VAGRANCY AND THE VICTORIANS:
THE SOCIAL CONSTRUCTION OF THE VAGRANT IN MELBOURNE, 1880-1907

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(This thesis does not exceed 100,000 words.)
In Memory of my Father
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ABBREVIATIONS

COS: Charity Organization Society
MCPS: Melbourne Court of Petty Sessions
NVLMS/ILMS: No visible lawful means of support/ Insufficient lawful means of support.
VDPAS: Victorian Discharged Prisoners' Aid Society
VPD: Victorian Parliamentary Debates
VPP: Victorian Parliamentary Papers
VPRS: Victorian Public Records Series
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ABSTRACT

In Melbourne between 1880 and 1907, the construction and propagation of a vagrant stereotype and its manifestation in law, constituted an important means of controlling the behaviour of individuals and groups who were perceived to be socially undesirable or economically burdensome. The construction and application of this stereotype, designated particular individuals as lazy, cunning and immoral, and was inextricably connected to the inter-related hierarchies of class and gender. Men and women who were categorised and condemned as vagrant were almost exclusively members of the working-class, while those who shaped and applied the vagrant label were almost invariably members of the bourgeoisie and/or representatives of the state. In the majority of cases, those who were designated as vagrant were condemned partly because they failed to conform to accepted patterns of male and female behaviour - patterns which reflected middle-class notions of respectability. Whereas men were condemned primarily for failing to participate in the labour market, women were principally criticised for sexual impropriety and for other forms of unfeminine behaviour. The members of five particular groups were at risk of being judged vagrant: prostitutes, juveniles, professional criminals, those who followed a traditional vagrant lifestyle, and the elderly, ill and impoverished.

Throughout the 1880s, the buoyancy of Victoria's economy, the relative prosperity of the majority of the colony's citizens, together with their conservative belief
in the ideals of self-help and material progress, created a climate in which distinctions between the respectable and the vagrant could be readily drawn. The depression of the 1890s, however, blurred this distinction and the arbitrary manner in which men and women were convicted and gaol as vagrants became the subject of widespread public concern. Arrests and convictions for vagrancy declined as the judicial regulation of police activities, and the introduction of non-penal strategies including village settlement schemes, labour colonies and the old age pension, shifted the basis of social control away from a repressive reliance on the law to the use of more extensive and subtle mechanisms. This transformation in the means of social control paved the way for the eventual re-implementation of the vagrancy law in 1907.
'Thoughts are vagrants which must be diligently watched for, caught, examined, whipped and sent on their way.'

Thomas Goodwin

INTRODUCTION

On 1 August 1888, the people of Melbourne gathered to celebrate the opening of the Centennial Exhibition. The occasion was marked by a procession of over 17,000 men and women, including vice-regal guests, and members of the Navy, Military, Fire Brigades, Trades Societies and Friendly Societies, through the city streets.1 As the procession wound its way from the Town Hall to the Exhibition Buildings, it was cheered on by some 75,000 spectators.2 The Exhibition itself was lauded as 'a celebration by the people for the people'.3 Extending over 33 acres and featuring lavish exhibits of fine arts, machinery and handicrafts from all over the world, it was regarded as marking a new level of achievement in Melbourne's brief but exuberant history.4 The colony's cultural and material advancement was attested to. At least for a moment, the new world stood equal to the old.

But if Melbourne rivalled the old world's achievements, it also shared its woes. While each day visitors flocked to see the Exhibition, only a mile or so away, a

1 Official Record of the Centennial Exhibition, Melbourne 1890, pp.200-3; The Argus, 2 August 1888, supplement p.3; The Age, 2 August 1888, p.7.

2 Sydney Morning Herald, 2 August 1888, p.8.

3 Daily Telegraph, 2 August 1888, p.4.

gathering of a different sort reflected a world far removed from grandeur and gaiety. In the austere surroundings of the Melbourne Court of Petty Sessions, a parade of society’s accused continued to be regularly enacted. It was a scene mirrored in suburban courts throughout the colony, a practice of long standing. Thieves, prostitutes, drunkards and gamblers, transgressors of all descriptions, were brought before the bench so that judgment could be passed upon them. Each day of the week, with the exception of Sunday when the court did not sit, the presiding magistrates would usually hear between 30 and 60 cases. Following weekends or days of festivity, this number would swell, sometimes to well over 100. And whatever the day or number of cases, the magistrates could be virtually assured that at least one or two people charged under Victoria’s vagrancy law would be amongst those brought before them.

The individuals who were recognised as vagrants by the legal system, and by Melbourne’s respectable citizenry, constituted a motley collection. Amongst them were individuals of all ages, both males and females, the able-bodied and the ill. They came from a variety of birthplaces and followed different religions and occupations. Some were first offenders; others were experienced lawbreakers. Yet these differences were masked by the well-worn but ever pervasive image of the vagrant. Through the application of the vagrancy label, such individuals were cast as the members of a dishonourable underclass, and their perceived transgressions conveniently attributed to a personal lack of will or moral fibre.
Like most things colonial, the vagrant stereotype was derived from Britain. It depicted the homeless, the poor and the unemployed as lazy, cunning and immoral. Extensive legislation invested the stereotype with legitimacy and authority, and ensured that those who were deemed to be vagrants, could be formally punished. The stereotype, and its legal expression, provided a mechanism through which individuals who were perceived to be disorderly and non-productive could be differentiated from those who appeared hard-working and conformist. In a society promoted as a 'workingman's paradise', one free of the miseries of the old world, impoverished and idle people were viewed with particular intolerance. The belief that the poor had only themselves to blame for their plight was partly perpetuated through the acceptance of the vagrant stereotype and the constant sanctioning of individuals under the vagrancy provisions.

The modern sociological definition of vagrants as 'itinerant persons, either single or effectively single, using accommodation for transients' is ineffective as a basis for the historical study of vagrancy. It fails to identify the negative connotations underlying the term and its use. Moreover, it suggests that the concept of vagrancy is easily defined and is unchanging over time. On the contrary, it is the constructed nature of the concept, and the inherent flexibility in its use by authorities, that has ensured its

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5 The image of the 'workingman's paradise' was used to attract emigrants to the colonies in the early nineteenth century. It played a central role in the transformation of the penal colonies into free societies. Richard White, *Inventing Australia*, George Allen & Unwin, Sydney, 1981, pp.29-37.

survival. The challenge for the historian is to explain how the term vagrant has been constructed in different ways, so as to make it relevant to different people, at different times, in different places.

This thesis explores the way in which vagrants were defined, perceived and treated in Melbourne between 1880 and 1907. It addresses a number of central questions: How was the image of the vagrant constructed, and by whom was it constructed? What purpose, and indeed whose purposes, did the image serve, and how was it practically expressed and utilized? What characteristics were ascribed to vagrants and how did these relate to social attitudes and standards within the broader community? Who were the people most likely to be identified as vagrants and why? By what process did they come to be recognised as such? What were the consequences of this process for individuals who were deemed to be vagrants and for the society as a whole?

In answering these questions, particular attention is paid in this study, to the Victorian vagrancy laws, and to the interactions between vagrants and public and private institutions. There are two reasons for this. The first relates to the definition of vagrants and vagrancy. While some individuals in nineteenth century Melbourne may have recognised themselves as members of a distinct vagrant subculture, the category of 'vagrant' essentially remained an elaborate construct employed by particular segments of the community to highlight the social undesirability of other groups and individuals. The legal system provided the most obvious and powerful means for
designating and punishing individuals as vagrants. The vagrancy provisions, in both their framing and their administration, encapsulated the assumptions and beliefs that underlined the vagrant stereotype. Legislators, policemen and magistrates inherited a particular understanding of vagrancy, but they also shaped this understanding to suit their own interests and the changing colonial context. The next most significant translators of the vagrant stereotype were the representatives of mainstream charitable organisations and institutions. They insisted upon drawing a clear distinction between the deserving and undeserving poor, and regularly identified as vagrants, those individuals who failed to meet their stringent criteria. Religious leaders, journalists, businessmen, doctors and administrators were also significant in shaping, reinforcing and purveying conceptions about vagrancy and vagrants.

The second reason for focusing upon the interactions of vagrants with the legal system and private and public institutions, relates to the methodological problem of identifying and tracing vagrants. Like most other predominantly non-literate or underprivileged groups, vagrants have left few records of their own. Indeed their existence has generally only been documented when they have come into contact with formal structures and procedures. Details of their identity and circumstances must therefore be gleaned from the records of the police, courts, gaols, charitable institutions and lunatic asylums with which they had dealings. The nature of these sources has both advantages and disadvantages for the historian. Because vagrants had frequent contact with such institutions, references to them in the formal records produced by these agencies are numerous and often quite detailed. They provide vital information
about the experiences and circumstances of those individuals who were deemed to be vagrants, and also illuminate the way in which they were perceived and defined by others. But these sources must be approached with caution, for, as Tawney reminds us, the history of the vagrant 'is inevitably written by his enemies.' Institutions and their representatives provide the perspectives through which vagrants are normally seen. Since these perspectives have been shaped and limited by bureaucratic practices and the idiosyncracies of the recorders, they tend to reveal more about the observer than the observed.

Three related concepts - social control, class and gender - have been used to analyse the construction and management of vagrancy in late nineteenth and early twentieth century Melbourne. The concept of social control was first used in 1901, by the American sociologist, E.A. Ross. He proposed that social order was maintained through two types of social control: 'ethical' controls - such as public opinion, suggestion, personal ideals, religion, and social valuation - which sprang from moral feelings, and, through consensus, aimed at achieving moral order; and 'political' controls - the law, belief, ceremony, education and illusion - which had no ethical basis,

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8 A more detailed discussion of the methodology employed in this thesis and the broader problems associated with the study of vagrancy is provided in Appendix One.

9 The concept of race could not be developed in this thesis. Very few of the individuals who were identified as vagrants in Melbourne during this period were of non-Anglo-Saxon origin. Little detail has survived about those who were. It is important to note, however, that vagrancy is one of the street offences most commonly used to arrest Aborigines in Australia today.
but which were expressed in policy and could be manipulated by particular groups for their own benefit. Ross's formulation has provided the basis for two traditions of social control theorising: one which stresses the consensual operation of society, and another which gives primacy to the coercive aspects of it.

Since the late 1960s, this latter understanding of social control has been used, both explicitly and implicitly, by social historians interested in the structure of society and the maintenance of social order. By focusing upon the nature and expression of power, and the coercive aspects of specific structures and institutions, these historians have provided an account of social process directly opposed to the reformist or progressivist history of earlier years. Critics of this approach have argued that the concept of social control has been too loosely used, with the consequence that the

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history produced has been ahistorical and reductionist. They have alleged that such historians have paid inadequate attention to individuals, and have presented the state and the bourgeoisie as unproblematic totalities able to exercise their will freely over a powerless and unresisting proletariat.\textsuperscript{12} But, as Donajgrodzki points out, the basic problem lies in the use of the concept rather than in the concept itself. He suggests that social control is not always part of a conscious or intended program, and that recognition of it by the historian does not demand that other motivations such as altruism or religious devotion be dismissed as false or hypocritical. To identify social control processes in religion, social work and leisure, 'is not to assert that the control element within each is necessarily its main characteristic, still less its only meaning'.\textsuperscript{13} The same can be said of the laws and philanthropic endeavours relating to vagrancy. Acceptance of the idea of social control does not commit the historian to a narrow and inflexible view of the past. By maintaining a sharp sense of the specific historical context it is possible to avoid the problems of ahistoricism and reductionism.

In Melbourne during the late nineteenth and early twentieth centuries, the


construction and propagation of a vagrant stereotype, together with the criminalisation of vagrancy, represented important means of controlling the behaviour of individuals who were perceived as socially undesirable. This process of social control was undeniably related to the concept of class. The vagrancy law, as part of the criminal law, was a means of achieving 'cultural and economic domination'. It was applied almost exclusively to working-class men and women, while those who shaped and utilised it were generally members of the bourgeoisie and/or representatives of the state. The circumstances and practices that were accepted as characterising vagrancy, and which were outlawed, were those usually associated with the working class. Poverty, homelessness and idleness, for example, went hand-in-hand with poor wages and insecure employment. Similarly, public drinking, swearing and illegal gambling were aspects of working-class, rather than middle-class, culture. The individuals who were categorised as vagrants almost invariably belonged to one of five distinct groups. Elderly, ill and impoverished people constituted one discernible group. Prostitutes, juvenile offenders, known criminals, and those individuals who followed a 'vagrant lifestyle' as a matter of choice or necessity, constituted the other four groups.

Consideration of Melbourne's changing socio-economic circumstances is vital to understanding the connections between vagrancy, social control and class. During the 1880s, unprecedented economic prosperity, and spectacular, though ill-founded, material expansion, brought Victoria's capital international fame and led to it being

dubbed 'Marvellous Melbourne'. Throughout the boom years, the categorisation and punishment of troublesome and idle individuals was widely accepted as both proper and necessary. Politicians, judges, law enforcers, moralisers and the majority of philanthropists warned that undisciplined and non-productive individuals posed a moral, as well as a physical danger, to society's well-being.

A downturn in the city's economic fortunes in the 1890s, prompted a significant change in the definition, perception and treatment of vagrants. Vagrancy arrests peaked in Melbourne in 1889-90, when political agitation by the unemployed was at its height, and the authorities appeared desperate to maintain some semblance of order. In the following two years, as economic conditions worsened and the social consequences of the depression became clearer, arrests continued at a relatively high level. By 1893, however, serious doubts were being raised about the propriety of convicting and gaoling, elderly, ill and destitute people, as vagrants. Middle class reformers had begun to recognise what members of the working class had long known - that the vagrancy law was used not only against the deliberately idle and criminal, but also against those who, through no fault of their own, had fallen on hard times. But it was not simply altruism that sparked this new-found concern. Critics of the practice pointed to the economic and social costs of imprisoning the innocent. Police use of the vagrancy law began to decline significantly in the early 1890s, as a consequence of heightened public

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15 George Augustus Sala, a well-known London journalist, first coined this phrase in 1885. In an article entitled 'Marvellous Melbourne', he claimed that it was gold, or rather the yearning for gold, which had made Melbourne marvellous. Stephen Murray-Smith (ed), The Dictionary of Australian Quotations. Heinemann, Melbourne, 1984, p.233. The original article by Sala was published in The Argus, 8 August 1885, p.5.
concern, and the actions of the judiciary in formally and informally regulating police powers in this area.

This decline in the use of the vagrancy law marked a transformation, rather than a lessening, of the means of social control. At the same time as the vagrancy provisions were being abandoned, new measures were being introduced to deal with those who could no longer be easily categorised and punished as vagrants. These included the establishment of labour colonies and village settlements in the 1890s, the introduction of a non-contributory old age pension scheme in 1900, and the medicalisation of the treatment of drunkards. These measures appeared to remove the genuinely unemployed and the elderly from the realm of the criminal law, and thus enabled the police to argue successfully for the introduction of stronger and more extensive vagrancy provisions early in the twentieth century.

Still, one must not assume that the state or the bourgeoisie constituted all-powerful totalities. Michael Ignatieff's comments about the ruling class in nineteenth century Britain are pertinent to the Australian context:

Unquestionably justices, members of parliament and philanthropists recognized each other as the rich and regarded vagrants, pickpockets, and the clamouring political mob as the lower orders, but their sense of 'we' versus 'they' was not enough to make the ruling class into a collective social actor. One can speak of a ruling class in the sense that access to strategic levers of power was systematically restricted according to wealth and inheritance, but one cannot speak of its acting or thinking as a collective historical subject.\(^\text{16}\)

\(^{16}\) Ignatieff, 'State, Civil Society and Total Institutions', p.94.
In Victoria, as in Britain, those who wielded power did not constitute a uniform group. While members of the government, moralists, philanthropists and businessmen continually spoke of the nuisance and threat posed by those who violated accepted standards of behaviour, they were often motivated by different factors and held quite different views. The state, too, did not function as a single entity. Although the legislature, police and judiciary were inextricably bound to each other, they operated within different spheres and reacted to different demands and motivations. In dealing with vagrancy, their relationship was more often marked by disagreement than by cooperation.

Similarly, those who were targeted by the vagrancy law should not be viewed as unprotesting victims. The working-class were integral to the demise of the vagrancy law in the late nineteenth century and were equally important in bringing about the introduction of alternative measures such as village settlement and labour colonies. This process of change supports Ignatieff's contention that 'new forms of the state are partly creations of those classes which they are intended to control.' Despite its weaknesses, the controversial work of Michel Foucault is useful in explaining this irony. In his works on methodology, penology, sexuality, mental illness and medicine,

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Foucault concentrates upon the relationship between power and knowledge, and its manifestation in language or discourse.\textsuperscript{19} He suggests that power is not confined to a particular group; that it is, in fact, everywhere and in everyone. He rejects the notion that power or resistance can be traced to a single source, and instead focuses upon the complex interactions of micro-powers. For Foucault, the state is not a single entity. He describes it, instead, as 'a composite result made up of a multiplicity of centers and mechanisms'.\textsuperscript{20} It is at the extremities of power, in the interactions between institutions and their targets, that Foucault believes that power 'installs itself and produces its real effects'.\textsuperscript{21}

The concept of gender provides another dimension to understanding the relationship between vagrancy, social control and class. Mainstream criminological and historical analyses of social control and crime have been rightly criticised for

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\textsuperscript{20} Alan Sheridan, \textit{Michel Foucault: The Will to Truth}, Tavistock, New York, 1980, p.217.

overlooking the importance of sex and gender considerations. They have assumed that men and women are subject to the same forms of control, and that male and female experiences of these do not differ. Feminist theorists have exposed the androcentrism of these accounts. Historians, including Jill Matthews, Joan Scott and Marilyn Lake, have argued that gender relations - that is, the interactions and power balances between and among women and men - constitute one of the central dynamics of all societies, and that therefore gender should be accepted as a central category of all historical analysis. Such an approach, they argue, throws into question ideological constructs such as the private and public spheres, and accepted categories such as

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work and family.\textsuperscript{24}

Feminist sociologists and criminologists have used sex and gender as analytical tools to examine social control, law and crime. They have pointed out that, although most laws are framed in gender-neutral terms, their administration both reflects and reinforces dominant notions of gender and sex, and thus serve to perpetuate power inequalities existing between men and women.\textsuperscript{25} While recognising the importance of the law as a means of social control, Carol Smart usefully reminds us that social

\textsuperscript{24} Jill Matthews, 'Feminist History', \textit{Labour History}, no.50, May 1986, pp.147-153; Joan Scott, 'Gender: A Useful Category of Historical Analysis?', \textit{The American Historical Review}, vol.91, no.55, Dec. 1986, pp.1053-1075; Marilyn Lake, 'Women, Gender and History', \textit{Australian Feminist Studies}, no.7 & 8, 1988, pp.1-9; Gisela Bock, 'Women's History and Gender History: Aspects of an International Debate', \textit{Gender and History}, vol.1, no.1, Spring 1989, pp.7-30. Debate continues between feminists about the relationship between sex and gender, and their usefulness as analytical tools. In this thesis, gender is used to refer to the ideological construction of masculinity and femininity. This understanding of 'gender' has been criticized as too malleable and as dangerously divorced from the body. These criticisms are well-founded, but as yet, biological determinism continues to limit the usefulness of 'sex' as an alternative analytical tool. A new conceptualisation of the relationship between the body as a biological entity, and gender, as an ideological construct, is needed. For an overview of the sex/gender debate see Anne Edwards, 'The Sex/Gender Distinction: Has it outlived its Usefulness?', \textit{Australian Feminist Studies}, no.10, Summer 1989, pp.1-12. See also Genevieve Lloyd, 'Woman as Other: Sex, Gender and Subjectivity', \textit{ibid}, pp.13-22; Denise Thompson, 'The "Sex/Gender" Distinction: A Reconsideration', \textit{ibid}, pp.23-31; Moira Gatens, 'A Critique of the Sex/Gender Distinction', \textit{Beyond Marxism? Interventions after Marx}, Intervention, Sydney, 1983, pp.143-60.

control, particularly that which is exercised over women, takes many forms, 'internal or external, implicit or explicit, private or public, ideological or repressive', and that its sources are often located within 'seemingly innocuous social processes'.

Between 1 May 1888 and 30 April 1901, the Melbourne Court of Petty Sessions heard approximately 9,600 cases; women and girls were the accused in nearly half of these. During the depression years of the early 1890s, female defendants featured in more than half of the vagrancy cases heard by the court. But it is not simply the numerical frequency of cases involving women which is important. The actual construction of vagrancy was inextricably connected to notions of masculinity and femininity. Accusations of vagrancy were levelled at those who failed to conform to accepted patterns of male and female behaviour—patterns which reflected middle-class notions of respectability. Because of its gendered nature, quite different behaviours were cast as characterising vagrancy in women and men. Whereas men were condemned primarily for failing to participate in the labour market, women were principally criticised for sexual impropriety and for other forms of unfeminine behaviour. Gender was also crucial in the administration of the vagrancy law. Women and men were often arrested for different offences, and were dealt with differently by the courts. Women were more likely to be placed in non-penal custodial care, and, in general, the treatment of male and female offenders, whether inside or outside gaol, was intended to produce gender-specific results. The construction of vagrancy as a crime, and the

administration of the vagrancy legislation, serve as a useful example of what feminist scholars have identified as the gendered nature of the law.

Studies of vagrancy and the workings of vagrancy laws have generally marginalised, or totally ignored, women’s experiences of it. They have provided us with a male stereotype of the vagrant. Jim Ward, for example, in a 1979 study of skid row life, presents vagrants as exclusively homeless men.\textsuperscript{27} Similarly, historian Miles Fairburn has argued that the nineteenth century vagrants or ‘folk devils’ of New Zealand were male bushworkers.\textsuperscript{28} While such studies provide evidence of the flexibility of the concept of vagrancy, they also imply that it is of no relevance to women. Some researchers who have recognised the significance of vagrancy to women, have failed to explore the ways in which women’s experiences of it have differed from those of men. Other accounts appear to be totally sexless.\textsuperscript{29} As Judith Allen suggests, it is a masculine and not a universal experience of crime and law enforcement that these accounts provide.\textsuperscript{30}

\textsuperscript{27} Jim Ward, \textit{The Street is their Home}, Quartet Books, Melbourne, 1979.

\textsuperscript{28} Miles Fairburn, ‘Vagrants, "Folk Devils" and Nineteenth-Century New Zealand as a Bondless Society’, \textit{Historical Studies}, vol.21, no.85, October 1985, pp.495-514.


\textsuperscript{30} Allen, ‘Policing since 1880’, p.191.
There is a diverse and ever-growing body of international literature dealing with vagrancy. Most of it has been generated by non-historians, and is concerned with contemporary vagrancy and the 'professional treatment' or 'care' of vagrants. Through detailed empirical studies, psychologists, anthropologists, criminologists, sociologists and psychologists have sought to investigate the extent and nature of modern vagrancy.31 These studies are characterized by biological and sociological positivism. A second stream of the literature reverses this emphasis. Naturalist accounts, which have been produced mainly in America, have employed an ethnographic approach to highlight the subjective dimensions of vagrancy.32

Most historical accounts of vagrancy and vagrancy laws focus on Britain and are limited to a narrow time period. Ribton-Turner's 1887 study, entitled A History of Vagrants and Vagrancy and Beggars and Begging, remains the most comprehensive work in the area. It traces the evolution of British and European vagrancy laws from 386 A.D through to the 1880s, and laid the basis for later analyses, by presenting


vagrancy as the product of social and economic oppression. This theme has been developed by Beier, Slack and Pound who have examined the relationship between vagrancy and socio-economic factors in sixteenth and seventeenth century England. Chambliss has provided a particularly illuminating account of the gradual criminalization of vagrancy.

David Jones, who has focused on vagrancy in nineteenth century Britain has drawn attention to the flexibility of the vagrancy laws and the discretion which the police exercised over their administration. These issues are also dealt with by Leonard Leigh, who traces the development of British vagrancy laws from 1824 through to the 1970's, and by Jeffrey Adler who focuses on the history of St. Louis' vagrancy legislation. Michael Roberts draws attention to the importance of moral codes and spatial considerations in the introduction and enforcement of Britain's 1822 Vagrant Act.

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36 D. Jones, Crime, Chapter 7.

Act. 38 Lionel Rose, in a study of British vagrancy from 1815 to 1985, pays some attention to economic and social factors, but rarely rises above the moralistic stereotyping of vagrants. He thus describes the 'vast majority of tramps' as 'miserable wretches with personality and psychiatric disorders, or the plain unemployed or homeless', and explains a supposed increase in the number of female vagrants as 'an untoward side effect of women's liberation'.

In Australian historiography, vagrancy is more noteworthy for its omission, than for its inclusion. As yet, no book nor article has been produced on the history of vagrancy in Australia, and references to it in more general works remain rare. The neglect of vagrancy by labour historians is particularly surprising. Buckley and Wheelwright in their recent book, No Paradise for Workers, suggest that 'the ultimate nightmare for the capitalist class was countered by the law on vagrancy', but their discussion of it covers less than a page. For the most part labour historians have continued to focus upon class, institutions, employers and the employed. Vagrancy


is more likely to be addressed by what John Merritt describes as a new 'social history of labour'. Such an approach would include studies of the working-class family, poverty, crime, health, housing, leisure and popular culture, and incorporate questions of class, gender, social control and hegemony. Studies produced, collectively and individually, by members of the Sydney Labour History Group, provide the best example of such an approach. They provide an important historiographical backdrop to this thesis, for they combine history with an examination of the state, to emphasize the dynamic and complex nature of social interactions.

