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Recalculating the Wages of Sin: the Social and Legal Construction of Prostitution, 1850-1920

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It's the same the whole world over, ain't it all a bloomin' shame; it's the rich wot gets the pleasure, it's the poor wot gets the blame.¹

VIEWS ABOUT THE MORAL significance of the 'sins of the flesh' changed dramatically in Canada between 1850 and 1920, as unease about 'vice' in general and its supposed ill effects increased within middle class circles and moral reform crusades developed around it. Both social and legal attitudes towards vice underwent extensive reconstruction during the period. From a legal perspective the ideological trend was towards highly publicised appeals for the state to use the law, especially criminal laws, to proscribe a wide range of conduct in the name of vice suppression. Within that broader instrumental context a powerful moral discourse directed against sexual immorality, especially prostitution,² had a significant impact on the construction of law. Various moral agencies, religious and secular, were involved in securing changes in social attitudes which generated heightened popular concern about prostitution and put pressure on legislators and administrators for more and better criminal laws to fight it. The coalition of efforts which emerged was not, however, free of inner tensions. Analysis of the anti-prostitution campaign reveals periodic gender-based differences about objectives and strategies.

Moral discourse on prostitution was never uncontested during this period. In Foucaultian terms, it spawned discourses of resistance.³ There were important counter-arguments or alternative strategies raised in opposition to, or in substitution for, the moral discourse and its legal agenda. Some of these had a decidedly subversive effect on the law in action.

This essay examines the interaction and roles of moral discourse and reformist action in attempts to change social attitudes to prostitution through the law. Consideration is also given to counter discourses and agencies which did not share the moral concern of reformers and to the realities of actual law enforcement against prostitution and the extent to which those practices undercut the reformist vision.

¹ Anonymous nineteenth century music hall song having to do with female virtue compromised.

² The term "sexual immorality" is used advisedly, because vice is clearly a broader term which encompasses other forms of supposedly immoral conduct, such as gambling and the production, circulation and use of mind-altering substances, which lack a sexual element.

³ M. Foucault, *History of Sexuality*, vol. I: *An Introduction* (New York: Vintage Books, 1980) at 92-97.

I. Social and Economic Realities, 1850

By 1850 Canada was emerging from its frontier past into a more settled, uniform pattern of economic and social existences.⁴ The economy was expanding, albeit fitfully, assisted by increasing infusions of capital from both outside and inside the country. Although still dominated by agriculture and the lumber industry, a nascent manufacturing sector was in the making, located primarily in cities and towns.

In the longer settled communities durable social institutions had evolved, generating both feelings of confidence and a sense of moral cohesion among more prosperous and "respectable" members. Municipal government was being overhauled and appropriated by a commercial middle class.⁵ Outside Québec, evangelical Protestant churches, with the Methodists front and centre, were becoming important sources for encouraging moral identity and social action.⁶

The institution of the family was meanwhile undergoing a partial transformation. Although both male and female members of rural families worked alongside each other in farming activities, middle class urban families increasingly organised around gender-based divisions of labour. Husband-father entered the public sphere, working for the general economic good and that of himself and his family, while wife-mother remained at home to manage the household and nurture the children.⁷ This separation of spheres in middle class families increasingly resonated in both moral and medical discourse into a "cult of domesticity." As John Weaver has remarked:

Women were to be unassuming, happy in the home, tasteful and tender. They were to be angels of mercy and the repositories of moral virtue.⁸

Such idealisation of the feminine role accentuated the family's patriarchal character and the psychological power of male clergy and doctors over its female members.⁹

4 J. Careless, *The Union of the Canadas: The Growth of Canadian Institutions 1841-1857* (Toronto: McClelland & Stewart, 1967) at 27-36.

5 On changes in the character of municipal government, see G. Glazebrook, "The Origins of Local Government" and C. Whebell, "Robert Baldwin and Decentralization, 1842-49" in F. Armstrong, H. Stevenson and J. Wilson, eds., *Aspects of Nineteenth Century Ontario: Essays Presented to James J. Talman* (Toronto: University of Toronto Press, 1974); K. Crawford, *Canadian Municipal Government* (Toronto: University of Toronto Press, 1954); D. Higgins, *Urban Canada, Its Government and Politics* (Toronto: MacMillan, 1977); W. Magnusson and A. Sancto, *City Politics in Canada* (Toronto: University of Toronto Press, 1983).

6 On changes from the "religion of experience" to that of "good works," see W. Elgee, *The Social Teachings of the Churches: Protestant, the Early Period before 1850* (Toronto: Ryerson Press, 1964); W. Westfall, *The Protestant Culture of Nineteenth Century Ontario* (Kingston: McGill-Queen's University Press, 1989) at 38-81 examines how by 1850 the Methodists were becoming indistinguishable from the socio-political establishment in Upper Canada.

7 C. Ball, "Female Sexual Ideologies in Mid to Late Nineteenth Century Canada" (1986) 1 *Canadian Journal of Women and the Law* 324.

8 J. Weaver, "Crime, Public Order, and Repression: The Gore District in Upheaval" (1986) 78 *Ontario History* 175 at 192.

9 On the role of doctors, see W. Mitchison, *The Nature of Their Bodies: Women and Their Doctors in Victorian Canada* (Toronto: University of Toronto Press, 1991).

Growth of economic confidence and social stability in these young communities was tempered by fears of social disharmony and moral breakdown. Most troubling was the apparently tattered state of the country's moral fabric. Along with the benefits of settlement and material wealth, the colonies had inherited serious social vices: excessive drinking, sexual license, riotous behaviour and a host of anti-social or "useless" recreational pursuits.¹⁰ Associated with the "lower orders", such activities were believed to jeopardise labour discipline, threaten the middle class with "moral contagion" and condone sacrilegious behaviour. As Paul Craven has argued, such conduct was seen to be symptomatic of inherently subversive tendencies.¹¹ Such fears grew with the influx of large numbers of Irish immigrants, especially Roman Catholics who were viewed as a particular threat to the moral order as defined by middle class Canadians. They were uncivilised, unruly and excessively clannish.¹² Such unwelcome newcomers were especially susceptible to criticism and discrimination in the medico-moral discourse of contagion from foreign sources current at the time. Instances of rioting by Irish labourers and the high percentage of Irish women in the prostitute population merely proved the point.¹³ Exposing erosion of moral values was easy. Building a social and legal consensus on what to do was to take time and effort.

II. Legal and Social Controls of Vice, 1850

In 1850 the law addressed the problem of vice according to the values of social conservatism and patriarchy. Those who had made and administered Canada's criminal law in its pioneer phase tended to be men who entertained a determinist view of class relations, believing that the immorality of the poor was endemic. Poor females were considered to be especially 'loose' in their sexual appetites and habits. Consequently the law, and other means of social control could and should be invoked only to contain the excesses flowing from those proclivities. This position drew strength from a rationalist form of religious discourse which saw sin and its wages as largely a matter between the sinner and the Almighty.¹⁴ It also reflected pragmatic

¹⁰ Accounts of the Rabelaisian and bacchanalian nature of life in various Canadian communities can be found in T. Radell, *Halifax, Warden of the North* (Toronto: McClelland & Stewart, 1971) at 42-43; Patricia Malcolmson, "The Poor in Kingston, 1815-1850" in G. Tulchinsky, ed., *To Preserve and Defend: Essays on Kingston in the Nineteenth Century* (Montréal: McGill-Queen's University Press, 1976) at 286; E. Guillet, *The Pioneer Farmer and Backwoodsman*, vol. I (Toronto: Ontario Publishing, 1963) at 146; J.-P. Wallot, "Religion and French Canadian Mores in the Early Nineteenth Century" (1971) 52 *Canadian Historical Review* 51; and, J. Weaver, *Hamilton: An Illustrated History* (Toronto: Lorimer & Co., 1982) at 35.

¹¹ P. Craven, "The Law of Master and Servant in Mid-Nineteenth Century Ontario" in D. Flaherty, ed., *Essays in the History of Canadian Law*, vol. I (Toronto: The Osgoode Society, 1981) 175 at 191-196.

¹² E.g., M. Cross, "The Shiner's War: Social Violence in the Ottawa Valley in the 1830's" (1973) 54 *Canadian Historical Review* 1.

¹³ Weaver, *supra* note 8 at 186, 191-194.

¹⁴ Westfall, *supra* note 6 at 21-27. This type of thinking did not mean that social conservatives were necessarily averse to the vigorous application of the law. As Patrick Brode notes in *Sir John Beverly Robinson: Bone and Sinew of the Compact* (Toronto: The Osgoode Society, 1984) at 172-176, the

concerns about risks associated with interfering unduly with the provision of sexual services for groups of unattached, transient males in many Canadian communities, whether serving in the armed forces or merchant marine or engaged in construction or the lumber industry.¹⁵

The object of criminal law was to allow the authorities to intervene to maintain or restore public order or morality where they were threatened or had been shattered by drunken and immoral activities of vagabonds, and by the dubious establishments such as brothels and low gaming houses to which they resorted. The law offered a gradually expanding pattern of vagrancy offences which seemed to accommodate the mix of moral determinism and pragmatic concerns about disorder in the conservative view of vice.¹⁶ Although Canadian law on prostitution took its general inspiration from English common law and legislative models, differences were apparent in its detail. Eighteenth century English legislation making brothel keeping a vagrancy offence was applied or copied.¹⁷ However, under the law on bawdy houses in the Nova Scotia and the Canadas being an inmate or a frequenter were also vagrancy offences.¹⁸ Streetwalkers, earlier encompassed by vagrancy legislation directed at "persons of lewd behaviour," were later targeted by adoption of an English act of 1822 which made explicit reference to that class of vagrant.¹⁹ However,

Chief Justice was particularly forthright and harsh in condemnation of morals offences, including the maintenance of brothels, because they threatened public order and undermined the cohesiveness of a Christian community.

¹⁵ The relative toleration shown towards prostitution in a port town is well illustrated by the case of Halifax: see J. Fingard, *The Dark Side of Life in Victorian Halifax* (Halifax: Pottersfield Press, 1989) at 98-111. See also Weaver, *supra* note 8.

¹⁶ J. 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 (Toronto: The Osgoode Society, 1990) 128 at 129; C. Backhouse, "Nineteenth Century Prostitution Law: Reflection of a Discriminatory Society" (1985) *Social History* 387 at 388-390. On the similar pattern of thinking and legal activity in New France, see A. Lachance, *Crimes et Criminels en Nouvelle-France* (Montréal: Boreal Express, 1984) at 53-57; "Women and Crime in Canada in the Early Eighteenth Century, 1712-1759" in L. Knafla, ed., *Crime and Criminal Justice in Europe and Canada* (Waterloo: Wilfred Laurier University Press, 1981) 157 at 165-66.

¹⁷ *An Act for better preventing thefts and robberies, and for regulating places of public entertainment, and punishing persons keeping disorderly houses* (1752) 25 George II, c. 36 (England), copied in *An Act for the more speedy and effectual punishment of persons keeping disorderly houses* (1829) 9-10 George IV, c. 8 (New Brunswick); *Of Offences against the Public Morals* (1851) R.S.N.S., c. 158, s. 3.

¹⁸ *An Act for Establishing a Bridewell, or House of Correction, for the County of Halifax, and for the better and more effectual administration of the Office of a Justice of the Peace in the Township of Halifax, and for providing a Police Officer in the said Town, with proper officers to attend the same* (1815) 55 George III, c. 9, (Nova Scotia); *An Act to amend and extend the act of 1857, for diminishing the expenses and delay in the Administration of Criminal Justice* (1858) 22 Victoria, c. 27 (Province of Canada).

¹⁹ The original legislation in Nova Scotia was *An Act for Regulating and Maintaining a House of Correction or Work House in Halifax* (1759), 33 George II c. 1, s. 2. Streetwalking was mentioned expressly for the first time in England in *An Act for Consolidating into One Act and amending the Laws relating to idle and disorderly Persons* (1822), 3 George IV, c. 40 (England). For a Canadian statute directed against streetwalking, see *An Ordinance for establishing a system of Police for the cities of*

Canadian practice did not pick up subsequent English amendments which made riotous, indecent or annoying behaviour an element of the offence.²⁰ In Canada the mere fact of being a woman on the street unable to give a good account of herself was sufficient to warrant a conviction.

