insane, justices of the peace, at least in the Niagara District, decided to use public funds to provide more direct financial support to the poor. Throughout the 1820s magistrates in the Niagara District maintained a "pauper list," which included names of individuals who received direct "public support from district funds."[39] This "pauper list" included individuals who had either applied on their own or had someone petition on their behalf, to receive direct financial support from the district. Although local magistrates were apparently very selective in deciding who should be included in the official pauper list, once a person was placed on the list "support from the district continued from one Quarter Sessions to the next, unless the individual died or moved out of the District."[40] The Niagara district pauper list was

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[38] John Howinson, *Sketches of Upper Canada* (Edinburgh: Oliver and Boyd, 1821) at 217; Mrs. Jameson, *Winter Studies and Summer Rambles in Upper Canada* (London: Saunders and Otley, 1838) at 347.

[39] Murray, *supra* note 29 at 181.

[40] *Ibid.*

routinely reviewed and updated until January 1829, when the list was discontinued, partly because grand jurors began expressing increased concern that there was no statute that authorised magistrates to use district funds for that purpose.

The pauper list maintained by Tory magistrates in the Niagara District provided a revealing indication of the types of unfortunate individuals whom they considered worthy of receiving public support. In 1829, two thirds of the people on the list were elderly who lacked other means of support. Other types included in the list were: young adults being cared for by relatives who were poor themselves, widows suddenly left on their own with families to support, orphans and destitute immigrants, and mentally retarded children. The one category of individuals noticeably absent from the list were the "idle" and "worthless" poor, perceived to have fallen victim to poverty through their own making.[41]

Quarter sessions records indicated that magistrates in other districts were also cautious about allocating public funds for poor relief purposes. One expedient was the practice of "auctioning off paupers to the lowest bidder." Essentially, this entailed the holding of a public auction at which individuals interested in taking in a destitute person would bid on the amount of money they wanted for their bother. The successful "bidder" was the one who offered to take in a pauper at least expence to the public. Although this practice was commonly used in other British North American colonies[42] and England,[43] there was only one instance of it recorded in published Upper Canadian courts of quarter sessions records. On 2 July 1816, magistrates presiding over the London District Quarter Sessions held at Charlotteville ordered the clerk of the court to "advertise to the public the Widow of Samuel Wilson and George Fisher to be let to the lowest bidder" on the upcoming Saturday, July 13th. While available court of quarter sessions records provide no further documentation concerning the use of this expedient, it was quite likely resorted to more often, perhaps without the need for public notices to be issued.[44]

Evidence suggests that JPs attempted, whenever possible, to rely on poor relief expedients that allowed them to avoid having to make use of any district funds. One example was the parsimonious manner in which magistrates in the Home District responded to the plight of a family found to be suffering severe economic distress. The minutes of the Home District Quarter Sessions held at York on the 12th of July, 1803, noted that in the course of the day's proceedings three members of the grand jury, Abner Miles, John H. Hudson, and John Lyons appeared and represented to the Court that:

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41 *Ibid.* at 193–94.

42 Greenhous, *supra* note 2 at 106–07.

43 Longmate, *supra* note 4 at 42.

44 In his examination of various "welfare" expedients relied on in the county of Ontario (surrounding the towns of Whitby and Oshawa) in the 1850s and 1860s, L.A. Johnson notes that "a practice grew up of 'auctioning off' the able-bodied poor who were without families or relatives in the area." Although by this time JPs had relinquished their control of local government to elected municipal councils, the expedient of "auctioning off" the poor apparently continued to be endorsed. L.A. Johnson, *A History of the County of Ontario* (Toronto: University of Toronto Press, 1972) at 255.

... a certain Moses Martin of the Township of Markham in the said District, Yeoman, & his family, consisting of a Wife and four Children were in very great Distress; that Moses Martin himself was in a very ill state of health, that his head and face were almost Destroyed by a Cancer, that his Wife neglected both him and his family, and that his children were naked and without Food.

. The court ordered that two of the grand jurors form:

a committee to take into their Custody a[nd] Possession all the moveable property and chattels belonging to the said Moses Martin, consisting of two Oxen, Four Cows, Two young Cattle & Several Hogs (No. unknown); and to sell and dispose of the whole of such part of the said Cattle and Hogs, as to them may seem expedient, and the proceeds of such Cattle and Hogs, to use and employ, in the providing of Food, Clothing and other necessaries for the said Moses Martin and his family.

While district magistrates were evidently willing to undertake the task of providing relief to the "worthy poor," they were by no means always willing to make use of district funds for this purpose. Magistrates tended to rely on more direct public poor relief measures only as a last resort, after other quasi-public and private alternatives had been exhausted. Moreover, the decisions made by JPs were highly discretionary, allowing them to decide on a case by case basis whether an individual or family was worthy of being offered charitable relief. While Upper Canadians may well have shared a frame of mind that stressed virtues of "private charity" and "individual responsibility," they were by no means opposed to lending public support to the worthy poor. On the contrary, the reliance they placed on various kinds of public and quasi-public poor relief, suggested at least a modified principle: the state should intervene when other mechanisms of care and control were not able to cope adequately on their own.

Those perceived as victims to poverty through no fault of their own were not dealt with in a particularly coercive manner. Support for bastard children, the "binding out" of destitute and orphan children as apprentices, the "boarding out" of paupers and the insane in private homes, and the provision of direct financial support to the aged and the infirm, exemplified the extent to which they assumed a openly paternalist attitude toward the worthy poor. However, justices of the peace and other Upper Canadians, elicited a much less benevolent response to those who were perceived to be "morally blameworthy."

C. "Blameworthy Poor": The Use of Imprisonment

The earliest Upper Canadian legislation that provided for the use of imprisonment for the poor was enacted in 1810.[45] According to the *Act*, legislators considered it "expedient that until houses of correction shall be erected in the several districts of this province, that the common gaol in each and every of the said districts shall be held and taken for certain purposes, (to be) a house of correction." More specifically, district gaols were to be used to confine "all and every idle and disorderly person, or rogues and vagabonds, and incorrigible rogues, or any other person or persons who may by law be subject to be committed to a House of Correction."

Although the *Act* of 1810 was the first Upper Canadian statute to authorise the use of district gaols to house the "idle" and "disorderly" poor, they were resorted to

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[45] Statutes of Upper Canada (1810), 50 George III, c. 5.

for this purpose prior to enactment of enabling legislation. Minutes of the Court of Quarter Sessions of the Home District for the period prior to 1810 contain several references to this effect. On 17 October 1801, magistrates ordered that "a Letter be written to the [Home District] Sheriff, requesting he will allow two Rooms in the District Gaol, to be set apart for the use of a Bridewell." At its meeting on 14 July 1802, the court authorised that "Hugh Cameron the Keeper of the [Home District] Gaol" be paid the six months salary owed to him for his work "as Keeper of said Gaol & Keeper of the Bridewell." In addition, the court ordered "that whensover [*sic*] and as soon as a Bridewell shall be established, that he [the Gaoler] be appointed Keeper thereof, and be allowed and paid ten pounds p. annum therefor."