The only substantial historical discussion of vagrancy in Australia is offered by Christopher McConville, in his M.A. thesis on 'Outcast Melbourne' between 1880 and 1914. McConville employs a social interactionist perspective to explain the formation of the vagrant subculture. Unfortunately, his theoretical approach now appears dated, and the discussion overall, is flawed by his failure to analyse the relationship between vagrancy and the law. Yet McConville's work, together with his studies of crime, policing and prostitution, are important, given the general neglect of crime and law by Australian historians. Michael Sturma and Peter Grabosky have provided book length accounts

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42 John Merritt, 'Labour History', p.140.


44 C. McConville, 'The Location of Melbourne's Prostitutes, 1870-1920', Historical Studies, vol.19, no.74, April 1980, pp.86-97; 'From "Criminal Class" to "Underworld"', in
of crime in New South Wales, but no comparable texts exist for Victoria.\textsuperscript{45} Judith Allen provides the only other substantial contribution to historical understanding of crime in Australia.\textsuperscript{46} She has challenged the androcentrism of mainstream historiography, by producing an account of crime which uses sex as the fundamental category of analysis. Mark Finnane's individual and collaborative contributions to the history of Australian policing are also noteworthy.\textsuperscript{47}

Welfare history provides another historiographical setting for this thesis. Although histories of charity and welfare in Australia have not dealt specifically with vagrants, they have noted the important distinction that nineteenth century philanthropists drew between the deserving and undeserving poor.\textsuperscript{48} Of particular relevance is the work of Shurlee Swain, who has graphically illustrated the tenuous existence of the urban poor and their relationship with charitable institutions in late


nineteenth century Melbourne. She also provides a methodological model for those interested in recovering the history of the poor.⁴⁹ Roslyn Otzen's thesis on the Melbourne City Mission is notable for its analysis of the non-penal control of women who were criminalised, and of the gendered nature of Melbourne philanthropy.⁵⁰ Richard Kennedy, in his work on the Charity Organisation Society of Melbourne and the relationship between charity and ideology, has presented ‘social welfare as part of the tools of oppression in the class war’.⁵¹ Kennedy has been criticised for his dogmatism,⁵² but his sense of outrage, together with the structural critique he offers, is a welcome alternative to controlled liberal accounts of charity and welfare.

Australian studies of urban history are also important in situating this thesis historiographically. The histories of Davison and Serle eloquently describe Melbourne’s material development during the nineteenth century but pay scant attention to the reality

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⁵² Brian Dickey, 'Problems in Writing Welfare History', Journal of Australian Studies, no.21, November 1987, p.82.
of everyday life and to issues of class and conflict. In recent years, the focus of urban history has expanded to take into account these aspects of city experience. Studies of slums, slum life and poverty in Victoria and New South Wales have shattered the illusion of colonial egalitarianism and prosperity.

Australian feminist historiography also provides an important background for this study. Since the publication of Anne Summers' pioneering work, Damned Whores and God's Police, in 1975, Australian feminist historians have shown a continuing interest in the representation and marginalisation of women. Summers' argument that the 'damned whore' stereotype was used as a weapon to discipline and control women has


been refined and explored by later writers. Increasing attention has been paid to women's agency and the relationship between women, economics, social institutions and the state.\footnote{Since the mid-1970s, there has been a discernible shift in the writing of Australian women's history. Whereas early accounts, most notably those by Summers and Dixson, focused relentlessly upon women's oppression, more recent works have concentrated, sometimes just as relentlessly, upon the achievements and power of women. The tendency to portray women as a homogeneous group has also diminished, with increased attention being paid to differences in race, ethnicity, class and sexual preference. For a general account of developments in Australian feminist and women's history, and an overview of the victim-agency debate, see Kay Daniels, 'Women's History' in Osborne & Mandle, New History, pp. 32-50, and 'Feminism and Social History', Australian Feminist Studies, no.1, Summer 1985, pp.27-40. Contributions to Australian feminist historiography are too numerous to list, but works which have focused on the formal and informal marginalisation women are of particular relevance to this thesis. Among the most notable are Jill Matthews, Good and Mad Women, George Allen & Unwin, 1984; Kay Daniels (ed), So Much Hard Work, Fontana/Collins, Brisbane, 1984; Meg Arnot, 'Prostitution and the State in Victoria 1890-1914', M.A. Thesis, University of Melbourne, 1986; Judith Allen, Sex and Secrets; Judy Mackinolty & Heather Radi (eds), In Pursuit of Justice: Australian Women and the Law, Hale & Iremonger, Sydney, 1979.} But the examination of marginal groups is not intended as an end in itself. Mary Murnane and Kay Daniels rightly argue that an idea of broader social relations can be acquired through the study of marginal groups, such as destitute women, Aborigines, and prostitutes.\footnote{Daniels, 'Women's History', p.49. Kay Daniels and Mary Murnane pursued this approach in selecting and presenting the documentary collection, Uphill all the Way: A Documentary History of Women in Australia, University of Queensland Press, St Lucia, 1980.} The work of Jill Matthews and Judith Allen illustrate the potential of this approach.\footnote{Jill Matthews, Good and Mad Women; Allen, Sex and Secrets.}
This thesis seeks to relocate vagrants within the boundaries of Australian society and its history. The first chapter introduces the reader to late nineteenth century Melbourne. It provides an outline of the economic and social circumstances of the city, and examines popular perceptions which characterised Melbourne as the home of wealth and progress, poverty and immorality. It explores how the image of the vagrant was constructed by various social groups including journalists, moralists, philanthropists, and legal personnel; it identifies the people most likely to be classified as vagrants and details the process by which they came to be categorised as such.

The next four chapters deal specifically with the legal aspects of vagrancy. Chapter 2 traces the evolution of the vagrancy laws in Britain, New South Wales and Victoria, in relation to specific economic and social circumstances. Chapter 3 examines police use of the vagrancy law in inner Melbourne. It draws particular attention to the flexibility of the legislation and shows how the police used it to deal with five particular groups within the community - those who followed a traditional vagrant lifestyle, prostitutes, known criminals, juveniles, and the elderly, ill and impoverished. Chapter 4 examines the way in which the Melbourne Court of Petty Sessions dealt with vagrants. Chapter 5 focuses upon the institutions to which vagrants were sent upon being convicted or released by the Court; it explores the experiences of vagrants in gaols, reformatories, lunatic asylums, refuges and charitable institutions.

The final two chapters examine how Melbourne's changing economic and social circumstances between 1880 and 1907 resulted in a redefining of vagrancy. Chapter
6 highlights the grave crisis which the depression of the 1890s posed for those involved in the administration of the vagrancy law. It illustrates how use of the vagrancy law declined significantly after 1892, and links this to changes in public attitude and the limiting of police powers by the Supreme Court. In Chapter 7 attention is paid to the introduction of new non-penal measures, which targeted individuals who had formerly been arrested as vagrants. It is argued that the introduction of these measures deflected criticism away from the vagrancy law and allowed a new narrower definition of the vagrant to gain credence. Thus, in 1907, the police were able to lobby successfully for the introduction of stronger and more extensive vagrancy provisions.
CHAPTER 1

A WORLD OF DIFFERENCE

During the 1880s, Melbourne was acclaimed as a city of international standing. Foreign and colonial commentators lauded the city's rapid progress and claimed that its offered all individuals ample opportunity for material and social improvement. Hard work and a virtuous lifestyle were promoted as the keys to success. This emphasis upon self-improvement had a negative aspect. Those who failed to succeed, or who did not display the required amounts of endeavour and virtue, were condemned as lazy, improvident and immoral. They were perceived by the respectable middle-class as posing a serious, though largely indirect, threat to the existing social and economic order. Those individuals who appeared least successful and most wayward were liable to be categorised and dealt with as vagrants. The members of five particular groups were at risk: the elderly, ill, disabled and destitute; those who lived a traditional 'vagrant' lifestyle; juveniles; prostitutes; and professional criminals. The vagrant identity attributed to these individuals a defective and dangerous character, and thus diverted attention away from the social and structural inequalities that prevented many citizens from improving their lot.
THE NEW TOWER OF BABEL.

Treasurer.—"NOTHING BUT EXPENDITURE—EXPENDITURE ON EXPENDITURE! ALL VERY GRAND—but I can't see any end to it!"

Illustration 1.1
(Melbourne Punch, 22 April 1880, p.165)
"The Inhabitants of Melbourne Are Proud of their City..."¹

When a gentleman sounds his own trumpet he "blows"... You hear it and hear of it everyday. They blow a good deal in Queensland; - a good deal in South Australia. They blow even in poor Tasmania. They blow loudly in New South Wales, and very loudly in New Zealand. But the blast of the trumpet as heard in Victoria is louder than all the blasts, - and the Melbourne blast beats all the other blowing of that proud colony. My first, my constant, my parting advice to my Australian cousins is contained in two words - "Don't blow".²

Anthony Trollope may have been disturbed by the 'blowing' of his colonial hosts when he visited Melbourne in the mid-1870s, yet even he had to admit that they had much to be proud of. 'It is impossible', he enthused,

for a man to walk the length of Collins Street up by the churches and the club to the Treasury Chambers, and then round the Houses of Parliament away into Victoria Parade, without being struck by the grandeur of the dimensions of the town.³

The city's long broad streets, its spacious gardens and impressive public buildings instantly won the writer's admiration. Although he found no street complete, Trollope judged the city as a whole, to be 'magnificent'.⁴

Throughout the final quarter of the nineteenth century, Trollope's sentiments

¹ David Blair, Cyclopaedia of Australasia, vol.1, Ferguson and Moore, Melbourne, 1881, p.234.
² Anthony Trollope, Australia and New Zealand, George Robertson, Melbourne, 1876, p.251.
³ ibid. p.252.
⁴ ibid.
were echoed time and again by Melbourne’s visitors and residents. The city was touted as ‘the metropolis of the Southern hemisphere’, the antipodean jewel in the crown of the empire.\textsuperscript{5} It was, by all accounts, a truly ‘modern city’.\textsuperscript{6} Nat Gould surmised that ‘if Sydney [was] an old-world city’, Melbourne [was] certainly one of the newest of the new.\textsuperscript{7} He noted with pleasure its ‘palatial buildings’ and broad streets, but like other observers, he did not measure the advancement of the city simply in material terms. The general pace of everyday life and the character of the people inhabiting the city constituted an equal, if not more important, indicator of urban progress. Commentators reported favourably on the hustle and bustle of Melbourne life. Even the ravages of the depression were not sufficient to quell the enthusiasm of Waldemar Bannow, who in 1896, enthusiastically noted the city’s crowded streets, chaotic traffic and the round the clock activities of pleasure-seekers.\textsuperscript{8} Other commentators focused upon, what they perceived to be, the purposeful manner of Melbourne’s inhabitants. Gould described Melbourne people as ‘go-ahead...They move about smartly, and, like Londoners, never


\textsuperscript{6} According to Gunther Barth, the phrase ‘modern city’ began to be used in America in the 1890s to denote ‘a large city straining under the impact of intensified urbanization and industrialization.’ He suggests that cities such as New York and San Francisco were characterised by physical, social, and cultural diversity; a consequence of various waves of migration. Late nineteenth century Melbourne also exhibited the sort of diversity noted by Barth. Gunther Barth, \textit{City People: The Rise of Modern City Culture in Nineteenth Century America}, Oxford University Press, New York, 1980, pp.7-24.


seem to have a moment to spare. Richard Twopeny was even more laudatory when comparing the citizens of Melbourne with those of Sydney:

the people dress better, think better, are better, if we accept Herbert Spencer's definition of Progress. There is far more 'go' and far more 'life', in every sense of these rather comprehensive words, to be found in Melbourne, and it is there that the visitor must come who wishes to see the fullest development of Australasian civilization, whether in commerce or education, in wealth or intellect, in manners and customs - in short, in every department of life. 10

Melbourne boasted a larger population than any of the other capitals in Australia and could claim a rapid rate of growth. Between 1871 and 1881, the city's population had increased steadily from 206,780 to 282,947. During the following decade, the population had spiralled dramatically. By 1891, 490,896 people were residing in the capital. 11 They represented over 43% of Victoria's total population. 12 Geographic expansion, made possible by the city's flat environs and the extension of the public utilities, accompanied this population swell. Many of the immigrants who arrived in

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9 Gould, *Town and Bush*, p.120.

10 Twopeny, *Town Life*, p.3.

11 T.A. Coghlan & T.T. Ewing, *The Progress of Australasia in the Nineteenth Century*, W. & R. Chambers, London, 1903, p.372. Coghlan's estimates are derived from the census statistics and are the official ten mile figures. By contrast, J.W. McCarty has used a five mile limit to estimate Melbourne's population. He suggests that the city's population rose from 191,000 in 1871 to 268,000 in 1881, and then to 473,000 in 1891. Despite their differences, both sets of figures attest to Melbourne's spectacular growth during the 1870s and 1880s. See J.W. McCarty, 'Australian Capital Cities in the Nineteenth Century', *Australian Economic History Review*, vol.10, no.2, 1970, pp.129-131.

Melbourne took up residence in the new outer suburbs. By 1890, the edges of settlement had extended to Footscray and Essendon in the west, Coburg and Preston in the north, Camberwell and Malvern in the east, and Caulfield and Sandringham to the south. This expansion in the metropolitan area offset the effects of rapid population growth. By 1888, the city sprawled over nearly 164,000 acres, making it one of the world's largest, but least densely populated, cities.

Greater Melbourne was divided along economic and class lines. Manufacturing industries, including the noxious trades, were concentrated in the low-lying suburbs close to the city centre. Collingwood, Richmond, South Melbourne, Kensington and Footscray were dotted with tanneries, candle and soap factories, boiling-down works, slaughterhouses and wool washing establishments. The pollution emitted by these industries sullied the surrounding environment, but working-class people had little choice but to live close to their source of employment. Economic necessity drove workers and their families to congregate in the city’s industrial zones, while the more well-to-do escaped the worst aspects of 'Marvellous Smelbourne' by moving to the leafy suburbs across the Yarra River. Hawthorn, Kew, Studley Park, Toorak and South Yarra offered Melbourne's upper classes a healthier and more restful environment in

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14 Weber, Cities, p.139.

Illustration 1.2
(Illustrated Australasian News, October 1880, Supplement)
which to live, yet were only a train ride away from the delights of the city centre.\textsuperscript{16}

Melbourne's standing was enhanced by its reputation as Australia's commercial and financial capital.\textsuperscript{17} Merchants, who had originally made their fortune during the goldrushes of the 1850s, had established prosperous enterprises, and at least until the early 1880s, 'had no peers in wealth, power and reputation'. Some like James Service and Frederick Sargood had aspired to parliamentary office and, along with other reputedly 'self-made' men of their generation, constituted Melbourne's elite.\textsuperscript{18} These men juggled their business commitments with a heavy schedule of social engagements. They belonged to one or more of Melbourne's prestigious clubs, regularly attended civic and social functions, and sat upon city councils, boards of management and committees. They were actively involved in government and philanthropy, and in these, as well as other endeavours, they enthusiastically espoused the value of hard work, thrift and respectability.

During the 1880s, a younger and more mercenary breed of entrepreneur emerged. This 'new elite' consisted of financiers, professional men and manufacturers

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\item \textsuperscript{16} Davison, \textit{Marvellous Melbourne}, pp.147-151.
\item \textsuperscript{17} McCarty describes Melbourne as a 'pure commercial city'. He suggests that it was established as a base from which to open up new lands, and that its evolution varied from traditional cities, in that urbanization preceded industrialization. He suggests that the growth of the commercial cities was determined primarily by world economic factors and the export markets. McCarty, 'Australian Capital Cities', pp.110-111.
\item \textsuperscript{18} Davison, \textit{Marvellous Melbourne}, pp.19-20.
\end{itemize}
who willingly engaged in speculation in order to secure profit. The bold and often devious practices in which these men engaged, eventually led to their downfall, but not before they had established themselves as the driving force behind the colony's material development. The influence of Melbourne's businessmen extended far beyond Victoria's border. According to Twopeny, nearly all large commercial institutions which had dealings in more than one Australian colony had their headquarters in Melbourne. He advised people wishing to transact their business 'well and quickly' to go to the Victorian capital, for it was there that finances and opportunities were available. While in the 1890s, Melbourne was ranked seventh among the cities of the British Empire in terms of population, it was ranked fourth in terms of wealth and traffic. On a world scale, it was ranked thirty-fourth in terms of population, and twelfth in terms of importance.

Melbourne's cityscape reflected the utilitarian logic of the market-place. The streets of the city proper were arranged in a grid, with the five major thoroughfares - Flinders, Collins, Bourke, Lonsdale and Latrobe streets - being intersected at right angles by eight lesser ones. To Francis Adams' mind, it was like a 'huge chessboard flung upon the earth.' The arrangement imposed order upon the environment and

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19 ibid. pp.25-35.

20 Twopeny, Town Life, p.2.


appealed to the resident's preference for scientific and rational solutions. The design was also highly functional. It provided a simple method of surveying, made orientation easy, ensured the steady flow of traffic, and facilitated speculation and redevelopment.\textsuperscript{23}

As sites changed hands, or as the interests of the owners altered, buildings were demolished and replaced by new ones. During the 1880s, the shape of the city was transformed as the three and four-storied edifices of the goldrush era were replaced by new buildings, some of which stood ten and twelve stories high. These nineteenth century skyscrapers reflected the society's preoccupation with accumulation and progress, as well as accommodating new work practices and employer-employee relations.\textsuperscript{24}

The city proper was given over to the twin pursuits of business and pleasure. It was approximately one square mile in size and contained several identifiable sectors. Flinders Street, which was closest to Melbourne's wharves, served the needs of sailors and new arrivals. Its west end in particular was noted for its seaman's restaurants, chandlery places, boarding houses, cheap shops, pawn-broking establishments and rough public houses.\textsuperscript{25} Collins Street was the next major thoroughfare. In part, it too reflected nautical interests, with wool warehouses and the premises of steam ship companies and other sea-related businesses being situated at its western end. The

\textsuperscript{23} Barth, \textit{City People}, pp.30-31.

\textsuperscript{24} Davison, \textit{Marvellous Melbourne}, pp.28-29.

eastern end of this street was dominated by the offices of doctors, dentists and medical specialists. Sandwiched between these extremes, in the centre of Collins Street, lay the city's most prestigious shops and office buildings. The leading banks, insurance companies and building societies were situated here. Late on weekday afternoons and around midday on Saturday, Collins street was reputedly at its best. It was then that the city's fashion conscious turned out to 'do the Block'. 'Forwards and backwards, again and again', they promenaded, 'till the tip-toppers, or the would-be tip-toppers, knew to a hair's breadth the number of inches of their fellow-dudes' shirt collars or the number of feet of the ladies' hats'. 26 Bourke Street also featured in Melbourne's social life. It boasted Melbourne's theatres, coffee palaces and hotels, and together with Collins Street, constituted the real heart of the city. While Collins street flourished during the day, Bourke street came most to life at night. Then the theatres threw open their doors and the street filled with pleasure-seekers, cabs and carriages. 27

The remainder of the city lacked the elegance and glamour of these two thoroughfares. Lonsdale and LaTrobe streets were dominated by wholesaling businesses and warehouses, along with some poorer quality shops and mixed housing. The north-eastern quarter of the city, between Bourke and Little La Trobe streets, was notorious for its slums. In and around Exhibition street, only a block away from Parliament House, the bulk of the city's brothels were clustered. In 1883 and 1884, the police listed sixty brothels in this neighbourhood. Another eight were reported to exist


27 Sutherland, Victoria, p.552.
Illustration 1.3
View of Melbourne from the Spire of Scots' Church c.1875
Bourke Street bordered by the Slums
(La Trobe Library Small Pictures Collection)
in Little La Trobe street. Nearby in Little Bourke street were the gambling houses and opium dens of the Chinese. Cheap lodging houses, hotels and sixpenny restaurants provided food and shelter to those with limited means. The slum district housed many of Melbourne's 'respectable poor', but it was more widely acknowledged as the home of the city's less reputable souls. Moralisers, philanthropists and law enforcers claimed that vice and debauchery were bred and cultivated in the dirty laneways and decaying buildings that characterised the area. They disapprovingly noted the presence of professional and petty criminals, prostitutes, beggars and drunkards, who were drawn to the area by the promise of affordable food and lodgings, and the possibility of renewing old business and social contacts.

In the hands of the boosters, even Melbourne's disadvantages could be turned to advantage. The existence of poverty, pollution, crime and immorality was interpreted as proof of the city's progress. 'Are not all great cities so environed?' asked Alexander Sutherland, in reference to the shabby dwellings that marked Melbourne's fringe. To him, these ungainly structures testified to Melbourne's rapid and relentless expansion. Likewise, prostitution was understood as part of an evolving urban culture. As John Freeman put it:

Like all large cities, we have a demi-monde, some of the members of which are of a rather high tone. As a class, they are as well conducted as the frail sisterhood in any part of the civilized world, and as numerous in proportion to the population, seeing that we have five hundred and

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28 McConville, 'From "Criminal Class" to "Underworld"', p.77.

29 Sutherland, Melbourne, vol. 1, p.542.
ninety-seven of the fallen angels in this noble city of ours.  

Poverty was similarly seen as an inevitable product of urbanization. 'In every great congregation of men', wrote Trollope, 'there will be a residuum of poverty and filth, let humanity do what it will to prevent it.' Melbourne, to his mind, was no different. He noted the impoverishment of some citizens and the existence of squalid neighbourhoods, yet he concluded that the misery in Melbourne was generally less severe and more hidden than that found in other large cities of the world. According to Trollope, Melbourne's less pleasant aspects had to be actively sought out. They did not simply meet the eye as they did in London, Paris and New York. 

Middle and upper-class commentators, who were secure in their position and wealth, regarded Melbourne as a 'workingman's paradise'. They argued that Melbourne workers found it easier to gain employment than their British and colonial counterparts, and also enjoyed the benefits of higher pay, cheaper and better food, more comfortable

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31 Trollope, Australia, p.250. 'The Vagabond' echoed Trollope's sentiments some years later when he wrote: 'In every civilized community there is a vast substratum of poverty, disease, vice and crime, and by its depth the stability of the institutions of the country can be judged. In cities which boast of the highest civilization and luxury, the opposite extreme is found.' The Vagabond', 'The Outcasts of Melbourne', The Argus, 20 May 1876, p.4. Throughout this thesis, reference is made to several articles by John Stanley James, or 'the Vagabond' as he was better known. The original articles have been used, in preference to the harshly edited versions provided by Michael Cannon in his collection of James' work. John Stanley James, The Vagabond Papers, ed Michael Cannon, Melbourne University Press, Melbourne, 1969.

32 Trollope, Australia, p.250.
accommodation and a temperate climate. Gaston Thiery, who visited the colonies in 1890, claimed that all Australians lived 'luxuriously': 'Everyman has his own cottage - in many cases a large one - round which a garden runs; this garden is well kept, and is crowded with fruits and flowers.' The editor of Table Talk understandably hinted that Thierry was credulous in making this claim, yet other visitors acquired a similar, though less exaggerated, impression of prosperity. Twopeny argued that there was no poor class in the colonies. Both he and Ada Cambridge, were of the opinion, that all shared in Melbourne's material wealth.

You can see that bread-and-butter never enters into the cares of these people; it is only the cake which is sometimes endangered, or has not sufficient plums in it.

According to Trollope, 'there [was] perhaps no town in the world in which an ordinary working man [could] do better for himself and for his family with his work than he [could] at Melbourne.' Observers, such as American-born journalist H.M. Franklyn, claimed that those who worked hard and behaved in a morally righteous way were able to move easily up the social scale:


34 Table Talk, 18 April 1890, p.2.

35 Twopeny, Town Life, p.111.

36 ibid. p.18. Ada Cambridge claimed that during the boom years, 'all in their degree were rich and lived luxuriously.' Ada Cambridge, Thirty Years in Australia, Menthuen, London, 1903, p.185.

37 Trollope, Australia, p.259.
The artisan who can earn ten shillings a day by eight hours work in a climate where the interruptions to outdoor work are few and far between, and who can obtain board and lodgings for fifteen shillings a week, has only to practise sobriety and thrift, in order to elevate him into a position of a director of other men's labour in the course of a very few years....No working man, who is prudent, temperate and industrious, need occupy a house that is not his own. No farm-labourer need continue to be a wage earner for more than a few years, for it is quite within his power to acquire a small farm for himself, by the practice of anything but severe economy.  

A S A D W A N T.

Molly.—"Well, Bridget, and how do you like Horsham?"

Bridget.—"Oh, yes, the sun is splendid, the police elegant, the women smart; sure we haven't got a 'darkie' at all, like we have in the gold country."

Illustration 1.4

(Melbourne Punch, 29 January 1880, p.48)

38 H.M. Franklyn, A Glance at Australia in 1880, Melbourne 1881, pp.165-6, quoted by G. Davison, 'The Dimensions of Mobility in Nineteenth Century Australia', Australia 1888, no.2, August 1979, p.9. Similar sentiments were expressed by Twopeny, Town Life, p.96.
Civic and national progress was seen as the collective result of individual advancement. The interpretation of Victoria's past, which was promoted by the wealthy and which gained credence within the broader community, consisted of little more than 'innumerable success-stories' welded together to provide an elite and harmonious account of colonial development. Alexander Sutherland's commemorative history, *Victoria and its Metropolis*, best exemplified this approach.\(^{39}\) In copiously detailing the successes of individual settlers, Sutherland, like other chroniclers of his age, unquestioningly accepted the 'goal of bourgeois success' and linked its achievement to moral virtue. He saw the individual's endeavour, hard work, thrift, perseverance and sobriety as being rewarded with upward social mobility, while the society as a whole benefitted through material and cultural progress.\(^{40}\) The growth of Melbourne 'from a few wattle-and-daub huts and weather-board shanties' to 'a magnificent city', was attributed to 'man's work, not nature's'.\(^{41}\) The city was perceived as the product of human, or even more correctly masculine, endeavour. In David Blair's words, it stood as 'a remarkable monument to what the enterprise of man and the power of wealth can effect in a short time'.\(^{42}\)

According to Twopeny, the public buildings of Melbourne did 'the greatest credit

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39 Sutherland, *Victoria*.