In competition with social conservatism was the reformist view that there was nothing natural or irredeemable about vice, and that measures should be taken to combat it within society by a range of strategies, including use of the law. Within the ranks of social and moral reformers were political “utilitarians” committed to creating conditions in which the maximum economic efficiency could be achieved: businessmen who viewed themselves as apostles of economic growth. They had zealous allies among members of mainline evangelical Protestant sects, especially Methodists, who increasingly saw Christian virtue as embracing not only personal salvation but also the responsibility to do redemptive work in the community. As evangelical Protestant religion was espoused by a significant segment of the business and professional classes, there was often a congruence of sacred and secular agendas, to sustain and promote the moral order.²¹

The initial impulse of reformers was to direct their energies towards moral suasion, in the forms of sermonising and education for those who had fallen or were in danger of falling prey to vice. The power of the ‘Word’ was evident in both the spread of temperance pledge societies from 1830 onwards,²² and the alarmist homilies on the dangers of vice put out by the religious press.²³ Mary Shortt has noted that the theatre was a favourite target for moral censure because of its accessibility and capacity to turn youthful, especially female, minds towards sins of the flesh.²⁴ In 1849 the *Canada Christian Advocate* pungently labelled it as:

Satan’s synagogue. It is the constant resort of the most corrupt portions of society — the pickpocket — the black leg — the prostitute and profane are there It is known that the morals of thousands have been ruined both for time and eternity by attending these haunts of vice.²⁵

The *Christian Guardian* had in 1840 already passed its ringing judgment on actors:

Quebec and Montreal (1839), 2 *Victoria* 1, c. 2 (Lower Canada).

²⁰ The amending statutes were *An Act for the Punishment of idle and disorderly Persons and Rogues and Vagabonds* (1824), 5 *George IV*, c. 83, s. e (England) and *The Metropolitan Police Act* (1839), 2 & 3 *Victoria*, c. 47, s. 54(11) (England).

²¹ Westfall, *supra* note 6 at 50-54.

²² F. Barron, “The American Origins of the Temperance Movement in Ontario, 1828-1850” (1980) 11 *Canadian Review of American Studies* 131; M. Garland and J. Talman, “Pioneer Drinking Habits and the Rise of Temperance in Upper Canada Prior to 1840” (1931) 27 *Ontario Historical Society Papers and Records* 341; E. Dick, “From Temperance to Prohibition in 19th Century Nova Scotia” (1981) *Dalhousie Law Review* 530.

²³ Weaver, *supra* note 8 at 184-85. Much of the inspiration for religious publications, especially tracts, came from the United States. On the movement there, see P. Boyer, *Urban Masses and Moral Order in America, 1820-1920* (Cambridge: Harvard University Press, 1978) at 3-33.

²⁴ Mary Shortt, “Victorian Temptations” (1988) 68 *The Beaver* 4 at 5.

²⁵ *Ibid.* at 6

The stage is a nursery of candidates for perdition. Spendthrifts and prodigals, men and women who have lacerated their parents' hearts, have frequently jumped on to the stage, there to fill up their iniquities and perfect their baseness by teaching others to do the same.²⁶

Despite the emotive power of religious rhetoric, education was seen as the primary vehicle for inducing moral and thus social change. As Egerton Ryerson believed, if the "criminal classes" were to be reclaimed it would be through a compulsory and extended system of public education.²⁷ Material benefits of secular education, and the moral strength derived from the transformed family and the churches, would together provide the constituents for a virtuous life. Central to this view of social disciplining was the "moral insufficiency" of the poor, believed to be at the root of their social and economic deprivation. The role of criminal law was ancillary: to provide the means whereby the morally flawed could be directed to institutions which would seek to reform them, the penitentiaries, reformatories and Magdalen and mental asylums. To the extent that it was seen necessary to complement traditional vagrancy laws with more precise offences and to afford the police greater powers to deal with suspect working class recreations, by-laws passed under municipal incorporation statutes were viewed as the appropriate vehicle for action.²⁸ Bytown's (Ottawa's) 1847 by-law is but one example:

If any person or persons shall at any time or times thereafter, within the limits of the said Town, keep a bawdy house or brothel, or house of ill-fame, for the resort and commerce of lewd and dissolute people, or a house where lewdness, indecencies, or other immoral and scandalous acts are permitted . . . to be practised - he, she or they shall forfeit and pay a penalty not exceeding five pounds nor less than two pounds ten shillings upon each conviction for such offence.²⁹

There was, as yet, no clear conception of vice as a national problem, susceptible of more generic legal solutions.

Some communities enforced anti-prostitution laws during this period. As Toronto expanded and professionalised its police force in the decades after the 1850s, there is evidence that the existing law was being applied with vigour. Nick Rogers notes that from 1858 onwards approximately half of the offences listed in the city's annual crime statistics involved conduct detrimental to public order or offensive to public morality. The main targets of police activity were the drunk and disorderly, street walkers and keepers and denizens of brothels.³⁰ In other cities and towns with more

²⁶ *Ibid.*

²⁷ See H. Graff, "'Pauperism, Misery and Vice': Illiteracy and Criminality in the Nineteenth Century" (1977) 11 *Journal of Social History* 245, for the views of Ryerson on the relationship between education and a moral society.

²⁸ G. Marquis, "The Contours of Urban Justice, 1830-1875" (1987) 15 *Urban History Review* 269 at 270-272, for an account of how reform of local government gave powers to municipalities to enact by-laws safeguarding public morals, among other things.

²⁹ E. Welch, *Bytown Council Minutes 1847-1848* (Ottawa: Ottawa City Archives, 1878) Appendix 2 (By-law no. 3, VI -December 4, 1847).

³⁰ N. Rogers, "Serving Toronto the Good: The Development of the City Police 1834-1884" in V. Russell, ed., *Forging a Consensus: Historical Essays on Toronto* (Toronto: University of Toronto Press, 1984) 116 at 132. See also C. Backhouse, *supra* note 16 at 396-408. For five sample years from 1845 to 1895 Backhouse reveals that between 164 and 644 women *per annum* were charged with pros-

traditional policing régimes or fledgling professional police forces less resolution was evident in the enforcement of the law. In Halifax, for instance, a port city with a significant military and naval presence and a sleepy constabulary, the attitude of the law enforcers towards prostitution before 1870 was relaxed, except in cases of actual or apprehended public disorder and the chronically "deviant."³¹ With accentuation of middle class anxieties about the threat from the "criminal classes" during the 1870s, a period of severe economic depression, and associated moves to improve the system of urban justice, the Halifax police ultimately became more active in seeking to enforce vagrancy law against streetwalkers and the keepers and inhabitants of bawdy houses.³²

III. Nationalising Moral Concerns: The Temperance Model

The translation of vice into a national problem in Canada originated in reformist concern about alcoholic drink. In the minds of temperance advocates the whole complex of social and moral problems afflicting the 'lower orders' had its roots in the use and abuse of liquor. The Select Committee of the Legislative Assembly of Canada, in which the temperance forces were well represented, observed in 1849:

Intemperance leads to crime, to insanity, and to pauperism. One half of crime annually committed, two thirds of the insanity, three fourths of the pauperism are ascribable to intemperance.³³

The temperance lobby had become increasingly dissatisfied with moral pressure and licensing as the means of curbing drink. By 1860 they actively espoused legal prohibition.³⁴ Some success came in 1864 in the United Province with introduction of a local option system, the *Dunkin Act*.³⁵ Decisive, it seemed, in converting this success into national temperance legislation after Confederation was the formation in 1875 of the Dominion Alliance for the Total Suppression of the Liquor Traffic. This coalescence of temperance groups concentrated the power and influence of the temperance lobby in Parliament.³⁶ The moral coalition against drink which engineered passage of the *Canada Temperance Act* in 1878,³⁷ and orchestrated the much

titation-related offences or associated disorderly conduct in Toronto.

³¹ Fingard, *supra* note 15 at 96 *et seq.*

³² Phillips, *supra* note 16 at 132-52.

³³ Quoted in R. Spence, *Prohibition in Canada: A Memorial to Francis Stephens Spence* (Toronto: Ontario Branch of the Dominion Alliance, 1919) at 86.

³⁴ J. Clemens, "Taste Not, Touch Not: A Study of the Social Assumptions of the Temperance Literature and Temperance Supporters in Canada West Between 1839 and 1859" (1972) 64 *Ontario History* 142 at 157-160; J.K. Chapman, "The Mid-Nineteenth Century Temperance Movement in New Brunswick and Maine" (1954) 35 *Canadian Historical Review* 35.

³⁵ *An Act to amend the law in force respecting the Sale of Intoxicating Liquors and the issue of Licenses therefor and otherwise for repression of abuses resulting from such sale* (1864), 27 & 28 Victoria c. 18 (Canada). See also Spence, *supra* note 33 at 91-100; A. Birrel, "D.I.K. Rine and the Gospel Temperance Movement in Canada" (1977) 58 *Canadian Historical Review* 22 at 23.

³⁶ Spence, *supra* note 33 at 114-118.

³⁷ *An Act respecting the Traffic in Intoxicating Liquors*, S.C., 1876, c. 16.

longer battle for total prohibition, provided a suggestive model of activism for groups committed to legislative solutions to other moral problems.

A. The W.C.T.U and Vice: Voices of Experience

At the more operational level of social and moral reform, women took the initiatives. Prominent middle class women opened and staffed the first asylums for "wayward" females in cities such as Montreal and Toronto.³⁸ More significant in terms of reformist perceptions of the nature of vice was the emergence of the Women's Christian Temperance Union in the late 1870s.³⁹ As with women's involvement in asylum work, formation of W.C.T.U. chapters was a product of a growing belief on the part of women that they had an important, independent role to play in the formulation of social policy, stemming from their unique experience as wives and mothers within the nuclear family.⁴⁰ Establishment of an exclusively female temperance lobby group reflected in part a belief that women must set their own agenda on social issues and speak with one "voice" on the issue of drink.⁴¹

Both male and female temperance organisations found inspiration in a robust, judgmental form of evangelical Protestant Christianity. The male wing tended to stress the adverse social and economic consequences of alcoholism. By contrast, women of the movement, a majority of whom in the early days came from the country and small towns, were actually engaged in personal missionary and rescue endeavours. They were ready to emphasise the roots of intemperance in the social and economic deprivation to which many working class families were subject, as well as the degradation of the women and children which, they found, was the distressing result.⁴²

B. The Campaign for Legal Suppression of Sexual Immorality

Reform legislative agendas for other forms of vice were slower to emerge. The pressure was, moreover, initially the result of individual initiatives. While intemperance was already classified as a national problem, vice in other guises, especially sexual immorality, was seen as local in its origins and impacts. Challenges to this latter view emerged in the 1880s, inspired by the campaign of British moral reformers to afford greater legal protection to girls and young women from sexual predators,⁴³ as well as by the experience of rescue workers in Montreal where, as

³⁸ Backhouse, *supra* note 16 at 415-41; E. Jarvis, "Mid-Victorian Toronto: Panic, Policy and Public Response 1857-1873" (Ph.D. thesis, University of Western Ontario, 1978) at 128-129.

³⁹ W. Mitchison, "The Woman's Christian Temperance Union: A Study in Organization" (1981) 4 *International Journal of Women's Studies* 143; "The WCTU: For God, Home and Native Land: A Study in Nineteenth Century Feminism" in L. Kealy, ed., *A Not Unreasonable Claim: Women and Reform in Canada 1880s-1920s* (Toronto: Women's Press, 1979) 155.

⁴⁰ A. Prentice, et al., *Canadian Women: A History* (Toronto: Harcourt Brace Jovanovich, 1988) at 172.

⁴¹ Mitchison, *supra* note 39 at 144.

⁴² *Ibid.* at 151-152.

⁴³ J. McLaren, "Chasing the Social Evil: Moral Fervour and the Evolution of Canada's Prostitution Laws, 1867-1917" (1986) 1 *Canadian Journal of Law and Society* 124 at 130.

Andrée Levesque has noted, tolerance of brothel prostitution was practised.⁴⁴ John Charlton, Liberal M.P. for North Norfolk, inside Parliament and D.A. Watt, a Montreal moral reformer, outside, inveighed against the double standard of a sexual morality which penalised poor girls and women while ignoring the males who exploited them. Both men warned of the naiveté in supposing that commercialised vice could be confined within municipal or even provincial boundaries.⁴⁵ The solution lay, they argued, in the addition to the criminal law of provisions designed to protect women and children everywhere against sexual exploitation. In the early 1880s the criminal law fell far short of that mark.