The Home District gaol also continued to serve as a "House of Correction" in the years following enactment of enabling legislation. At their sitting on 25 May 1811, the magistrates

[r]ead a Petition from William Knott the Keeper of the Home District Gaol; praying to be appointed the Keeper of the House of Correction, in and for the Home District, as long as he is Continued the Keeper of the Gaol; with an Annual Allowance or Salary, as the Court may think proper.

In response, they "Ordered that the said William Knott be the Keeper of the House of Correction, that the Salary be the subject of a future Consideration and when agreed upon do not Commence later than this day."

Although apparently intended to serve also as a house of correction, available quarter sessions records, both for the Home District and elsewhere, failed to throw light on how extensively gaols were used to confine the "morally blameworthy" poor. Most likely the paucity of data has more to do with the manner in which they were committed to district gaols than with the frequency of their confinement.

One of the few recorded instances of confinement of the "blameworthy" poor in district gaols occurred in the Mecklenburgh District in 1790. On 14 April 1790, a certain Charles Justin McCarthy appeared before the quarter sessions held at Kingston to answer to charges that he was "a vagabond, imposture, and disturber of the peace." Upon hearing the evidence presented by the prosecution and defence, and consulting with the grand jury, the court ordered that "the said Charles Justin McCarthy shall, within the space of one month, leave this district and not return, and that the sheriff of the district shall see his order duly executed." Apparently, McCarthy was not prepared to follow this court order, as on 13 July 1790 he appeared before the court again after being "apprehended and committed by the Sheriff" for having returned to the district. In order to ensure that he would not return a second time, the court ordered that McCarthy "shall remain in gaol until the Sheriff shall find a proper conveyance for sending him to Oswego [New York]."

With this exception, published quarter sessions records for the period 1789–1818 contain no reference to the Mecklenburgh, and later Midland, District gaol being used to confine the idle and disorderly poor.[46] Similarly, published minutes of the London District quarter sessions for the period 1800–1809 and 1813–18 contain no reference to the London District gaol being used for this purpose.[47] According to

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46 Shortt, ed., *supra* note 18.

47 "London District Quarter Sessions Minutes" *supra* note 20.

Peter Oliver,[48] the absence of any reference, other than in the Home District, to district gaols being used as houses of correction during the first three decades of the province, may have been due to a reluctance on the part of magistrates "to spend District funds maintaining the vagrant and indigent in gaol." Alternatively, Oliver speculates that the absence of any mention of this practice in published quarter sessions records may reflect the fact that "individual magistrates could take action without reference to the court." Through examining correspondence relating to the committal of a female "vagrant" and "notorious prostitute" to the Niagara District gaol in 1836, Oliver found that throughout the first four decades of the nineteenth century individual magistrates, acting independently of the quarter sessions, had legal authority to sign "warrants of committal" ordering that such individuals be confined in local district gaols.

Oliver's speculation that the idle and disorderly poor may have been committed to district gaols far more frequently than quarter sessions records suggested is borne out in data from district gaol returns. In 1831, the sheriffs in charge of the operation of district gaols began submitting annual gaol reports to the office of the provincial secretary.[49] These contained both statistical data relating to the number and kinds of prisoners in each of the district gaols and the answers that sheriffs provided to fifteen questions concerning the use made of their district gaols. Upon being received by personnel working in the provincial secretary's office, the information was used to construct annual provincial gaol returns which, upon completion, were forwarded to the Colonial Office in London.[50]

The first question that district sheriffs were to answer was whether their institution was used as a "Common Gaol or House of Correction"? Rather than including the answers that specific district sheriffs provided, the annual gaol returns forwarded to the Colonial Office during the 1830s included the standard answer that district gaols in Upper Canada served as "Both Common Gaols and Houses of Correction."[51] Although indicating that at least some were intended to serve as houses of correction, the aggregate returns do not tell us which, if any, of the district gaols were used to confine the idle and disorderly poor.

Annual gaol reports submitted by district sheriffs to the provincial government are considerably more revealing. The provincial secretary's correspondence files for 1831 contain such reports from four of the eleven districts into which the province was then divided. Sheriffs of the Eastern and Gore districts noted that their institutions served only as "Common Gaols," while the sheriffs in charge of the Newcastle

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48 Peter Oliver, "A History of Corrections in Ontario" (n.d), [unpublished], cited with permission.

49 Manuscript copies of the gaol returns submitted by district sheriffs to the office of the Provincial Secretary of Upper Canada are held at the National Archives of Canada (RG5 B27, Provincial and Civil Secretaries' Offices, Upper Canada, Canada West, 1791–1867, "Prison Returns, Gaol Calendars" vol. 1–2, 1823–1839).

50 The annual provincial gaol returns forwarded to London were subsequently included in the annual "Blue Books" prepared by the Colonial Office. Micro-film copies of the gaol returns included in the Colonial Office "Blue Books" during the period 1831–1855 are in the National Archives of Canada [NAC], CO 47, reels B-2908 to B-2914, "Return of the Gaols and Houses of Correction," vol. 147–170, 1831–1855.

51 NAC, CO 47, vol. 148–154.

and Home district gaols indicated that their institutions were intended for use as both a "Common Gaol and House of Correction."[52] The "Annual Report of the Home District Prison" for 1831, prepared by Sheriff William Jarvis, revealed more. Jarvis took care to record that some prisoners listed under the general category of persons charged with "misdemeanours" were "persons committed for short periods as vagrants." The brief explanatory note that Jarvis added was significant for several reasons. First, reference to the fact that some prisoners were persons who were "committed for short periods as vagrants" suggested that magistrates in the Home District, and presumably magistrates in other districts of the province, exercised authority to sign "warrants of committal." Secondly, Jarvis's mention of the fact that the vagrants committed were included, along with petty criminal offenders, in a statistical category that listed the total number of prisoners charged with "misdemeanors," suggested that an untold number of "morally blameworthy" poor were held in district gaols. Assuming that other district sheriffs also did so, it was possible that such idle poor constituted a significant proportion of district gaol populations.[53]

In light of the imprecise record for inmates of district gaols, it is impossible to determine how often the morally blameworthy poor were dealt terms of imprisonment. From an early date Upper Canadian legislators recognised the eventual need for "houses of correction" that, when in full working operation, would serve to reform the recalcitrant poor. Both before and after enabling legislation in 1810, specific district gaols were designated for use as both "Common Gaols and Houses of Correction." But few, if any, actually operated to reform the idle poor by forcing them to engage in "hard labour." One reason for the lack of efforts to employ prisoners at hard labour was that, throughout the period to the mid-1830s, Upper Canadians used district gaols as multi-purpose institutions for confining the blameworthy poor alongside convicted criminals and the insane.[54]

III. Providing for the Poor: Tory Benevolent Societies, 1812–33

In the two decades after 1791 the task of coping with different manifestations of poverty was assumed largely by relatives and friends of the destitute, supplemented by a range of discretionary measures resorted to by district justices of the peace. Although these measures continued to be relied upon in later years, in the period from 1812 to the late-1820s, Upper Canadians developed a variety of other agencies

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52 NAC, RG5 B27, vol. 1.