40 Davison, 'The Dimensions of Mobility', pp.7-8 and 'The Mobility Theme', *Australia 1888*, no.1, February 1979, p.10.


to the public spirit of the colonists'. They attested to 'the largeness of their views and the thoroughness of their belief in the future of the country.'

He was particularly struck by the magnificence of the hospitals and charitable institutions. The city's gaols and lunatic asylums also won favourable comment. John Freeman was among their most enthusiastic admirers. 'Our prisons and madhouses' he exalted, 'prove our civilization to be equal of any of the older cities of Europe.' Melbourne's institutions were taken as proof of public benevolence. Trollope was of the opinion that the unfortunate of Melbourne were cared for regardless of their condition or circumstances. 'Let the cost be what it may, the poor are to be taught, the needy sheltered and fed, and the afflicted, whether in mind or body, relieved as outward appliances may relieve them.' In 1896, just as the depression was beginning to lift, Bannow claimed that benevolence was both 'ready and widespread'. In his opinion, it was lack of money rather than a lack of benevolence that sometimes resulted in the deserving poor being gaoléd.

A very thin line, however, existed between those who were considered to be deserving and undeserving citizens. Whereas material improvement was seen as a reward for hard work and moral virtue, poverty was seen, conversely, as the result of idleness and immorality. Because material advancement was depicted as an

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achievable, if not inevitable reward, those who did not achieve it were criticised all the more fervently by those who did. Twopeny’s emphasis upon individual responsibility was typical of this middle-class attitude:

Except under very rare circumstances poverty in Australia may fairly be considered a reproach. Everyman has it in his power to earn a comfortable living; and if after he has been some time in the colonies the working-man does not become one of the capitalists his organs inveigh against, he has only himself to blame.47

Marcus Clarke believed, that if a bohemian starved in Melbourne, it was his own fault.48 Still, he did not accept the myth of prosperity as readily as most. Clark argued that real poverty did exist amongst those who had been left behind in the city’s push for progress. While the wealthy paid to dance and feast, he saw the poor turned away from inadequately funded charitable institutions. To him, Melbourne’s poor were outcasts in their own city - condemned both physically and morally. Victoria, he concluded,

is not the place for poor men. To be rich is to be admirable, aristocratic, talented and well-born; to be poor is to be despicable, plebeian, ignorant, and infamous. There is poverty here, sore poverty, but it is the terrible poverty of shabby gentility, the poverty that patches its broken boots, lies in bed during the washing of its only shirt, and goes without a dinner to pay for the darning of its black coat. There is the poverty of old age and incapacity, the poverty that works till it can work no longer, and without friends, money, or strength, is trodden down in the fierce press and crawls away to some corner to die.49

47 Twopeny, Town Life, p.97.


49 ibid. p.204.
Images of the Old World

Melbourne's citizens drew upon the images of the old world to explain the existence of poverty, crime and immorality in the new. The writings of British social commentators and reformers were particularly influential; their visions indeed 'became the lenses through which the colonial city-dwellers viewed their own urban landscapes.' Andrew Mearns, Henry Mayhew and similar commentators provided colonials with a description of London slums that could be readily applied in the colonial context. These accounts emphasised the physical squalor of the slums and the poverty, immorality and degeneracy of slum dwellers. Vagrants were often discussed at length by British commentators, for they were believed to epitomise the worst of these characteristics. Mayhew, for example, considered young vagrants to be intelligent, but also shrewd, undisciplined, deliberately idle and criminal. He believed them to be 'the most dishonest of all thieves, having not the least respect for the property of even the members of their own class.'

A new pragmatism was evident in British writings of the late nineteenth and early twentieth centuries. Commentators such as Charles Booth, and later Benjamin

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Rowntree, adopted an empirical approach to the study of slum life and poverty. They identified some of the structural causes of destitution and squalor, and by positing the slums and their inhabitants as a 'social problem', posed serious questions for legislators and city administrators. Even in these accounts, however, vagrants were viewed as a result of hereditary rather than structural factors, and continued to be categorised as members of the lowest stratum of society. Charles Booth divided the people of east London into eight categories, the lowest of which consisted of 'occasional labourers, street-sellers, loafers, criminals and semi-criminals.' He spoke of 'young men who [took] naturally to loafing' and 'girls who [took] almost as naturally to the streets.' 'They render no useful service' he wrote of the former, 'they create no wealth: more often they destroy it. They degrade whatever they touch, and as individuals are perhaps incapable of improvement."

Colonial slum journalists, including Marcus Clarke, John Stanley James (better known as 'the Vagabond'), John Freeman, and later J.A. Andrews, used the images and literary devices of writers such as Dickens and Mayhew to explore and detail Melbourne's seamier side. These men aimed to entertain as much as to reveal. As a consequence, their accounts were sensationalist. They presented the slums as a mixture of the dangerous, exotic, mysterious and romantic. The literary device of the

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expedition was used to highlight the unknown and threatening nature of the area.\textsuperscript{55} Journalists pointed out that their own visits took place under the cover of an assumed character or in the company of a friendly policeman. They described in colourful detail their wanderings through 'labyrinthine' laneways, their visits to opium dens and brothels, and their meetings with drunkards, 'celestials', prostitutes and thieves. The slum dwellers, and their environment, were depicted as alien. A clear dichotomy was drawn between Melbourne's high and low life. The former was presented as wealthy, industrious, civilized and progressive; the latter as poor, mendicant, barbaric and stagnant.\textsuperscript{56}

The physical closeness of the slum district to the commercial and social centre of the city was continually emphasized, and no doubt fuelled both fear and fascination in readers. According to James, no other city in the world could 'show such foul neighbourhoods centred in its very heart.\textsuperscript{57} The Australasian too, drew attention to the geographical immediacy of the slums, while highlighting the physical and moral otherness of the area and its inhabitants. It reminded readers, that, 'within a stone's throw of Bourke-street', were 'squalid, noisome regions, the abodes or rather lairs of

\textsuperscript{55} Hicks, 'Most Humble Homes', p.42.

\textsuperscript{56} This dichotomy and the strong influence which British commentators had upon colonial writers, is perhaps best illustrated in John Freeman's \textit{Lights and Shadows of Melbourne Life}. In both title and format, the book mirrors James Grant's 1842 publication, \textit{Lights and Shadows of London Life}. Hicks, 'Most Humble Homes', pp.34 & 38.

\textsuperscript{57} 'The Vagabond', 'The Outcasts of Melbourne', \textit{The Argus}, 20 May 1876, p.4.
As late as 1901, journalist and anarchist J.A. Andrews provided this lurid description of Little Bourke street and its surrounds:

The by-ways were as foul as it is possible to conceive of. Waste paper and litter of all sorts, putrid kitchen garbage, dead cats and dogs in all stages of decomposition, human excreta in abundance besides the drainage from leaky and overflowing cess-pans, together with forlorn prowling cats as wretched as any human outcasts, and at odd times an occasional 'drunk' wallowing in a mess of vomit, or perhaps laid on a muck heap to recover as best he might after having been robbed - all combined to produce, upon the mind of the investigator, an impression of abomination and squalor never to be forgotten.

Like other commentators, Andrews assumed that the slums constituted 'another world', and that slum dwellers behaved in a different and less acceptable manner than the city's more respectable citizens. But his explanation of this differed in some ways from those offered by his predecessors. While earlier journalists had noted that the inhabitants of the slums suffered cruelly at the hands of greedy landlords, Andrews went one step further, by suggesting that the slums were a direct product of the capitalist system. He rejected the notion that the residents of the area were to blame for their squalor; instead, he attributed their behaviour to the detrimental effects of the environment. His concern was indicative of a new stream of thought which linked human development to the environment and emphasized the negative effects of

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58 The Australasian, 20 January 1883, p.79. See also Morris (ed.), Cassell's Picturesque Australasia, p.75.

59 The Tocsin, 5 September 1901, p.2.
crowded urban living.\textsuperscript{60}

Environmental explanations of human behaviour gradually won supporters, but they failed to displace completely traditional notions about slums and slum dwellers. Conservative accounts attributed the behaviour of slum dwellers to hereditary weaknesses. They depicted the poor as lacking moral strength, and therefore susceptible to drunkenness, laziness, immorality and vice. A lack of adequate drainage and sanitation facilities rendered the slums susceptible to dirt and disease, but middle-class observers blamed the conduct of the slum dwellers for the area's physical degradation. The residents were accused of disregarding personal and domestic hygiene, and thereby encouraging diseases which threatened the broader community. Epidemics of influenza and typhoid were said to be encouraged by the tendency of the poor to crowd together.\textsuperscript{61} In the popular psyche, dirt and disease were linked with moral impropriety. Just as the slum dwellers were blamed for the outbreak and spread of diseases, so too they were held responsible for the proliferation of immorality and vice. Disease related concepts such as 'cancer' and 'ulcer' were freely used as metaphors for unacceptable behaviours and beliefs which permeated society, allegedly threatening the security and well-being of all.

Some journalists presented the slum dwellers as primitive, if not sub-human. John Freeman described them as 'rattish and predatory', like the real rodents that lived

\textsuperscript{60} Hicks, 'Most Humble Homes', pp.42-4.

\textsuperscript{61} Alan Mayne, "The Question of the Poor", p.562.
LET LOOSE.

HELLENA (as Small Fry emerging on grey horse): "DELIGHTED TO MEET YOU, MY FRIEND. YOU'LL FIND THIS A GLORIOUS CITY TO SET UP IN—EVERYTHING READY FOR YOUR GEMS—FINE OPEN GUTTERS, A NOBLE FILTHY RIVER, CROWDED NOVELS IN THE BACK SLUMS. GIVE ME YOUR HAND, OLD MAN, AND I'LL LOAD YOU TO SOME OF THE PLAGUE SPOTS WHERE YOU CAN COMMENCE BUSINESS."

See page 9.

Illustration 1.5
(Melbourne Punch, 26 January 1882, p.35)
under the floorboards of their dilapidated houses. He portrayed the residents as a subversive group, intent upon upsetting the harmony and order of the greater community. 'We, too,' he warned,

have a dangerous class in our midst, lurking in holes and corners from the public gaze, where they make undisturbed their plans against society; and where vice in every form flourishes unchecked by aught that might have a restraining influence over it.

Vagrants shared the dubious honour of being considered amongst the most dangerous of the slum dwellers, but it was a distinction earned through inaction, rather than action.

Relatively few vagrants were accused or convicted of serious crimes against property or persons. The threat which they were believed to pose was of a more insidious kind. 'The Vagabond' warned that as material wealth increased, so too would the ranks of the morally decayed. He likened vice and crime to 'a deep-seated ulcer' which had the potential to 'eat into and destroy the body of the state.' Of 'the outcasts of Melbourne', he wrote:

These unfortunates may be likened to parasites, which (fulfilling only their own natural impulses) prey upon the leaves of a noble tree. The tree increases in height and breadth, and flourishes fair in the face of the heavens. But the parasites increase also - their course is unmolested; and so in due time they suck away the sap and vigour of the monarch of the forest, its glory departs, and ruin alone remains.

Men and women of the 'genus loafer' were depicted as the archetypal opposites of the self-made man and the virtuous woman. They were believed to share a number

62 Freeman, Lights and Shadows, p.15.
63 Ibid.
64 'The Vagabond', 'The Outcasts of Melbourne', The Argus, 20 May 1876, p.4.
of undesirable character traits. In keeping with the inherited British stereotype of the vagrant, the male and female vagrants of the colonies were depicted as shrewd, deceitful, lazy, dishonest and of dissolute habits. There was, however, a basic difference in the way in which men and women were categorised and presented as vagrants. Female vagrants were commonly accused of sexual impropriety. The fall of young girls into a vagrant lifestyle was inextricably linked in popular consciousness to their loss of sexual purity. An 1886 report on street children emphasized the sexually immoral lifestyle of girls, as opposed to the thieving and generally wayward behaviour of young boys. Similarly, 'the Vagabond' claimed that the women who lived by the Yarra River were mainly elderly prostitutes, 'outcasts whose age and faded attractions prevent[ed] them from plying their trade.' Sexual impropriety was, in turn, linked to a general loss of womanly virtues. Vagrant women were accused of appearing and acting in a way inappropriate to members of the female sex. In 'the Vagabond's' opinion, those who lived in the slums were 'low, degraded' and 'brutal looking'; they seemed 'as if virtue and purity had never been known to them even by name.' Clarke claimed that 'you [could] go any night to the hotels along the Wharf, or among the stones just outside Prince's-bridge, and you [could] see twenty girls ... ragged, dirty, bruised, and drunken....' According to Clarke, these women lurked around the wharves and low


66 'The Vagabond', 'The Outcasts of Melbourne', *The Argus*, 20 May 1876, p.4.

67 *ibid*.

68 Clarke, 'A Colonial City', p.138.
public houses looking for men to 'lure' and trap. The Argus claimed that, in the slum district, many innocent men fell victim to women who were so debased that they were inconceivable to 'gentle womanhood':

strong, healthy, brutal, cruel, knowing no compunction or scruple of any sort whatever; only restrained from robbing and murdering any victim that falls into their hands by dread of the vengeance which would overtake them.

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69 ibid. p.128.

70 The Argus, 22 January 1889, p.5.
Vagrant women were depicted as having rejected the institutions of marriage and family. They were most often portrayed as sexually promiscuous single women. Occasionally they were recognised as partners in a de facto relationship, but most commonly, they were portrayed as prostitutes. Commentators noted disapprovingly that vagrant women were sometimes accompanied by children. John Freeman suggested that beggar women borrowed children from their counterparts in order to win the sympathy of their victims. Although he could not say that the children were hired, it was an idea which he did not dismiss.71 Female vagrants were accused of raising another vagrant generation. In every respect, they were presented as the antithesis of the gentle mother and the loving wife - the revered moral guardians of society.

While the charge of sexual impropriety was of central importance in the categorisation and depiction of vagrant women, it was less significant in relation to men. Commentators occasionally criticised the 'libidinous habits' of male vagrants, but it was their failure to work which was accepted as a far more important indicator of their moral poverty. Vagrant men were accused of laziness and deliberate idleness, and were commonly denounced as 'loafers'. James attributed the condition of the men living on the banks of the Yarra to 'indolence and want of sufficient mental stamina.' 'Strong drink', he also believed, to have been an important agent in the downfall of some.72 Failure to work was also linked to the avoidance or abandonment of familial responsibility. It was emphasized that male vagrants, like their female counterparts,

71 John Freeman, *Lights and Shadows*, p.133.

72 'The Vagabond', 'The Outcasts of Melbourne', *The Argus*, 20 May 1876, p.4.
lived outside wedlock and the bourgeois family structure. Middle-class commentators, who supported the evangelical ideal of the 'domestic man', 73 criticised male vagrants for failing to conform to the role of husband, father and provider. Even more importantly, male vagrants were seen to have broken free of the 'civilizing influence' of the home. But that is not to say that they were praised by those who rejected the ideal of the 'domestic man' and the model of masculinity which it involved. Bushmen were championed for their independence, but the same was not said about vagrants whose solitary transient lifestyle was popularly seen more as a product of weakness than of strength.

Vagrants were seen in terms of regression, rather than progression. Marcus Clarke, for example, suggested that the vagrants who found shelter in unused gaspipes had 'reached the level of the brute.' 74 Similarly, he described those who slept by the Yarra River, as the members of a lowly, almost animal-like caste:

Take care how you step, for vagabondism is all beneath your feet. Ragged, dirty, wet, infamous, and obscene, it lies huddled upon the soaked earth, beneath the low-hanging branches of scrub and wattle. It makes no sign, it has no fire, no warmth, no shelter - only sleep...It lies under bushes, by the side of rotten palings, and in the gully by the fence. It is covered with tattered blankets, with rags, with coat turned up over head, with thickness of pasted advertisements torn down from the mouldering paling-boards, with cut-down and plucked-up bushes - with nothing. Here are the dwellers in the wilderness, huddled together indiscriminately - men, women and children. 75


74 Clarke, A Colonial City, p.168.

75 ibid, p.172.
In the Vagabond's account of the 'Yarra Bankers', the vagrants' individual characteristics are overshadowed by their collective appearance:

They are all of one class - 'homeless, ragged, and tanned.' They are mostly without family, without friends, without bodily strength, ignorant of any trade, of feeble health, and whose only associates are as themselves.
They are vagrants, pure and simple, fear of the law and want of nerve keeping them from being actively criminal, but still ever ready to commit any petty theft, if they can do so without detection.\textsuperscript{76}

Freeman, too, claimed that all vagrants looked alike. He recalled the loafers he had come across in a sixpenny lodging house:

There were no two men of the same height, or any two of the same cast of feature; but the expression on the faces of all was as much alike as though they had sprung from the same father and mother. The same look about the eyes, a sameness about the mouth, and the same unwholesome complexion, thus showing plainly enough the power drink has over its victims, and how it can influence their looks as well as bring their minds to the same dead level.\textsuperscript{77}

Vagrants were depicted as an homogenous and monolithic group; one which shared a distinct and threatening culture. Commentators noted how vagrants moved within and around the city, and how they congregated in particular places, around street drinking taps, in parks, night shelters and sixpenny restaurants. Clarke suggested that vagrants, like other segments of Melbourne low-life, possessed their own distinct language. He described it as a 'sealed book to most men.' He drew attention to specific words and phrases that they used, as well as particular gestures and signs. In Clarke's opinion, their's was a sinister language intended to conceal the communicator's thoughts from the uninitiated:

A lower Bohemian learns, in the course of his life, to speak without words, to communicate without signs, to express a world of meaning in a sentence, a volume in a word, a word by a motion, a motion by a glance. In the solitary cell, in the prison, on the scaffold, he communicates with his friends, organises plans of escape, receives and transmits intelligence. Perhaps in no other city is this terrible language

\textsuperscript{76} 'The Vagabond', 'The Outcasts of Melbourne', The Argus, 20 May 1876, p.4.

\textsuperscript{77} Freeman, Lights and Shadows, p.28.
spoken with such facility as in Melbourne. During the last twenty years has been pouring into the city a crowd of released convicts, redeemed scoundrels, adventurous vagabonds, all of whom speak this hideous tongue with facility.  

The press, in particular the daily papers, carried frequent accounts of the slums, slum life, and vagrants. Reports by slum journalists captured popular imagination and played an important role in reflecting, shaping and reinforcing notions about the district and its inhabitants. Sensationalised accounts of police raids and court trials, involving the owners and employees of the city's brothels, gambling houses and opium dens, also served to whet public curiosity. Arrests and trials involving vagrants were covered in varying degrees of detail. The Age and The Argus also provided numerous individuals and groups with a vehicle for the promotion of their own views. They reported upon meetings of charitable associations, and published addresses given by evangelicals, philanthropists, government members and other notable public speakers. In addition, the papers were liberally sprinkled with letters. Angry residents, businessmen, charity workers, lobby groups and government members were among those who used the press to publicise their own particular cause or grievance. Some letters dealt explicitly with vagrancy, others with associated issues. In general, they reflected popular beliefs about vagrants but incorporated the personal, and sometimes idiosyncratic, interests of their authors. A letter written by J.F.K. and published in The

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76 Clarke, A Colonial City, pp.160-62. Clarke's interest in the language used by Melbourne's outcasts was shared by Constable Cornelius Crowe who produced the Australian Slang Dictionary containing the words and phrases of the thieving fraternity, together with the unauthorised though Popular Expressions now in vogue with all classes in Australia, Robert Barr, Fitzroy, 1895.
Argus in 1886 is illustrative of this. The correspondent was a disgruntled neighbour of the unconventional philanthropist Dr John Singleton. He wrote to complain about the nuisance caused to him and his wife by the men and women who visited the doctor in search of recommendations for charitable assistance:

"every morning when I go to town I see ‘female beauties’ at his gate, or on their way to the Fitzroy gardens, that I know will be a terror to my wife during the day. And when posting letters at night I see, at the same gate greasy loafers that will be a terror to me at night...I ask why the police do not clear our streets of these vagrants, put them into gaol, where they may do some little work; they never do any out of it." 79

The images put forward by various groups and individuals of vagrants, were basically variations of the same theme. Philanthropists, evangelicals, policemen and doctors generally agreed that vagrants were cunning, lazy and dishonest, but differences in personal philosophy and interests did produce some divergence of opinion. A variety of explanations and interpretations of vagrancy were put forward. Some believed vagrancy to be primarily a sin; others deemed it a crime. The majority believed it to be due to moral weakness, but a few enlightened troublemakers attributed it to social and economic causes. There was disagreement over whether vagrants could be reformed, and how, in general, they should be treated.

Fire and brimstone evangelist Henry Varley had his own distinct view of Melbourne low-life. This British-born preacher intermittently resided in Melbourne where he set about whipping up a frenzy of moral indignation. At public meetings and in

79 The Argus, 30 June 1886, p.9.
pamphlets, he denounced the sinfulness which he believed to be abundant in the city.⁸⁰ Through lurid descriptions, he attempted to shock his audience into submission. Varley described the back slums, as 'a loathsome centre in which crime, gambling hells, opium dens, and degraded Chinese abound, and where hundreds of licentious and horribly debased men and women are herded like swine.'⁸¹ He spoke of prostitutes, 'some whose eyes flashed like incarnate demons', who waited to prey upon innocent manhood, and warned of the dangers of drunkenness and gambling. Even the amusements of the most respectable were not beyond attack. Varley regarded the Melbourne Cup Carnival as the greatest example of the city's depravity, with 'more lessons in villainy, more cheating, lying and dishonesty, more wreckage of character and more abominable wickedness' being evident then than at any other time of the year.⁸² 'Had the fearful social evils which came into such prominence been attacked, denounced, and driven back', he believed that Melbourne would have been free of much of the vice and crime that plagued it.⁸³  

Other evangelicals placed their faith in practical action rather than sensationalist rhetoric. They preferred to take their message straight to the slums. Wesleyan John Coles, for example, moved from Talbot to the Wesley Church in 1875 so that he could

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⁸⁰ For an account of Varley's life see Henry Varley (Jun), Henry Varley's Life-story, Alfred Holness, London, 1913.

⁸¹ Quoted by Davison & Dunstan, "This Moral Pandemonium", p.51.

⁸² Henry Varley, The Impeachment of Gambling, Melbourne, 1890, p.11.

⁸³ ibid.
labour amongst the poor, the degraded and the lost, in that terribly low neighbourhood'.

Eighteen years later, the Wesley Central Mission was set up in Lonsdale street under the guidance of Reverend A.R. Edgar. The Salvation Army also provided spiritual guidance to the slum-dwellers. Like their Wesleyan counterparts, the Salvationists visited brothels, opium dens and public houses in the hope of reclaiming their fallen sisters and brothers. Army members provided counselling, shelter and aid to discharged prisoners and to young girls whom they 'rescued' from the various slum establishments. The unconventional methods of the Salvationists were criticised by the respectable, and often violently resisted by those they sought to save. Nevertheless they and the other evangelicals gained strength from the belief that sin could be overcome. They attributed the plight of vagrants and other outcasts to personal weakness, but by emphasizing human goodness, forgiveness and the promise of ultimate judgement, refused to ascribe an irredeemable character to them. It was the evangelicals' belief that even the worst sinners could save themselves from eternal damnation.

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84 John Coles, The Life and Christian Experience of John Crowley Coles, Hutchinson, Melbourne, 1893, p.68.

85 Davison & Dunstan, "This Moral Pandemonium", p.46; Table Talk, 21 July 1893, p.4.


87 For an account of the Salvation Army in Melbourne see Blair Usher, 'The Salvation War' in G. Davison et al., The Outcasts of Melbourne, pp.124-39.
The evangelicals' emphasis on personal salvation left no room for the consideration of structural inequalities. This issue was taken up by more radical theologians who mixed political and religious doctrines to point to the injustice existing within colonial society. In 1890, Reverend H.L. Jackson, a Sydney exponent of Christian Socialism, treated delegates at the First Australasian Charity Conference to a lengthy paper on the nature, causes and remedies of pauperism. Jackson agreed with conservatives that 'indiscriminate charity' bred 'professional loafers', but he went on to suggest that social inequalities and greed were at the root of most of the evils that bedeviled society.\textsuperscript{88} He believed the reorganisation of society along socialist lines to be the only possible solution. Charles Strong, the Melbourne-based leader of the independent Australian Church, was also an outspoken critic of capitalism.\textsuperscript{89} Like Jackson, he focused attention upon the plight of the poor. He criticised the lack of relief available to the poor, and, rather than blame the destitute for their situation, attacked the wealthy landlords and exploitative employers who kept them in poverty.\textsuperscript{90} In Strong's opinion, vagrancy and destitution went hand in hand and were the products of an unjust capitalist system.

Melbourne philanthropy also had its radicals. Selina Sutherland, who was well


\textsuperscript{89} For biographical details see entry on Charles Strong, ADB, vol.6, pp.208-9; C.R. Badger, The Reverend Charles Strong and the Australian Church, Abacada Press, Melbourne, 1971.

\textsuperscript{90} Kennedy, Charity Warfare, p.108-113.
known for her work amongst slum children, pointed an accusing finger at the city's respectable citizens. In an address given at the Second Australasian Conference on Charity in 1891, she drew attention to the exorbitant rents that Melbourne slum dwellers were forced to pay by greedy landlords. Sutherland alleged that the opium dens were owned by 'men of wealth' and that the public houses of the district were the property of breweries, whose shareholders included 'legislators and so-called leaders of society.' In addition, she pointed to the ill-effects of overcrowding, physical squalor and unemployment.\(^91\) Although Sutherland presented herself as a classic child rescuer, her evangelical beliefs were limited by an awareness of the external factors that contributed to the existence of poverty.\(^92\)

The title of Melbourne's most radical philanthropist was earned by John Singleton.\(^93\) This Irish-born doctor was well known for his work amongst the poor, oppressed and criminal. He was responsible for the establishment of the Collingwood Free Medical Dispensary and various night shelters for homeless men and women.\(^94\)


\(^{93}\) For biographical details see the entry on him in the ADB, vol.6, pp.129-130; T.J.H. Leavitt, Australian Representative Men, Wells & Leavitt, Melbourne, 1887, vol.2, pp.269-173; John Singleton, A Narrative of Incidents in the Eventful Life of a Physician, Hutchinson, Melbourne, 1891.