Canadian criminal law on prostitution was embodied in a consolidation of the traditional vagrancy offences of streetwalking, keeping, and being an inmate or frequenter of a common bawdy house with the addition of a new category: living on the avails of prostitution.⁴⁶ The age of consent to sexual intercourse stood at twelve for the victim.⁴⁷ Apart from provisions designed to protect proprietary rights of males in the virtue of "propertied" heiresses, and rights of parents generally in their minor children,⁴⁸ little in the law afforded direct protection to girls or women from sexual abuse and violation above the age of twelve. The law in Canada comprised the offences of defilement of women under twenty one by fraud and the forcible abduction of a woman of any age for purposes of marriage or carnal knowledge.⁴⁹

It is doubtful that these provisions were, in fact, invoked to protect women and children. To the extent that police enforced the law, it was the vagrancy provisions in the federal act, or embodied in municipal by-laws, which appealed to them. Typically, prostitutes were primary targets of their attention.⁵⁰ This was not necessarily antithetical to reformist sentiment. During the 1870s, as Magdalen asylums and refugees run on a charitable basis appeared to have little impact on prostitution, the "rehabilitative urge" was increasingly translated into espousal of longer and supposedly curative prison sentences for female offenders and institutional care for girls "at risk." Support shifted to establishment of state run reformatories for women and industrial schools for young people which would best inculcate virtue on a systematic basis.⁵¹

⁴⁴ A. Levesque, "Éteindre le Red Light: Les Réformateurs et la Prostitution à Montréal entre 1865 et 1925" (1989) 17 *Urban History Review* 191 at 191-192.

⁴⁵ McLaren, *supra* note 43 at 131-35. On John Charlton's view of sexual immorality, see C. Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto: The Osgoode Society, 1991) at 70-72.

⁴⁶ *An Act respecting Vagrancy*, S.C., 1869, c. 28, s. 1.

⁴⁷ *Offences against the Person Act*, S.C., 1869, c. 20, ss. 51, 52. This legislation was based on the consolidating English statute of the same name: (1861), 24 & 25 Victoria, c. 100 (England).

⁴⁸ *Ibid.* at ss. 54, 56. There was the further offence of child stealing (s. 57). The evils addressed by this provision were the deprivation of the parents' possession of the child and the taking of property in possession of the child.

⁴⁹ *Ibid.* at ss. 50, 55.

⁵⁰ Backhouse, *supra* note 16 at 396-408.

⁵¹ *Ibid.* at 416-418.

The battle for changes to the law was not easy. Dominion politicians of both parties, and especially the leaders, resisted one-issue reform campaigns centered around moral principles that advocated rigid solutions. They preferred what Peter Waite has described as “generous concessions on points of principle, compromises, with loyalty and patronage as the glue to make it all stick.”⁵² Moreover, some in parliament, such as Sir John A. Macdonald, had the conservative’s distrust for moral crusaders, maintaining that if protective legislation was required it should benefit those men who were victims of duplicitous and designing women.⁵³ Although Charlton’s efforts inducing major reforms were only partially successful, D.A. Watt, like Charlton a devout Presbyterian, and founder of the Montreal Society for the Protection of Young Girls and Women, achieved remarkable success.⁵⁴ Assisted by enactment of tough legislation in Britain against exploiters of commercial vice, at the behest of moral and social reformers there, some parts of that law were absorbed into Canadian crimes legislation in the late 1880s. The fact that the Department of Justice was in the process of drafting the *Criminal Code* in the early 1890s encouraged Watt to wage a vigorous and incessant campaign, using both personal and written lobbying as well as political contacts.⁵⁵ His sheer doggedness induced the Minister of Justice, John Thompson, and his department to include much of the reformist agenda in the *Code*.

The *Criminal Code* of 1892 contained an extensive complex of provisions relating to vice. In the context of sexual deviance it embodied, as Graham Parker has noted, “the most comprehensive system of offences for protecting young women and girls from sexual predators.”⁵⁶ Superimposed on existing vagrancy offences of streetwalking, keeping or being an inmate or frequenter of a common bawdy house and living on the avails,⁵⁷ was a new litany of procuring offences, designed to protect girls and young women from the wiles of procurers, brothel keepers and other sexual exploiters, including parents and guardians.⁵⁸ A more serious “nuisance” offence of keeping a bawdy house was added.⁵⁹ The age of consent rose to sixteen.⁶⁰ In addition the *Code* included a range of more general provisions proscribing activities of seducers.⁶¹

⁵² P. Waite, *Canada 1874-1896: Arduous Destiny* (Toronto: McClelland and Stewart, 1971) at 88.

⁵³ See the speech by Macdonald, *Parliamentary Debates*, House of Commons (1883), 222-3. For other comments of this type, see Backhouse, *supra* note 45 at 72-73.

⁵⁴ McLaren, *supra* note 43 at 135.

⁵⁵ G. Parker, “The Legal Regulation of Sexual Activity and the Protection of Females” (1983) 21 *Osgoode Hall Law Journal* 185 at 217-226. An example of the extent to which Watt was prepared to go in making his case is his publication at his own expense: D. Watt, *Moral Legislation: A Statement Prepared for the Information of the Senate* (Montréal: Gazette Printing Co., 1890).

⁵⁶ G. Parker, “The Origins of the Canadian Criminal Code” in D. Flaherty, ed., *supra* note 11, 249 at 268.

⁵⁷ *Criminal Code of Canada*, S.C., c. 29, ss. 207-208.

⁵⁸ *Ibid.* at ss. 185-187.

⁵⁹ *Ibid.* at s. 198.

⁶⁰ *Ibid.* at s. 269.

One area in which the *Code* fell short of Watt's aspirations was that of ownership and control of common bawdy houses. It did not incorporate provisions, such as those contained in the imperial parliament's 1885 Act, which made an offence of permitting the use of premises as a brothel. Canada's *Code* did contain a section, originally in the *Indian Act*, making it an offence for the keeper of a house, tent or wigwam to allow an "unenfranchised Indian woman" to remain there for purposes of prostitution.⁶² Furthermore, anyone who appeared to act as master or mistress of the establishment was deemed to be the keeper. Although these peculiar and racially specific provisions may have been the product of a "benign" desire to protect Native women from white men, it was possible, as Backhouse has suggested, that the real motive was governmental concern about miscegenation.⁶³

With enactment of these provisions it seems that "respectable" Canadians rested content, not only that they enjoyed extensive legal protection from the commercial exploitation of vice but also that law enforcers were armed with all the ammunition required to suppress it. Reality was different. The police, often undermanned and marginally trained, especially in the West, combining both elements of social conservatism among their leaders and identity with working class communities among the rank and file, mostly tolerated prostitution as long as it stayed within prescribed "segregated areas."⁶⁴ To the extent that the police felt the need from time to time to "show willing" with enforcement against brothels and street walkers in order to placate middle class sentiment, the tendency was to use the vagrancy offences in the *Criminal Code* or municipal by-laws. Fining was the favoured penalty, the money often amounting to a licence to continue business.

Even in cities, like Toronto, with large and professionalised police forces and a closer identity between the aims of local reformers and police administration, the two groups did not march in lock-step. The vice laws may have been enforced more vigorously than elsewhere, but the evidence was that containment rather than suppression was the primary police objective. As Morality Inspector David Archibald, noted for his crusading zeal and contribution to the image of the city as "Toronto the Good," reported in 1893:

⁶¹ *Ibid.* at ss. 181-184.

⁶² *Ibid.* at s. 190. The section also made it an offence for an unenfranchised Native woman to prostitute herself in such an establishment, and to keep, frequent or be an inmate of a "disorderly house, tent or wigwam" used for prostitution.

⁶³ Backhouse, *supra* note 16 at 410-22. There is certainly evidence that there was anxiety among white Canadians over the situation of the "half-breed" population. The latter were viewed as having inherited some of the "wildness" of their Native forbears and as finding it difficult to settle into a European frame of reference. See, e.g., the address of Justice H.P.P. Crease of the British Columbia Supreme Court in the "Kamloops Outlaws Case" in H. Foster, "The Kamloops Outlaws and Commissions of Assize in Nineteenth-Century British Columbia" in D. Flaherty, ed., *Essays in the History of Canadian Law*, vol. II (Toronto: The Osgoode Society, 1983) 308 at 332-33. The Northwest Rebellion of 1885 must have accentuated these fears.

⁶⁴ McLaren, *supra* note 43 at 141-142. For the relaxed attitude to prostitution in the Prairies, see J. Gray, *Red Lights on the Prairies* (Saskatoon: Western Producer Books, 1986); A. Artibise, *Winnipeg: A Social History of Urban Growth 1875-1914* (Montréal: McGill-Queen's University Press, 1975) at 246ff.

While the police have nothing to do with the ethical phase of the "social evil" question, their duty being merely to apply the law as they find it, it should be borne in mind that a policy of repression in too severe a form may lower rather than improve the moral tone of the people, by causing women of the town to seek the shelter of private lodgings in respectable localities instead of confining themselves to places where their presence is not objected to.⁶⁵

That dispersal of the sex trade created frustration for the Toronto police is evident from Archibald's 1896 report. There he complained of "loose women" scattering, and "living in rooms where they can receive men without police interference, often to the annoyance of the more respectable residents who object to the presence and desire their removal."⁶⁶ That the trade was in fact alive and well in the Ontario capital was evident from the writings of an iconoclastic journalist, Christopher St. George Clarke. In an exposé of the seedy side of the Ontario capital published in 1898, he drew attention to the existence of numerous brothels and houses of assignation and widespread street soliciting in the city.⁶⁷ Moreover, he went out of his way to suggest that Archibald's public relations claims in the press that the police were succeeding in their attempts to suppress the trade, were mistaken, charging that the Staff Inspector was smugly oblivious to what was going on under his nose.⁶⁸

The results of less than enthusiastic law enforcement of *Criminal Code* provisions on prostitution and sexual exploitation more generally are apparent in the Dominion criminal statistics for the period 1893 to 1899. There was no decisive increase in the number of convictions for prostitution-related vagrancy offences over the period immediately preceding the enactment of the *Code*.⁶⁹ Convictions for abduction of a female ranged between zero and seven per year, and those for seduction between three and thirteen annually. No entries appeared for either defilement or procuring, nor for the indictable nuisance offence of keeping a common bawdy house.⁷⁰

⁶⁵ Toronto City Archives, *Annual Report of the Chief Constable 1893*, Appendix C. On Archibald's role in the campaign to clean up Toronto, see C. Armstrong and H. Nelles, *The Revenge of the Methodist Bicycle Company* (Toronto: Peter Martin Associates, 1977) at 8.

⁶⁶ T.C.A., *Report of the Chief Constable*, Appendix C, 1896, (Staff Inspector's Department) at 5.

⁶⁷ C.S. Clarke, *Of Toronto the Good: The Queen City of Canada as It Is* (Montréal: Toronto Publishing Co., 1898) at 84-147.

⁶⁸ *Ibid.* at 20-22, 91-92. The pervasiveness of prostitution, and the hypocrisy and insensitivity which he claimed were associated with attempts to suppress it, led Clarke to advocate regulation: *ibid.* at 87.

⁶⁹ For most of this period the figures for bawdy house offences were not broken down into the various categories of summary conviction vagrancy offences. Where they were, for the period before 1896, the figure for keeping and being an inmate were lumped together, but those for frequenting recorded separately. The average figure for convictions for all such offences between 1886 and 1892 was 1351. For the next seven years (1893 to 1899) it dropped to 1047. Only in the new century did the figure outstrip that for 1866-1892. Between 1900 and 1906 the average was 1622.