53 Throughout the 1830s, the annual gaol returns forwarded to the Colonial Office in London contained columns listing the number of persons charged with "misdemeanors" who were confined in each of the district gaols during the year. Other columns contained in the statistical section of the annual returns listed the total number of prisoners, the number of "debtors," and the number of "felons" held in the various district gaols. Although the personnel working in the provincial secretary's office evidently overlooked discrepancies in the data they used to create the statistical tables included in the annual returns, the data are nonetheless useful in showing it was likely the case that district gaols were commonly used for dealing with the idle poor. The annual returns for 1835 show that approximately 34% of district gaol inmates were classified as "debtors," while 40% were listed as "misdemeanants" and 25% were confined as "felons." For a more detailed discussion of the gaol statistics contained in the Colonial Office "Blue Books" for 1833–1836, see Smandych, *supra* note 17 at 264–66.

54 For a more detailed discussion of evidence supporting this view, see Smandych, *supra* note 17.

through which they attempted to administer to the needs of the poor, while working to prevent the spread of pauperism. The most important were voluntary charitable societies, whose members took upon themselves "poor relief" measures and work toward the "moral uplifting" of the poor.

Like the voluntary charitable societies that existed in Britain during the same period,[55] these societies engaged in a variety of philanthropic endeavours. In addition to providing for immediate subsistence needs, Upper Canadians created societies for assisting newly-arrived emigrants, providing medical aid to the sick and destitute, and raising funds for building hospitals and other charitable institutions. With equal commitment and enthusiasm, Upper Canadians also engaged in organised efforts aimed at satisfying the moral and spiritual needs of the poor, establishing denominationally-based organisations for spreading the Christian gospel and educating those perceived to be in most need of moral instruction. Like counterparts in Britain, the voluntary charitable societies founded in Upper Canada displayed a remarkable degree of variety and diversity.[56]

Upper Canada's original charitable societies were designed to function as private organisations that operated outside the scope of state authority and without having to rely on the government for financial aid. Although each Christian denomination had its own affiliated set of charitable societies that operated at the parish-level, the Anglican Church, which included most members of the provincial tory governing élite, played a leading role in promoting more widespread organised poor relief efforts. The reliance Upper Canadian's placed on voluntary "benevolent" societies highlighted the large extent to which the pre-segregative control of the poor was achieved through non-state agencies and less-coercive forms of control.[57] This evidence also raises serious questions about the accuracy of earlier "revisionist" accounts that have tried to explain the rise of "state" institutions of segregative control in Upper Canada in the 1830s.[58]

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55 R.J. Morris, "Voluntary Societies and British Urban Elites, 1780–1850: An Analysis" (1983) 26 Historical Journal 95.

56 Morris, *supra* note 55; Roberts, *supra* note 16.

57 Although not dealt with at any length in this paper, the manner in which Upper Canadians went about attempting to provide for the "spiritual needs of the poor" also offers a great deal of evidence to support this view. See generally, Smandych, *supra* note 17, Chapter 8, "Administering to the 'Spiritual Needs' of the Poor: The Contest for Ideological Control."

58 In particular, this study raises serious concerns about the accuracy of the interpretations offered by Thomas Brown, "The Origins of the Asylum in Upper Canada, 1830–1839" (1984) 1 Canadian Bulletin of Medical History 27; Bruce Edginton, "The Formation of the Asylum in Upper Canada" (Ph.D. dissertation, University of Toronto, 1981); Kari Dehli, "Creating a Dense and Intelligent Community: Local State Formation in Early 19th Century Upper Canada" (1990) 3 Journal of Historical Sociology 109; and Robert Gaucher, "Class and State in Lower and Upper Canada, 1760-1873: Groundwork for the Analysis of Criminal Justice in Pre-Confederation Canada" (Ph.D. dissertation, University of Sheffield, 1982) and "Canadian Civil Society, the Canadian State, and Criminal Justice Institutions: Theoretical Considerations" in R. Ratner and J. McMullan, eds., *State Control: Criminal Justice Politics in Canada* (Vancouver: University of British Columbia Press, 1987).

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A. The Loyal and Patriotic Society of Upper Canada

Upper Canada's first "benevolent" society was established in the midst of the War of 1812. In December 1812, John Strachan and other prominent citizens at York organised a meeting for the purpose of founding the Loyal and Patriotic Society of Upper Canada.[59] Its original purpose was that of undertaking humanitarian efforts that would aid in the war effort. These included provision of aid to families of volunteer soldiers while the men were on duty, caring for wounded and sick soldiers, and providing relief to the widows and orphans of soldiers killed in battle. In order to meet the expences incurred, voluntary contributions came from both Upper Canadians and from supporters of the war effort in other British North American colonies and in England.[60]

The Loyal and Patriotic Society of Upper Canada remained active until 1817, having raised 13,000 pounds, most of which was spent providing relief to wounded soldiers and helping to alleviate war induced poverty.[61] In one of the last of his reports as its treasurer, John Strachan noted that in the fourteen month period from August 1816 to October 1817, he had "distributed agreeable to the order of the Directors, eleven hundred and sixty-nine pounds, five shillings and two pence half penny: by which many families have been relieved from great distress."[62]

While concerned primarily with relieving the economic distress experienced by volunteer soldiers and their families, in the years following the war the Society began lending support to other charitable relief efforts. Strachan noted that in preceding months he had, with the consent of the majority of directors, distributed a small sum of money, amounting to around £55, to "distressed emigrants" who had recently arrived. Apparently a difference of opinion existed among directors concerning "the propriety of diverting any part of the funds of the Society to their relief." In Strachan's mind, however, "these unhappy strangers" were worthy of receiving relief. Specifically, Strachan informed the Directors:

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59 John Strachan is widely recognised by historians as one of the key figures of the provincial governing élite. Before arriving in Upper Canada in 1799, Strachan was trained as a teacher and Anglican minister in Scotland. In 1803 he established a grammar school at Cornwall, which for many years remained the institution where most of the figures who would go on to become members of the province's governing élite received their primary education. Within a few years of arriving in the province, Strachan also became the Archdeacon of the Anglican Church in Upper Canada. For more than two decades he also served as an Executive Councillour and member of the Legislative Council, thus exerting a considerable influence over succeeding lieutenant-governor's. See Patrick Brode, *Sir John Beverley Robinson: Bone and Sinew of the Compact* (Toronto: University of Toronto Press, 1984), Robert Fraser, "Like Eden in Her Summer Dress: Gentry, Economy, and Society: Upper Canada, 1812–1840" (Ph.D. dissertation, University of Toronto, 1979); George W. Spragge, "John Strachan's Contribution to Education, 1800–1823" in J.K. Johnson, ed., *Historical Essays on Upper Canada* (Toronto: McClelland and Stewart, 1975), and S.F. Wise, "Sermon Literature and Canadian Intellectual History" in J. Bumsted, ed., *Canadian History Before Confederation* (Georgetown, Ont.: Dorsey Press, 1972), and "God's Peculiar Peoples" in M. Horn and R. Sabourin, eds., *Studies in Canadian Social History* (Toronto: McClelland and Stewart, 1974).