\(^{94}\) By 1888, Singleton had established three shelters for the homeless. These were his Temporary Home for Friendless and Fallen Women, the Blue Bell Night Shelter for Men and the Night Shelter for the Homeless and the Friendless Poor. COS, Guide, p.57.
Singleton was inspired by evangelical christianity rather than any sophisticated critique of capitalist society. Nevertheless he clearly recognised the poverty under which many people laboured, and was critical of the narrow-minded approach which dominated Melbourne philanthropy. He was one of the first individuals to draw a connection between vagrancy and poverty. In 1889, Singleton opened his 'Life-Boat' Shelter for the Homeless Poor in West Melbourne. Two days later, in the Daily Telegraph, he wrote of the distress of the homeless:

I and others know that many...still pass the night for want of a sixpence to pay for a bed when the shelter is full, but they have refrained from mentioning their resting place, as it would lead them to gaol. Any observer of the police-court's accounts can see that such are apprehended as vagrants, and, together with those who voluntarily give themselves up, hungry and homeless, are sent from a month to a year in gaol.95

Singleton admitted that there were idle and drunken people who would live off charity if allowed to, but he argued that they were a minority. Destitution he attributed mainly to unemployment, debility and illness. He urged that relief not be refused 'under the false idea that the homeless poor are unwilling to work, or otherwise unworthy of sympathy and help.'96

Singleton put his preachings into practice by providing assistance to even the most outcast. His lack of discrimination contradicted accepted charitable practices and brought him into conflict, not only with his neighbours,97 but with other philanthropic

95 Quoted by Kennedy, Charity Warfare, p.109.
96 ibid, p.110.
97 The other residents of Islington Street and its surrounds did not share Singleton's enthusiasm. In 1886, they formed a 'vigilance committee' and appealed to
agencies. The Charity Organisation Society, the colonial offshoot of the British society of the same name, was Singleton’s most virulent opponent.\textsuperscript{98} The society’s motto was ‘Work rather than Alms’. It emphasized the harmful effects of indiscriminate charity, a practice which in its opinion, ‘tended more to ruin than to rescue.’\textsuperscript{99} The COS espoused the virtues of ‘scientific charity’, which involved distinguishing between the deserving and undeserving poor on the basis of rigorous and uniform investigation. It had little time for those it considered unworthy, and indeed one of its primary objectives was to have the Collingwood Council to relieve the neighbourhood of the ‘nuisance and stigma’ caused by the home and its residents. In his defence, Singleton pointed to the extraordinary need for such an institution. \textit{The Argus}, 27 July 1886, p.7 & 7 August 1886, p.10.

\textsuperscript{98} The COS and Singleton engaged in a long battle over the provision and management of night-shelters for the homeless. The society accused the doctor of failing to keep adequate records and of dispensing assistance to undeserving persons. In 1889/90, the organisation tried to introduce a uniform method of record management and exchange for Melbourne’s night shelters, the aim being to weed out those individuals who were seen to be abusing the system. Singleton refused to provide any details about his institutions for this project, or for the society’s revised guide to Melbourne’s charities. As a consequence of Singleton’s action, the Society refused to support his endeavours in any way, and advised individuals not to donate to his homes. In 1895, the COS also accused the St. Vincent de Paul Society of indiscriminantly assisting the homeless. It found the Society to be ‘composed of 4 or 5 men who hardly seem[ed] qualified to distribute alms’ and concluded that it probably did ‘as much harm as good’. The first progress report of the Royal Commission into Charitable Institutions, released in 1890, similarly claimed that the private charity of Dr Singleton and the St Vincent de Paul Society was ‘not altogether wise in its workings.’ For references to Singleton see COS Minutebook, 12 Dec 1888 - 17 March 1893, entries for 1 October 1889, 3 December 1889, 10 December 1889, 25 February 1890, 14 October 1890, 28 October 1890 and 26 April 1892. For references to the St Vincent de Paul Society see COS Minutebook, 21 March 1893 - 29 November 1897, entry for 18 June 1895. See also First Progress Report of the Royal Commission into Charitable Institutions, \textit{VPP}, 1890, vol.4, p.6; Kennedy, \textit{Charity Warfare}, pp.107-113.

objectives, was to expose 'sturdy beggars and professional impostors'.\textsuperscript{100} The COS appointed a retired policeman as its first 'visiting agent' and actively sought the prosecution of people found soliciting donations.\textsuperscript{101} In 1888, its Secretary, Major Jacob Goldstein, complained that beggars constantly came to his office: 'Mostly vagrants', they 'not only wasted his time, but were often difficult to get rid of.'\textsuperscript{102} In Goldstein's opinion, 'loafers, tramps, drunkards, criminals, broken down and "masterless" men, and invertebrate creatures' who constituted a large proportion of the unemployed, were a 'standing menace to civilization'.\textsuperscript{103} Goldstein, like the other members of the COS, firmly believed that individuals should prove their willingness to work before being given aid. Thus the society pushed for the introduction of labour-tests and was also instrumental in the establishment of the Leongatha Labour Colony in the 1890s.

The COS was certainly not unique in its attitudes to the poor and the vagrant. Numerous speakers at the conferences it convened in 1890 and 1891 supported the notion of work-tests and greater differentiation between deserving and undeserving

\textsuperscript{100} COS Minutebook, 2 June 1887 - 4 December 1888, entry for 11 July 1887.

\textsuperscript{101} COS Minutebook, 2 June 1887 - 4 December 1888, entry for 26 August 1887. Also COS Minutebook 12 December 1888 - 17 March 1893, entries for 6 August 1889 and 20 August 1889. For examples of action taken against beggars see latter minutebook, entries for 5 November 1890 and 28 April 1891.

\textsuperscript{102} COS Minute Book, 2 June 1887 - 4 December 1888, entry for 12 September 1888.

\textsuperscript{103} Jacob Goldstein, 'The Unemployed', \textit{Proceedings of the Second Australasian Conference on Charity}, p.99.
persons. The Victorian Discharged Prisoners' Aid Society was designed to help convicted criminals, yet it too sought to distinguish between the deserving and undeserving. The members of the VDPAS recognised the connection between poverty and vagrancy, but refused to assist vagrants with multiple convictions to their name. Such individuals were denounced as 'confirmed criminals' who, 'habituated to crime and hardened in their vicious courses... [had] no inclination or desire to reform.' The crimes of vagrants were generally minor in nature, but they were often frequent enough to be viewed as proof of an irreformable character.

There was much disagreement over whether vagrants could be reformed. Evangelicals believed that there was always hope of redemption, but at least one experienced inner city policeman dismissed their faith in reform as 'nonsense.' Many members of the medical and legal fraternities accepted that environmental factors

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104 Of particular interest in the Proceedings of the First Australian Conference on Charity are the papers by Alexander MacCully, 'The Unemployed', pp.114-119; Pastor Herlitz, 'Workmen's Colonies for the Unemployed', pp.93-99; Dr Garran, 'Science and Charity', pp.34-36; Reverend J.W. Simmons, 'The Principles of Charity', pp.28-33 and J.D. Langley, 'Able-bodied Pauperism', pp.64-67. Of the papers presented in the Proceedings of the Second Australasian Conference on Charity, the most relevant is Pastor Herlitz's, 'Workmen's Colonies for the Unemployed' and the discussion following it, pp.107-120.

105 Letter from Chairman and Honorary Secretary of VDPAS to Chief Commissioner, 12 February 1890, in VDPAS Letterbook, 8 July 1884 - 2 October 1893, pp.106-9; VDPAS 24th Annual Report, 1896, p.8.


contributed to the wayward behaviour of individuals, but still they argued that reform was unlikely, if not impossible. Their pessimism stemmed largely from their belief in 'natural' or 'instinctive' criminality. Exponents of the new science of criminal anthropology provided the most detailed explanation of this phenomenon and greatly affected penal debate in the colonies as elsewhere. According to Cesare Lombroso, who was reputed to be the world's greatest exponent of criminal anthropology, habitual criminals were marked by a variety of physical, mental and nervous anomalies. In introducing Lombroso's 1895 work, The Female Offender, W.D. Morrison eloquently outlined the anthropologist's main tenet:

In short, the habitual offender is a product....of pathological and atavistic anomalies; he stands midway between the lunatic and the savage; and he represents a special type of human race.\textsuperscript{108}

Vagrants and other habitual offenders were cast as degenerates. W.L. Cleland, a surgeon and the resident medical officer of Adelaide and Parkside Lunatic Asylums, believed the brains of criminals to be 'atypical of the race and on a lower level of organization'. He argued that those offenders who were continually brought before the Courts of Petty Sessions had less power to see 'all the relations and bearings on a subject'; a consequence of being 'brain-blind to the nicer requirements of a more or less advanced civilization'.\textsuperscript{109} Cleland argued that 'an element of innate criminality' existed within habitual offenders, whom he likened to the chronic insane and the

\textsuperscript{108} Introduction to C. Lombroso, The Female Offender, London 1895, p.xvi.

\textsuperscript{109} W.L. Cleland, A Comparative Study of the Chronic Insane, the Habitual Offender and the Endemic Unemployed with a view to Treatment, Webb & Son Printers, Adelaide, 1897, p.4.
endemic unemployed. In all three groups, he argued:

Everything is below par. There is a want of spontaneous effort to initiate action and a lack of the power of steady application. Thought for the future is impossible, and a hand-to-mouth existence is all that is practicable. It is evident that in not any of the three can it be said that there exists a healthy mid in a healthy body.\textsuperscript{110}

The most extreme proponents of the theory of 'innate criminality' were drawn to eugenics and advocated the elimination of habitual offenders and other non-productive people from society. In 1893, H.K. Rusden put such a proposition to the members of the Australasian Association for the Advancement of Science:

the lives of criminals, lunatics and idiots are not only useless, but painful to them, a mischief to society, and far worse to posterity. The humane course is to narcotise them on their first conviction. Ten years of this system would go far to abolish crime, if not lunacy, and would rapidly raise the average of morality and intelligence of the human race.\textsuperscript{111}

The bulk of professionals opposed such drastic measures, but agreed that the isolation of habitual offenders was essential if reform was to be attempted. It was argued that segregation was also needed to protect society from the unhealthy influence of criminals. There was, however, disagreement over how habitual offenders should be treated once they were isolated. Doctors and psychiatrists argued that criminality should be regarded as a disease and therefore treated medically. In its 1884 progress report, the Royal Commission on Asylums for the Insane and Inebriate, provided some support for this medical model:

\begin{quote}
The criminal classes are notoriously, as a class, weak-minded; and in
\end{quote}

\begin{footnotes}
\item[\textsuperscript{110}] ibid, p.7.
\item[\textsuperscript{111}] H.K. Rusden, 'The Survival of the Unfittest' in Australasian Association for the Advancement of Science Report, no.5, 1893, p.523.
\end{footnotes}
some more advanced stage of civilization warped, deformed, and deficient minds may be treated rather as mad than bad.\textsuperscript{112}

Professionals who shared this view suggested that criminals were best dealt with outside of prisons. Others suggested that the penal system be altered to enable a more therapeutic method of treatment to be adopted. In 1884, E.C. Martin argued that criminality should 'be treated as a disease' and suggested that Victoria, New South Wales and Tasmania join together to establish a self-supporting prison system. Martin envisaged the establishment of a small community populated only by criminals and penal officials, with the latter interfering as little as possible in the regulation of the community. Through isolation, hard work and responsibility, Martin believed criminals could be taught the importance of individual rights and responsibilities.\textsuperscript{113}

By the end of the nineteenth century, there was greater flexibility evident in the treatment of vagrants. Charitable institutions, lunatic asylums and labour colonies provided alternatives to penal incarceration, yet imprisonment remained the dominant means of dealing with these offenders. The illegality of vagrancy ensured that vagrants were regarded as criminals and validated the view that they were deserving of punishment. Penal detention fulfilled this ideal of retribution, and was considered particularly appropriate for those who were believed to be beyond reform. Vagrants were not only found guilty of committing particular offences, they were also found guilty

\begin{itemize}
\item \textsuperscript{112} Report of the Royal Commission on Asylums for the Insane and Inebriate. VPP, 1886, vol.2, p.xxxii.
\item \textsuperscript{113} E.C. Martin, 'A New Penal System', Melbourne Review, vol.9, January-October 1884, pp.201-7.
\end{itemize}
of being particular types of people; either 'idle and disorderly persons', 'rogues and vagabonds' or 'incorrigible rogues', depending upon the gravity of their offence. Individual traits and circumstances were replaced by the general stereotype of the vagrant. Their flawed character was believed to make reform largely impossible and the frequency with which they returned to gaol reinforced this view. Recidivism could be attributed to the negative aspects of gaol life and the offender's stigmatisation, but usually it was explained as the product of the vagrant's weak or wicked character.

Behind the Image

It is obvious that the image of the vagrant, together with its legal expression, blatantly disadvantaged members of the working-class. Above all else, the vagrant stereotype was used to isolate and denounce those who did not contribute to the capitalist system. By bringing into ill-repute those who failed to conform to bourgeois demands of respectability and endeavour, the vagrant image reinforced middle-class values and standards of behaviour that were necessary to the maintenance of economic and social order. Working-class men who were unable or unwilling to take employment, or who engaged in activities which were disruptive of work practices, were formally sanctioned under the vagrancy law. Women of the same class were liable to similar treatment if they were not gainfully employed, either inside or outside the home.

It is difficult to determine whether working-class people shared middle-class
perceptions of the vagrant. Marcus Clarke believed that they did. According to him, the respectable working-class people who lived in the slums kept their distance from the less respectable:

The two countries border on each other, it is true; but the manners, customs, dresses, language, all are different, and the inhabitants frequently never meet nor speak to each other...as a general rule, the respectable workman, on his way to his respectable toil, will look askance if by some accident he should see, at the other side of the oil-cloth covered board which bears his coffee, some ragged, dirty, shambling creature, blinking uneasily at the approach of daylight. Clarke hinted that Melbourne’s slum district possessed its own social hierarchy. Robert Roberts noted a similar phenomenon when recalling his experiences as a resident of the Salford slums in the early years of the twentieth century. The slum dwellers that Roberts knew were acutely aware of social position and strove relentlessly to maintain, and if possible, better their place in the slum hierarchy. Shopkeepers, publicans and skilled tradesman constituted the elite of the Salford slums. Idlers, petty thieves, beggars, those with criminal convictions and prostitutes formed the base of the social pyramid. It is unlikely that the slums of late nineteenth century Melbourne were very different. In 1882, Sergeant James Dalton drew attention to the hierarchy of prostitutes that worked in and around the city’s slums. According to Dalton, every street had its own particular class. Paul Hicks argues that the letters sent by slum dwellers to the Melbourne City Council reveal a strong concern for the ‘so called “middle-class values”

114 Clarke, A Colonial City, pp.147-8.
of respectability, morality and image.'

Hicks suggests that these letters often served a 'policing role', by drawing attention to the unacceptable behaviour of other residents. In 1890, for example, W. Wilson wrote to the council to complain about a house in Crossley Street in the city. It was occupied by a Jew and Jewess called Goldstein, who took in lodgers:

owing to the presence of so many Single men in the House it is a perfect Nuisance to the locality continual quarrels going on night and day between Mrs. Goldstein and her motelly crowd of lodgers most Beer Drinkers - the noises made in these Cottage by this Woman and her lodgers are a perfect Nuisance to the whole Neighbourhood.

The letters sent by slum dwellers to the police often exhibited similar concerns. In 1894, A.W. Parker wrote the following to the Chief Commissioner of Police:

I am very much annoyed be a number of Roughs who are camping in an empty House in Little Napier St Fitzroy who are constantly annoying and Frightening any Tenants they have comp. destroyed a House adjoining mine and are wrecking any empty House the can find in fact the respectable people who reside there hardly dare sleep at night...

The correspondent no doubt perceived himself as one of the respectable, yet observers who lived outside of the slums often drew little distinction between slum residents. Constable O'Sullivan who was called upon to investigate the complaint had little sympathy for Parker:

The locality where Mr Parker's house is, has for years been and is so up

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117 Hicks, 'Most Humble Homes', p.346.
118 ibid, p.428.
119 ibid, p.425.
120 Letter from A.W. Parker, 1894, Chief Commissioner of Police Inward Correspondence, VPRS 807: Unit 1: A1053.
to the present, a den of low drunken prostitutes it is a part of the city recognised as a quarter for these dissipated characters, and when a respectable person gets into there, they very soon make themselves scarce, unless they are not very particular as to the class of persons they are mixed up with. 121

The division between the reputable and the disreputable was reinforced through the workings of the legal system, and through the distribution of aid by mainstream philanthropic organisations such as the COS and benevolent societies. Working-class people who wished to secure charitable assistance had to prove that they were law-abiding and respectable citizens. They therefore needed to remain aloof from less reputable souls and to avoid the habits associated with poor character. As well as emphasizing their own moral worthiness, candidates for assistance could win favour by condemning the wayward behaviour of others. By demanding proof of respectability, mainstream charities stifled unacceptable behaviour and drove a wedge between those who were considered respectable and those who were not.

Acceptance of this distinction by members of the working-class, however, may well have been tempered by an awareness of their own vulnerability. Economic circumstances were as important as individual desire when it came to maintaining respectability. Those who sought to enhance their reputation had to contend with the ever-constant dangers of unemployment, accident and illness. Charles Fahey and Jenny Lee have shown that, even during the boom years of the 1880s, regular employment was not guaranteed. The seasonal nature of rural production had

profound ramifications for urban workers. Harvest time heralded an upturn in employment at the docks. Woolen mills, food preserving companies, confectionery and soft drink makers, as well as other businesses that processed raw produce, took on more workers. The clothing trade which was a main employer of women also speeded up production in Spring. Employment opportunities, though, were short-lived. Christmas coincided with a slow-down in production. Many workers were laid off or lost wages due to public holidays. An even more serious retraction in the labour market occurred as Winter approached. The building and manufacturing industries, in particular, retrenched workers. Predictably, it was the unskilled and semi-skilled labourers who found employment during peak periods of productivity, who were the first to lose their jobs when industry slowed down.

The vagaries of the labour market meant that workers could expect to be unemployed for at least part of the year. During the depression years of the 1890s, the situation was, of course, exacerbated, with unemployment becoming a permanent state for a large number of men and women. P.G. Macarthy has estimated that unemployment rose from 8.3% in 1891 to a high of 28.3% in 1893, but even this high

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Unemployment, whether it was caused by economic circumstances, illness or accident, had serious consequences for individuals and families. Those who eked out a meagre existence during periods of employment had few resources to fall back on during hard times. They were forced to sell the few possessions they owned, but the income they gained in this way was often insufficient to ward off impatient landlords. Eviction and destitution generally followed.

Illustration 1.8
(Melbourne Punch, 26 February 1880, p.84)

Family breakdown was another common consequence of poverty and unemployment. During the depression particularly, men took to the road to find work. Many left behind a wife, children, and elderly dependents. Like widowed mothers, the women who were left in the city, had to shoulder the burden of family care. They made ends meet by performing odd jobs and were sometimes able to secure charitable assistance. Older children and aging relatives who could no longer be cared for by the family were forced to fend for themselves. As Shurlee Swain suggests, people at either end of the age scale were particularly susceptible to social and economic hardship.  

Material progress then, even in 'Marvellous Melbourne', had its human cost. Raymond Williams' observations on the double-edged nature of capitalism are relevant:

Capitalism has...always been an ambiguous process: increasing real wealth but distributing it unevenly; enabling larger populations to grow and survive, but with them seeing men only as 'producers and consumers, with no substantial claim on society except in these abstract capacities. There was thus a continuing contrast between the extraordinary improvement of the land and the social consequences of just this process, in the dispossessed and the vagrants, and the old, the sick, the disabled, the nursing mothers, the children who, unable to work in these terms, were seen merely as negative, an unwanted burden.

Vagrants were products of capitalism and the ideology that supported it. In the Australian colonies, as in England, structural inequalities such as limited employment opportunities and the uneven distribution of wealth, created an underclass which did not share in the benefits of material progress. This 'residuum' was composed of

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124 Swain, 'The Poor People of Melbourne', pp.92-99.
people who had either ‘turned their backs on progress, or had been rejected by it.’

The elderly, ill, disabled and poor constituted one of five distinct groups within Melbourne’s vagrant population. The experiences of the individuals who made up this group highlight the difficulties that many working-class people faced, and expose the precarious nature of respectability. Members of the middle-class boasted of the opportunities available to even the lowliest labourers in Melbourne, yet it is clear that some individuals, through no fault of their own, were unable to share in the city’s prosperity. Some were beaten before they had even begun. Those who had been born with physical and mental disabilities were unable to compete with able-bodied workers, and, if not institutionalised or in family care, were left to eke out an existence on their own. Men and women who had been prematurely been struck down by illness or accident, or who were unable to work as a consequence of old age, often found themselves in a similar predicament. Nor was it uncommon for respectable members of the working class, especially the unskilled or semi-skilled, to be reduced to the status of vagrant as a consequence of chronic unemployment and material poverty.

The story of James Rule exemplifies this process. On 21 January 1889, Rule was arrested in Little Collins Street by Constable James Dalton. He was 67 years old, destitute and ill. Like most vagrants, Rule was not a native of Victoria. He had been born in England and had arrived in the colony in 1853. Despite his 36 years of residence, it seems that he had neither friends nor relatives upon whom he could call

\[\text{\textsuperscript{127} ibid. p.11.}\]
for support or assistance. Rule was a labourer by trade, but his advanced years and failing health had brought his working-life to an end. He was convicted of vagrancy by the Melbourne Court of Petty Sessions and forwarded to the Melbourne Gaol, where he was placed under medical care. Upon his admission, he was described as 'old and feeble'. He told the gaol doctor that he was starving and that he had been without food for four or five days. On 7 February, Rule passed away. His death was officially attributed to 'old age, debility and want'.

The sad reality was that in late nineteenth century Melbourne, little assistance was available to people like Rule. State aid for the elderly was not provided until 1900. Hospital treatment was only available on subscription and there was no poor-law to provide for the impoverished. 'As far as the law is concerned' mused Trollope, 'any man who cannot feed himself may lie down and die'. Those, who during hard times, lacked the emotional and financial support of family and friends were particularly vulnerable. They eked out a living scrounging food and items to sell. Some attempted to gain charitable assistance but this was difficult, especially if the individual had no one to vouch for his or her good character. Any hint of dishonesty, drunkenness or immorality was taken as proof of poor character and resulted in the request for aid being denied. The mainstream charities' emphasis upon good character had particularly serious implications for women who had been deserted or were impoverished as a consequence of their husbands' intemperate habits. Philanthropists

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129 Trollope, Australia, p.255.
argued that such women should not be given assistance, because it wrongfully relieved men of their responsibilities and enabled them to continue their viceful existence. Requests for aid constantly exceeded the available resources, so if assistance was eventually given, it was usually meagre. Successful applicants were discouraged from applying again, for continual reliance upon charitable assistance was believed to lead to pauperism. The overall inadequacy of the system, and the harshness with which it was administered, ensured that the most impoverished and the least able were eventually forced onto the streets. Once reduced to utter destitution, they had little hope of resurrecting their lives. They were susceptible to arrest as vagrants, and many like James Rule, spent their final days incarcerated in a gaol or lunatic asylum.

Men and women who followed a traditional vagrant lifestyle constituted a second group within Melbourne's vagrant population. In many ways, they are difficult to differentiate from the poor, ill, elderly and disabled. Many people adopted a transient way of life, free of property and regular employment, as a consequence of impoverishment, illness and aging. They slid into it, rather than consciously choosing it. Some no doubt regarded it as an admission of defeat. For others who consciously embarked upon such a lifestyle, it may have been an act of open defiance, signalling their unwillingness to compete on unequal terms for employment, charitable assistance, status and wealth. Commentators invariably drew attention to the subversive aspect of vagrancy. The values and practices promoted within society - hard work and the accumulation of property, devotion to family, and the observation of religious and moral tenets such as honesty, sobriety and thrift - were seen as being openly challenged by
the vagrant lifestyle. The visibility and frequency of vagrants' offences, coupled with their challenging of everyday conventions, heightened the seriousness with which such acts were viewed. Crimes such as murder constituted very serious breaches of order, but were relatively uncommon and isolated. By contrast, the offences committed by vagrants were numerous and immediate. For this reason, they were believed to pose an insidious and ongoing threat to social order.

The vagrant lifestyle was offensive because it involved a blatant disregard of the conventions governing the use of private and public space. Capitalism in Melbourne, as elsewhere, was accompanied by a careful structuring of space. A primary division, reflecting the sexual division of labour, was drawn between the public and private. The home represented the private sphere and was regarded as women's domain. Within its walls, women were supposedly free to exercise their moral authority and to create a haven safe from the troubles of the outside world. By contrast, everything outside the home represented the public sphere and was depicted as the domain of men and male action.130 The central business district symbolised the achievements of men. The

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130 For a brief account of the development of the spatial manifestation of this dichotomy see Women and Geography Study Group of the IBG, Geography and Gender: An Introduction to Feminist Geography, Hutchinson, London, 1984, pp.46-51. Jill Matthews rightly argues that the ideological ideal of 'separate spheres' was imperfectly translated into practice in late nineteenth century Australia. Although industrialisation brought an increasing separation of work and home, she stresses that not all women accepted the model of the domestic, home and family-bound woman. Jill Matthews, Good and Mad Women, p.88.
workplace, the race course, the hotel and even the street represented male space. The acquisition of public space by men had serious ramifications for women. Then, as now, perceptions of female sexuality were largely defined by the space women occupied. Women who were mobile, and who frequented streets, hotels and other public spaces, were viewed as less pure than those who remained within the home. The presence of women on the streets, especially at night, was perceived as evidence of their sexual provocativeness. In 1886, Inspector Pewtress reported on the unacceptable conduct of Melbourne's homeless women. 'It is no unusual occurrence', he wrote, 'to see several of them sitting in some of the back lanes, reserves or allotments of land, with a bottle of beer'. Their appearance and behaviour, were in his eyes, proof of their degeneracy. In general, women were criticised for drinking or smoking, as these practices were considered to be unwomanly. Pewtress concluded that the women were 'practically irreclaimable... without doubt idle, lazy, filthy creatures, having barely sufficient clothing to cover their nakedness.'