⁷⁰ It is possible that this is explained by peculiarities in the recording and reporting systems, but it is more likely that the conviction rate was non-existent or so low that no figures were registered for these offences. D.A. Watt was certainly of the view that the Montréal police preferred to go after brothel keepers under the vagrancy offence of keeping a common bawdy house, a position which he deprecated. See, National Archives of Canada [NAC], RG 13 Department of Justice files, 886-87\084, Box 27, File 1966\1893, letter from Watt to Minister of Justice, Sir John Thompson, March 3, 1893. Parker, *supra* note 55 at 223-229 notes that there were only three reported cases of defilement on the

The gap between the letter of the law and enforcement practices did not go unnoticed in reformist ranks, but protest proved largely unavailing. D.A. Watt for his part continued to badger the Department of Justice because of his view that the Montreal police were proving inactive in pursuing sexual exploiters and because when they did proceed, for example against brothel keepers, they favoured prosecution as a summary offence.⁷¹ These further pleas fell on deaf ears in the Department where the view was that the limits of the law were now firmly set. The women of the W.C.T.U. were also well aware of what was going on. During the 1890s they voiced frequent distress over the law and its enforcement. They objected to the prostitute being victimised while the customer was ignored or merely slapped on the wrist.⁷² For the W.C.T.U., prostitutes were not pariahs but, in the words of a resolution at the 1898 National Convention, "those of our sisterhood who have lost the priceless jewel of virtue, knowing them to be more sinned against than sinning."⁷³ However, while the women protested over local examples of prosecutorial inaction they did not make the lack of enforcement a major, national lobbying issue. Their more pressing concern at the time was to work with prostitutes in an attempt to lead them to a better life.⁷⁴

To the extent that the reform movement was active at a more general policy level during the 1890s, it increasingly directed its energies towards "child saving" and adoption of the first steps towards a child welfare and juvenile justice system for the country.⁷⁵

IV. Externalising the Roots of Vice

A. The Discourse of White Slavery

The phenomenon which was to galvanise moral and social reformers into action on the issue of enforcement of laws against prostitution was the alarming news that commercialised vice, far from being confined to particular communities, provinces and to the nation, was international in scope. Grafted onto the discourse of "moral contagion" as applied to vice was now the rhetoric of 'white slavery.' Such fears reached a height in Britain in the 1880s with revelations of English girls working in French and Belgian brothels and of widespread child prostitution in Britain itself.⁷⁶ By combining white slavery fears with artful high melodrama, W.T. Stead,

premises of a householder in the first twenty years of the *Code*.

⁷¹ NAC, *ibid.*, where the same letter Watt suggested that it be a *Code* offence for a police officer to willfully omit to carry out his duty to prosecute.

⁷² See, Ontario W.C.T.U., "Report of Resolution Committee" *Report of 17th Convention*, (Cornwall, 1894) at 140.

⁷³ World W.C.T.U., *Report of the 6th Convention* (Toronto: 1898) at 90.

⁷⁴ See, W.C.T.U., "Report of Purity Development" *Report of 8th National Convention*, (Toronto, 1896) at 58-60; *Report of 10th National Convention*, (Toronto: 1897) at 57.

⁷⁵ N. Sutherland, *Children in English Canadian Society* (Toronto: University of Toronto Press, 1976) at 48-96.

⁷⁶ E. Bristow, *Vice and Vigilance: Purity Movements in Britain since 1700* (Dublin: Gill & MacMillan Ltd., 1977) at 85-90. British Parliamentary Papers, H.L., *Report of the Select Committee*

moral reformer and sensationalist newspaper editor, pressured parliament at Westminster to pass a package of reforms to the criminal law directed at commercialised vice in 1885.⁷⁷ The legislation, thanks to D.A. Watt, was partially emulated in Canada's *Criminal Code* (1982). Despite vigorous enforcement of the amended law in Britain, often at the behest of locally self-appointed vigilantes, reformers found to their shock that a new breed of sexual exploiter had appeared on the scene, the pimp.⁷⁸ The fact that many of these characters and some of their women, were foreigners led inexorably to the conclusion that tentacles of an international trade in women was again reaching into Britain. Oblivious of the fact that prostitution, and the exploitation to which it was invariably subject, had always tended to adapt to prevailing social and legal conditions, British reformers led by W.A. Coote, the energetic and visionary leader of the National Vigilance Association, committed themselves both to introducing a more repressive legal régime at home,⁷⁹ and to leading a campaign against the international trade.⁸⁰

The Canadian connection with this movement came through the profound interest of Lady Aberdeen, the wife of Canada's governor-general from 1892-1898. She formed the National Council of Women in 1892, a coalition of women's groups dedicated to social and legal reform to improve the lot of women in Canadian society.⁸¹ Although sharing with groups like the W.C.T.U. the strong belief that middle class wives and mothers had a key role to play in the development of social policy, this organisation differed in outlook in that its leadership was drawn from the higher echelons of the urban middle class: wives of wealthy businessmen or leading professionals who, until 1910, eschewed involvement in campaigns for female suffrage. On Lady Aberdeen's return to Britain she became president of the International Council of Women. Prior to World War I, through the close connection of the Aberdeens with the National Vigilance Association, Britain's leading "social purity"

on the Protection of Young Girls, 1882.

⁷⁷ R. Schults, *Crusader in Babylon: W.T. Stead and the Pall Mall Gazette* (Lincoln: University of Nebraska, 1972) at 128-68; D. Gorham, "The 'Maiden Tribute of Modern Babylon' Re-examined: Child Prostitution and the Idea of Childhood in Late-Victorian England" (1978) 21 *Victorian Studies* 353.

⁷⁸ Bristow, *supra* note 76 at 169-171; J. Walkowitz, *Prostitution and Victorian Society: Women, Class and the State* (Cambridge: Cambridge University Press, 1980) at 211-212.

⁷⁹ See the *Vagrancy Law Amendment Act*, 1898, 61 & 61 Victoria, c. 39 which introduced the offence of pimping and the *Aliens Act*, 1905, 5 Edward VII. c. 13 which gave magistrates the power to repatriate foreign prostitutes from Britain.

⁸⁰ Bristow, *supra* note 76 at 174-194.

⁸¹ V. Strong-Boag, " 'Setting the Stage': National Organization and the Women's Movement in the Late Nineteenth Century" in S. Trofimenkoff and A. Prentice, eds., *The Neglected Majority: Essays in Canadian Women's History* (Toronto: McClelland and Stewart, 1977) had 87. Lady Aberdeen was an active philanthropist, closely connected with the Liberal Party in Britain. Her rescue work with prostitutes prior to her marriage earned the praise of William Gladstone. She had founded the Onward and Upward Association "for the material, mental and moral education of women," in particular those in service whom she saw as at special risk in sexual matters. Her publications adviser for the Associations' magazine was none other than W.T. Stead; see J. Drummond, ed., *Onward and Upward* (Aberdeen: University of Aberdeen Press, 1983).

movement, the I.C.W. was involved in a series of international conferences held to articulate concern and to seek action to smash the international white slave trade.⁸²

As with all emotive terms used to describe social unease 'white slavery' had a loose and slippery character. Its indiscriminate use shrouded what were different understandings of the problem of sexual exploitation and diverse motives in addressing it. In the British context its use had ranged from that of a metaphor by feminists to describe prostitution in general, with roots in patriarchy and economic privation, reflecting the double standard of sexual conduct, to its much more specific use by male reformers to describe the vicious external forces which supposedly threatened all females, a meaning which deflected attention from prostitution's more immediate, cultural, social and economic contexts.⁸³ In the hands of an excessively righteous librettist like Stead, it could be manipulated to orchestrate a régime of moral censure and legal repression.

After 1900 many middle class Canadians were receptive to suggestions that the moral welfare of the nation was threatened, not least by sinister outside forces. Their perception, that society was changing for the worse and that traditional verities were being challenged created a growing sense of unease. The apparent decline in the quality of life and values was ascribed in these circles to advancing industrialisation and urbanisation, exacerbated by an influx of "inferior" immigrants into the country.⁸⁴ The corrosive effect of these trends, it was argued, was evident in the emergence or aggravation of a series of social problems: drunkenness, gambling, use of narcotics, salacious forms of reading and entertainment, the worst imported from France, marital infidelity and breakdown, child abuse and neglect, and a range of sexual perversions including prostitution. As Michael Bliss's research shows, dangers of excessive and aberrant sex, particularly in contracting of venereal diseases, were widely publicised in popularised medico-moral sexual health guides.⁸⁵

To those gripped by these anxieties, an alarming offshoot of the growth of cities and wage labour was the entry of larger numbers of working class women into the work force. The apprehended result was breakdown of the family as the basic unit of moral management.⁸⁶ As more 'respectable' women took up employment, showing a degree of social and fiscal independence before marriage, these concerns increasingly transferred to a middle class frame of reference.

Discomfort caused by greater economic and social mobility heightened with the arrival of increasing numbers of immigrants, especially those who lacked Protestant, Anglo-Saxon roots.⁸⁷ The greatest threat to Canadian values and virtue were seen as

⁸² See NAC, The Aberdeen Papers, MG 28 1 245, vol. 20, File #313, for two letters in 1905 from W. A. Coote, the leader of the National Vigilance Association in Britain, requesting her to address N.V.A. meetings in support of the anti-white slavery movement and on the I.C.W.'s involvement in it.

⁸³ Bristow, *supra* note 76 at 86.

⁸⁴ C. Bacchi, *Liberation Deferred: The Idea of English Canadian Suffragists, 1877-1915* (Toronto: University of Toronto Press, 1983) at 7-12.

⁸⁵ M. Bliss, "'Pure Books on Avoided Subjects': Pre-Freudian Sexual Ideas in Canada" (1975) Canadian Historical Association Papers 89.

⁸⁶ See J. Snell, "'The White Life for Two': The Defence of Sexual Morality in Canada, 1890-1914" (1983) 16 *Social History* 111.

coming from visible minorities — Chinese, Japanese, African and East Indian — often characterised as sub-human and believed to be the source of both physical and moral contagion.⁸⁸ These fears, accentuated by social Darwinist literature and pseudo-scientific claims of “eugenics,” were used by some propagandists to forecast racial degeneration, if not suicide.⁸⁹ All of this created a receptive mental climate for externalisation of the moral ills of the country and for calls to resolute action.

B. The Campaign for Legal Suppression of White Slavery

That Canada had problems with enforcing prostitution laws at a national level only began to permeate public consciousness in the decade after enactment of the *Criminal Code* in 1892. It was the international network, of which the National Council of Women was a part, which helped to stimulate wider interest in the issue.⁹⁰ In 1904 the International Council of Women Conference in Berlin called upon national chapters to examine the state of the law against prostitution and its policing in their own countries.⁹¹ Canadian representatives began to discover to their alarm that the situation in Canada was not as satisfactory as they had supposed. Reports from N.C.W. chapters across the country during succeeding years exposed what were characterised as horrifying cases of commercialised exploitation of sex in their communities: Chinese involvement in B.C.,⁹² fake employment ads to seduce young women in Toronto,⁹³ houses of ill fame operating openly in Halifax,⁹⁴ white slavers loose in the Ontario countryside.⁹⁵ These worries were buttressed by accounts of those engaged in rescue and traveller’s aid, in particular members of the W.C.T.U. and the Y.W.C.A. Much of the initial evidence seemed to have been culled from reports in newspapers which, as Paul Rutherford has noted, were by the end of the nineteenth century largely committed to upholding the “moral order,” often in sensationalist copy.⁹⁶

⁸⁷ For a contemporary example of these anxieties, see J. Woodsworth, *Strangers within Our Gates* (Toronto: University of Toronto Press, 1972, reprint of 1909 original).

⁸⁸ P. Roy, “The Oriental Menace in British Columbia” in M. Horn and R. Sabourin, eds., *Studies in Canadian Social History* (Toronto: McClelland and Stewart, 1974) 289. On the attitudes of white communities, especially reformers, to prostitution, real or imagined, in the Chinese community in British Columbia, see M. Valverde, *The Age of Soap, Light and Water: Moral Reform in English Canada, 1885-1925* (Toronto: McClelland and Stewart, 1991) at 86-88.

⁸⁹ A. McLaren, *Our Own Master Race: Eugenics in Canada, 1885-1945* (Toronto: McClelland and Stewart, 1990) at 13-27.

⁹⁰ See J. McLaren, “White Slaves: The Reform of Canada’s Prostitution Laws and Patterns of Enforcement” (1987) 8 *Criminal Justice History* 53 at 70-77, on the role of Canadian feminists in the anti-white slavery campaign.

⁹¹ See “Report by the Standing Committee on the Suppression of the White Slave Trade of the National Council of Women”, *Handbook* (1905) [hereinafter N.C.W.] at 116.

⁹² *Ibid.* (1908) at 62-62; (1910) at 54.

⁹³ *Ibid.* (1905) at 117.

⁹⁴ *Ibid.* (1912) at 50-51.

⁹⁵ *Ibid.* (1908) at 61-62.