60 Edith Firth, ed., *The Town of York, 1815–1834* (Toronto: University of Toronto Press, 1966) at 228; Robert D. Wolfe, "The Myth of the Poor Man's Country: Upper Canadian Attitudes to Immigration, 1830–37" (M.A. thesis, Carleton University, 1976) at 79.

61 Wolfe, *supra* note 60 at 80.

62 *Kingston Gazette*, 4 November 1817.

Although the Treasurer never had any doubt in his own mind of the propriety of relieving strangers from the funds of the Society, who had been driven by the pressure of the times from the Mother Country to settle in this Province; yet, as such a doubt was entertained by Members entitled to the greatest consideration and respect, and as his office was entirely Ministerial, he sought for other sources to meet this new exigency.[63]

Although the Loyal and Patriotic Society of Upper Canada ceased operating in late-1817, its account books were not closed for another three years. Members of the Society had yet to decide what to do with the large sum of money raised in England to relieve the distress caused by the war. In addition to money remaining in the Society's cash account in 1817, the Society's directors had at their disposal £4000 sterling raised in England. Although they initially considered giving this money to the recently established Society for the Relief of Strangers in Distress, when the Society's account books were finally closed in 1820 the money was turned over to the building fund for the York General Hospital.

Leading members of the Society also played a key role in establishing the York General Hospital. In the mid-1820s, Chief Justice William Dummer Powell wrote an account of the efforts that he and other directors of the Society undertook to build the hospital at York.[64] He described the steps taken to transfer the funds raised in England to the York hospital building fund and commented on why the directors of the Society believed it important to have a hospital. According to Powell, they decided, in light of the growing "pauper Emigration from Europe," that the £4000 sterling should be "employed to erect at the Capital a general Hospital for the whole Province."[65]

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63 *Ibid.* One of the sources that Strachan turned to in order to obtain funds for the relief of newly-arrived emigrants was the money that had been collected in England to relieve the distress caused by the war. In his final report, the Treasurer noted that in preceding months he had been in communication with the "Trustees in Lower Canada" to whom £3000 "had been transmitted by the subscribers to the funds of the Loyal and Patriotic Society in London, to be distributed if necessary in that Province." Strachan told the Directors that although this sum still remained unexpended, and that "the Trustees declined giving any portion of it for the relief of Emigrants," he was nonetheless able to get the Trustees to agree to placing the interest that accrued on the £3000 at his disposal. With apparent pride, he noted that "the whole of this interest," amounting to just over £350, had been used to provide relief to "distressed Strangers from the Mother Country."

64 William Dummer Powell was a Loyalist emigré who left for Quebec after the Revolution. Having previously been a lawyer and colonial judge in Massachusetts, in 1789 Powell was appointed as sole judge of the Court of Common Pleas in the District of Hesse of the old province of Quebec (which after 1791 became the Western District of Upper Canada). From 1794 until 1816, Powell was a *puisné* (associate) judge of the Court of King's Bench of Upper Canada, and from 1816 until 1825 he was the chief justice of the province. Powell also served as an Executive Councillor (from 1808) and as a member of the Legislative Council (from 1816) until his retirement in 1825. See Fredrick H. Armstrong, *Handbook of Upper Canadian Chronology and Territorial Legislation* (London, Ont.: Centennial Publication, Lawson Memorial Library, University of Western Ontario, 1967) at 13, 34, 107–09; and A. Ewart and J. Jarvis, "The Personel of the Family Compact" (1926) 7 *Canadian Historical Review* 213. In addition to gaining eminence through his association with succeeding lieutenant-governors, Powell was a prominent landowner who held deeds to more than 10,000 acres. See A. Dunham, *Political Unrest in Upper Canada, 1815–1836* (Toronto: McClelland and Stewart, 1963) at 44.

65 Toronto Public Library, *Early Toronto Papers*, "Appeal for York General Hospital" cited in Firth, ed., *supra* note 60 at 228.

Powell's account revealed more than simply the role played by members of the Loyal and Patriotic Society. It implicitly pointed to the manner in which such Upper Canadians viewed the services provided by hospitals to be "poor relief." Powell's passing statement that the hospital would serve to relieve the suffering of pauper emigrants can only be fully appreciated when considered in light of the fact that during the period in which he wrote "hospitals existed for the care of only one type of sick person: those who were poor."[66] Upper Canadians who took up the task of establishing medical hospitals did so with the explicit view of providing another form of poor relief.

B. The Society for the Relief of Strangers in Distress

One notable feature of the Society for the Relief of Strangers in Distress, established in 1817, was the extent to which its membership overlapped with that of the Loyal and Patriotic Society and the Board of Trustees of the York General Hospital. The first meeting of the Society, held on 18 October 1817, presided over by Chief Justice William Dummer Powell, appointed Archdeacon Strachan as the first treasurer, a post which he held until 1822 when William Allan took over as secretary-treasurer.[67] From the time of its establishment until the late-1820s, the Society for the Relief of Strangers in Distress, referred to locally as the "Stranger's Friend Society," operated as a private charitable organisation, funded entirely by donations and annual subscriptions from "the charitable and well-disposed" towns-people of York.[68] It operated under various names from 1817 until the late-1830s, as an eminently "Tory" organisation, its main supporters being "members of the ruling oligarchy" at York.[69]

The Society for the Relief of Strangers in Distress was organised for the stated purpose "of subserving to the wants and alleviating the misery" of destitute emigrants.[70] During its first three years of operation, the Society gave direct financial or "pecuniary" aid to newly arrived emigrants.[71] However, by 1820 members of the Society had come to recognise that a more expedient and discriminating mode of providing relief was necessary.

On 4 April 1820, a general meeting of the York Society for the Relief of Strangers in Distress considered the report of a committee appointed to offer recommendations "as to the most expedient mode of affording relief and employment to such Emigrants, as may either now, or from time to time be in temporary want of assistance."[72] In its report, the Committee proposed thirteen resolutions, all of which were "unanimously adopted" by those who attended the April meeting. The resolutions

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66 Wolfe, *supra* note 60 at 85.

67 Baehre, *supra* note 4 at 59–60; Firth, *supra* note 60 at 222–23.

68 Baehre, *supra* note 4 at 59.

69 Firth, *supra* note 60 at 222; Wolfe, *supra* note 60 at 80.

70 Baehre, *supra* note 4 at 59.

71 Wolfe, *supra* note 60 at 80.

72 "Meeting of the Society for the Relief of Strangers in Distress" reported in the *Kingston Chronicle*, 28 April 1820.

set out the manner in which the Society's members intended to approach the task of dispensing poor relief in future. Apparently recognising errors made in the past, the first resolution stated:

That as a pecuniary relief, without some return of labor, is but too often productive of idleness, such relief should be withheld, except in cases where, from the positive sickness or absence of those of the family capable of labor, no means of earning a subsistence remain; provided, the measures proposed for furnishing employment when required should prove attainable.