132 Shirley Ardener, 'Ground Rules and Social Maps for Women: An Introduction', in Women and Space: Ground Rules and Social Maps ed. Shirley Ardener, Croom Helm, London, 1981, pp.11-13; Matrix, Making Space: Women in the Man-Made Environment, Pluto Press, London, 1984, pp.4, 39-44 & 49-52. The perception of women outside of the home as sexually provocative has rendered women liable to violent attacks in public. Such attacks have, in turn, been used to justify the confinement of women to the domestic realm. Gendered notions of space, reinforced by the threat and reality of physical violence, thus constitute a primary form of social control.


There were certain activities permitted within the home, which were considered to be totally inappropriate outside it, that is unless they were performed within specially designated spaces. Drinking, for example, was acceptable in a hotel but not in the street. Sleeping, urinating, fighting, and love-making were likewise condemned if performed out of place. Vagrants, of course, clearly transgressed the rules that governed public behaviour. Without a settled home, they had no private domain into which they could withdraw. Acts carried out by most people in the privacy of their own homes, tended to be performed by vagrants in public places.

Sleeping out was one vagrant practice which offended the more respectable. At night vagrants were to be found sleeping along the banks of the Yarra and in many of the city's parks. The grounds of Government House were not immune from nightly invasion, nor were railway yards and business premises. Poor health, bad weather or rigorous policing sometimes prompted vagrants to seek shelter in a refuge. Singleton's Homes, the Salvation Army House, the Immigrant's Home and the Collingwood and West Melbourne Night Shelters all provided accommodation for the homeless. Reverend A.R. Edgar, who was involved with the Central Methodist Mission, found that the number of lodgers at the mission fell significantly during Summer, but began to increase again as Winter approached.¹³⁵ In warm weather, most vagrants preferred the peacefulness of a park to the discipline and evangelical preaching that accompanied admission into a shelter. Charitable institutions nevertheless remained a useful backstop.

THE CASUAL ROOM AT THE IMMIGRANTS HOME.

Illustration 1.9
(Illustrated Australasian News, 11 July 1868, p.5)
in the case of emergency, and it was as such that they were exploited.

A degree of inventiveness was often involved in finding shelter. The large malt tanks which were situated in Flinders street were used as sleeping quarters by some. These, however, were far from comfortable as one journalist reported:

It was awkward to get into and out of, it was cold to lie in, being of metal, and it was sure to be draughty; in addition to which, it necessitated maintaining a cramped position. Certainly if lying on its side, with the opening away from the wind, it had the advantage of being rainproof, but on the other hand, if any wet did come in, it came to stay.\footnote{The Tocsin, 12 September 1901, p.7.}

In 1892, the owner of a tenement in King Street, complained that at night vagrants used the water-closets at the rear of the building as sleeping compartments. As the closets backed onto a right-of-way and could not be locked as they were shared by three or four families, they provided an easily accessible shelter for the homeless.

Deserted houses provided a less cramped, though not necessarily more comfortable, abode. In the 1880s, with the soaring price of inner-urban housing, and again in the 1890s with the decrease in the city's population, many houses were left vacant, thus providing vagrants with obvious hideaways. Constable McEvilly came across one such house in Griffith's lane, off Little Lonsdale Street, in 1896. He described the house as 'not fit for habitation', yet residing in it he found a woman named Mary Allen whom he promptly arrested for vagrancy. According to McEvilly, in one of the front rooms was a makeshift bed with some dirty bedclothes that 'had not
been washed for years.' In a back room was a blanket and a few old bundles for pillows, 'apparently where some persons had slept the night previous.' The house, he concluded, was 'in a dirty state, it looked as if it had not been cleaned for months.' Vagrants were commonly accused of vandalising the vacant houses in which they lodged.

Socially and economically, the slum district catered for the needs of vagrants. As well as charitable refuges, the area boasted numerous hotels, boarding houses and brothels where, for a minimal fee, men and women could find shelter for a night. An adequate meal could be obtained at one of the sixpenny restaurants. Eating and sleeping places also served as contact points; places where vagrants could meet others and pass on or acquire information regarding such things as the latest police tactics and the availability of temporary work. While vagrants remained in these areas, they were largely tolerated. The real trouble arose when they appeared in more respectable areas of the city and suburbs.

As the focus of commercial interests and civic pride, the central business district was considered to be an inappropriate resort for vagrants. Their presence challenged the 'spatial identity' of the elite, and prompted businessmen and property owners to

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137 Constable McEvilly's Report, 22 February 1896, City of Melbourne, Town Clerk's Files, Series 1, VPRS 3181: Unit 400.

demand the removal of undesirables from the city centre.\textsuperscript{139} In 1889, David Syme, the owner of \textit{The Age}, complained to the Chief Commissioner of Police about the vagrants who took shelter in the entrance passage of his building during the early hours of the morning.\textsuperscript{140} The Manager of the Melbourne Stock Exchange similarly called for the repression of ‘undesirable persons’ who congregated in and around that premises. The more important the building, the more indignant the complaints. The invasion of Melbourne’s Public Library by vagrants provoked some vehement outcries. The library was a popular resort for vagrants, for it provided shelter, warmth and comfort during the daylight hours. According to one student, there were more loafers to be seen within the walls of the public library at one time than could be met in a day’s walk in the lowest quarters of the city. He went on to write:

\begin{quote}
The Melbourne Public Library is made a kind of clubhouse by these miseries, and, as a shelter from the inclemencies of the weather and the vigilance of the policeman, it ranks very high in their estimation. The library has become so notorious as the resort of loafers that very few students really care to visit it at all unless absolutely necessary.\textsuperscript{141}
\end{quote}

But it was not simply the vagrants’ presence which aroused such hostile

\textsuperscript{139} John Schneider provides an illuminating account of the relationship between space, symbolism and policing in Detroit between 1845 and 1875. His argument that ‘the shape and form of the city helped to define the problem of urban public order’, and in turn influenced policy and practice in regard to law and order, is of direct relevance to late nineteenth and early twentieth century Melbourne. See John C. Schneider, ‘Public Order and the Geography of the City: Crime, Violence, and the Police in Detroit, 1845-1875’, \textit{Journal of Urban History}, vol.4, 1977-8, p.190-3.

\textsuperscript{140} David Syme to Chief Commissioner of Police, 10 July 1889, Chief Commissioner of Police Inward Registered Correspondence, VPRS 937: Unit 329:

\textsuperscript{141} Letter from ‘A Student’, \textit{The Argus}, 7 May 1887, p.10.
responses. Their appearance and behaviour was also considered objectionable. The student who complained of their presence in the library, drew attention to their unkempt and dirty appearance. ‘There could be no danger of mistaking an honest but poorly-dressed man for a loafer’ he declared, ‘for the former is at least cleanly, while the latter - ugh!’ 142 A second correspondent also complained about the scores of people going in and out of the library 'in the dirtiest of attire and most stale and begrimed condition.' 143 Constable McHugh, who was sent to the library to ascertain the truth of such reports, concurred. Of the eighty or so people who passed him during the first twenty minutes of the library’s opening, he wrote:

> the great majority of them appeared to be nondescripts of hardly any definable occupation. Most of them looked like the frowsy patrons of low class lodging houses whose toilet is usually made up of a spare use of water on the cheeks, a feeble attempt to brush last nights mud off[f] the bottoms of the trousers and just a pretence of a shine on boots so badly fitting and wrinkled that it would be a difficult matter to succeed in polishing them all over. A few wore dirty woollen mufflers, some wore neither muffler nor collar, but the greater number wore linen or paper collars that had long ago ceased to be clean. The clothes of some of them gave out that filthy odour that comes from unwashed garments and a dirty skin. 144

It was difficult for those who had spent the night by the Yarra, or in a water-closet, to emerge the next morning fresh faced and well laundered. Their dishevelled appearance, however, was put down to moral rather than physical causes. In the popular mind, dirt went hand in hand with depravity. Vagrants were condemned for

142 ibid.


their transient lifestyle. The middle-class associated stable residence with property
ownership and upward social mobility. Conversely, nomadism was associated with
improvidence. Drinking and begging were also identified as signs of moral poverty.
Chronic alcoholism was accepted as a distinctive sign of a vagrant disposition. It was
considered to be both a symptom and a cause of moral weakness. Begging was
considered even more offensive than drinking, for it necessarily involved an interaction
between vagrants and other more respectable members of society. Beggars were to

Illustration 1.10
(Melbourne Punch, 12 September 1872, p.88)

MISSING THE POINT.
"BEG YER PARD'N, MISS, BUT COULDN'T YOU OBLIGE A POOR FELLER———"
"NO, MY GOOD MAN, I NEVER GIVE ALMS IN THE STREET.
"LOR, BLESS YER, MISS, I DON'T WANT MONEY. IT'S ONLY THE LOAN OF A
HAIRPIN I'M AFTER, TO PUT DOWN MY PIPE."

145 G. Davison, 'The Dimensions of Mobility', p.10.
be found outside the main cafes, hotels and restaurants of the city. They were depicted as parasites laying in wait for their prey. According to John Freeman, Melbourne boasted three classes of beggar - 'the blind, the pretended blind, and the wide-awake.'

It was the presence and behaviour of young vagrants that prompted the most complaints from the proprietors of city businesses. In 1894 and again in 1895, the manager of the Grand Coffee Palace in Spring Street complained about young beggars congregating about the door of the hotel and annoying customers who were going in and out. Similarly the proprietor of the Vienna Cafe in Collins Street drew the Police Commissioner's attention to the number of juveniles gathering about his establishment. The boys were described as 'a source of annoyance to the public by not only begging but by their conduct generally.' One boy with a deformed hand was considered a particular nuisance.

Juveniles, including young beggars, constituted a third group within Melbourne's vagrant population. Each year, hundreds of children and youths were brought before the courts as neglected children. A smaller but equally important number appeared on vagrancy charges. More often than not, these children were regarded as the vagrants

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146 Freeman, _Lights and Shadows_, p.122.

147 Letter from the Manager of the Grand Coffee Palace Co. to Chief Commissioner of Police, 6 March 1894, VPRS 807: Unit 5, and 13 February 1895, VPRS 807: Unit 16.

148 Chief Commissioner's Note re juvenile beggars, 25 January 1894, VPRS 807: Unit 3.
of the future. It was believed that one generation of vagrants gave rise to another, and so the Secretary of the Department for Neglected Children stressed 'the importance of getting hold, at the earliest age, of children of vagrant parents, whose teaching and example are alike pernicious'. Inspector Winch of the Victorian Police Force similarly warned that slum children were 'daily witnesses to scenes of debauchery' and that they quickly learned their parents' thieving ways. He claimed that, by the age of eleven, children had launched themselves into a life of crime by stealing, and that by seventeen, the boys were experienced house-breakers and the girls were drifting into prostitution. According to Winch, the children learned to use 'blasphemous and filthy language' as soon as they could lisp, and once able to run, were 'turned out into the gutter to wallow like so many pigs'.

Like adult vagrants, juvenile vagrants were clearly seen to transgress the boundaries of public and private space and to breach the accepted code of public behaviour. They were dubbed 'street arabs', as a consequence of their wandering and public ways. The children's occupation of the streets was largely due to the squalid and cramped conditions existing within the slums. Slum houses were small and dingy, and the area as a whole, lacked parks and recreational facilities. The street was the children's only playground, but middle-class observers rarely took such physical factors


Illustration 1.11
(Illustrated Australasian News, 5 August 1885, p.121)
into consideration. Instead they focused upon the child as a victim of corrupt or neglectful parents. A child's dishevelled and dirty appearance, for example, was more often attributed to neglect, than to the filthy state of the street.

Juveniles were targeted as vagrants if their behaviour was similar to that of adult offenders. They were therefore condemned for frequenting the streets, begging and sleeping out. As with older vagrants, there was a distinct difference in the way in which males and females were judged. Boys were denounced as vagrants if their behaviour was generally wayward. Girls, on the other hand, were usually judged more specifically in relation to their sexual conduct. Descriptions of vagrant girls, commonly contained allegations of sexual impropriety or promiscuity. In 1894, 16-year-old Emily Kiley was brought before the City Court on a vagrancy charge. Despite her young age and 'rather pleasant appearance', it was alleged that Kiley was 'a slave to various vicious habits of the Chinese.' It was claimed that the girl had led a 'terribly abandoned life' in the lowest part of the city, but final proof of her degeneracy lay in the fact that she had married a Chinese man. It was common for girls like Kiley, who were found in either a brothel or in the company of Chinese men, to be described and arrested as vagrants. Whereas vagrant boys were cast as the thieves of the future, vagrant girls were portrayed as prostitutes in the making.\(^{151}\)

Women and girls who worked as prostitutes constituted a fourth group within Melbourne's vagrant population. In keeping with the vagrant stereotype, they were

characterised as victims of their own moral weakness. A too-eager desire for money and fun, vanity, a vicious inclination, a propensity to drink, and a willingness or tendency to succumb to the bad example of others, were all reasons used to explain the fall of young women from virtue.\textsuperscript{152} Melbourne society, though, offered women few economic and social opportunities. They were expected to gain economic support from men, be it from a husband, father or some other male relative or associate. This assumption of economic dependence was institutionalised in the wage structure, with female workers being paid substantially less than their male counterparts. As a consequence, women who did have to earn their own keep struggled to make ends meet. The work available to women was generally gruelling and menial in nature, and offered little financial reward or independence. Marriage of course, was the most respectable path to economic security available, but it was certainly not without pitfalls. Men were frequently forced to travel to find work, their wages were often insufficient to keep a family and desertion was relatively common. Faced with these difficulties, it is not surprising that some women turned to prostitution. Whether they entered the trade as a consequence of necessity or choice, prostitution offered them a viable income and an unusual degree of independence.\textsuperscript{153} For those women with tarnished reputations, it was often the only means of survival available.

Prostitution, however, was not seen as an acceptable occupation. This is

\textsuperscript{152} Report on the Social Evil considered with a view to legislation, \textit{VPP}, 1873, vol.3, pp.6-7; McConville, 'The Location of Melbourne’s Prostitutes', p.95.

\textsuperscript{153} Arnot, 'Prostitution and the State', pp.vi-vii.
because it was ‘comprehended as sex rather than work, about morality rather than economy.’ As Kay Daniels suggests, the socially constructed image of the prostitute was ‘a synthesis of nineteenth century middle-class ideas about women, male and female sexuality, marriage, work and class relations’:

The result was a powerful and persistent myth in which prostitution became the opposite both of marriage and of work, defining these central institutions through its insistence that only the prostitute sold her body and that this transaction represented not work but the avoidance of work. The idea that only the prostitute sold her body masked the degree of sexual exploitation present in much of the work done by women, as well as disguising the economic element present in marriage. The symbol of the whore became a warning of the worst that could befall women, of what they should strive (through work or marriage) not to become.

Prostitutes were constantly vilified by the press. Their alleged vices, and the threat they were believed to pose to the broader society, were exaggerated almost to demonic proportions. The Hawk, for example, depicted them as the agents of evil:

Night after night hundreds of houses of ill-fame hold orgies of the most nauseous description, and be-powdered and be-painted trollops smirk, and smile, and rob and ruin young men and women in the grossest manner imaginable.

Prostitutes were seen to possess a potent and dangerous sexuality; the dutiful mother

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156 The Hawk, 1 March 1894. Complete copies of this periodical no longer survive, however, a copy of this particular article is contained in the Chief Commissioner’s Correspondence, VPRS 807: Unit 4.
and wife was, by contrast, desexualized and pedestalized.157

Prostitution flourished despite constant attacks from the press and social reformers. Like it or not, prostitutes provided a sought-after service. The hierarchical structure of the trade reflected the diversity of its clientele. Plush brothels in the suburbs serviced the 'needs' of gentlemen, while the street walkers who roamed the city attracted the custom of working-class men. Predictably, it was the prostitutes with the least power, who serviced the least powerful men, who provided the scapegoat for public outrage and who were most likely to be arrested as vagrants. These women worked independently of brothels and plied their trade on the streets. Like other members of the vagrant population, they breached unwritten rules which governed behaviour and space. Prostitutes were particularly criticised when they strayed into respectable neighbourhoods. The owners and managers of city businesses were quick to register their disapproval at the nuisance that prostitutes allegedly created. H. Abrahams, for example, the owner of Premier Gun, Rifle and Cartridge Manufacturers, complained about prostitutes 'parading' Elizabeth Street between the hours of 7 and 10 o'clock at night. He claimed that his business was at 'a complete standstill' because 'respectable people' would not walk on his side of the street.158 'A Collins St East M.D.' found the situation little better at the opposite end of the city. Unlike most complainants though, he stressed the nuisance created by the male customers of

157 Summers, Damned Whores, pp.267-316; Raymond Evans, "Soiled Doves": Prostitution in Colonial Queensland', in Daniels, So Much Hard Work, pp.127-61.

158 H. Abrahams to the Chief Commissioner of Police, 23 March 1892, VPRS 807: Unit 2669.
prostitutes. 'My wife and daughters' he wrote, 'can hardly venture out after dark, unless accompanied by a gentleman, but what they meet with offensive remarks, not from the prostitutes - but from the men who are seeking the company of prostitutes.' It was more typical for individuals to complain about the presence and behaviour of the women themselves. To middle-class observers, lower-class prostitutes appeared devoid of all gentility. 'The Vagabond', for example, wrote condemnatorily of the prostitutes who frequented the Theatre Royal:

Flaunting in their dress, bold and vulgar in their manners, they flounce in and out of the stalls during the performance, causing in this alone a positive nuisance and annoyance.

Professional and habitual criminals made up the final group of Melbourne’s vagrants. These were men who invariably had numerous criminal convictions and were well-known to the police. Their designation as vagrants was partly a product of official expedience, for the vagrancy provisions provided the police with a convenient and simple method of prosecution. Yet professional criminals were also linked to other vagrants at a discursive level. Professional criminals, including thieves, pickpockets, card-sharps and defrauders, were ascribed a character similar to that of vagrants. They were depicted as shrewd, lazy, dishonest and parasitical. Some believed that professional criminals were simply idlers who had sunk to new depths. Michael Davitt, who had been imprisoned in England as a Fenian revolutionary, claimed that in

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159 Letter from 'A Collins St. East M.D.' to the Chief Commissioner of Police, 11 January 1895, VPRS 807: Unit 14a.
160 'The Vagabond', 'The Theatre Vestibules' The Argus, 1 July 1876, p.4.
Australia 'lazy and shiftless characters, "larrikans" and loafers generally...drift[ed] into felony and prison.' Professional criminals, like others who were judged to be vagrants, were perceived as posing a threat to social and economic order. The introduction and utilization of the vagrancy laws, reflected and reinforced popular perceptions of the vagrant, and provided a formal mechanism for the categorisation and punishment of individuals. With this in mind, I will now turn to the evolution and construction of vagrancy laws.

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CHAPTER 2

THE EVOLUTION OF THE VAGRANCY LAWS

The Victorian vagrancy laws of the late nineteenth century were derived directly from British legislation that had evolved over hundreds of years. Early British vagrancy laws were designed primarily to regulate the agricultural labour market. In the sixteenth century, however, the orientation of the laws changed. Greater distinctions were drawn between the innocent poor, and those who appeared to be unjustifiably idle. The former were gradually removed to the realm of the poor law, while the latter continued to be dealt with under vagrancy law. The wandering and idle were perceived as potential criminals, capable of upsetting the social and economic order. During the late seventeenth and early eighteenth centuries, the vagrancy laws were expanded to protect private property and industry from the danger that vagrants were believed to present.

In structure and content, the colonial vagrancy laws directly followed the British Vagrancy Act of 1824. The Victorian law, like its British predecessor, emphasized the criminality of the wandering and idle, and divided offenders into three basic categories: 'idle and disorderly persons', 'rogues and vagabonds' and 'incorrigible rogues'. Vagrancy laws, in general, were distinct from other criminal legislation because of their preoccupation with character, and their inherent breadth and flexibility. They allowed a
degree of discretion in their application, and could therefore be used as a catch-all. In Victoria, and in Britain, the vagrancy provisions were used to prosecute not only the criminal, but also the suspected and the innocent.

The British Inheritance

In his classic history of vagrancy, published in 1887, Ribton-Turner offered a common-sense view of the evolution of laws. 'It may ordinarily be accepted as an axiom' he advised, 'that laws are not made in anticipation of evils which may occur, but to remedy such as are proved to exist.' He therefore concluded that vagrancy existed as a social problem long before the first vagrancy laws were introduced. Twentieth century theorists, however, have provided us with alternative interpretations of the nature and development of laws. Sociologists of the 'labelling' and 'social interactionist' schools have argued that criminality, like deviance in general, is socially constructed through the introduction and maintenance of rules. In Howard Becker's words, 'social groups create deviance by making the rules whose infraction constitutes deviance.' Laws, of course, represent the most powerful of social rules, for they are officially sanctioned and formally policed by the state. Marxist theorists have pointed to the repressive nature of the law and its importance, both materially and ideologically,

1 Ribton-Turner, Vagrants and Vagrancy, p.3.

to the maintenance of capitalism. They have argued that laws are class-biased - invariably serving the interests of the propertied while, at the same time, disadvantaging members of the working class. Feminist theorists have added a further dimension to the debate, by arguing that the law is gender-biased. They have illustrated how, in their function and administration, laws reflect and reinforce existing power inequalities between the sexes.

These different approaches are neither unproblematic nor fully compatible with each other, yet all are useful in helping to explain the evolution of British and colonial vagrancy laws. Wandering, idle and propertyless people existed before the introduction of vagrancy laws, but legal intervention did profoundly alter their situation and status. By outlawing particular types of behaviour, vagrancy laws transformed previously innocent individuals into criminals. They provided a formal mechanism for the official categorisation and punishment of men and women as vagrants. Of course, not everybody was susceptible to such classification. The vagrancy laws clearly reflected class interests by prohibiting behaviour which threatened the material security or

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4 See, for example, Carlen and Worrall, Gender, Crime and Justice, and Smart, Feminism and the Power of Law. For an overview of Marxist, feminist and social interactionist approaches to the law, see Edwards, Regulation and Repression, Chapters 2, 3 & 5.
offended the sensibilities of the propertied. The activities that were outlawed were commonly associated with the least well-off members of the community. Gender interests were interwoven with class interests. Vagrancy legislation appeared gender-neutral, but was administered in such a way as to reinforce dominant notions of masculinity and femininity.

A Statute of Labourers, introduced in Britain in 1349, is recognised as the first fully-fledged vagrancy law. It laid the basis for all future vagrancy legislation by explicitly seeking to control the movement and behaviour of individuals perceived to be economically non-productive and socially burdensome. This act was introduced to combat a shortage of agricultural workers, brought on by the ravages of the Black Death in the previous year and by the gradual movement of people from the country to the developing towns. It clearly served the interests of the propertied, by limiting the mobility of labourers, thereby enabling land-owners to dictate terms of employment. The act deemed it a crime to give alms to anyone who was unemployed yet of sound mind and body, and prohibited people from refusing to work and from leaving their employment before their term had expired or without cause. Travelling to another town for work when it was already available, was also made an offence, and a standard wage was set for all workers. As Chambliss suggests, this statute was an attempt to force labourers to accept employment at a low wage, so as to ensure landowners an adequate supply of labour at an affordable price.

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5 A Statute of Labourers, 23 Edw.III.

The emphasis of the vagrancy laws remained substantially unaltered until the sixteenth century. By this time, legislators had to admit that the criminal law could not successfully be used to tie workers to their labour, whilst unemployment and poor working conditions drove them from it. Increases in the severity of punishment meted out to the wandering and idle had failed to curb the growth of Britain’s vagrant population. Throughout the sixteenth century, the problem was exacerbated by the disbanding of private armies, the displacement of agricultural labourers by the enclosure movement, the dissolution of charitable and religious foundations, substantial rises in the cost of living, and the growth of a nascent urban proletariat which was vulnerable to unemployment and destitution.

In 1530 a new vagrancy act was introduced. It heralded a redirection of the vagrancy laws, for it was the first to draw a clear distinction between poor, aged and impotent individuals, and vagabonds. The legislation enabled the former to obtain a license to beg, while the latter were prohibited from soliciting alms and were made

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7 For details of the vagrancy laws introduced between 1349 and 1500 see Ribton-Turner, *Vagrants and Vagrancy*, pp.43-69.


9 An Act directing how aged, poor, and impotent Persons, compelled to live by Alms, shall be ordered, and how Vagabonds and Beggars shall be punished, 1530, 22 Henry.VIII.c.12.
subject to sanctions usually reserved for serious criminals.\textsuperscript{10} In 1535, this distinction was drawn even more rigorously. A new vagrancy law decreed that the impotent poor be provided with charitable alms by the parish to which they were associated.\textsuperscript{11} None were permitted to beg openly, and all sturdy but idle persons were to be compelled to work. Children found begging or living a life of idleness were liable to similar treatment. Those who deliberately continued to be idle were subject to increasingly severe punishments:

A Valient Beggar, or sturdy Vagabond, shall at the first time be whipped, and sent to the place where he was born or last dwelled by the space of three Years, and there to get his living; and if he continue his rogulous Life, he shall have the upper part of the gristle of his Right Ear cut off; and if after that he be taken wandering in Idleness, or doth not apply to his Labour, or is not in service with any Master, he shall be adjudged and executed as a felon.\textsuperscript{12}

This legislation laid the basis for the establishment of separate vagrancy and poor laws. The impotent poor were gradually removed from the realm of the vagrancy laws, leaving the way open to treat those who could not justify their idleness as genuine criminals. Rather than emphasizing the control of the labour force, the vagrancy laws of the 1530s sought to protect society from the economic burden, nuisance, and potential criminality of the vagrant population. This emphasis has been retained in all modern vagrancy statutes.