⁹⁶ P. Rutherford, *A Victorian Authority: The Daily Press in Late Nineteenth-Century Canada*

Views on what to do in light of such revelations differed among women's groups. The initial response of N.C.W. reformers was not legal but social, to emphasise the importance of education: moral education of young males and education in self-protection for girls and young women.⁹⁷ By contrast the W.C.T.U., in addition to reaffirming its commitment to the "single standard" of sexual morality, vowed "to secure in all countries legal protection for the innocent and defenceless, and impartial punishment for offenders."⁹⁸

Discourses changed to emphasise legal strategies more keenly with the realisation that municipal authorities and police in many Canadian communities were actually ignoring the practice of prostitution and tolerating informal "red light" areas. A central role in sensitising the nation to this reality was the institutionalisation of moral concern in two mainline, evangelical Protestant churches, Methodist and Presbyterian.⁹⁹ Leadership in both churches promoted the "social gospel", a credo that for Christians there was beyond personal salvation a broader obligation to assist in building a more moral and caring society on earth.¹⁰⁰ The "social gospel" was an activist form of Christianity reaching actually or prospectively into every aspect of Canadian public life and much of the country's private life.¹⁰¹ Basing claims on biblical authority, it also embraced what was described as the new science of sociology, which seemed to set out embryonic principles for secularised social work.¹⁰² This structural shift in theology had its prime movers in the Rev. Samuel Chown of the Methodists and the Rev. Dr. John Shearer of the Presbyterians. In sermons and speeches both railed against the general decline in moral values, the apparent spread of both prostitution and its by-product, venereal diseases, as well as against the sinfulness of the policy of tolerance which underlay that decline.¹⁰³ In some instances it seemed to them that Canadian society was being taken over by the *demi-monde*. As Chown reported to the Methodist clergy in 1910:

A strumpet in an Alberta town recently while drunk mounted a horse and rode through the streets making the day hideous with blasphemy and lewdness. The magistrate ordered the constable to arrest her. She was not arrested but wheeling her horse around in front of the magistrate's store she shouted her abuse of him in the presence of his customers.¹⁰⁴

(Toronto: University of Toronto Press, 1982) at 165-67.

97 N.C.W., *supra* note 91 (1907) at 85-91.

98 Provincial Archives of Ontario, W.C.T.U., *Report of the Seventh Convention* (Boston, 1906) at 23.

99 McLaren, *supra* note 90 at 77-84.

100 On the intellectual and theological dimensions of the movement, see B. Fraser, *The Social Uplifters: Presbyterian Progressives and the Social Gospel in Canada, 1875-1915* (Waterloo: Wilfred Laurier University Press, 1988); R. Cook, *The Regenerators: Social Criticism in Late Victorian England* (Toronto: University of Toronto Press, 1971) at 3-34.

101 R. Allen, *The Social Passion: Religion and Social Reform in Canada 1914-1928* (Toronto: University of Toronto Press, 1971) at 3-34.

102 Valverde, *supra* note 88 at 54.

103 McLaren, *supra* note 90 at 78-80.

104 United Church Archives [UCA], Victoria University, Toronto, S.D. Chown Papers, Box 13, File #1 at 9.

Through the Department of Temperance, Prohibition and Moral Reform of the Methodist Church and the Presbyterian Board of Moral and Social Reform, each church leader made it his business to take up the cause of moral reform, wherever in the nation vice reared its ugly head. They decried toleration of prostitution in communities as geographically separated as Halifax, Montreal, Winnipeg, the Yukon and Vancouver.¹⁰⁵ Presbyterians employed private detectives to report on the sale of obscene literature in Toronto and activities of houses of ill-fame in the Nova Scotia capital.¹⁰⁶ A call issued from the same source for the organisation of the nation's police on a dominion or provincial basis, to remove the temptation to moral backsliding, thought to be inherent in local policing.¹⁰⁷ Both men reacted quickly and decisively to reports from the faithful of vice run rampant in the communities of New Ontario.¹⁰⁸ Complaints were forwarded from head office in Toronto to the provincial Department of the Attorney General or to the Superintendent of the Ontario Provincial Police.¹⁰⁹

The Church leaders concluded that the problem of vice was one which demanded common action at a national level. Encouraged no doubt by successful lobbying of coalitions opposing alcoholic liquor and promoting strict Lord's Day observance, the two churches established the Moral and Social Reform Council of Canada in 1907.¹¹⁰ Its primary purpose was to press, by all available means, for the moral cleansing of the country. The work of Chown, Shearer and the Council soon attracted support from other Protestant denominations, becoming a catalyst for the development of a legal agenda: a set of proposals for reform of the criminal law to proscribe sexual aberrance in general, including adultery and "lewd cohabitation," and to stiffen the law and its penalties for procurers, pimps and the customers of brothels.¹¹¹ The campaign for "social purity" was building steam. But could such energies move the entire nation's law and its enforcers?

The campaign in Canada for reform of the law relating to sexual vice, especially prostitution, drew inspiration from British reformers' concerns about the international white slave traffic, and its supposed connections with the domestic sex trade, and from a parallel crusade for suppression of commercialised vice in the United

¹⁰⁵ McLaren, *supra* note 90 at 80-83.

¹⁰⁶ UCA, Board of Moral and Social Reform, Presbyterian Church of Canada, Minutes of the Board and Executive, 1907-1912, 16 September 1909 at 1, and 3 December 1909 at 1.

¹⁰⁷ *Ibid.*, 7 September at 17-18. See also, Board Supplementary Report 1909, 2-4, in which the laxness of the police in dealing with prostitution generally, and their tolerance of segregated areas and individual houses of ill fame, is mentioned.

¹⁰⁸ J. McLaren, *supra* note 90 at 80-82.

¹⁰⁹ Their practice was to go over the heads of their initial contacts to superiors if their complaints were ignored or denied, including in at least one case to the Premier of Ontario, Sir James Whitney: RG 4, c. 3, 1909, file #1639, letter from Samuel Chown to Whitney, 4 November, 1909. The responses to complaints varied. In some cases Chown and Shearer touched sensitive nerves with the result that steps were taken to uphold the law. In others the authorities concluded that law enforcers were being unjustly maligned by the reformers and said so.

¹¹⁰ Allen, *supra* note 101 at 13. The Presbyterian, Shearer and T.A. Moore, a Methodist, were appointed general secretaries to the Council.

¹¹¹ NAC, Canadian Council of Churches Archives, Moral and Social Reform Council of Canada, *Draft Legislation*, 1911.

States. There prostitution had been essentially a local matter until 1900.¹¹² Thereafter, progressive reformers, shocked by the open acceptance of red light districts and the graft which attended their operations, converted it into a national issue. Anxieties among the American middle classes about “adverse” social change, immigration and moral decline were focused by a highly effective campaign in which the problem of commercialised vice was exposed by “scientific” study.¹¹³ The product was a series of vice commission reports, the most extensive being that on Chicago in 1911.¹¹⁴

Reformist framers of these documents relied heavily on social statistics and retained social scientists to collect and interpret such data. The reports are full of ostensibly reliable scientific, medical and statistical evidence suggesting problems of major proportions. Some of the scientific evidence as well as its expert interpreters was affected by moral considerations.¹¹⁵ This was especially so in the conclusions on the medical effects of prostitution. Public health physicians, increasingly worried by what seemed to be a major increase in incidences of venereal diseases, found it difficult to separate the scientific and the moral. They were not beyond manipulating statistics to demonstrate that contagion had reached epidemic proportions.¹¹⁶

Alarmist claims of the experts, rather than hard evidence of the contribution of environmental factors to vice that also featured in the reports, was what the lay reformers relished. To “scientific” discourse was added a popular genre of anti-white slavery literature, drama and film sensationalising lurid accounts of innocent maidenly virtue defiled by wily male exploiters, often with east European accents or Asian features. Female victims invariably found early graves after extended imprisonment in brothels.¹¹⁷ Lay social purists embraced some of these melodramatic accounts, as well as material culled from social workers’ and lawyers’ case files. These were published, interspersed with carefully pruned quotes and liberal paraphrases from scientific findings in the vice commission reports and reformers “sermons,” in anti-white slavery tracts.¹¹⁸ Not surprisingly American middle class opinion fed on

¹¹² D. Pivar, *Purity Crusade: Sexual Morality and Social Control 1868-1900* (Westport: Greenwood Press, 1973); B. Miel Hobson, *Uneasy Virtue: The Politics of Prostitution and the American Reform Tradition* (New York: Basic Books, 1987).

¹¹³ M. Connelly, *The Response to Prostitution in the Progressive Era* (Chapel Hill: University of North Carolina Press, 1980); F. Gritner, *White Slavery: Myth, Ideology and American Law* (New York: Garland Publishing, 1990).

¹¹⁴ The Vice Commission of Chicago, *The Social Evil in Chicago* (New York: Arno Press, 1971; reprint of 1911 original). See also, The Committee of Fifteen, *The Social Evil with Special Reference to Conditions Existing in the City of New York* (New York: Putnams, 1902).

¹¹⁵ See Connelly, *supra* note 113 for a critique of the moral assumptions of the Chicago Vice Commission.

¹¹⁶ *Ibid.* at 18-21. Connelly cites the case of Dr. Prince Morrow, an expert in the relationship between venereal disease and prostitution. Morrow pronounced in 1904 that 60% of adult males in the United States suffered from gonorrhea or syphilis in their lifetime.

¹¹⁷ *Ibid.* at 114; Gritner, *supra* note 113 at 107-126. A prime example discussed by Gritner is the novel by the socialist activist R. Kauffman, *The House of Bondage* (Saddle River: Gregg Press, 1968, reprint of 1910 original).

¹¹⁸ E.g., E. Bell, *War on the White Slave Trade* (Toronto: Coles Publications, 1980; reprint of 1909 original); C. Roe, *The Great War on White Slavery* (Chicago: Roe and Stedwell, 1911).

this unpalatable diet concluded that the United States was “on the ropes” morally and socially. The impact on law-making of such intense soul searching, led to equating perception with “reality” itself: an international conspiracy did exist to enslave American girls and women, requiring enactment of draconian legislation to suppress both international and interstate “trade” in women. The *Mann Act* of 1910 created the federal law’s jurisdiction over white slavery, while local initiatives to crush the trade grew through statutes such as Iowa’s *Red Light Injunction Law*.¹¹⁹

This fit perfectly into the agenda of the Canadian social purity reformers. Indeed, Canadians normally laid blame for white slavery at the door of sinister syndicates supposedly operating from south of the border.¹²⁰ Increasingly, Canadian reformers invoked the scientific, medical, and statistical data selectively culled from American vice reports and the rhetoric of the anti-white slavery media. Chown, for example, reported the rate of unchastity among North American men as well over 50% and that 1.5 million new recruits fell into the “moral sewer” each year.¹²¹ The message in all of this was clear: respectable Canadian womanhood was at risk from machinations of a conspiracy of white slavers, organised from outside the country, which had no respect whatever for Canadian institutions and values. For male reformers the distressing consequence would be further corruption and degeneration of Canadian manhood.

In the wake of the I.C.W. Conference held in Toronto in 1909, which dwelt at length with the problem of white slavery,¹²² the rhetoric of social purists in Canada increased in stridency. Strong pressure was applied to the Dominion government to reform the criminal law, and to local authorities to enforce it. The discourse of the leading womens’ reform groups shifted perceptibly from earlier concerns with victimisation and socialisation strategies to the external menace. Statements at N.C.W. meetings began to reflect stories of virtue defiled which had already appeared in American anti-white slavery propaganda. Members were encouraged to be “up and doing,” to “attack this evil, and attack it at a vital point -the law.”¹²³ Individual lobby groups along with the influential Moral and Social Reform Council exhorted the government in Ottawa to expand bawdy house laws to catch those who permitted

¹¹⁹ *White Slavery Traffic Act*, U.S. Statutes at Large, vol. 36 (1910) 825-827. See D. Langum, *Crossing Over the Line: Legislating Morality and the Mann Act* (Chicago: University of Chicago Press, 1994). On the enactment of the “red light” injunction laws, see R. Rosen, *The Lost Sisterhood: Prostitution in America, 1900-1918* (Baltimore: Johns Hopkins University Press, 1982) at 14-37; T. MacKay, *Red Lights Out: A Legal History of Prostitution, Disorderly Houses and Vice Districts, 1870-1917* (New York: Garland Publishing, 1987) at 123-130.

¹²⁰ See UCA, Chown Papers, Lecture on “Social Evil” Box 13, File #369. In the course of this lecture Chown noted that District Attorney Sims of Chicago had revealed that the head of the “American Syndicate” which ran commercialised vice was the “Big Chief” and that the tentacles of the organisation had spread into Canada.