With the exception of the sick and destitute who lacked any other means of support, the committee recommended that in future all persons applying for relief should be required to work. In order to accommodate this, resolutions were passed calling for creation of various "public works" projects and establishment of a "Committee of Management" that would arrange for applicants to work on such projects. It was also resolved that "farmers or others, in want of hands" be invited to make their labour needs known to the Committee of Management or treasurer of the Society, "in order that those strangers now out of employ may have no longer excuses for remaining in idleness." To guard against the possibility of newly arrived emigrants turning to the Society for work instead of relying on their own initiative, and to offer a further inducement to potential employers, another resolution was passed which stated that persons who applied for work-relief would be paid wages that were lower than the going rate.[73]

The final major resolution directly countered any misunderstanding that newly arrived emigrants and residents in other parts of the province might have about the intentions of the Society established at York. The Society's members were particularly concerned with wanting "to prevent false impressions from gaining ground through the Province as to the extent of assistance" they intended to afford emigrants. In order to make the limited amount of relief offered by the Society known to "new settlers," who "might be inconsiderately tempted to take an unnecessary journey to York," it was resolved that the resolutions adopted at the meeting be printed and generally circulated throughout the province.

Members of the York "Stranger's Friend Society" made clear that they were only prepared to provide charitable relief to the most deserving objects of distress. They also made clear that the Society was not willing to meet all demands placed on it by those who claimed to be in need of assistance. Perhaps partly as a result of the steps taken in 1820 to make this generally known, for most of the decade of the 1820s the Society appeared to have been readily able to cope with the requests for relief that it received.[74]

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73 *Ibid.*

74 In the period from 1822 to 1828, the Society for the Relief of Strangers in Distress engaged in a variety of different "poor relief" efforts, some of which extended beyond simply meeting the subsistence needs of the poor. According to entries made in the account book kept by William Allan during this period, in addition to providing relief in the form of food rations purchased with money collected through church donations and annual subscriptions, the Society had enough money on hand to provide support to orphan children, pay some unfortunate person's hospital bill, pay the fare for a labourer to get to the Welland Canal, and even purchase paint for someone's use (Toronto Metro Library, Baldwin Room, *William Allan Papers*, "Account Book of the Society of Friends for the Relief of Strangers" cited in Baehre, *supra* note 4 at 59–60). Although it is impossible to determine the precise number of

C. Change and Continuity at York

In 1828, the members of York's tory benevolent societies began instituting significant changes in the manner in which they set about providing relief to the poor.[75] What contributed most to these changes was the dramatic increase in the number of emigrants placing demands on the Society's privately contributed funds. While taking pride in having provided relief to "hundreds" of individuals in previous years, members of the Society were faced with at least this number of applications for relief in 1828 alone. In the course of that year the Society managed to assist some 800 men, women and children, with moneys obtained from subscriptions and church donations. Having exhausted this source of funding, the Society's members took the unprecedented, and for some disagreeable, step of launching a door-to-door campaign. To make the task of approaching residents easier for the Society's "Collectors," as well as to reflect the type of relief that the Society was, out of necessity, now restricted to providing, members decided to change the name of the organisation to The Society for the Relief of the Sick and Destitute. Despite these efforts, by the end of 1828 the Society's treasury had been "entirely exhausted."[76]

Within a short time, these organisations began looking to the provincial government for supplementary financial support. The founding of the York Emigrant Asylum in 1828 marked a noticeable shift toward the increasing role of government in financial support to "privately" initiated poor relief efforts, increasingly so in the 1830s. The person who played the most important role in establishing the Asylum was Sir John Colborne, recently arrived in his post as lieutenant-governor. Colborne was invited to become a patron of the local "Stranger's Friend Society" and participate in its annual meeting.[77] Having previously been "a Member of Several Charitable Societies, which had been productive of very general good to the Poor,"

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people who benefited from the Society's various "poor relief" efforts, it was later claimed that in the period from 1817 to 1828 "hundreds" had "by its exertions been rescued from the greatest of misery" ("Founding of the Benevolent Society and Emigrant Asylum" 1829, RG7 G14, vol. 55, at 8734-8, NAC, cited in Baehre, *supra* note 4 at 59).

[75] The Society for the Relief of Strangers in Distress was only one of the "benevolent" societies established by members of the tory oligarchy at York. While leading male members of the local governing élite devoted their attention to operating the local "Stranger's Friend Society," their female counterparts joined together to form The Female Society for the Relief of Poor Women in Childbirth. Founded in November 1820, the Society was set up to raise funds for providing relief to poor women "during their confinement." The kinds of relief included gifts of food and clothing, caring for children left unattended by birthing mothers, and paying for the services of a midwife or physician, if required. Like its male counterpart, this Society was funded through annual subscriptions and operated by volunteers. The women most actively involved, both as contributors of money and in overseeing its operations, were honoured with the title of "Governess." In the period from 1820 to 1828, the Society operated "under the special patronage of Lady Sarah Maitland" ("First Report of the Female Society for the Relief of Poor Women in Childbirth" *Upper Canada Gazette and York Weekly Post*, 22 November, 1821; cited in Firth, *supra* note 60 at 226). After 1828, the leading "Ladies of York," acting under the "special patronage" of the wife of the new lieutenant-governor, Lady Colborne, continued to engage in organised efforts aimed at alleviating the distress suffered by poor women in childbirth. In the late-1820s, Lady Colborne and other leading female citizens of York increasingly began to lend support to other charitable causes.

[76] Baehre, *supra* note 4 at 60.

[77] Toronto Public Library, *Powell Papers*, S.P. Jarvis to W. D. Powell, 24 December 1828; cited in Firth, *supra* note 60 at 233.

Colborne proposed that a number of changes be made in the constitution of the Society, the most important being the establishment of an emigrant asylum.[78] He also took the unprecedented step of offering governmental financial aid to support its operation. Within a few weeks, a separate Committee of Management was created to oversee the operation of an emigrant asylum.[79] Although it was agreed that persons appointed to this Committee would work in close cooperation with the Society for the Relief of the Sick and Destitute, it was also agreed that they would undertake a distinctly different task. Rather than overseeing the operation of a strictly "private" and notably "non-institutional" poor-relief effort, the Committee's members took up the task of managing an institution partly funded by the provincial treasury.[80] The York Emigrant Asylum was typical of many other new poor relief agencies established in Upper Canada in the 1830s. Far from intervening to compensate for the breakdown of earlier mechanisms employed to deal with the poor, during the 1830s the provincial government began offering financial support aimed at ensuring that they would be better able to cope.[81] A similar degree of historical continuity was evident in the attitudes Upper Canadians held in the 1830s toward the English poor law.