\textsuperscript{10} Chambliss, 'Sociological Analysis', p.71.

\textsuperscript{11} 1535, 27 Hen.VIII.c.25.

\textsuperscript{12} ibid.
This change in the orientation of the legislation coincided with a shift in the perception of vagrants. At most, vagrants constituted only two per cent of Britain’s population under James I and about half a per cent under William and Mary.¹³ Their existence, however, generated far more concern than their numbers would seem to warrant. Beier has suggested that the institution of a national campaign against vagrants during Elizabeth’s reign, was one facet of a conservative campaign designed to shore up the social framework, following the turbulent rule of the two previous monarchs. He argues that the government’s fear of conspirators and terrorists led it to view the idle and wandering with unprecedented suspicion. He suggests that, at another level, the repression of vagrants was an attempt to maintain the links of paternalism upon which the social hierarchy was based. In a society in which ‘every man had his place, his function and his master’, the vagrant was an anomaly. He was the ‘masterless man’, who had broken away from the established order and had no useful function to perform.¹⁴

The articulate justified the repression of vagrants by pointing to their dangerous character and unsavoury practices. Commentators referred to the young single men who constituted a large section of the vagrant population as ‘mighty’, ‘sturdy’ and ‘lusty’ rogues. They implied that these men were capable of perpetrating violent attacks upon individuals and the State. Female vagrants were commonly depicted as the

¹⁴ ibid, pp.26-7.
concubines of male vagrants and as participants in crime.\textsuperscript{15} Another theme that emerged during the sixteenth century was that of the vagrant child. Children and adolescents who displayed vagrant tendencies, or who were believed to be abused or neglected by their parents, were depicted as criminals in the making. Between 1536 and 1601, legislation was introduced allowing the State to take responsibility for these children and to board them with reputable citizens who could teach them marketable skills and civic discipline.\textsuperscript{16} The child's welfare was of secondary importance, for such measures were primarily intended to protect adults from the threat posed by improperly socialized children.\textsuperscript{17} The elasticity of the term 'vagrant' was also clear by the sixteenth century. The ill and handicapped, those who resisted work, the temporarily unemployed, as well as prostitutes and petty thieves, were all liable to be categorised as vagrants.\textsuperscript{18} Similar groups constituted Melbourne's vagrant population four centuries later.

During the eighteenth century, Britain's vagrancy laws were expanded and refined. The act of 1744 was the most significant. As Michael Ignatieff suggests, it 'assembled together categories of social condemnation that had been accumulating...since the days of Elizabeth and added new ones to bring it up to date

\textsuperscript{15} \textit{ibid}, pp.6-7.


\textsuperscript{17} \textit{ibid}, p.207.

\textsuperscript{18} Langbein, 'Historical Origins', pp.46-7.
with the labor discipline needs of eighteenth century masters. Rather than referring to the general crime of living as a vagabond, the 1744 act prohibited specific actions, and attributed these actions to particular types of offenders. The act identified three standard categories of vagrant - the 'idle and disorderly', 'rogues and vagabonds', and 'incorrigible rogues'. These categories were incorporated into subsequent vagrancy laws, both in Britain and in the Australian colonies. The 'idle and disorderly' constituted the least serious transgressors. They included those who threatened to run away and thereby leave their families at the expense of the state; people who returned to a parish from which they had been lawfully removed; those who lacked sufficient means to keep themselves or refused to work for the standard wage or begged in the streets of their own parishes. All were liable to be committed to a house of correction with hard labour for up to one month.

Rogues and vagabonds were guilty of more serious offences. They were individuals who had run away leaving their families chargeable to the state; those who gathered alms by deception, entertained in the streets or claimed or appeared to be gypsies, palmists and fortune tellers. Unlawful betterers, unlicensed pedlars and those wandering outside their own parish, or sleeping rough without being able to give a good account of themselves, were also categorised as such. Their penalty consisted of a public whipping, fines and removal to their own parish if dealt with by a single

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19 Ignatieff, *Just Measure*, p.25.

20 An act to amend and make more effectual the Laws relating to Rogues, Vagabonds and other idle and disorderly Persons, and to Houses of Correction, 1744, 17 Geo. II. c. 5.
magistrate. If sentenced at the Quarter Sessions, they could be imprisoned for up to six months with hard labour.

The most serious offenders were deemed to be 'incorrigible rogues'. Their offences involved the direct defying of authority. Gaol escapees, those individuals who refused to appear before a justice or to take an oath, as well as those who gave a false account of themselves, were classified as rogues and vagabonds. So too were individuals who returned to England after being removed to Scotland. Their penalty consisted of a whipping and imprisonment for up to two years or, in some cases, seven years transportation or enforced service in the Royal Navy or army. The introduction of these categories had serious repercussions for offenders. The vagrancy laws were peculiar in that they imposed upon offenders a status that was supposedly a reflection of their character and lifestyle. The vagrant's real crime lay not in a specific action, but rather in his or her roguish personality and behaviour. By labelling an individual a 'rogue and vagabond', the court called into question the individual's integrity and doomed them to future stigmatization.

The 1744 act was also significant because of the administrative requirements that it laid down. In general, the act greatly enhanced the power of the authorities in their war against the suspected villain. Elaborate measures were outlined to control the movement of individuals between parishes, and rewards were offered for the capture of 'rogues and vagabonds' and 'incorrigible rogues'. Constables who neglected such duties were made subject to heavy fines, as were those who harboured or assisted
vagabonds. The belief that one criminal class gave rise to another was clearly reflected in the clause relating to beggars found with children:

> Persons are often found offending against this Act, having children with them, whom they bring up in a dissolute Course of Life, destructive to such Children, and prejudicial to the Kingdom, in which a race of disorderly persons will increase, if such Children are suffered to remain with such Offenders...²¹

Justices in Quarter Sessions were therefore empowered to order that such children over the age of seven be placed as servants or apprentices until they reached 21 or an earlier accepted age. Any offender found committing a crime for the second time accompanied by a child, was deemed to be an incorrigible rogue.

Throughout the eighteenth and nineteenth century, more far-reaching laws were introduced to curb the threat believed to be posed by the wandering and idle. In 1752, the 'Preventative Police Law' was enacted.²² It allowed justices to examine on oath any person taken into custody during a privy search or under warrant. Examinations were written down, signed by the accused and the justice, and sent to the next General or Quarter Sessions where they were filed and kept. Suspected vagabonds, who could not prove the 'lawfulness' of their livelihood or get a reliable householder to testify on their behalf, were liable to be detained for up to six days in a house of correction. Their records were permanently retained in the court files, regardless of whether or not they had been charged with an offence.

²¹ ibid, clause xxiv.

In 1766, the vagrancy laws began to be extended to cover a wide range of property-related offences. Pilferers who damaged, destroyed or removed logs, timber or plants on private land were dealt with under new vagrancy legislation. A 1783 act gave the authorities power to prosecute individuals who were perceived as behaving suspiciously. People found carrying housebreaking implements 'with intent to feloniously break and enter', or found in buildings or yards with 'intent to steal any Goods and Chattels' were deemed to be 'rogues and vagabonds'. So too were those found carrying 'offensive weapons' with 'intent to feloniously assault'. In 1792, constables and watchmen in parts of Middlesex and Surrey, were empowered to arrest 'divers ill-disposed and suspected Persons, and reputed Thieves', and have them summarily convicted as rogues and vagabonds under the 1744 Vagrancy Act. Eight years later, suspected persons and reputed thieves found frequenting the River Thames, or the Quays and Warehouses adjoining it, were rendered liable to the same

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23 An Act for the better Preservation of Timber Trees and of Woods and Underwoods: and for the further Preservation of Roots, Shrubs, and Plants. 1766, 6 Geo.III.c.48.

24 An Act to extend the Provisions of an Act (entitled, An Act to Amend and make more effectual the Laws relating to Rogues, Vagabonds, and other idle and disorderly Persons, and to Houses of Correction) to certain Cases not therein mentioned. 1783, 23 Geo.III.c.88.

So too, were individuals found in forests at night, in the company of others, and carrying weapons with the intention of killing or taking game.

Like much of the legislation passed in the late eighteenth century, these vagrancy laws were designed to protect the burgeoning industries and private property of the middle and upper classes. They were aimed at would-be offenders and those established criminals against whom more serious felonies could not be proven. A clear connection was made between paupers, vagrants and criminals. In 1790, a conference of magistrates convened by the Proclamation Society, endorsed a statement emphasizing the potential threat that the idle posed:

The Society considers the prevention of begging and vagrancy as an object of the greatest importance to the quiet and good order of the Public, as beggars and vagabonds seldom return to habits of labour and sobriety, but generally proceed to the commission of crimes of the most atrocious and alarming nature.

The vagrancy act of 1824 consolidated the statute of 1744 and its various amendments and additions. It utilised the three existing categories of offender - the

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26 An Act for the more effectual Prevention of Depredations on the River Thames, and in its Vicinity; and to amend an Act, made in the second Year of the Reign of his present Majesty, to prevent the committing of Thefts and Frauds by Persons navigating Bum Boats, and other Boats upon the River Thames, 1800, 39 & 40 Geo.III, c.87, s.xii.

27 An Act to extend the Provisions of an Act made in the Seventeenth Year of the Reign of King George the Second, intituled, An Act to amend and make more effectual the Laws relating to Rogues, Vagabonds, and other idle and disorderly Persons, and to Houses of Correction, 1800, 39 & 40 Geo.III, c.50.


29 An Act for the Punishment of idle and disorderly Persons, and Rogues and
'idle and disorderly', 'rogues and vagabonds' and 'incorrigible rogues' - and prohibited specific actions, most of which had already been legislated against. Individuals who refused or neglected to provide for their families, those who returned to a parish from which they had been lawfully removed, unlicensed pedlars and chapmen, common prostitutes who behaved in a riotous or indecent manner in public, as well as beggars and those who encouraged children to beg, were all identified as idle and disorderly people. The offences of which rogues and vagabonds were convicted, were even more numerous and varied. Fortune telling and palmistry, sleeping rough and having no visible means of subsistence, obscene exposure, some varieties of begging, illegal public gambling and the suspicious possession of housebreaking implements and offensive weapons were offences which for which the perpetrator was deemed to be a rogue and vagabond. Idle and disorderly people who resisted arrest, individuals found in enclosed yards or buildings for unlawful purposes, as well as reputed thieves found loitering in particular areas with intent to commit a felony, were similarly categorised. Rogues and vagabonds who resisted arrest or who were convicted a second time, were deemed to be 'incorrigible rogues'. The 1824 act consolidated, rather than changed, existing vagrancy laws. It included some additional offences, but these were merely extensions of those already defined by earlier legislation. The act continued the pattern begun in the sixteenth century, by focusing upon what was perceived to be the potential criminality of those without jobs and fixed abodes. It was a comprehensive and flexible piece of legislation, useful in times of social and
political tension, and provided police and magistrates with wide discretionary powers.\(^{30}\)

This act provided the basis for all later British and colonial vagrancy legislation.

The Colonial Vagrancy Laws

In the Australian colonies, fears of the vagrant threat also flourished. These, of course, derived from the colonists' British heritage but were compounded by the unique nature of colonial society. The colonists' peculiar circumstances heightened their sense of insecurity and led some to believe that they were even more susceptible to the dangers posed by an impoverished and idle class than were the propertied classes in Britain. The large convict population was viewed as a source of social instability and vice, whilst the Aborigines were seen to constitute a more unpredictable threat to life and property.\(^{31}\) The penal nature of early New South Wales settlement ensured that a degree of order was maintained, but this was eroded with the gradual freeing of convicts. Individuals who had formerly been provided for by the Crown, were forced to find accommodation and employment for themselves. Without a poor law or established charity network to fall back upon, some fell into poverty and idleness, while others resorted to crime. By 1835, the Sydney Herald was urging that specific legislation be introduced to protect the 'honest and industrious' from the 'disturbances

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\(^{31}\) Sturma, *Vice*, Chapters 1 & 2.
caused by vagrants, both white and black.\textsuperscript{32} It enthusiastically praised the British vagrancy law for 'enab[ing] the public to detect and punish idle, worthless and unprincipled characters, who prefer[red] a vagrant life, and indulgence in crime, to a steady and honest line of conduct.'\textsuperscript{33}

The British Vagrancy Act of 1824 could not be applied directly to the colonies, but it did serve as a model for the colonial legislature.\textsuperscript{34} In 1835, New South Wales introduced its first vagrancy law.\textsuperscript{35} Because the Port Phillip District remained part of New South Wales until 1851, this was also the first vagrancy law to take effect in Victoria. The act incorporated the same tripartite system of classification, but ordered harsher sanctions. Whereas the 1824 Act provided penalties of one, three and six months' imprisonment respectively for idle and disorderly persons, rogues and vagabonds and incorrigible rogues, the colonial act increased these to three, six and twelve months. English administrative measures relating to the poor law and parish responsibilities were deleted and replaced with new measures suited to colonial conditions. Most of the offences outlined in the 1824 act were reiterated in the colonial

\begin{footnotes}
\item[32] The Sydney Herald, 15 June 1835, p.2.
\item[33] The Sydney Herald, 18 June 1835, p.2.
\item[34] The structure of the 1824 British Act was not applicable to New South Wales, even though the subject matter was suited to the colony's circumstances. See the finding of Chief Justice Griffith in the 1907 case Mitchell v Scales. J.M. Bennett & Alex C. Castles, A Source Book in Australian Legal History, The Law Book Company Limited, Sydney, 1979, pp.274-77.
\item[35] An Act for the prevention of Vagrancy and for the punishment of idle and disorderly Persons Rogues and Vagabonds and incorrigible Rogues in the Colony of New South Wales. 1835, 6.Wm.IV.c.6.
\end{footnotes}
legislation, but some new and altered definitions did appear. In a departure from the British model, the New South Wales act branded as idle and disorderly, habitual drunkards who had been convicted of drunkenness three times in the preceding twelve months and who behaved in a riotous or indecent manner while in a street, highway or place of public resort.

More noticeable inclusions in the colonial act related to Aborigines and convicts. The English act had made it an offence for people to be found consorting with gypsies. This provision was obviously of no relevance in the colonies and was therefore not included the New South Wales legislation. The general principle of consorting was applied instead to those found associating with Aborigines. According to the 1835 act, non-Aborigines who were found lodging or wandering with Aborigines, could be brought before a Justice of the Peace and asked to explain their conduct. They were required to prove that their association with the Aborigines was temporary and lawful, and that they had a fixed place of abode in the colony and lawful means of support. Failure to do so resulted in the defendant being convicted as an idle and disorderly person.

Michael Sturma suggests that this provision was seen as a means of excluding disorderly Aborigines from towns.\textsuperscript{36} Nine years earlier, Governor Darling had complained about the behaviour of Aborigines around Sydney, and observed that,

\textsuperscript{36} Sturma, 	extit{Vice}, p.58.
despite the efforts of missionary Reverend Threlkeld, they seemed resistant to civilization. 'It seems impossible', he wrote,

for them to abandon their Vagrant habits, or to enter into any pursuit with an appearance of industry...The appearance of the Natives about Sydney is extremely disgusting; those, who reside at a distance, are a much finer race, which may in some degree be accounted for by their not having such frequent access to the use of Spirits...disgusting excess.\(^{37}\)

The 1835 provision provided the authorities with the means to deal with such Aborigines, but it could also be used more generally to minimise contact between the indigenous inhabitants and the settlers. The purpose of the provision was threefold: to protect Aborigines from obvious exploitation and abuse,\(^{38}\) to prevent the arousal of their hostility through mistreatment or deliberate incitement, and to stem any ill-effects that association with the Aborigines was thought to have upon the European settlers. Half-caste children, disease, and a general lowering of the society's moral standards were identified as some of the unacceptable likely results of interactions between colonists and Aborigines. In particular, the authorities sought to stop contact between Aborigines, convicts and ex-convicts.

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\(^{38}\) While the European colonisation of Australia was characterised by violence, official British policy of the 1830s stressed the need to civilize and protect Aborigines. The establishment of the Port Phillip Protectorate in 1838 was one product of this paternalistic approach. Protectors were appointed to oversee the interests of the Aborigines, to teach them English and introduce them to the value and virtue of a settled and industrious existence. *Ibid*, pp.53-63; Richard Broome, *Aboriginal Australians*, George Allen & Unwin, Sydney, 1982, pp.49-50.
During the early colonial period, vagrancy laws were used a 'catch-all' for combating what the authorities perceived as criminal problems; they were used to clear 'disreputable characters' from the goldfields, to deal summarily with suspected thieves during the 1844 'crime wave', and to control ex-convicts.\(^{39}\) The latter group was seen as particularly troublesome and were subject to special provisions. The 1835 act set out details for the registration of transportees to New South Wales, and other felons, who had been convicted in the colony of capital and transportable offences. Within a week of their release, these individuals were required to register their place of abode with a magistrate or Justice of the Peace in Petty Sessions. Failure to register, or to notify the authorities of a subsequent change in residence, constituted an offence, and the perpetrator was to be dealt with as an idle and disorderly person.

A second New South Wales vagrancy law was introduced in 1849.\(^{40}\) Like the 1835 act, it made special mention of ex-convicts. The preamble attributed the introduction of the act to the prevalence of crimes against property. These offences were popularly attributed to ex-convicts from Van Diemen's Land. The new vagrancy law extended the registration system to cover ex-convicts from other colonies. Those who did not register or who failed to provide a good account of themselves or their means of support, when summoned to do so by a magistrate, could be imprisoned with

\(^{39}\) Sturma, Vice, p.58.

\(^{40}\) An Act for the more effectual prevention of Vagrancy and for the punishment of idle and disorderly Persons, Rogues and Vagabonds and Incorrigible Rogues in the Colony of New South Wales. 1849, 13.Vic.c.46. Two years later, this act was disallowed by the British Government on the grounds that it interfered with the Crown's prerogative to pardon.
hard labour for up to two years. Sturma has argued, however, that in New South Wales this clause was largely of symbolic value, for in its two years of operation, only one person was ever convicted under it.\textsuperscript{41} Victoria was far more rigorous in both framing and applying anti-convict legislation. In 1852, the newly-formed Victorian legislature passed the Convicts Prevention Act. This act was inspired by the colony's closer proximity to Van Diemen's Land and the Victorian colonists' determination to distance themselves from the convict taint. It specifically barred freed convicts from Van Diemen's Land from entering Victoria, and more generally, provided the authorities with 'dragnet powers' over 'any suspicious-looking person' arriving from the southern colony. In two years, 140 people were convicted under it.\textsuperscript{42} The non-penal origins of Victoria, together with the introduction of anti-convict legislation, meant that Victoria's vagrancy laws did not have to include special provisions relating to convicts.

In 1852, the Victorian legislature passed its first vagrancy act.\textsuperscript{43} The provisions outlined in this statute were re-enacted by successive Police Offences Acts, with the result that the structure and content of the laws relating to vagrancy remained virtually unchanged in Victoria throughout the nineteenth century. Predictably, the 1852 act mirrored almost exactly, in form and content, the 1824 British act and the New South Wales legislation of 1835 and 1849. All shared a common aim - the control of idle and

\textsuperscript{41} Sturma, \textit{Vice}, p.58.


\textsuperscript{43} An \textit{Act for the better prevention of Vagrancy and other offences}, 1852, 16 Vict. No.22.
wandering people and all were based upon a perception of this class of people as a threat to social and economic order. However, the Victorian act was far more clearly structured than any of its predecessors, and also noticeably broadened the number of offences which constituted idle and disorderly conduct. It also substantially increased the severity of the penalties, with terms of imprisonment of one year, with or without hard labour for the idle and disorderly; two years with hard labour for rogues and vagabonds; and three years with hard labour for incorrigible rogues.

To grasp the breadth and implications of the 1852 act, it is necessary to outline separately each of the 23 clauses that set out the offences it deemed punishable. Many of these clauses were quite broad, often listing several different offences, or numerous variations of one particular type of misdemeanour. When all of the possible permutations and combinations are added up, they total well over 100 different offences. A separate section of the 1852 vagrancy act dealt with the use of obscene, threatening or abusive language in public. In 1864 though, this section became part of the broader provisions relating to public order in the Police Offences Act.

Seven clauses of the 1852 act outlined the circumstances in which an individual could be deemed an idle and disorderly person. The first of these dealt with individuals who had no visible lawful means of support or insufficient means of support. People who were suspected of not having an adequate and lawful income could be brought before a Justice and asked to explain their circumstances. If they failed to provide a satisfactory explanation, they were deemed to be idle and disorderly persons. This was
by far the most important vagrancy provision to be implemented in nineteenth century Victoria. Having insufficient or no visible lawful means of support had not been specifically prohibited by earlier vagrancy legislation, but there was a clear connection between this offence and others that had been previously defined. The provision encapsulated the essential qualities of vagrancy legislation. Above all else, it was flexible. It could be applied to a wide cross-section of the community, including the criminal, the poor, the weak, the suspected and the simply annoying. By the 1880s, this provision was commonly used to arrest prostitutes. Although the act of prostitution was not in itself an offence, the income earned from it was judged by the courts to be unlawful. The rhetorical elasticity of the provision allowed the authorities broad discretion in their interpretation of it. What was deemed to be sufficient means of support or adequate proof thereof, was a matter for the arresting policeman, and ultimately the magistrate, to decide. As with earlier British and colonial acts, this provision placed the onus of proof upon the accused. The guiding tenet of British law, 'innocent until proven guilty', was effectively overturned, with defendants being required to prove their innocence. This irregular approach was tolerated because those who were found to be impoverished and idle were immediately regarded with suspicion and condemnation. The situation was compounded by the fact, that those who were arrested under vagrancy provisions, generally lacked the resources to challenge proceedings effectively.

44 K. Buckley, Offensive and Obscene, Ure Smith, Sydney, 1970, p.236.
Like the vagrancy laws before it, the 1852 act was intended to curb what was perceived to be the threatening behaviour of idle and potentially criminal people. Five of the other six clauses relating to idle and disorderly persons detailed offences that had been included in previous vagrancy legislation. The second clause was identical to the 1835 New South Wales statute in prohibiting contact between Aborigines and non-Aborigines. The third clause dealt with 'habitual drunkards' and 'common prostitutes' who behaved in a 'riotous or indecent manner' in any thoroughfare or place of public resort. This provision, like the first, was especially open to varying interpretations. It also distinguished between different classes of prostitute. Although the term 'common prostitute' was not defined, the provision clearly targeted prostitutes of the lower-class; those who worked the streets and were considered most obnoxious by the authorities and citizens.

The fourth clause prohibited consorting with reputed thieves and people who had no visible lawful means of support. The occupiers of houses where such people met, together with visitors who were found in the company of undesirable persons, could be prosecuted as idle and disorderly persons. This provision was obviously aimed against the gathering places of criminals, as well as opium dens, gambling houses and brothels. It reflected long-established and widely-held fears about the danger of allowing the idle, criminal and immoral to congregate and conspire together. The fifth clause, which made begging and the gathering of alms and offence, was also built on respectable perceptions of the poor as lazy, deceitful and cunning. Like its British predecessor, this clause reflected the fear that one generation of beggars would
give rise to another. It ordered that persons who caused, procured or encouraged a child to beg, be deemed an idle and disorderly person.

The remaining two clauses dealing with idle and disorderly persons were even more clearly based upon suspicion rather than proof. The sixth required people found carrying offensive weapons at night to provide a 'good account' of their means of support and a 'valid and satisfactory reason' for being armed. As with earlier provisions, discretion was the hallmark of this clause. The seventh clause, which was new to vagrancy laws, outlawed the carrying of any article of disguise or deleterious drug without a 'ready and lawful excuse'. Like all of the preceding provisions, it stressed the need to show the 'lawfulness' of one's activities. None of the acts for which one could be labelled idle and disorderly were of a serious nature, yet the commission of any one rendered an individual liable to arrest and imprisonment. These provisions endorsed the idea that the authorities be allowed to punish people in order to prevent possible crimes, and were thus contrary to the principle of common law that people should only be punished for committing a proven criminal act. Moreover, the provisions placed the defendant in the onerous position of having to prove his or her innocence.

The clauses in the 1852 act which dealt with rogues and vagabonds shared these traits. As in all vagrancy statutes, recidivism heightened the severity of the offence. An individual once found guilty of being an idle and disorderly person was, upon a second conviction, immediately elevated to the status of a rogue and vagabond.
The same applied to persons who, when arrested as 'idle and disorderly', resisted arrest. The other offences that earned the perpetrator the title of rogue and vagabond were merely reiterations of previously defined crimes. These included the collection of alms under false pretences, attempting to defraud charitable institutions or individuals, the displaying of obscene books, posters and other representations, as well as the wilful, obscene and public exposure of one's person. People convicted of playing or betting at unlawful games or games of chance in a public place, were also labelled rogues and vagabonds.