¹²¹ *Ibid.*

¹²² For the presentations relating to the white slave trade, see NAC Library (Ottawa), *Proceedings of the International Congress of Women*, vols. 1 & II (Toronto, 1909) vol. I, at 69-87; vol. II at 416-423.

¹²³ N.C.W., *supra* note 91 (1910, “Report of Committee on White Slave Traffic” (Mrs. Amelia Gordon) at 58.

or ignored prostitution on their premises, to tighten the law on pimping and procuring, and to increase penalties for anyone exploiting prostitution for profit.¹²⁴ Both national social purity leaders and local activists launched campaigns to rid cities of tolerated vice. Montreal, Winnipeg, Calgary and Vancouver were the main targets of criticism and action. Pressure was great enough to establish judicial enquiries to look into charges of municipal and police complicity in the toleration of informal red light districts in Montreal, Winnipeg and Calgary respectively.¹²⁵ In each instance the police were found to have condoned brothel prostitution to one degree or another and were ordered to enforce the *Criminal Code*. While Vancouver for the moment avoided an inquiry, reformers effected a closure of the last remaining red light district by political lobbying.¹²⁶

The campaign for changes to the Criminal Code came to a head in 1912 and 1913. W.A. Coote, the energetic and zealous leader of the international campaign against white slavery, visited Canada in 1912 at the behest of Lady Aberdeen.¹²⁷ His challenge to Canadian reformers, to follow the lead of other countries and establish a national body committed to suppression of white slavery, voiced at a N.C.W. convention, immediately led to formation of the National Committee for the Suppression of the White Slave Trade late in 1912.¹²⁸ Run by Shearer as an offshoot of the Moral and Social Reform Council, it also began pressing for law reform. The reformers generated a highly charged emotional atmosphere, relying on rhetoric which exuded white slave imagery. Sarah Rowell Wright, President of the Canadian W.C.T.U. clearly recognised its propaganda value when she asserted:

In the year of our Lord 1913 a regular systematised mart in human life goes on in almost every land, sometimes the fairest and best of young women are unwillingly enslaved, many of them going down in the shameful vortex which engulfs the soul as well as the body in blackness of darkness.¹²⁹

Mrs. Amelia Gordon of the N.C.W. was no less wanting in emotional appeal, informing her audience that same year of the \$3 billion spent annually on vice in the United States, of the 300,000 women of the night and the 3,000,000 men whom they serv-

¹²⁴ *Supra* note 92.

¹²⁵ On the work and report of the Cannon Commission (1909) in Montreal: J.-P. Brodeur, *La Délinquance de l'Ordre* (Montréal: Hurtibise, 1984). For the enquiries in Winnipeg and Calgary, see Justice H. Robson, *Report of the Royal Commission on the Enforcement of Vice Laws in Winnipeg* (Winnipeg: King's Printer, 1911); Justice C. Stuart, *Report of Commission of Inquiry into Certain Allegations against the Chief of Police of Calgary and the Calgary Police Force*, 1908 (reprinted in full in the *Morning Albertan*, 28 January 1908). On prostitution in Winnipeg and Calgary at this time, see Artibise, *supra* note 64 at 246-265.; J. Cooper, "Red Lights of Winnipeg" (1972-73) *Historical and Scientific Society of Manitoba Series III* at 61; and, J. Bedford, "Prostitution in Calgary, 1905-1914" (1981) 29 *Alberta History* 1.

¹²⁶ See D. Nilson, "The Social Evil": Prostitution in Vancouver, 1900-1920" in B. Latham and C. Kess, eds., *In Her Own Right* (Victoria: Camosun College, 1980) at 208-215.

¹²⁷ N.C.W., *Executive Minutes* (1912) at 3 MG 28 I 25, vol. 67, File #4, Report of the Corresponding Secretary.

¹²⁸ See N.C.W., *supra* note 91 (1910) at 53-54 for the Coote challenge, and *supra* note 92 (1913) at 15-16 for details of the establishment of the National Committee.

¹²⁹ W.C.T.U., *Report of the Eighteenth Convention* (London, 1913) at 67.

iced, and of the 60,000 new victims each year required to replenish the trade, many described tantalisingly as coming “from Canadian homes.”¹³⁰ All such claims received a sort of validation nationally when circulated through the newspapers and religious press. Most editors bought the reformer’s line that the road to improvement of the moral climate of the country was the invocation of tough criminal law sanctions.¹³¹

C. Legislative Victory: Appropriating the Public Health Discourse

The result of this well orchestrated campaign was the *Criminal Code Amendment Act*, 1913,¹³² described tersely by its sponsor, Minister of Justice Doherty, as designed to deal more effectively with white slavery.¹³³ The statute, while it lacked provisions outlawing adultery and “lewd cohabitation,” went a considerable distance in meeting reformist demands. It extended protection of the general procuring offence to all women regardless of age and added to the list of procuring offences.¹³⁴ As well, it introduced the discretionary penalty of whipping on a second procuring offence and converted living on the avails from a vagrancy into an indictable offence with tougher penalties.¹³⁵ The ambit of the offence of keeping a common bawdy house enlarged to make accountable landlords who permitted others to use premises as a bawdy house, or failed to eject tenants convicted of running such establishments in them.¹³⁶ Such changes labelled operators of brothels and houses of assignation as exploiters of prostitution. The offence of “frequenting” a common bawdy house was dropped and replaced by the more flexible form of vagrancy known as “found in” a brothel, designed to catch and convict customers and, as experience would show, inmates, more easily.¹³⁷

Amendments in later years converted the offence of keeping a common bawdy house into an exclusively indictable offence,¹³⁸ extended the definition of keeping a common bawdy house to catch operators of massage parlours¹³⁹ and increased

¹³⁰ N.C.W., *supra* note 91 (1913) at 123.

¹³¹ Sometimes the dividing line between the secular and religious press was difficult to discern. At this time the editor of the *Toronto Globe* was James Macdonald, previously the editor of *The Presbyterian*. See Fraser, *supra* note 100 at 109-114.

¹³² S.C., 1913, c. 13.

¹³³ *Parliamentary Debates*, H.C., 1913 at 10077.

¹³⁴ *Criminal Code Amendment Act*, s. 9. The inveigling offence was narrowed by excluding prostitutes from its protection. The new procuring offences were: concealment in a bawdy house, spiring a new arrival to Canada to a brothel and exercising control, direction or influence over a female for purposes of prostitution. Procuring was made an offence subject to arrest without a warrant, s. 23.

¹³⁵ *Ibid.* This new offence was supported by a presumption of guilt where the accused lived with or was habitually in the company of prostitutes, with no visible means of support.

¹³⁶ *Ibid.* at ss. 10, 11. A presumption that premises were a disorderly house was also established by the willful prevention or obstruction of a peace officer from entering.

¹³⁷ *Ibid.* at s. 12.

¹³⁸ *Criminal Code Amendment Act*, S.C., 1915, c. 12, s. 7.

¹³⁹ *Criminal Code Amendment Act*, S.C., 1917, c. 14, s. 3. See, S. Russell, “The Offence of Keeping a Common Bawdy House in Canadian Criminal Law” (1982) 14 *Ottawa Law Review* 270 at

penalties for procuring.¹⁴⁰ The reformatory measures of the 1910s convinced social purists that the battle against white slavery was on the way to being won. The law reform victory turned the attention of both women's groups and the churches to other social and moral issues, specifically national prohibition and, of course, the implications and challenges of World War I.¹⁴¹ Reference to white slavery in the annual reports of John Shearer to the National Committee, assumed that the law was being enforced so effectively that the exploitation of prostitution was fading into oblivion:

From information at hand it would appear that the legislation secured in 1913 has been successful in the prevention of "procuring" girls for vice purposes. Correspondence with the authorities in the cities of Canada indicates that very few cases of this kind occurred within the dominion. The faithful work of the police in our Canadian cities, together with the excellent law has done much to prevent the continuance of this crime¹⁴².

Serious concern about prostitution did emerge from another source at this time, generating a discourse which complemented and fed fears manifest in the social purity lectionary. Public health physicians and psychiatrists raised visions of a scourge of venereal diseases rooted in the medico-moral condition described as "feeble-mindedness."¹⁴³ The resulting anxieties in government circles in Canada spawned a series of repressive legal measures at the provincial level late in the 1910s.

In the United States a powerful public health lobby had emerged in the first ten years of the new century. Medical data generated on the connection between venereal disease and prostitution, and the moral interpretations given to it by such organisations as the American Society of Sanitary and Moral Prophylaxis (ASSMP) and the American Federation of Sex Hygiene (AFSH), filtered into Canada through both medical journals and publications of the anti-white slavery movement.¹⁴⁴ That information combined with developing anxieties of mental hygienists. Mental hygiene had roots in hereditarian, deterministic notions of the genetic transmission of moral, intellectual, and mental as well as physical characteristics. Sutherland has aptly described such theories as "an amalgam of humanitarianism, patriotism, science and pseudo-science."¹⁴⁵ The movement sought to prevent dilution of blood and genes by those of inferior breeding.¹⁴⁶

275.

¹⁴⁰ In 1920 the penalty for procuring which had been set at a maximum of five years in 1909 was increased to ten: *Criminal Code Amendment Act*, S.C., 1920. c. 43, s. 18.

¹⁴¹ N.W.C., *supra* note 91 (1914-1920); W.C.T.U., *Proceedings* (1916).

¹⁴² NAC, Canadian Council of Churches Collection, Social Service Council of Canada, *Minutes of the Annual Meeting 1918*, at 17.

¹⁴³ J. Cassel, *The Secret Plague: Venereal Disease in Canada 1838-1939* (Toronto: University of Toronto Press, 1987) at 101-21.

¹⁴⁴ See Connelly, *supra* note 113 at 14-16 on the origins and work of the American medical hygiene organisations. The process of translation of medical knowledge from the United States to Canada is addressed by Cassel, *supra* note 143 at 101-21. For examples of American anti-white slavery literature available in Canada, see Bell and Roe, *supra* note 118.

¹⁴⁵ Sutherland, *supra* note 76 at 72.

¹⁴⁶ *Ibid.* at 73.

In the medico-moral discourse that emerged in Canada, the two elements of medical and mental hygiene together produced a compelling “scientific” argument for the state to take vigorous proactive steps to fight venereal disease and to regulate and where necessary suppress activities of known prostitutes labelled as the primary source of contagion.

Anxiety about venereal disease, largely an abstract element in public discourse earlier, reached a peak during World War I, as medical examination revealed infections of a significant minority of the country’s fighting men, both at home and abroad.¹⁴⁷ The federal response was institutional in wartime, through emergency legislation of venereal disease control areas. Meanwhile the provinces enacted suppression statutes, which afforded sweeping powers to public health authorities. The powers included the medical examination of persons convicted of *Code* or provincial offences who were suspected of having venereal disease. Where infection was found, treatment and detention continued until subjects were considered safe for release by prison authorities. Further, those infected with venereal disease who failed to seek treatment were subject to prosecution and, if found guilty, to fines.¹⁴⁸ This draconian legislation was justified not only in terms of physical but also moral dangers to the community. Contemporary psychiatric thinking suggested a close link between prostitution and mental deficiency. As Dr. C.K. Clarke, Dean of Medicine at the University of Toronto, put it:

To the psychiatrist it is plain that the sin [of infection and reinfection] is to be laid at the doors of a system which fails to make proper provision for the detection of the multitudes of mental weaklings who drift into prostitution, just as surely as a chip floating down a rapid stream must inevitably go over the rapids which await it.¹⁴⁹

The particular culpability of prostitutes for spreading disease was accentuated by much of the propaganda and educational material put out by public health and mental hygiene agencies, particularly the National Council for Combatting Venereal Disease.¹⁵⁰ “Feeble-mindedness,” a term embracing everything from clear insanity to teenage rebelliousness and mild eccentricity, quickly became the code word for deviant qualities of the working class, and especially its female members.¹⁵¹ The loca-

¹⁴⁷ S. Buckley and J. Dickin McGinnis, “Venereal Disease and Public Health Reform in Canada” (1982) 63 *Canadian Historical Review* 337 at 338.