IV. The Politics of Poor Relief and the Rebellion of 1837

A. Houses of Industry and the Soup Kitchen Debate

The most telling evidence of the degree to which the leading members of York's benevolent societies continued to be prominent tories can be found in the annual report that John Strachan presented at the sixteenth annual meeting of the Stranger's Friend Society in December 1833.[82] Strachan commented on the many charitable endeavours that citizens of York undertook in the year following the peak flow of emigrants from Britain, and in the aftermath of the major cholera epidemic that followed in its wake. Strachan was especially pleased to report on the work of the committee appointed to dispense "the magnificent contribution" made by citizens of York to relieve the distress caused by the cholera epidemic. He noted that since the summer of 1832 the committee's members had "disposed of several hundred

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78 *Ibid.*; NAC, *Colborne Papers*, MG 24 A 40, vol. 29 at 8392.

79 *Ibid.* at 8392.

80 Baehre, *supra* note 4 at 60–61.

81 Although the onset of massive immigration in the late-1820s prompted the provincial government to begin offering financial support to various organised poor relief efforts at York, the increase in demands placed on York's major benevolent societies did not have the effect of altering their overall fundamental character. As in earlier years, in the 1830s the major benevolent societies at York remained predominantly tory organisations. As had previously been the case, in the 1830s the members of different tory benevolent societies established at York would continue to work in close cooperation with one another. Moreover, while the major tory-led voluntary societies that operated at York in the 1830s continued to devote energies to pursuing different charitable causes, their members also continued to share a sense of being united in a common endeavour: providing relief to the poor in the most economical manner possible, while at the same time working to guard against the spread of pauperism.

82 "Report of the Chairman of the Annual Meeting of the Stranger's Friend Society held on Saturday the 14th December, 1833" in *Colborne Papers*, *supra* note 78 at 8464–8466.

orphans and fatherless children, by binding them out to respectable families or otherwise providing for them." Strachan also noted that "a great number of widows" who could not afford to care for their children were found work as domestic servants, while several who had infants and were therefore "unable to earn any thing for their support" were still being cared for by the committee.

Another local charitable institution that Strachan praised for the economical manner in which it brought relief to the poor was the "Soup Kitchen" that the Stranger's Friend Society began operating in early 1832. He proudly stated that "[a]fter several years trial, there is ample proof that the Soup Kitchen is the most ready and extensively useful form of dispensing relief that has yet been attempted in this place." As proof of the manifest "cheapness" of this poor relief measure, Strachan pointed out that within the last year alone more than 16,000 rations were issued "at rather less than two pence" each. While the province was now receiving many more destitute emigrants than it had in previous years, Strachan pointed out that economical measures like the Soup Kitchen made it much easier for York's charitable societies to cope with this influx. Specifically, he informed his audience that:

This Society has now existed for sixteen years, and although the demand upon its slender resources having during that time very much increased, yet by the attention paid to its expenditure, it can be said that the money actually disbursed since rations were distributed from the Soup Kitchen, has been much less, in proportion to former years, than the good actually effected; or in other words, that three times the relief, under present arrangements, can be dispensed at the same cost.[83]

Like many of his other public addresses, Strachan's report on the activities of the Stranger's Friend Society had noticeable political undertones. Specifically, Strachan made a point of responding to criticisms levelled at the Stranger's Friend Society for having decided to open their Soup Kitchen. He responded by stating that, in light of the proof he presented of the "great benefit arising" from the Soup Kitchen, he trusted that the "malicious calumnies raised by persons who without compassion them-selves, seem to delight in accumulating misery and distress, will be treated with the contempt which they deserve." One individual that Strachan undoubtedly included among the group of "heartless" persons was William Lyon Mackenzie who had editorialised on the role played by public soup kitchens as a "trumpet" for calling pauper emigrants and "a standing rendezvous for indiscriminate pauperism."[84] In later editorials he would attack the Tories' support of the poor, sarcastically referring to his political rivals as members of the "Soup Kitchen party."[85] The political debate over poor relief, reflected in Strachan and Mackenzie's argument, grew increasingly bitter in the years leading up to the Upper Canadian Rebellion of 1837.

Two major events that sparked this debate were the enactment of legislation that provided for the construction of "Houses of Industry," and the opening of the province's first House of Industry at Toronto in 1837. After more than forty years of coping with different types of deviance and dependency without state-supported

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83 *Ibid.* at 8464.

84 *Colonial Advocate*, 26 April 1832.

85 *Constitution*, 28 December 1836.

segregative institutions of control, in the 1830s Upper Canadians began the move toward establishing such institutions for criminals, the insane, and the poor. In the spring of 1837, the Upper Canadian House of Assembly enacted a *House of Industry Act* that authorised district JPs to oversee the construction of a house of industry in their districts if three successive grand juries recommended such an institution.[86] Earlier historians have concluded that what happened in Upper Canada closely mirrored changes in poor relief occurring in the 1830s in England.[87] However, additional historical data suggests that what happened in Upper Canada represented quite the opposite.

From his study of the changing character of Upper Canadian poor relief in the 1830s, Rainer Baehre concluded that the founding of the Toronto House of Industry reflected significant changes in the "structure" and "underlying ideology" of Upper Canadian poor relief practices.[88] Specifically, he maintained that "[i]n the 1830s, eligibility for relief began explicitly to include the "moral" character of the needy." Those involved in providing relief began to distinguish more carefully between "deserving" poor, who could not support themselves, and "able-bodied" unemployed poor, considered "less-eligible" for relief. Baehre argued that the shift in the "underlying ideology" of poor relief in Upper Canada in the 1830s was greatly affected by coinciding developments in England. The most important of these was "rationalisation," or tightening up, through enactment of the new English poor law in 1834. In essence, Baehre contended that founding the Toronto House of Industry, alongside enactment of the *House of Industry Act* of 1837, came from concern that "prominent" Upper Canadians, following the English example, had for developing a more cost-saving, uniform, and centrally-controlled poor relief system. As evidence for this connection, he pointed out that only after Sir Francis Bond Head, a former English Poor Law Commissioner, was appointed lieutenant-governor of Upper Canada in 1835, were concrete steps taken to establish houses of industry at Toronto and elsewhere in the province.

Although Baehre produced a more plausible account than other recent investigators who have attempted to develop more "state-centred" accounts of the development of the house of industry, alongside other Upper Canadian "disciplinary" institutions,[89] there were nonetheless several problems with his interpretation. Baehre's account suffered three related empirical flaws. First, his account failed to recognise that both the founding of the Toronto House of Industry and the enactment of the *House of Industry Act* of 1837 were initiatives spearheaded by Upper Canada's tory governing élite. Secondly, he failed to recognise the intimate connection that existed between the broader political debate over tory support for pauper emigration from Britain, and the bitter political controversy that surrounded steps taken to establish houses of industry for the poor. Thirdly, while claiming that developments in the 1830s reflected a shift toward the increasing use of institutions to deal with

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[86] *Statutes of Upper Canada* (1837), 7 William IV, c. 24.

[87] Baehre, *supra* note 4; Edginton, *supra* note 58.

[88] Baehre, *supra* note 4 at 80.