Another five clauses were based upon suspicion of more serious criminal activities. Three of these were derived from almost identical provisions that appeared first in the eighteenth century British legislation and later in the New South Wales acts. These clauses criminalised the carrying of housebreaking implements without lawful excuse, prohibited suspected persons and reputed thieves with criminal intent from frequenting public places and areas of industry and trade, and also made susceptible to punishment those found without lawful reason in dwellings, warehouses enclosed yards, ships and other designated locations. These clauses were clearly intended to protect private property and the burgeoning industries of the colony. A fourth clause was similarly aimed at potential robbers and burglars, but it was probably of limited value, given the comical stereotype upon which it was based. It decreed that any individual found at night, wearing slippers or some form of disguise, with face blackened and having felonious intent, be deemed a rogue and vagabond. A fifth clause prohibited the carrying of guns, pistols, swords, bludgeons or any other
offensive weapon with felonious intent. Of course, in all of these cases, 'felonious intent' was left up to the authorities to define and judge. The interpretation of the term 'suspected person' was also open to varying interpretation. In addition, defendants who were thus classified were placed at an immediate disadvantage, because from the outset, guilt was implied. This lack of precise definition militated against the interests of defendants, by rendering the act open to deliberate or accidental misuse.

'Incorrigible rogues' were regarded as the most hardened and, as the name suggests, the most irreformable of vagrants. Under the 1852 act, this title was applied to only three types of offender: those who escaped from gaol, persons previously found guilty of being rogues and vagabonds and convicted a second time, and finally rogues and vagabonds who resisted arrest. Like the previous vagrancy laws, the category of rogue and vagabond was reserved for those who appeared flagrantly to violate authority.

This three-fold classification of offenders was theoretically based upon on the seriousness of the prohibited acts, yet perhaps it can better be understood as an indicator of social perceptions. It is obvious that the vast majority of offences listed within the vagrancy act were not of a serious nature. In most cases, in fact, the act merely punished individuals for what was perceived to be their criminality or criminal intention. The harsh reality was that individuals could be found guilty of vagrancy without ever having committed a real offence. Proof of the perpetration of a crime was not required by most vagrancy provisions. Rather the court's perception of the
defendant, as a person willing and capable of committing a crime, constituted the primary determinant of guilt.

During the remainder of the nineteenth century, the vagrancy provisions were only marginally altered. In 1864, the Vagrancy Act was incorporated into the Police Offences Act, a consolidating statute which dealt with the management of towns and the suppression of misdemeanours usually associated with urban environments. During the remainder of the nineteenth century, the vagrancy provisions were only marginally altered. In 1864, the Vagrancy Act was incorporated into the Police Offences Act, a consolidating statute which dealt with the management of towns and the suppression of misdemeanours usually associated with urban environments. Part III of this Act was devoted specifically to vagrancy and was generally referred to as the vagrancy law. It was identical to the 1852 Act, except that it did not include the clause relating to the use of unacceptable language. In 1865, a new Police Offences Act was introduced. The only alteration to the vagrancy provisions was the inclusion of a new clause, which outlawed the manufacture and selling of spurious, adulterated or mixed metals under the guise of gold. Like the vagrancy provisions that outlawed begging and illegal gambling, this new clause targeted those who sought to make a profit through deception. According to the Attorney-General, George Higinbotham, the amendment was introduced in response to a police report, that had highlighted the

45 An Act to consolidate the Law relating to the Management of Towns and other Populous Places and for the Suppression of various offences. 1864, 27 Vict. No.225.

46 An Act to Consolidate the Law relating to the Management of Towns and other Populous Places and for the suppression of various Offences. 1865, 28 Vict. No.265.
need for specific legislation to deal with the practice.\textsuperscript{47} In 1890, a third Police Offences Act reiterated the existing vagrancy provisions.\textsuperscript{48}

An 1891 amending act had serious consequences for individuals charged with having insufficient or no visible lawful means of support.\textsuperscript{49} Prior to the passing of this act, the ability to produce, or to prove that one possessed, money or property, was sufficient to avoid conviction. This defence was nullified, however, by the new act, which required individuals to prove that such money or property had been lawfully acquired. For many, including the most innocent, this requirement was difficult to fulfil. Needless to say, the amendment ensured the police greater success in prosecuting accused vagrants.

The 1891 act was also significant in formally granting magistrates a greater degree of discretion in dealing with girls and women convicted of certain transgressions against good order. The act decreed that those found guilty of being drunk and disorderly, using offensive language or behaving in an offensive manner, could, if they consented, be forwarded by a magistrate to a private charitable institution and be detained there for between nine and twelve months. This option was also applied to women found guilty under the vagrancy law of being habitual drunkards, or common

\textsuperscript{47} Victorian Hansard, vol.11, 1864-5, p.432.

\textsuperscript{48} An Act to consolidate the Law relating to the Management of Towns and other Populous Places and for the Suppression of various Offences. 1890, 54. Vict. No.1126.

\textsuperscript{49} An Act to amend the Police Offences Act 1890, 1891. 55.Vict.No.1241. c.11.
prostitutes, behaving in a riotous or indecent manner. The measure was intended to provide a more reformatory alternative to prison, but it was not new. The discharge of individuals into the care of such institutions had been informally practiced by magistrates prior to 1891.

Finally, the vagrancy provisions relating to gambling in streets and public places were strengthened by the 1891 act. The geographic restrictions placed upon illegal gamblers were tightened, and the activities that were prohibited in public places, were made more numerous. Offenders against this provision were deemed to be rogues and vagabonds. Another clause which was added to the vagrancy law, prohibited known and reputed thieves from loitering in public places with instruments of gaming or cheating. Individuals who could not provide a satisfactory explanation of such conduct were also convicted of being rogues and vagabonds.

The degree to which the police relied upon the vagrancy provisions, was partly determined by the availability of alternative legislation. Gambling and prostitution were two activities covered by more specific legislation. Part IV of the Police Offences Act, for example, detailed the gaming laws. These were used, far more than the vagrancy laws, to prosecute illegal gamblers and the managers of unlawful betting houses. Similarly, the 1891 amending act provided the police with a new, and sometimes preferable, mechanism for dealing with prostitutes. This act prohibited common prostitutes from importuning in the streets and made them liable to a fine of £5 or

50 Police Offences Act, 1865; Police Offences Act, 1890.
imprisonment of up to one month. Successive acts relating to neglected and criminal children provided the authorities with an alternative avenue for the control of juveniles. These acts, however, like their British counterparts, were closely aligned with the vagrancy laws. They sought to protect society from the proliferation of criminals and paupers, and the type of behaviour they identified as wayward in children, directly mirrored that which was attributed to, and condemned in, adult vagrants. Children who begged, wandered, slept rough, or who kept company with prostitutes or thieves, were targeted as 'neglected'. Significantly, little distinction was drawn between neglected children and juvenile offenders.

The vagrancy law was regarded as an integral part of Victoria's criminal law code, despite the existence of alternative legislation. Whereas other laws were valued for their specificity, the vagrancy law's greatest attribute was considered to be its breadth and vagueness. Like its British predecessors, the Victorian vagrancy law focused upon the potential threat believed to be posed by the idle and impoverished. Its loosely-worded provisions allowed discretion in their interpretation, enabling the authorities to use the act as a catch-all. Definite violators, as well as potential offenders and nuisances could be rounded up under its provisions. In the next chapter, the policing of the Victorian vagrancy law will be discussed in detail.

51 An Act to Amend the Police Offences Act, 1891.
52 An Act for the amendment of the Law relating to Neglected and Criminal Children, 1864, 27 Vict. No.216; An Act to Amend the Law relating to Juvenile Offenders and for other purposes, 1887, 51 Vict. No.951; An Act to Amend the Law relating to Neglected Children, 1887, 51 Vict. 941; An Act to consolidate the Law relating to Neglected Children, 1890, 54 Vict. No.1121.
CHAPTER 3

POLICING THE VICTORIAN VAGRANCY LAW

The Victorian vagrancy law provided the police with an unrivalled opportunity to exercise their discretion. Its inherent flexibility meant that it could be used against a wide variety of individuals and ensured a high degree of success. By far the most commonly used charge related to individuals having insufficient or no visible lawful means of support. A number of property-related vagrancy charges, as well as a few which pertained to particular types of behaviour such as begging, were also frequently employed.

The police clearly preferred to use those provisions which were most flexible. The believe the law's flexibility to be its greatest strength, but for those who were policed, it posed a constant danger. The vagrancy provisions were highly vulnerable to abuse by the authorities. Their administration was influenced by complex social and economic factors, as well as the idiosyncrasies of individual policemen. The law could be used in a wide range of circumstances and was often employed as a 'catch-all'.
The Enforcers of the Law

In Melbourne, during the late nineteenth century, the police were guilty of harshly administering, and sometimes deliberately misusing, the vagrancy provisions. One must nevertheless avoid a simplistic analysis which presents the police and the magistracy as unproblematic agents of oppression. As Mark Finnane suggests, the act of policing cannot be divorced from the social context in which it occurs. It is a phenomenon which changes over time and between localities, and is influenced by complex economic, social and political factors. The composition of police forces, police priorities, the use of discretion, and the relationship between police, policing and the broader community, have emerged as important issues requiring detailed analysis.¹ Any discussion of the policing of the Victorian vagrancy law must take into account the nature of those empowered to enforce the law, as well as the various economic, political and social factors which influenced their interpretation and implementation of it.

For the Victoria Police, the 1880s was a time of enforced reflection and rebuilding. In March 1881, the government appointed a Royal Commission, to enquire into the circumstances surrounding the long career and eventual capture of the Kelly Gang, as well as the general organisation and efficiency of the force.² The Longmore

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¹ Mark Finnane, 'Writing about Police in Australia', in Policing in Australia ed Finnane, pp.2-14; Finnane and Garton, 'The Work of Policing', pp.1-5.

² Robert Haldane provides a detailed description of the Royal Commission and the circumstances surrounding it, in The People's Force, Melbourne University Press,
Commission's final report was handed down in 1883. Its findings severely damaged the reputation of the force and ended the careers of several senior officers. The Commission found the police to be 'demoralized and comparatively powerless in the face of a grave and unexpected emergency', and incapable of effectively performing the duties of everyday law enforcement. It alleged that corruption was widespread throughout the organization, and that even the elite Detective Force was 'little less than a standing menace to the community'. The powerlessness of the police was attributed to a number of factors:

The mal-administration of the department was no doubt the primary source of the mischief; but the unsatisfactory relations of some superior officers, the misconduct and incapacity of others, the laxity of discipline, the vicious system pursued by the detectives, the impunity with which the law was evaded by low-class publicans, the wide-spread ramifications of public prostitution, the audacity which characterised larrikinism in every direction, and the marked increase of every species of gambling, all demonstrated that the exigencies of the service, and the safety of the public, demanded a thorough change in the mode of working adopted by the police.

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Sergeant.—Though in body and in mind,—Tarantara, tarantara;
For sugar we're inclined,—Tarantara;
And anything but blind,—Tarantara, tarantara.
To the danger that's behind;

Though we feel the end is near,
We manage to appear
As insensible to fear,
As anybody here,—Tarantara, tarantara.

Illustration 3.1
(Melbourne Punch, 16 June 1881, p.245)
The subsequent remodelling of the force began at the top. Acting-Chief Commissioner Nicolson and Superintendent F.A. Hare were forced into retirement, and the force, as a whole, was restructured. The much criticized detective force was incorporated into the larger police body and rigorous examinations were introduced in an attempt to select those best suited to the task of maintaining law and order. In 1888, the sought-after recruit was 'smart and active, of a strong constitution, and free from any bodily complaint or defect'. The corrupt, incompetent and ineffectual policemen who had brought the force into disrepute, were to be replaced by men of intelligence, integrity and tact. Artisans and labourers were commonly recruited as foot police, while senior men continued to be drawn from the military and from the ranks of the Royal Irish Constabulary. The Irish had traditionally constituted a disproportionately large segment of the Victorian Force.

The person chosen to lead the new-look force was Hussey Malone Chomley - a policeman who had joined the service as a cadet in 1852 and moved up through the ranks with an unblemished record. In March 1881, he became the first serving policeman to be appointed Chief Commissioner. Although his appointment was due more to the misfortunes of others than to his own achievements, Chomley's steady character provided a stabilising influence within the force. Unlike his predecessor

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It was only after the death of Commissioner Standish in 1880 and the forced retirements of Acting Chief Commissioner Nicolson and Superintendent Hare that Chomley was appointed Chief Commissioner. See Haldane, *The People's Force*, p.94;
Frederick Standish, who had been criticized for his 'want of impartiality, temper, tact, and judgement', Chomley was known for his courage, courtesy, honesty and fairness. He brought with him the experience of 'a long apprenticeship to police work', an 'easy-going disposition' and the 'genius of commonsense'.

Illustration 3.2
(John Sadleir, Recollections, facing p.265)

Chomley was eager to make the Victorian Police Force a smooth running and respectable organization. He worked to increase its efficiency and public standing, and


10 'Chomley', ADB, p.393; Sadleir, Recollections, p.269.
greeted with indignation, any suggestions that the police were incapable of maintaining law and order. In 1888, Chomley was deeply offended when the Secretary of the International Exhibition recommended that an 'English detective officer' be engaged for special duties at the Exhibition. The Commissioner noted the problematical and costly nature of such an exercise, and dismissed the suggestion outright. He curtly concluded that 'the experience of past Exhibitions in various parts of Australia, shows that the Colonial police are quite capable of dealing with the criminals, specially attracted there to from various quarters' 11

The Chief Commissioner was determined to improve the reputation of the police, yet his conservatism led him to oppose many suggested reforms. 12 Corruption and disharmony within the force were often ignored in an attempt to maintain appearances. According to John Sadleir, who served under Chomley, the Commissioner 'was ready occasionally to sacrifice a good deal as long as things went smoothly.' 13 Chomley attended to the general administration of the force and left matters relating to everyday policing in the hands of less senior officers. This was particularly the case in urban areas. According to Sadleir, Chomley's 'experience had all been in country work; of city police work he pretended to no special knowledge, and seldom interfered with the

11 Chief Commissioner of Police to Undersecretary, 16 May 1888, VPRS 678: Unit 107.

12 Chomley staunchly opposed the enfranchisement of policemen and only accepted in a hesitant and piecemeal way many of the recommendations of the Longmore Commission. Haldane, The People's Force, pp.113-4.

13 Sadleir, Recollections, p.269.
officer in charge of that particular branch.\textsuperscript{14}

Sadleir was in a position to know. As superintendent of the Metropolitan district, he was responsible for the maintenance of law and order in the most troublesome sections of Melbourne. It was a task which Sadleir relished, for he too had been a victim of the Longmore Commission. The Commission had found that, during the pursuit of the Kelly gang, Sadleir had been 'guilty of several errors of judgement'. It had described his conduct of operations at Glenrowan as 'not judicious or calculated to raise the police force in the estimation of the public'. His treatment of lesser officers had also been criticized as 'harsh and unmerited'. As a consequence, Sadleir had been placed at the bottom of the list of superintendents.\textsuperscript{15} Only two years after his demotion and transfer to Ballarat, Sadleir was called upon to take up superintendence of the Metropolitan district. He accepted this as an opportunity to re-establish his reputation and his career prospects. His familiarity with urban policing, filled him with confidence:

\begin{quote}
Every street and right-of-way was known to me from my service in previous years and, I might also add, the qualifications of almost every sub-officer doing duty in the city. Better still, I was familiar with every branch of the city work...\textsuperscript{16}
\end{quote}

\textsuperscript{14} \textit{ibid}.


Sadleir took up his Melbourne duties late in 1883. He later claimed that he had found the city police at that time to be 'sunk to a depth of degeneracy and decay they had never reached before', with 'the sub-officers failing in their duty' and the constables 'shirking theirs'. Sadleir attributed this to negligence, refusing to recognise the high level of corruption which existed within the force. He did, however, initiate changes which served to reduce both corruption and inefficiency. On Sadleir's suggestion,
Chomley approved a new regulation intended to increase the effectiveness of sub-officers and appointed a number of additional junior officers to the city and suburban staff.\textsuperscript{18} By 1888, the Force's most severe critics had been silenced. Young enthusiastic officers had replaced the old and incompetent, and a far higher level of efficiency had been attained.\textsuperscript{19}

Corruption, however, continued to exist within the new-look force. Low pay, poor promotion prospects and the sheer drudgery of police work, quickly dispelled the enthusiasm of many recruits.\textsuperscript{20} Some policemen supplemented their salary with money obtained through graft. Threats of physical violence and legal prosecution, under the vagrancy law or alternative legislation, were used to extract payments from prostitutes, publicans and gamblers.\textsuperscript{21} The introduction of an examination-based promotion scheme during the 1880s did little to offset these corrupt practices. The number of candidates who passed the written tests far exceeded the number of promotions available.\textsuperscript{22} With promotion prospects stifled, the temptation for policemen to gain

\textsuperscript{18} The new regulation prevented policemen charged with misconduct from pressing counter-charges against a superior if the relevant information had been in their possession for more than three days. This regulation was intended to protect the officers and increase their ability to charge less senior members of the force with misconduct. Such regulation could, of course, work negatively to protect officers guilty of corrupt practices. \textit{ibid}, pp.245-8.

\textsuperscript{19} McConville, 'A Policeman's Lot', p.82.


\textsuperscript{21} McConville, 'A Policeman's Lot', p.85.

\textsuperscript{22} \textit{ibid}, p.80.
money illicitly remained. The belief of some senior officers, that promotion should be based on practical experience and achievement rather than book-learning, also militated against responsible policing. The ambitious constable realised that his career prospects could be bolstered by the commission of numerous or spectacular arrests. Policemen were thus tempted to be expedient in their everyday administration of the law. The vagrancy provisions, with their in-built flexibility, were extremely useful to those policemen keen to improve their tally of arrests and convictions.

It would be wrong, however, to regard the police simply as repressors. The role of the policeman in nineteenth century Melbourne was more diverse than it is today. Policing was generally characterised by a greater degree of interaction between law enforcers and the community. The relative smallness of the population, the compactness of the inner-city area, plus the reliance of the police upon 'the beat system', ensured that there was greater familiarity between police and citizens. This was reinforced by the wide variety of duties which the police performed. They contributed to the general welfare and management of the community by helping to settle neighbourhood disputes, assisting lost or injured individuals and watching for

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23 ibid, p.81.
sanitary hazards and dangerous obstructions. Police historian Robert Haldane suggests that the role of constables in late nineteenth century Melbourne was primarily a service one, but this view dangerously downplays the importance the police placed on crime prevention and detection. It also implies that an harmonious and equal

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24 ibid, p.84; Haldane, The People's Force, p.109. Police powers were particularly broad during the early years of settlement when the Australian colonies lacked effective local government, and thus relied on the police to enforce laws usually administered by separate agencies. D. Chappell and P. Wilson, The Police and the Public in Australia and New Zealand, University of Queensland Press, St Lucia, 1969, p.30.

25 Haldane, The People's Force, p.109. Two dominant interpretations of the development and nature of the modern police force exist. The first, which is reflected in Haldane's work and which is known as the orthodox account, suggests that the modern police force which emerged in Britain in the nineteenth century, had its roots in ancient traditions of communal self-policing. This view presents the 'new' police as being 'of the people and for the people' and emphasizes the benefits of it for all people. The second interpretation, which is known as the revisionist account, suggests that the development of the new bureaucratic force was inextricably linked to the processes of industrialization and urbanization. It depicts the police as a mechanism for stabilizing the relationship between conflicting social classes, and suggests that it was the bourgeoisie, which both established and benefitted from the new police. For a general overview of the orthodox and revisionist accounts see Robert Reiner, The Politics of the Police, Wheatsheaf Books, Brighton, 1985, pp.9-47. The classic orthodox account is provided by T.A. Critchley, A History of Police in England and Wales, London, Constable, 1967. Examples of the revisionist approach are provided by Allan Silver, 'The Demand for Order in Civil Society: A Review of Some Themes in the History of Urban Crime', in The Police: Six Sociological Essays ed David J. Bordua, John Wiley & Sons Inc., New York, 1967, pp.1-24, and Robert D. Storch, 'The Plague of the Blue Locusts: Police Reform and Popular Resistance in Northern England, 1840-57, International Review of Social History, vol.20, 1975, pp.61-90. The history of police and policing in Australia has been the subject of little research. Institutional histories, which tend to focus on administrative and organisational matters to the detriment of broader social questions, are provided by Haldane, ibid; G.M. O'Brien, The Australian Police Forces, Oxford University Press, Melbourne, 1950; Kerry L. Mîlte and Thomas A. Weber, Police in Australia: Development, Functions and Procedures, Butterworth, 1977. A work which successfully places Australian policing in historical and social context is Finnane, Policing.
relationship existed between the police and the policed. While welfare-type services constituted a segment of the constable’s duty, the protection of life and property through rigorous surveillance was considered to be by far his most important responsibility. Walking at exactly two miles per hour, on a prescribed beat, the constable was required to keep watch over the city’s streets, parks, laneways, and buildings. He was expected to check that the doors and windows of warehouses and business-places were secure, and to be on the alert for suspicious individuals and circumstances. The *Victorian Police Guide* advised constables to pay careful attention to ‘loiterers’, and instructed those on night duty, to ‘question any person found in the street carrying bundles under suspicious circumstances.’ The Guide emphasized that the constable who protected his beat, was superior to the one who allowed crime to be committed.26

Effective policing involved the careful management of social relations. Policemen, particularly constables on beat duty, were able to use their discretion to advantage. They often found that the threat of prosecution was less troublesome than, and just as effective as, actual arrest. Similarly the performance of welfare-type duties offset, at least to some degree, the feelings of resentment that some members of the community felt towards the Force. Social relations were also maintained by tolerating particular illegalities. Gambling and prostitution, particularly if undertaken discreetly, were two activities that were usually tolerated by policemen wary of upsetting local

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harmony. In general, the police preferred to concentrate upon those who were overtly dangerous or troublesome. But local interests had to be balanced with the concerns and demands of the broader society. Bouts of moral indignation amongst the middle-class usually resulted in the increased policing of vice, especially prostitution, amongst the poor. Public claims of police ineffectiveness had a similar result. The particular needs of individuals and the State also had to be met. Throughout 1888, for example, the police were called upon to attend a rash of public and official events. As well as attending annual events such as the Melbourne Cup and the Mayor’s Ball, the police were required to oversee special events including the opening of Prince’s Bridge and the Centennial Exhibition. On 1 August 1888, for example, 570 officers, sub-officers, foot and mounted constables, from all over the colony, gathered to superintend the opening procession. For the next six months, the Exhibition placed a relentless strain upon police resources but by the time of its conclusion, the force had earned the

27 Throughout 1888, Chief Commissioner Chomley juggled men and resources so as to maintain a high police profile in the inner city. He continually requested that policemen from rural and suburban branches be sent to Melbourne to undertake special duties. On 23 and 24 May 1888, for example, 31 policemen, some from as far away as Geelong and Sandhurst (Bendigo), were required to serve at the Fire Brigade Procession, the races, the review levee and the Governor's Ball. The next night, three policemen were needed at a dinner at Government House. The Exhibition, although in its preparatory stages, also required police attendance. On 31 May, the Commissioner forwarded letters to various district superintendents, requesting the transfer of 1 or 2 constables to Melbourne. 'So many men are now employed at the Exhibition' he explained, 'that I am compelled to withdraw some men from the country to enable me to meet very urgent requirements in Melbourne'. By 15 June, these reinforcements had also proved insufficient and the Commissioner sent out another set of letters, this time requesting 'foot constables of experience' for duty at the Exhibition. Chief Commissioner’s Memorandum Books, VPRS 678: Unit 107: Nos. 1159, 1200, 1292, 1293, 1294, 1300, 1423, 1424, 1425, 1426, 1427 & 1428.

praise of the Executive Commissioners who reported that ‘the supervision has been all that could be desired and the vigilance and civility of Officers and men alike have been themes of general remark.’

Public and official engagements provided the police with an opportunity to enhance their reputation. It was, after all, important that the police be seen to be doing their duty, particularly by those who wielded power in the community. The suppression of threatening and undesirable behaviour was essential in maintaining the city’s outward appearance of prosperity and harmony. It was especially important that order be maintained in central Melbourne, for the inner-city area was the focus of civic pride and the centre of business and entertainment. As such, it was also susceptible to the greatest disruption. For the police, the vagrancy law was an essential weapon in their struggle to maintain order in the city.

The Most Useful Law of All

In 1888, Constable John Barry, an experienced constable and author of the Victorian Police Guide, commended the vagrancy law to his colleagues, as ‘probably the most useful...certainly the most elastic law in the colony.’ He noted that it enabled

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29 Assistant Secretary of the Exhibition to the Chief Commissioner of Police, 28 March 1889, VPRS 937: Unit 327.
magistrates not only to deal with those who had 'committed some specific offence', but also with 'a numerous class' who 'obtain[ed] their living either by thieving, prostitution, or other illegal means.'

The provision allowing for the arrest of persons having insufficient or no visible lawful means of support, was generally recognised as the most useful of all the clauses, for it offered the police a unique opportunity to use their discretion. It could be used to round up a vast range of people, including known criminals, suspected lawbreakers, the weak, the poor and the simply annoying members of the community. The police could expediently use this provision to provide time and justification for the interrogation of known offenders and as a replacement for charges that were more difficult to prove. When other legislation was unsuitable, insufficient, inconvenient or non-existent, the vagrancy law could be called into action.

The Victorian Statistical Registers are a problematic source to use, but they do provide the only available estimate of the number of vagrancy arrests performed within the colony each year. As Figure 3.1 shows, between 1880 and 1894, the number

30 Barry, Police Guide p.105. This guide was praised by the Chief Commissioner of Police for its 'excellent conception and undoubted utility' and a copy of it was forwarded to each station in the colony. Chief Commissioner's Memorandum, 15 October 1888, VPRS 678: Unit 108: No.2473.