¹⁴⁸ *Venereal Disease Prevention Act*, S.A., 1918, c. 50; *Venereal Disease Suppression Act*, S.B.C., 1919, c. 88; *Venereal Disease Prevention Act*, S.O., 1918, c. 42. This legislative process was assisted by the publication of two Royal Commission reports in Ontario conducted by a Court of Appeal justice: F. Hodgins, *Interim Report of Royal Commission of Venereal Disease* (Toronto: King’s Printer, 1918); *Report of Royal Commission on Venereal Disease* (Toronto: King’s Printer, 1919); *Report of Royal Commission on the Care and Control of the Feeble Minded* (Toronto: King’s Printer, 1920). As a complementary measure to the provincial legislation, the *Criminal Code* was amended in 1919 to make it an offence “knowingly” or “by culpable negligence” to communicate venereal disease to another: *Criminal Code Amendment Act*, S.C., 1919, c. 46, s. 8.

¹⁴⁹ C.K. Clarke, “Juvenile Delinquency and Mental Defect” (1920) 2 *Canadian Journal of Mental Hygiene* 228 at 229.

¹⁵⁰ Buckley and McGinnis, *supra* note 147 at 348-49.

¹⁵¹ The dangers of feeble-mindedness were stressed in particular by Judge Emily Murphy, the first female magistrate in the British Empire who sat in Edmonton from 1916: see E. Murphy “A Straight

tion of this pathology in scientific discourse clothed it with an aura of legitimacy that appealed to moral reformers. The latter joined with the professionals in applauding venereal disease legislation, supporting plans for greater control and constraint of the "mentally defective."¹⁵² For their part the police welcomed a new weapon for their arsenal and an expanded mission in harassing and manipulating the lives of prostitutes. They willingly collaborated with public health doctors in launching prosecutions or ensuring that those convicted of other offences were examined and detained in gaol until certified as being free of infection.¹⁵³

By 1920 vice, as a war between good and evil, had become central to Canadian social discourse. In legal terms it had been translated from a marginal species of social irritant, dealt with under the vagrancy laws, to a corrosive form of social disease which warranted harsh treatment by tough proscriptive provisions in the *Criminal Code* and harsh regulatory provisions in provincial legislation. This transformation, achieved over a period of 70 years by moral reformers, presumed that social controls were not adequate to induce change among the lower orders and protect middle class values. They injected into public debate an increasingly alarmist set of discourses about the adverse moral and social effects of vice. In a decade marked by major changes in laws relating to prostitution, the institution of nationwide liquor prohibition and the deployment of social gospel and social purity activists in combatting a wide range of social and moral issues, there seemed to be every reason for rejoicing within reformist ranks.

V. Realities of Enforcement of Anti-Vice Laws

The upbeat mood was in fact misplaced regarding sexual immorality. Records of arrests and prosecutions during the 1910s suggested that, despite optimistic assumptions of moral reformers, the amended law was in part being used for other, more conservative purposes.¹⁵⁴ National crime statistics for the period showed a noticeable increase in prostitution law enforcement during the decade, especially between 1913 and 1915. For example, the national rate for all bawdy house convictions doubled between 1910 and 1915 from 2,814 to 5,469. The total figures for bawdy house offences was to increase after 1915, when keeping and being an inmate became indictable offences. However, the figures for those two offences dropped after 1916 (from 2814 that year to 823 in 1920), the slack being taken up by the highly flexible summary conviction offence of being a "found in." Annual convictions for procur-

"Talk on the Courts" Maclean's Magazine, 1 October, 1920 at 57. On Murphy's social and legal philosophy as a magistrate, see J. McLaren, "Maternal Feminism in Action—Emily Murphy, Police Magistrate" (1988) 8 Windsor Yearbook of Access to Justice 234.

¹⁵² A. McLaren, *supra* note 89 at 28-45.

¹⁵³ The prosecution approach seems to have been pursued extensively in Toronto: see, Toronto City Archives, *Annual Report of the Chief Constable, 1920 et seq.*, Appendix C. In Calgary by contrast the strategy was to concentrate on those charged with other offences, especially prostitution related crimes. See Calgary City Archives, *Annual Report of the Chief Constable, 1919, 1939.*

¹⁵⁴ J. McLaren, *supra* note 90 at 84-101; J. McLaren and J. Lowman, "Enforcing Canada's Prostitution Laws, 1892-1920: Rhetoric and Practice" in M. Friedland, ed., *Securing Compliance: Seven Case Studies* (Toronto: University of Toronto Press, 1990) 21 at 38-54.

ing, including living on the avails, which were not recorded prior to 1911, reached double figures that year at 16, climbing to 66 in 1914. Convictions for abduction and seduction were in the double figures throughout the 1910s reaching highs of 26 and 59 respectively in 1914 and 1915. Furthermore, there seems little doubt that this burst of prosecutorial activity was brought on in large part by the social purity campaign.¹⁵⁵ However, behind these national statistics, enforcement in particular communities offered scant evidence that the “progressive” objectives of the reformers were carried through.

Récords in Vancouver, Calgary and Toronto revealed that most charges of keeping a common bawdy house, primarily designed to get at vicious institutional exploiters, were laid against the operators of small brothels, houses of assignation or street walkers.¹⁵⁶ In both western cities the evidence suggested that a significant proportion of charges were laid against single prostitutes working out of rooms in apartments, hotels or rooming houses: individuals who could just as easily have been charged with street walking, because it was the street that provided initial contact with customers.¹⁵⁷ In Toronto more males were arrested for brothel keeping but most charges were against couples operating small houses of assignation in working class districts. One looks in vain for palaces or prisons of vice which featured so much in reformist rhetoric.

Arrest and prosecution records suggested that police imperatives meant that they still avoided vigorous action against exploiters, while continuing their traditional function of “keeping the lid” on working class deviance and engaging in public relations exercises for their middle class masters, proving firm commitment to resolute enforcement. The fact that fines by far outnumbered prison sentences for conviction of keeping a common bawdy house suggested that the magistracy still viewed it as an irksome nuisance to be informally regulated by fiscal penalty. Few magistrates deemed it a major social problem to be suppressed by the harsher sanction of imprisonment.¹⁵⁸ Both George Denison of Toronto and Gilbert Sanders of Calgary seemed to fit the mould.¹⁵⁹ They saw vice as the inevitable product of the

¹⁵⁵ J. McLaren, *supra* note 90 at 86–87.

¹⁵⁶ Calgary Police Archives, Prisoner Record Book, 2 vols., 12 October 1918 - 8 October, 1920; Toronto City Archives, Register of Criminals, 6 vols., 1912–20; Vancouver City Archives, Prisoner Record Books, 2 vols., 1912–17. The female-male ratio was 4:1 in Calgary; 10:1 in Vancouver and 2:1 in Toronto. For discussion of prostitution in these cities during the 1910s, see E. Langdon, “Female Crime in Calgary, 1914–1941” in L. Knafle, ed., *Law and Justice in a New Land: Essays in Western Canadian Legal History* (Calgary: Carswell Ltd., 1986) at 293–304.; L. Rotenburg, “The Wayward Worker: Toronto’s Prostitute at the Turn of the Century”, in J. Acton, P. Goldsmith and B. Shepard, eds., *Women at Work: Ontario 1850–1930* (Toronto: Canadian Women’s Educational Press, 1974) 57; Nilson, *supra* note 126.

¹⁵⁷ McLaren and Lowman, *supra* note 154 at 44–47. This is particularly noticeable in the Vancouver records in which addresses of the arrest location were given. Of 378 arrests for keeping a common bawdy house during the period 1912–17, at least 96 (25.4%) took place in rooming house rooms, apartments or hotel rooms. These were clearly arrests of women who had picked up customers, often police decoys, on the street.

¹⁵⁸ *Ibid.* at 49–50, for an analysis of Denison’s sentencing pattern for the keeping offence between 1879 and 1921.

¹⁵⁹ G. Homel, “Denison’s Law: Criminal Justice at the Police Court in Toronto, 1877–1921”

inbred immorality of the lower orders, a condition unlikely to change. For them all that could reasonably be done was to use the criminal law and its penalties to keep it within manageable bounds. Police priorities and imperatives were more important in the scheme of things than social reform.

An analysis of those charged, and almost certainly of those engaged in exploitation of one form or another, both male and female, also produced a bad fit between suppositions of the reformers and the characteristics of those caught in the police net. Offenders were, in common with the prostitutes, disadvantaged or rootless individuals of working class background with little by way of educational attainment, and with employment experience limited to dead end, low paying jobs. Few, if any, matched the image of cunning and devious fiends who featured so often in the demonology of the social purists. The records also revealed that, while a small minority of those charged with exploitation had the ethnic characteristics associated by reformers with white slavery, typically east Europeans and Asians, the vast majority were born in North America and caucasian by race.¹⁶⁰

VI. Gaps between Legislative Reforms and Enforcement Realities

Two complementary explanations existed for the gap between assumptions which expanded oppressive laws on prostitution-related conduct in the 1910s and the pattern of law enforcement during the same period.

First, the nature of the problem in Canada identified by social purists was to a significant degree imaginary. Although prostitution clearly involved exploitation, as in all patriarchal societies, its most notorious forms were of a very different order from the picture of vice syndicates painted in anti-white slavery propaganda.¹⁶¹ At that time prostitution as a trade involved mainly the operations of small independently run brothels and the wiles of individual pimps and procurers. Admittedly, prostitution had its share of "camp followers," the taxi drivers, bell hops and desk clerks who profited from the business; but none of this was the big business which most reformers perceived to be behind commercialised sex.¹⁶²

(1981) 73 Ontario History 171; T. Thomer and N. Watson, "Keeper of the King's Peace: Colonel G.E. Sanders and the Calgary Police Magistrate's Court 1911-1932" (1984) 12 Urban History Review 45.

¹⁶⁰ *Ibid.* at 91-93, 96-97, 99-101; J. McLaren, *supra* note 90, at 94-6, 100; McLaren and Lowman, *supra* note 154, at 46-8.

¹⁶¹ For a helpful treatment of the construction of "white slavery" as a mode of discourse in the Canadian context, see Valverde, *supra* note 88 at 88-89.

¹⁶² *Report of the Social Survey Commission* (Toronto: Carswell, 1915) at 9-14 provides the prosaic details of the trade in Toronto at that time. See also *R. v. Ames* (1913, Appeals Book) British Columbia Archives and Records Services [hereinafter BCARS], Department of the Attorney-General, Vault Register, 1913 # 10, (taxi driver convicted of procuring). The Social Survey Commission which comprised a "blue ribbon" group of reformers actually posed the question of whether the "white slave traffic" existed in Toronto. Having defined it as the luring of innocent girls into immoral lives by force or fraud, the commission concluded that such cases were rare in the city and that most prostitutes were operating on their own account. As a result, they suggested that there was no warrant in claiming that "white slavery" flourished there.

The reform movement was predominantly middle class and female. Womens' voices, especially in the ranks of rescue workers, had earlier shown some understanding of the economic and social privation driving many women into prostitution. However, with a growing realisation that rescue work and socialisation strategies were not having significant positive effects, and that state action was therefore required, this discourse began to fade. Reformist discourse, increasingly dominated by male social purists, especially Samuel Chown and John Shearer, redefined the causes of prostitution away from the social strains and stresses of capitalism towards external menaces and the mental and moral insufficiency supposedly natural to working class women. The fantasising drew on a rich and melodramatic folklore of white slavery fears, increasing in intensity as middle class girls and women, especially those showing independence in seeking employment and life apart from their families, were seen to be at risk. In fact there was little evidence of middle class girls and women being involved in the trade at that time in any way.

The reformist mindset found it difficult to accommodate working class women who had fallen from grace because it assumed their state originated in moral deficiency. The Reverend Samuel Chown, for instance, saw a great gulf between the daughter of a deceased Methodist minister who had taken to prostitution to support her ailing mother and the Alberta "strumpet," mentioned earlier, whose past and present were too sordid to contemplate.¹⁶³ The former carried with her some middle-class gentility and was reclaimable. The latter, with no redeeming social virtues, was beyond the moral pale.

Worries about bourgeois virtue endangered were intertwined with a strong racist and nativist sentiment which saw any group lacking white, Anglo-Saxon, protestant values as potential agents of moral contagion and sexual perversion. Chinese, Japanese, East Indians, Africans, Jews, Italians, Slavs all were singled out for blame at one time or another, although only the Chinese and Japanese felt the sting of discriminatory provincial laws designed to keep white women out of their clutches.¹⁶⁴

By the World War I decade about the only group articulating a class and gender analysis of sexual vice were left wing radical feminists, such as Flora MacDonald Denison.¹⁶⁵ These women, often single or separated, felt themselves independent of men and deeply committed to fundamental changes in the socio-economic system which, they believed, were the only way to improve the lot of women and redress

¹⁶³ *Supra* note 120.