[89] Edginton, *supra* note 58; Dehli, *supra* note 58; Gaucher, *supra* note 58.

the poor, and thus the great influence that the tightening up of the English poor law had in Upper Canada, Baehre failed to note the fact, or attempt to explain why, there were no houses of industry established in Upper Canada under the terms of the enabling legislation of 1837. The Toronto House of Industry was the only one that operated in Upper Canada until the late-1840s, when steps were taken to establish a second house of industry at Kingston.[90]

In the debate that ensued over the need for establishing houses of industry in the 1830s, Upper Canadians were clearly divided along ideological and political lines. While members of the tory governing élite strongly supported the move toward establishing houses of industry for the poor, members of the opposition Reform party led by William Lyon Mackenzie were vehemently opposed. The major reason that Reformers had was that they viewed the houses as another one of the onerous costs that stemmed from the Tories' practice of encouraging politically docile British pauper emigrants to settle in the province. In addition, Reformers viewed the Tories' support for houses of industry as another of the deceptive strategies they were willing to resort to in their attempt to keep down political unrest. This force of opposition would have a significant bearing on the outcome of such houses and such legislation.

B. The Tory and Reform Attack in Toronto

Like most earlier important poor relief developments at York and Toronto, the move toward establishing a house of industry at Toronto was led by prominent local Tories. In December 1836 a formal request to the mayor of Toronto called on him to arrange a public meeting for devising better "ways and means of relieving the poor." The request came in a letter to the mayor signed by prominent Upper Canadian Tory leaders John Strachan and John Beverley Robinson,[91] along with George Cruickshanks, D'Arcy Boulton, and Robert Stanton, the Warden of St. James.

Proceedings and outcomes of the subsequent meeting held on 26 December 1836 were reported in both the local Tory and Reform presses,[92] and in minutes of the meeting kept by the first secretary of the Toronto House of Industry.[93] These sources offered evidence of both the extent to which the Toronto House of Industry was a

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[90] Angus, *supra* note 25; Patricia Malcolmson, "The Poor in Kingston, 1815–1850" in G. Tulchinsky, ed., *To Preserve and Defend: Essays on Kingston in the Nineteenth Century* (Kingston: McGill-Queen's University Press, 1976).

[91] John Beverley Robinson was born in Berthier, Lower Canada in 1791. He was the son of a Virginia Loyalist who had come to the province with his family after the American Revolution. Although his father's death led to the impoverishment of his immediate family, Robinson was fortunate in gaining the interest and concern of prominent citizens in his education and professional future, the most notable being the chief justice of the province, William Dummer Powell. During his youth Robinson was a student at John Strachan's Cornwall Grammar School. He subsequently went on to become a key figure in the province's tory governing élite. While still a law student, at twenty-one, Robinson was appointed acting attorney-general for Upper Canada, and later held the positions of elected House of Assembly member, legislative and executive councillor, solicitor-general and attorney-general. In 1828 he was appointed chief justice of Upper Canada. For more detailed biographies of Robinson, see Brode, *supra* note 59; and R. Saunders, "Sir John Beverley Robinson" *Dictionary of Canadian Biography* (Toronto: University of Toronto Press, 1982) vol. IX, 668–78.

[92] *Constitution*, 28 December 1836; *Patriot*, 3 January 1837.

[93] Toronto City Archives: *Toronto House of Industry, Minutebook*, 26 December 1836.

Tory-led initiative and reasons why Reformers opposed its establishment. In addition, they provided evidence of the fact that poor relief developments in Upper Canada in the 1830s did not simply mirror events in England.

The meeting on December 26th at Toronto City Hall attracted 250 people. According to the report in the *Patriot*,[94] Archdeacon Strachan began the occasion by outlining reasons why he and others requested the meeting. Assuming his accustomed role, the Archdeacon told the gathering that "the object of the meeting was to devise means of relieving the Distressed Poor" of the City "during the inclemency of the present winter," because "the contributions raised at the Episcopal Church, and distributed weekly to the poor, had proved quite inadequate to the relief of so large a number." Strachan pointed out that despite many benevolent efforts already made, including recent arrangements by the Corporation of the City of Toronto to employ able-bodied poor at breaking stone used on the streets, "some more extensive means" had to be devised to provide "for the relief of the numerous widows, orphans, sick and other distressed poor" who would "otherwise perish from cold and hunger." One measure discussed was the establishment of a house of industry.

Having begun as a congenial gathering of "charitably-minded" Toronto citizens, the meeting on December 26th soon turned into a battleground that saw local Tories and Reformers arguing over needs and purposes. In his obviously tory report, the editor of the *Patriot* commented on the fact that later in the meeting D'Arcy Boulton got up to speak, only to be interrupted by the late arrival of "six persons attached to the Republican Party," whose "sardonic expression" made it clear:

that the firebrand of discord was about to be thrown into the proceedings of the meeting, and the benevolent and charitable objects of those who called that meeting, defeated if possible.[95]

At the first opportunity he had, one of the intruding Reformers, James Lesslie, proposed a resolution which recommended that a portion of the clergy reserves, controlled by the established (Anglican) church, "be appropriated for the relief of the poor," by being sold to provide funds for "the establishment and endowment of Houses of Industry."[96] According to the report in the *Patriot*, while Reformers who showed up at the meeting claimed concern with providing more adequate relief to the poor, their resolution clearly intended that a "well calculated" effort would defeat "the benevolent objects" of the meeting's organisers. In the editor's view, the real purpose of the Reformers' resolution was to offend "the Venerable Archdeacon," even though he was "admitted by all parties ... to be the most indefatigable friend the Poor ever had in this city." While Strachan and his followers professed the need to keep politics and poor relief separate, the Reformers who disrupted the meeting shared the view that the two were inseparable. In addition, as they complained on numerous occasions in the years leading up to the Rebellion of 1837, they felt that Tory support for houses of industry was closely tied to their stand on pauper

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94 *Supra* note 92.
95 *Ibid.*
96 *Ibid.*; Aitchison, *supra* note 31 at 650.

emigration. Another well-known "Republican Party" member who showed up at the meeting held on December 26th was William Lyon Mackenzie. His subsequent account of the event, in an editorial entitled "The Poor and the Tories," asserted that:

The Elections are just a coming, so Doctor Strachan, the Chief, our old friend D'Arcy, and the perpetual Church Warden Robert Stanton, H.M.P., put in their hand, to be generous and after declaring, at a time when the Assembly are praying for 100,000 more Irish and Scotch paupers ... that the poor in Toronto are so miserable that unless they obtain relief from subscriptions "many must perish from cold and hunger," asked a Public Meeting, where it was expected the great folks would have had their own way....