¹⁶⁴ Legislative steps were taken by some provinces to protect white female virtue from the supposed dangers to it in the employment of white women by Asian men. See, *Act to Prevent employment of female Labour*, S.S., 1912, c. 17 (as amended); *Act to prevent the employment of female Labour in certain capacities*, S.M., 1913, c. 19; *Act to Amend the Factory, Shop and Office Act*, S.O., 1914, c. 40, s. 2 (as amended); *Municipal Amendment Act*, S.B.C., 191, c. 63, s. 13. The Saskatchewan legislation originally referred to "Japanese or other oriental person." Reference to Japanese was deleted in 1913 after representations by the Japanese government (S.S. 1912-1913, c. 18). Manitoba's enactment made specific mention of Chinese and Japanese. The other two jurisdiction referred expressly or implicitly to Chinese.

¹⁶⁵ See D. Gorham, "Flora Macdonald Denison: Canadian Feminist" in L. Kealy, *A Not Unreasonable Claim* (Toronto: Women's Press, 1979); Bacchi, *supra* note 84 at 30-39.

the power imbalance which characterised gender relations generally. Of the view that all dependent women, but especially prostitutes, were victims of the patriarchal system,¹⁶⁶ the criminal law should not be used to punish prostitutes but to pursue and penalise exploiters.¹⁶⁷

As Mrs. Denison found to her cost when W.A. Coote objected to her "materialist" and gender analysis of prostitution at an N.C.W. conference in 1912,¹⁶⁸ this line of thinking lay well outside the mainstream of reformist opinion. That opinion could not stomach suggestions that the causes of prostitution lay within as opposed to outside the structure of Canadian society.¹⁶⁹ Janice Newton's essay on male socialist attitudes towards prostitution, which stressed its economic roots in capitalism while excusing the use of prostitutes by working class men as unable to afford the costs of married life, suggested a similar resistance to radical feminist discourse in that quarter as well.¹⁷⁰

Nobody apparently thought to ask what prostitutes felt. As a subject group, marginalised and despised, they were voiceless. To the extent that we have evidence of what adult prostitutes might have thought, as we may in the letters of a former prostitute, Maimie Pinzer to Mrs. Fanny Howe, a member of one of Boston's Brahmin families, it suggested that they understood the reasons for their taking up "the life." They recognised its dangers but reacted unfavourably to attempts by reformers, who they felt had at best a limited appreciation of their problems, to reclaim them through sermonising and imposed "moral uplift."¹⁷¹

The second explanation had to do with police and magisterial ideology. Although policing of prostitution stepped up during the 1910s, police priorities clearly differed from those of reformers. In the emotional climate created by social purists, police forces at least had to show resolve in dealing with commercialised vice. It was no longer possible, as Edmonton as police chief, A.C. Lancey, found to his cost in 1914 to be seen to be practising toleration. The chief was fired for condoning "segregated" prostitution while staging high-profile but ineffectual raids.¹⁷² However, police had no illusions that they were or could be agents of moral reform. In the first place, they did not believe much of the white slavery rhetoric spouted by advocates of moral renewal. Indeed, as 1912 discussions of the Association of Chief Constables of Canada revealed, they could be petulant about the misinformation on moral condi-

¹⁶⁶ Bacchi, *supra* note 84 at 35-36.

¹⁶⁷ *Ibid.* at 14

¹⁶⁸ N.C.W., *supra* (1912) note 91 at 52-54. In contradicting Denison who had suggested that the roots of prostitution were primarily economic, Coote ascribed it to sloth and greed on the part of the women involved.

¹⁶⁹ Bacchi, *supra* note 84 at 24-29; W. Roberts, "'Rocking the Cradle of the World': The New Woman and Material Feminism" in Kealy, ed., *supra* note 165.

¹⁷⁰ J. Newton, "From Wage Slave to White Slave: The Prostitution Controversy and the Early Canadian Left" in L. Kealy and J. Sangster, eds., *Beyond the Vote: Canadian Women and Politics* (Toronto: University of Toronto Press, 1989) at 217.

¹⁷¹ R. Rosen, ed., *The Mamie Papers* (Old Westbury: Feminist Press, 1977). Ms. Pinzer lived in Montreal for some time during which she sought to assist prostitutes.

¹⁷² Gray, *supra* note 64.

tions in cities and towns which they believed the most zealous reformers spread.¹⁷³ Secondly, they still adhered to the socially conservative view that vice could be contained but never eliminated. As their use of the exploitative offence of keeping a common bawdy house, and their enthusiastic cooperation with public health officials in arresting prostitutes for contravention of the venereal disease laws shows, they willingly used the harshness of reformed law to establish and maintain control over the streets and their denizens. However, they demonstrated a chameleon-like ability to appropriate and slough off discourses on prostitution, whenever it suited their purposes. This philosophy of policing reflected a series of pragmatic considerations, including demands on time and resources of more serious criminal conduct and the value of bawdy house operators and prostitutes as informants about other forms of criminality. Moreover, police claimed they faced difficulty securing successful prosecutions, both against visible exploiters and the shadowy figures who rarely came into view: owners of premises notoriously used as brothels, houses of assignation and doss houses.

The line of least resistance for the police in their dual objective of keeping order on the streets and supporting the policy of suppression, lay in the use of vagrancy and nuisance laws offering the widest discretion in discriminating against prostitutes. As the most visible and vulnerable parties in the trade, they were easy targets for police arrest or harassment when the moral heat was on.

That the police had their own agenda was evident from two sources of contemporary criticism. The Social Survey Commission (Toronto's vice commission) in 1915 chastised both the Police Commission and the Chief Constable for lax enforcement against street walkers and disorderly houses in immigrant areas of the city.¹⁷⁴ Alberta's Justice Nicholas Beck of the Supreme Court castigated Calgary police for the use of decoys to charge prostitutes with the keeping offence, which he described as "the hypocritical and pharisaical pretence of being zealous in extirpating public vice by the secret adoption of the same vices."¹⁷⁵ Police policies drew support from most magistrates who shared their conservative view of the durability of vice. By virtue of their service on police commissions, magistrates tended to identify with police operational priorities.¹⁷⁶

VII. Conclusions

The end of World War I brought the acme of the social purity crusade in Canada. During the 1920s and 1930s moral concerns embedded in the *Criminal Code* faded with adverse reaction to the "politics of moral uplift," engendered by the cynicism

¹⁷³ *Proceedings of the Eighth Annual Meeting of the Chief Constables Association of Canada*, 1912, Brantford, Ontario, at 9–13. See also the comments of Chief Williams of the London, Ontario Police in *Proceedings of the Ninth Annual Meeting of the Chief Constables Association of Canada*, 1913, Halifax, 48–50. The Chief challenged the reformers to show him a case of white slavery.

¹⁷⁴ *Social Survey Commission*, *supra* note 162 at 23–28.

¹⁷⁵ *R. v. Marceau* (1915), 23 C.C.C. 457 (Alta S.C.), referring to *R. v. Miller* (1913), 25 C.C.C. 151 (Alta S.C.).

¹⁷⁶ A notable exception were the early female magistrates who were concerned to treat the pathology of crime and deviance: see McLaren, *supra* note 151.

and the social and economic stresses of the post-war period. The repeal of prohibition, which John H. Thompson has described “as the most spectacular failure among middle class attempts to smooth Canada’s path to industrial capitalism,” the absence of common cause among recently enfranchised women voters on social and moral issues, and the increasing shift to professionalisation of social work effort further isolated moral crusaders.¹⁷⁷ Despite retention of much of the moral agenda in the criminal law, which federal politicians viewed, and still seem to view, as a sort of “moral bottom line” below which formal legal policy cannot be allowed to fall, the ideology of the law in action remained controlled by the police and magistracy.¹⁷⁸ The police continued to manipulate various options in the criminal law and to ally with public health authorities to utilise procedures for arrest and detention established in venereal disease control legislation.¹⁷⁹ By the 1990s, use of a harsh regulatory régime to deal with sexually transmitted diseases had been largely abandoned, but the police by manipulating the *Criminal Code* continued to be the only effective agents of social and legal policy against prostitution. Mainline churches have long since left the scene and moral reform groups have been replaced by new constellations of social action, for whom prostitution has not been a burning issue. New secular groups representing communities adversely affected by the sex trade have emerged to voice their concern. However, their legal strategy has been to pressure the police to use the law more vigorously against all the players — pimps, customers and prostitutes — with the often limited objective of moving commercial sex away from their neighbourhoods.

Reasons for the demise of the legislative crusade to outlaw prostitution in Canada, and the triumph of a policy of containment, are not hard to find. In the first place a majority of moral reformers misread the sex trade and what propelled people, especially women, into it. Social purists were quite capable of examining the problem of vice and its causes. They did it with increasing regularity and intensity during the period examined. However, for the most part these analyses ignored the extent to which prostitution was associated with the privation caused by economic policies and social structures that marginalised poor women and maintained patriarchy. The inequities of the class system and their conjunction with gender discrimination were not factors in the reform calculus. Instead it tended to focus on the moral shortcomings and irresponsibility of those caught in a web of vice. Even where degraded social conditions and straightened economic circumstances were exposed as causes of prostitution, reformers applied a middle class prism to the situation and found it difficult to resist moralising and sermonising to the “victims of vice,” according to scripts stressing the need to strive for “virtue,” “uplift” and “betterment.”

¹⁷⁷ J. Herd Thompson, *Canada 1922–1939: Decades of Discord* (Toronto: McClelland & Stewart, 1985) at 57–58.

¹⁷⁸ McLaren and Lowman, *supra* note 154 at 66–68.

¹⁷⁹ Predictably, it was in the next period of national emergency, World War II, that the police and public health authorities were most active. Prostitution as a source of venereal disease was even characterised as a domestic “fifth column”: see D. Williams, “The Suppression of Commercialised Prostitution in the City of Vancouver” (1941) 27 *Journal of Social Hygiene* 364.

Even now Canadian society is not free of this capacity for being judgmental about the sex trade and those who engage in it. True the militant moral reformism of the early decades of this century has been replaced by scientific and bureaucratic professionalism. Moreover, the rhetoric of class division is far more muted. However, some of the stereotypes of that era about gender, class and sexuality remain, with the result that the stigma of moral and social blame continues to be attached to those who do not fit what are supposed to be middle class norms of responsible behaviour.¹⁸⁰ Professional "scientific" assessments of what induces girls and women to become prostitutes can be quite as judgmental about motives and impulses as the amateur moral speculations of the social purists were.¹⁸¹

Secondly, the moral reformers demonstrated naivety about expectations and realities for policing in North America.¹⁸² Following a skeptical tradition inherited from Britain, which fit easily into the discourse of North American liberalism, the notion of a professional police force was viewed in the late eighteenth and early nineteenth centuries with horror, smacking of continental European state repression. When professional policing came to be accepted by the mid-nineteenth century, as necessary to protect dominant social and economic interests and to control the "brooding masses," fears about police repression at the whim of the political executive urged adoption of an alternative administrative model, which gave a great deal of operational autonomy to the police.¹⁸³ The result was, and continues to be, that police ideology and pragmatic politics favour the availability of wide discretion in managing legal and social policy. Nowhere has this been more evident than in the case of prostitution law enforcement. Recent studies show the phenomenon to be as true today as it was in 1915.¹⁸⁴

¹⁸⁰ Gorham, *supra* note 77 at 378-379; D. Chunn and R. Menzies, "Gender, Madness and Crime: The Reproduction of Patriarchial and Class Relation in a Pre-trial Psychiatric Clinic" (1990) 1 *Journal of Human Justice* 33.

¹⁸¹ This phenomenon is explored in the context of other aspects of "aberrant" sexuality in Foucault, *supra* note 3.

¹⁸² McLaren and Lowman, *supra* note 154 at 71-75.

¹⁸³ G. Marquis, "Power from the Street: the Canadian Municipal Police" in R.C. Macleod and D. Schneiderman, eds., *Police Powers in Canada: The Evolution and Practice of Authority* (Toronto: University of Toronto Press, 1994) 24 at 27-29.

¹⁸⁴ *Report of the Special Committee on Pornography and Prostitution*, vol. II (Ottawa: D.O.S.S., 1985) 530-38; J. Lowman, "Prostitution in Vancouver: Some Notes on the Genesis of a Social Problem" (1986) *Canadian Journal of Criminology* 1; J. Lowman, *Street Prostitution: Assessing the Impact of the Law* (Ottawa: Department of Justice, 1989).