The hint at touching the [Clergy] Reserves bro't up the Archdeacon who declared he did not stand in need of the lecture Mr. L[esslie] had read him. He was quite out of humour ... [but] Mr. Lesslie persisted, on which the venerable Archdeacon got up and left, followed by Harris, Boulton, and Stanton. ... So far as the Soup Kitchen party were concerned they were defeated, and deservedly, for had they got their way there would not have been a day's work to a labourer in 1836.[97]

Despite the success he claimed in exposing the political intrigue of the "Soup Kitchen Party," Mackenzie and fellow Reformers were unable to defeat entirely the "benevolent" purposes for which Strachan and others had organised the meeting. On the contrary, the meeting of December 26th saw several new poor relief measures introduced, one being the decision to undertake the voluntary work required to establish a new house of industry. By the third week of January 1837, an arrangement had been made with Toronto City Council to allow "the old courthouse on Richmond street" to be used as a temporary "House of Refuge and Industry." Within days the volunteer staff began to take charge of those who applied for relief.[98]

Owing to efforts of its predominantly Tory supporters, by the fall of 1837 a permanent house of industry existed in Toronto. Significantly however, while Tory-led Toronto citizens succeeded in creating a house of industry that would continue to operate for many years to come, it never did so along lines proposed under the enabling legislation of 1837. Throughout most of its life as Toronto's leading poor relief organisation, the house of industry ran as a voluntary charitable institution, receiving most of its funding from subscriptions and donations.[99] Although the "voluntary" character of the house of industry began to give way to a more "public" base in the latter part of the nineteenth century, when the City became its major funding source,[100] other aspects of its original character remained intact.

Even at the end of the nineteenth century, the house of industry provided both "outdoor" and "indoor" relief, with the former always far exceeding the latter. In addition, following the example set by early supporters, this relief continued to be offered only to "worthy" poor. Throughout the nineteenth century most worthy poor who applied for relief received outdoor relief, while only the most "distressed" and "deserving," such as the elderly, deserted wives, and children, were taken into the institution.[101] Most significantly, data bearing on creation of the Toronto house of

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97 *Constitution, supra* note 92.

98 Aitchison, *supra* note 31 at 656; G.P. de T. Glazebrook, *The Story of Toronto* (Toronto: University of Toronto Press, 1971) at 88.

99 Toronto City Archives: *Toronto House of Industry, Annual Reports,* 1837–1887.

100 *Ibid., Annual Report for 1886.*

industry revealed that its supporters did not simply follow the lead of Sir Francis Bond Head and the more restrictive public workhouse system which took hold in England in the 1830s.

C. The Fate of the *House of Industry Act*, **1837**

The same Reform opposition that threatened to undermine efforts made to create a house of industry at Toronto also stood in the way of implementing terms of the enabling legislation of 1837. Reformer opposition was directly tied to their broader attack on the Tory policy of encouraging "pauper emigration" from Britain and other alleged "public abuses" committed in the attempt to perpetuate their "authoritarian" rule. This opposition had a significant bearing on the ultimate fate of the legislation.

For Reformers like William Lyon Mackenzie, the *House of Industry Act* was simply another of the many corrupt Tory policies foisted on the population. Most dramatically, on 2 August 1837, Mackenzie published a lengthy report on the "City Reform Meeting" held at Toronto on 31 July to disclose the many "official delinquencies" and "public abuses" by the ruling Tories.[102] In his report, Mackenzie noted that everyone at the meeting agreed on how "under this mockery of human Government" Upper Canadians had been "insulted, injured and reduced to the brink of ruin." According to Mackenzie, one of the most serious "public abuses" committed by the Tories was the role played in ruining the province's economy. Added to this, Mackenzie noted, was the fact that in spite of the province's terrible financial condition:

A law has been passed enabling Magistrates, appointed during pleasure, at the representation of a Grand Jury selected by a Sheriff holding office during pleasure, to tax the people at pleasure, without their previous knowledge or consent, upon all their rateable property to build and support workhouses for the refuge of paupers invited by Sir Francis from the parishes in Great Britain; thus unjustly and wickedly laying the foundation of a system which must result in taxation, pestilence and famine.

Reformers continued their attack on the *House of Industry Act* throughout the months leading up to the Rebellion of 1837. Like Mackenzie, writers in the Reform press from other parts of the province accused the Tory government of attempting to create an English-style public workhouse system for "containing" the pauper emigrants they invited to the province. For example, on 17 October 1837, the *Cobourg Globe* published an editorial in which the writer pointed out that while the enabling legislation passed in the House of Assembly referred to them by the "dignified" name of "Houses of Industry," in fact what the legislation provided was the creation of English "Work-houses." He added that while those who supported the legislation claimed these so-called "Houses of Industry" would be "an improvement on the Workhouses of England," in actual fact they would be places "wherein poverty and prostitution are yoked together, live under the same roof and eat the same bread."[103]

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101 Toronto City Archives: *House of Industry, Register*, 19 January to 29 October, 1837; *Toronto House of Industry, Annual Reports*, 1837, 1861, 1872.

102 *Constitution*, 2 August 1837; also cited in C. Read and R. Stagg, eds., *The Rebellion of 1837 in Upper Canada: A Collection of Documents* (Ottawa: Carleton University Press, 1985) at 55–65.

103 *Cobourg Globe*, 17 October 1837, reprinted in the *Kingston Chronicle and Gazette*, 28 Octo-

The accusation was vigorously condemned in the Upper Canadian Tory press. A week after its reprinting in the *Kingston Chronicle and Gazette*, the editor published a letter from "A Friend of the Poor" who took it upon himself to directly rebut the accusations made in the *Cobourg Globe*.[104] The writer specifically pointed out the lack of substance to the claim that the English poor law was being introduced to keep down political unrest. Contrary to the claim that the *Act* "originated with the Government, in some Court sycophant," this "Friend of the Poor" asserted that:

... the measure originated with as independent a member as any in the Legislature, and the draft of the Bill was copied from an *Act* which passed in one of the New England States, where similar Institutions have been in existence nearly forty years; and which have proved to be very satisfactory and beneficial to the community. So far from its being in any shape connected with the Poor Law system of England, by introducing poor laws into this Province, a House of industry is probably the only measure that will wholly prevent our having any organized poor laws among us.

Why were there no "public" houses of industry established in Upper Canada under terms of the enabling legislation of 1837? One answer was that the fate of the enabling legislation was tied to the outcome of the Rebellion. If indeed, as Mackenzie and other Reformers argued, houses of industry proposed in the legislation were intended to maintain political control over the population, then maybe the Rebellion and subsequent putting down of any immediate threat to the Tory oligarchy lulled enthusiasm for establishing such houses. An alternate reason for the fate of the *House of Industry Act* was that Reformers convinced enough Upper Canadians that the legislation aimed at finally introducing the English poor law. Upper Canadians had long been apprehensive about the dismal consequences that could flow from following England's example of a "public" poor relief system. All that opponents of the *House of Industry Act* needed was to convince potential members of grand juries that they should refuse to make the three presentments needed before the legislation could be put into effect. There is evidence which suggests that this may have been what happened.[105] However, regardless of how one explains either the fate of the *House of Industry Act* of 1837, or the specific circumstances associated with creation of the Toronto House of Industry, developments in the realm of poor relief in Upper Canada in the 1830s, as in earlier decades, did not simply follow coincidental initiatives in England.

In this way, Upper Canadians rejected one part of their English legal inheritance in order to fashion their own legal instruments, public and private, for what remains an intractable social problem.

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104 *Kingston Chronicle and Gazette*, 4 November 1837.

105 Murray, *supra* note 29 at 199–201; Smandych, *supra* note 17 at 404–05.