31 The statistics relating to vagrancy in the Statistical Registers must be regarded with some caution as they are poorly defined and their format changed over time. Between 1880 and 1893, vagrancy charges were listed individually in the registers. From 1894 to 1907, arrests for vagrancy, except those involving habitual drunkenness, were identified in a separate subsection. See Appendix One for a detailed discussion of the statistical problems associated with the study of vagrancy and an explanation of the methodology used in this thesis.
of vagrancy arrests in Victoria each year exceeded 2,000.\textsuperscript{32} Such arrests were most numerous between 1887 and 1893, when over 2,700 apprehensions occurred annually. In 1889, the year that marked the end of the boom and the beginning of the depression, 3083 vagrancy arrests were recorded. This was the highest number recorded in any year between 1880 and 1907. 1894 marked the beginning of a gradual decline in the number of apprehensions. By 1906, less than eight hundred vagrancy arrests were being recorded each year. This downward trend will be discussed at length in Chapter 6.

\textbf{Figure 3.1: Vagrancy Arrests in Victoria, 1880-1907}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{vagrancy_arrests_graph}
\caption{Vagrancy Arrests in Victoria, 1880-1907}
\end{figure}

\textsuperscript{32} For detailed statistics see Appendices 2.1, 2.2 and 2.3.
Throughout the 1880s and 1890s, few types of arrest were more common than those for vagrancy. Arrests for being drunk and disorderly were by far the most numerous. Figure 3.2 shows that arrests for larceny, the use of obscene language and vagrancy were the next most common.\textsuperscript{33} Apprehensions under the vagrancy provisions usually ranked second, third or fourth in terms of prevalence. Because of their high frequency, vagrancy arrests consistently accounted for a substantial proportion of the total number of apprehensions performed within the colony. Figure 3.3 shows that between 1880 and 1897, over 7% of individuals arrested in Victoria each year were

\textsuperscript{33} See Appendix 2.4.
charged under the vagrancy provisions. In 1893, at the height of the depression, vagrancy arrests constituted 9.6% of total arrests. In the prosperous years between 1887 and 1889, over 8% of total arrests related to vagrancy. These statistics indicate that even before the onset of the depression, the vagrancy provisions were an important and often used part of the legal code.

Gaol returns support this suggestion. In May 1888, people convicted of vagrancy constituted one quarter of the colony's prison population. In January 1889,

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34 See Appendix 2.5.

35 See Appendix 2.6. These statistics are derived from monthly returns compiled by the Office of the Inspector-General of Gaols and sent to the Chief Commissioner of Police. The returns classified the prisoners who were received into Victorian Gaols each month according to their crime. The first of these returns was produced in June 1888.
they accounted for just over one-fifth of incoming inmates. This was the highest proportion of vagrants received in any of the months, between April 1888 and June 1893, for which detailed statistics are available. Throughout 1888, 1889, 1892 and 1893, vagrants almost always constituted more than one-tenth of the prisoners received each month. Vagrancy was also usually the first, second or third most prevalent offence for which prisoners were sentenced.

Unfortunately, the Statistical Registers give no indication of where vagrancy apprehensions took place. It is therefore impossible to deduce from them how many arrests occurred in central Melbourne. Other sources, like police charge books, which might compensate for this deficiency, no longer exist. The only source available for estimating the number and type of vagrancy arrests executed in central Melbourne are the registers of the Melbourne Court of Petty Sessions. These list every case brought before the City Court, but as an indication of crime and policing, they must be regarded with some caution. It is an established axiom of criminology that the further removed the statistics are from the actual commission of crime, the less accurate they are as an indicator of the real incidence of criminal activity.\(^{36}\) The difference between the number

of offences committed and offences prosecuted is impossible to estimate. The nature of the crime, the priorities of the police, the willingness of victims or witnesses to report offences and the availability of adequate evidence, all influence the likelihood of detection, arrest and conviction. This is particularly so in relation to offences against the vagrancy laws. In nineteenth century Melbourne, many vagrancy offences passed undetected or unreported. Unlike property crimes or offences against the person, acts of vagrancy usually did not involve a specific victim. Only the most obvious cases were reported and prosecuted. A person found sleeping out in a railway yard or park bench might be arrested as a vagrant, while many others were allowed to spend undisturbed nights asleep under bushes or in deserted houses. The chances of arrest were influenced by a degree of luck and also by police priorities and the temperament of individual officers. The court registers cannot be used to formulate an exact tally of the number of acts of vagrancy committed within the inner city area or the number of warnings handed out by officers. They do, however, provide a good indication of the number of vagrancy charges laid by police in the Melbourne district. When used in combination with police reports, newspaper accounts, gaol, asylum and charitable records they also offer valuable clues about the way in which the vagrancy law was enforced. 37

37 I have used a process known as nominal record linkage to reconstruct individual cases. It involves linking together information found in various types of records, in order to provide a detailed outline of a person's life. As the lives of vagrants are often recorded only through institutional records, and as their contacts with such institutions are infrequent and irregular, this is the only means by which a broader understanding of their circumstances and experiences may be gained. For a description of this technique, see the introduction of E.A. Wrigley (ed), Identifying People in the Past, Edward Arnold, London, 1973, pp.3-16. This method has been used successfully by Shurlee Swain in 'The Victorian Charity Network'.
The Melbourne Court of Petty Sessions was by far the busiest court in the colony. Throughout the 1880s, it heard approximately one-third of Victoria’s summary trials each year. This proportion declined during the 1890s, as did the court’s share of the colony’s civil cases, committal proceedings and indictable cases. Nevertheless, the City Court continued to preside over more trials than any other court in Victoria. By 1895, it was still hearing around one quarter of summary trials, one-eighth of committal proceedings and summarily tried indictable cases, and one-sixth of civil cases.38

The court presided over the bulk of Victoria’s vagrancy trials. The nature of the inner-city environment, the heavy concentration of people within it, together with the relatively rigorous policy of policing that was pursued there, resulted in a high number of arrests. Vagrancy charges were particularly useful to urban law enforcers. In the twelve years between 1 May 1888 and 31 April 1901, the Melbourne Court of Petty Sessions heard approximately 9,600 vagrancy cases. A ‘one in ten’ sample of all of the vagrancy cases heard by the court during this period, indicates that trials involving vagrancy charges were most common in the late 1880s and early 1890s.39

38 These statistics have been calculated from court returns included in the Victorian Statistical Registers between 1883 and 1895. After 1895, the number of cases heard by the Melbourne Court of Petty Sessions was no longer specified, therefore similar calculations for the years following 1895 could not be made.

39 The surviving registers of arrest cases heard by the Melbourne Court of Petty Sessions commence on 1 May 1888. The ‘one in ten’ sample extends from this date to 30 April 1901. It is designed to cover the height of the boom, the depression years, as well as the early years of recovery. In order to make maximum use of the registers, I have commenced the statistical survey on 1 May 1888. Thus the yearly intervals mentioned in the survey extend from 1 May to the 30 April the following year. For an explanation of the statistical method used in this thesis see Appendix One.
As Figure 3.4 shows, the highest number of vagrancy cases during this period was recorded in the year 1889/90. Over 1,000 cases were heard by the court during this interval. In each of the following two years, well over nine hundred vagrancy cases were heard. Between 1 May 1892 and 30 April 1893, when the depression was at its worst, the number of cases fell to approximately 870. This marked the beginning of a gradual decline in the number of vagrancy cases brought before the city bench, and was indicative of the general fall in the use of the vagrancy provisions throughout Victoria. By the turn of the century, the Melbourne Court of Petty Sessions was hearing less than 500 vagrancy cases each year.

40 See Appendix 3.1.
A study of the cases brought before the Melbourne Court reveals that only about one-third of the vagrancy provisions were used regularly by the local police. The frequent use of some charges, and the total neglect of others, partly reflected the urban nature of the court's jurisdiction. The clause relating to individuals found wandering with Aborigines, for example, was largely irrelevant to inner-city policing. By the 1880s, the area's indigenous inhabitants had been pushed to the outskirts of settlement. Throughout the survey period, not a single case involving this offence was brought before the Melbourne Court. Other vagrancy provisions were better suited to the demands of inner-city policing, but were also used rarely, if ever. Vagrancy charges relating to gambling and cheating, the carrying of offensive weapons, the display of obscene material, and the gathering of money through false representation were hardly ever the subject of court proceedings. Vagrancy charges dealing with obscure offences, or which were more technical in nature, were also not commonly applied; such provisions related to escaped prisoners, vagrants who resisted arrest or who were convicted a second time, individuals found wearing disguises, and the manufacturing spurious metals.

Police preferences and priorities played an important role in determining the extent to which various vagrancy provisions were used. Not surprisingly, charges relating to activities that were low on the police agenda were not often utilised. The makers and sellers of spurious metals, for instance, were hardly a prime target for law enforcers. They were unlikely to be prosecuted, even though their activities were
prohibited. Provisions that were limited in scope or difficult to prove were also used sparingly. Relatively little use was made of the charge which targeted common prostitutes behaving in an 'indecent or riotous manner' in public. The police preferred to use the more flexible charge of having insufficient or no visible lawful means of support. The existence of other legislation also served to limit police use of some vagrancy provisions. Gamblers, for instance, could be proceeded against in a number of ways, thus lessening police reliance upon the vagrancy provisions, which were regarded as too restrictive and difficult to prove. In general, the charge that was considered easiest to administer and most likely to succeed, was the one chosen.

The police clearly favoured those vagrancy clauses that allowed the greatest degree of discretion in their interpretation and application. These clauses were more versatile than other vagrancy and non-vagrancy provisions, and could be used against a wider cross-section of individuals and in a broader range of circumstances. The vagrancy charge, most frequently used by police, related to individuals having insufficient or no visible lawful means of support. Individuals who were considered likely to commit an offence, but had not actually done so, were often arrested on this charge. So too were prostitutes, who had not openly importuned in the streets, or behaved in an undesirable or troublesome manner. This charge offered the advantage of being easy to administer and relatively simple to prove, for it did not require the police to provide a high degree of proof. Evidence that a defendant had a poor character, and could not be trusted to obey the law, was often enough to secure conviction. Figure 3.5 illustrates the degree to which this charge dominated vagrancy proceedings heard
by the Melbourne Court of Petty Sessions between 1888/89 and 1900/01.41

Figure 3.5:
'1 in 10' Sample - NVLMS/ILMS Cases as a Percentage of Total Vagrancy Cases heard by the MCPS, 1888-1901

During each year of the survey period, cases involving this charge constituted between 66% and 92% of the vagrancy cases heard. The greatest proportion was recorded during 1892/93, when economic distress was widespread and the police were free to utilise the provision as they pleased. By the final years of the nineteenth century, the ability of the police to implement this charge had been both officially and unofficially curbed. As a consequence, the number of cases involving it fell dramatically. In 1889/90, the court had dealt with more than 900 of these cases. By 1899/1900, it was handling less than 400 per year. This decline was the prime cause of the overall decrease in the number of vagrancy cases heard by the Melbourne Court. The charge of having insufficient or no visible lawful means of support, did, however,

41 See Appendix 3.1.
remain the most important of all of the vagrancy provisions. In the late 1890s, even with improved economic conditions and restrictions placed upon the use of the charge, more than two-thirds of the vagrancy cases brought before the City Bench related to it.

Seven other vagrancy provisions accounted for the bulk of the remaining cases. Of these, the most regularly used related to the protection of private property. People charged with being in particular places, at night without lawful excuse, generally constituted between 2 and 4% of the accused vagrants brought to trial. In most years, individuals who were charged with being suspected persons or reputed thieves frequenting particular places with intent to commit a felony also constituted a significant minority of accused vagrants. In 1899/1900, over one-tenth of the vagrancy cases heard by the court involved this charge. The carrying of housebreaking implements without lawful excuse was another property-related charge that was sometimes put to use. In 1895/96, this charge accounted for almost 5% of the vagrancy cases heard. This level, however, was unusually high. Such cases usually constituted less than 2% of the total number of cases heard each year.

The other vagrancy provisions that were regularly used targeted socially unacceptable forms of behaviour. In most years, 1 to 2% of accused vagrants who appeared before the court, were charged with wilfully and obscenely exposing themselves. A similar proportion of cases involved individuals charged with begging

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42 See Appendix 3.1.
alms. People accused of being habitual drunkards or common prostitutes, behaving in a riotous or indecent manner, generally represented between 1 and 8% of all those brought to trial, while the occupants of houses frequented by people having no visible means of support also represented a noteworthy minority of accused vagrants. These were usually managers of lower-class brothels, who had been arrested during periods of heightened police activity.

The majority of vagrancy cases heard between 1888 and 1901 involved male defendants. There was, however, less than 10% difference in the overall proportion of male and female defendants; boys and men were tried in almost 55% of the cases heard, whilst women and girls were the accused in more than 45%. These statistics indicate that, at least in late nineteenth century Melbourne, the vagrancy law was applied with similar rigour to members of both sexes. Figure 3.6 shows how the proportion of male and female defendants fluctuated over time. Men constituted a larger segment of the accused population in most years, but female defendants were more numerous between May 1890 and April 1893, and May 1896 and April 1897.

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43 See Appendices 3.2 and 3.3.
The greater proportion of cases involving female defendants during these years, was primarily due to an increase in the number of women tried for having insufficient or no visible lawful means of support. Figure 3.7 shows that, in all of the years surveyed, women constituted more than 40% of those tried on this charge. During the depression years of the early 1890s, the deterioration of many women's social and economic circumstances, led to an increase in the proportion of women standing trial. Between 1888/89 and 1892/93, women were defendants in over half of the cases that involved the charge of having insufficient or no visible lawful means of support. In 1891/92, women featured in more than two-thirds of these cases - the highest proportion recorded for either men or women between 1888 and 1901.

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44 See Appendices 3.2 and 3.3.

45 The high prevalence of cases involving women during the early 1890s is discussed in detail in Chapter 6.
The proportion of male and female defendants also differed according to the charge. Overall, a wider range of vagrancy provisions was used against men. The charge of having insufficient or no visible lawful means of support, was the one most often levelled against men. In 1892/93, 90% of male defendants tried for vagrancy by the Melbourne Court, stood accused of this offence. This charge was least frequent in 1899/1900, when only 56% of cases involving men related to it. Property-related vagrancy charges, such as carrying housebreaking implements and being found in a designated place at night without lawful excuse, were also regularly used against men. Wilful and obscene exposure of the person was a charge lodged frequently, and almost exclusively, against men. A small minority of male defendants were charged with begging alms, being habitual drunkards, and occupying houses frequented by people.

See Appendix 3.3.
The charge of having insufficient or no visible lawful means of support was used even more frequently against females than males. In each of the twelve years surveyed, between 80 and 100% of the women who appeared before the Melbourne Court on vagrancy charges, were accused of this offence. The remainder were usually charged with begging alms, being the occupiers of houses visited by people with no visible lawful means of support, or of being habitual drunkards or common prostitutes behaving in a riotous or indecent manner. Unlike men, women were rarely arrested and tried for property-related vagrancy offences.

A Matter of Discretion

On 29 September 1888, a man named Gordon Lawrence was found promenading the Centennial Exhibition. He was dressed as a woman, and, according to a later police report, was behaving in a 'very imprudent manner. He would make faces at different respectable gentlemen, wink at them and by using his feminine voice attract them to follow him about the Exhibition.' Unfortunately for Lawrence, one of the men who fell in behind him was a detective named Sexton. After a moment of delusion, the detective recognised Lawrence as a man and promptly arrested him. The prisoner was taken to the Police Office at the Exhibition, where, upon interrogation,
he admitted that he was 'a sodomite'. He was then removed to the City Watch House and locked up on a charge of insulting behaviour. But this charge was not pursued. The next day, Detective Sexton with Sergeant Lovie, searched Lawrence's Fitzroy lodgings. There they found bottles of medicines and syringes 'used by sodomites', ladies' underclothing, dresses, fans, scents and indecent photographs. The belongings were confiscated and produced the following day in court when a charge of vagrancy was entered against the prisoner.

This case reveals how the police could use the vagrancy law to deal with individuals who were difficult to prosecute under more restrictive legislation. The charge of insulting behaviour provided the police with the means to detain Lawrence until further enquiries could be made into his circumstances. The charge may have seemed appropriate at the time of arrest, but later doubts were expressed as to whether or not it could be proven. Even Sexton had to admit that the prisoner had acted 'imprudently but not indecently' whilst at the Exhibition. It is likely that, upon investigating Lawrence's circumstances further, the police also felt that a more serious charge was warranted. The difficulty for them was that Lawrence had not actually committed an offence. This minor setback could, however, be overcome by way of the vagrancy law. The charge of having no visible lawful means of support was flexible enough to be applied to Lawrence, and carried with it some likelihood of conviction and imprisonment. Adoption of this tactic eventually proved successful, with Lawrence being sentenced to six months imprisonment by the Melbourne bench.\textsuperscript{49}

\textsuperscript{49} ibid.; \textit{The Age}, 2 October 1888, p.7.
The vagrancy law could be utilized to meet the demands of unusual circumstances, but even more importantly, it could be used routinely to deal with common types of offenders and misdemeanours. During the 1880s and early 1890s especially, the vagrancy law was used to control Melbourne's prostitutes. It is impossible to know exactly how many prostitutes lived and worked in Melbourne, but it seems likely that they never numbered less than 500. In 1887, Chief Commissioner Chomley informed the Government Statist that 403 prostitutes resided in the city and suburbs. It was an estimate in which Chomley placed little faith, however, as owing to the limited power of police to investigate and arrest prostitutes, constables were forced to rely largely on hearsay evidence. Thus, he concluded, 'uncertainty is a large element in any figure which the police can obtain regarding these women.'

Other factors, including the use of aliases by prostitutes, their movement from place to place, and the constant flow of women into and out of the trade, also made accurate estimation impossible. In the 1890s, official estimates of the number of prostitutes in Melbourne rose substantially. In 1892, it was reported that there was a total of 973 prostitutes: 482 were said to reside and earn their living in brothels; the other 491 also allegedly lived in brothels, but earned their living by street walking. Given the difficulties associated with accurately establishing the number of prostitutes in the city at any one time, it is likely that this estimate, like all others, significantly under-

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50 Chief Commissioner Chomley to the Government Statist, 10 December 1887. VPRS 937: Unit 355.
51 Superintendent Sadleir to Chief Commissioner Chomley, 23 June 1892. VPRS 937: Unit 357.
represented the prostitute population.

Prostitutes were popularly depicted as posing a severe threat to the order and morality of society. As already mentioned, their public image was coloured by speculation and sensationalism. In 1894, the periodical, The Hawk, provided a lurid description of activities in Melbourne’s brothels:

Night after night hundreds of houses of ill-fame hold orgies of the most nauseous description, and be-powdered and be-painted trollops smirk, and smile, and rob and ruin young men and young women in the grossest manner imaginable. 52

The Hawk went on to criticise the authorities for failing to curb prostitution. It alleged that women plied their trade ‘under the very eyes of the police’ and that beyond ‘an occasional reprimand and paltry fine’ nothing was done to regulate the trade. ‘We want to know’, demanded The Hawk,

.. what influence is at work by which the dirty Madames of Lonsdale and Exhibition streets are kept safe from raids and prosecutions, and if there be no such influence, then we ask plainly, how is it that these women can live by open prostitution when prostitution of any kind is as distinctly unlawful as murder. 53

The police countered such criticisms by claiming that legal difficulties prevented them from eliminating prostitution. In 1887, Chomley claimed that Victoria’s police ‘had no legal power over women of ill-fame so long as their conduct [was] not disorderly in

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52 The Hawk, 1 March 1894. Copy contained in the police file relating to this report, VPRS 807: Unit 4.
53 ibid.
the legal sense of the word.\textsuperscript{54} Seven years later, in response to the allegations made by \textit{The Hawke}, Superintendent Sadleir echoed the Chief Commissioner’s sentiments:

> It is of course well known that loose women do pass up and down through the streets, and it is equally clear that the police cannot stop them, so long as they do not misbehave themselves in public.\textsuperscript{55}

According to Constable Albert Tucker, the narrow definitions of ‘common prostitute’ and ‘importuning’ adopted by the bench of the Melbourne Court of Petty Sessions, further hindered police efforts to curb prostitution.\textsuperscript{56}

There was some validity in claims that the existing legislation was inadequate for dealing with prostitutes. The Victorian legislature had dealt with the issue in a piecemeal and hypocritical manner. Instead of totally outlawing prostitution, the government had introduced measures to regulate it. Under the vagrancy law, the police were able to arrest ‘common prostitutes’ who behaved in a ‘riotous or indecent manner’. This provision was intended to target prostitutes who behaved unacceptably, thus creating a public nuisance and drawing attention to themselves. In 1891, legislation was introduced to prohibit common prostitutes importuning on the streets.\textsuperscript{57}

\textsuperscript{54} Chief Commissioner Chomley to Government Statist, 10 December 1887. VPRS 937: Unit 355.

\textsuperscript{55} Superintendent Sadleir to Chief Commissioner Chomley, 15 March 1894. Contained in file relating to \textit{The Hawk} report, VPRS 807: Unit 4.


\textsuperscript{57} \textit{An Act to Amend the Police Offences Act}, 1891.
Such measures enabled men to retain the services of prostitutes, and in some cases, their interests in the trade, whilst eliminating those aspects of it which were most likely to attract public criticism and cause disruption.

While specific legislation relating to prostitution was deficient, the vagrancy law provided the police with an effective alternative. Prostitution itself was not prohibited under Victorian law, but the earnings of prostitutes were deemed to be unlawful. Thus prostitutes could be arrested under the vagrancy legislation for having insufficient or no visible lawful means of support. This provision offered the advantage of being more flexible than alternative legislation, for it allowed the police to arrest on sight women who were known to be prostitutes but who could not be proved to have committed an offence. Similarly, women who appeared suspicious in their look or manner could be detained on this charge. Conviction under the vagrancy provisions, also carried with it a heavier sentence. Whereas women found guilty of importuning were liable to a fine of up to £5 or imprisonment not exceeding one month, those convicted as idle and disorderly persons could be sentenced to a maximum of one year's imprisonment. Prostitutes who worked in brothels, together with their male customers, could also be prosecuted under the vagrancy provisions for occupying or visiting a house frequented by people having no visible lawful means of support.

The police obviously had the means to prosecute prostitutes; it was their choice

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whether they did so or not. Like legislators, the police chose to regulate, rather than totally eradicate, prostitution. Their policing of the trade was highly selective. Attention was focused upon street-walkers rather than high-class prostitutes; upon female prostitutes rather than their male customers. The position a woman held within the hierarchy of the trade, largely determined how she would be treated by the police and courts. Women who worked in fashionable brothels, servicing gentlemen, had little to fear. In April 1892, the police received a complaint about Ettie Wilson’s brothel, situated at the corner of Erin and Hoddle streets in Richmond. The four officers who subsequently reported on the residence, noted the orderliness of the business and the good character and behaviour of both its inhabitants and visitors:

the place is conducted on a very high scale, and is frequented by very stylish people, who, judging from their appearance occupy good social positions, they come to and leave the place in a very quiet manner mostly in Hansom Cabs which stand whilst waiting some distance away from the house, the people who frequent the place appear to avoid being seen least they should be recognised...The place is generally looked on as being exceptionally quiet for a Brothel, and although a female or two may be seen occasionally about the place in the daytime there is nothing noticeable in their manner that would give any offence to the public or justify the Police in taking action against the occupants with any chance

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Legislators and police in Melbourne adopted what Abraham Sion describes as an ‘abolitionist’ approach to prostitution. It involves an acceptance that prostitution is undesirable in principle, but also an acceptance that, in practice, it is impossible to eradicate through police intervention. In keeping with this view, the police act as keepers of the peace and only interfere with prostitutes when they disrupt public order. Spatial considerations were integral to the policing of prostitution. Through selective enforcement of prostitution and vagrancy laws, the police sought to limit the trade largely to the slums. Raelene Davidson has illustrated how selective policing in early twentieth century Western Australia led to the establishment of red light districts. See Abraham Sion, Prostitution and the Law, Faber and Faber, London, 1977, pp.50-4; McConville, ‘Location’, pp.89-90; Raelene Davidson, ‘Dealing with the “Social Evil”’, in Daniels, So Much Hard Work, pp.166-86.
of success...60

This report, and the others that were filed, clearly reflected the double standards that underlined the policing of prostitution. According to Chief Secretary, Alfred Deakin, the police adopted three principles when dealing with disorderly houses. They prevented new houses from being established in any locality; ensured that all such houses were removed, as far as possible, from main thoroughfares; and immediately suppressed those houses which were conducted in 'a most disorderly manner.'61 As long as business was conducted discreetly, the police were content to turn a blind eye. This was particularly the case if the male customers of the establishment happened to be reputable or well-known members of the community. The links between the city's gentlemen and the prostitution trade went beyond normal business-customer relations. Some gentlemen, including parliamentarian Henry Miller, owned the premises from which brothels operated.62 It was certainly no accident that, in 1892, it was suggested that Victoria's missing parliamentary mace might be found in a brothel in Exhibition street.63 The disappearance and supposed fate of the mace was a source of scandal and amusement, but it was the type of episode that the gentlemen of Melbourne

60 Report of Sergeant Mitchell, 30 April 1892. VPRS 807: Unit 2669.
62 In 1872, two Chinese men and an eleven-year-old girl were brought before the City Court, as the occupiers of a house of ill-fame. The house, which was situated at 244 Lonsdale Street east, was kept by negro Robert Bonner. It was owned by Sir Henry Miller who received 52 per year in rent. The Argus, 31 August 1872, p.5.
HOW "MONEY" IS MADE!!

"The house which the prisoner rented, and which was used for the accommodation of the lowest class of women of the town, belongs to the Hon. Henry Miller, who received $2 per year for the premises. A memorandum of agreement between Sikas (the negro) as a tenant for twelve months, and the Hon. Henry Miller, was produced."—Argus, August 31.

Illustration 3.4
(Melbourne Punch, 5 September 1872, p. 77)
wished to avoid.

The police were no doubt reluctant to earn the wrath of their social superiors, by exposing the delicate connections which existed between the city’s gentlemen and the prostitution trade. Thus the city’s ‘flash’ brothels were rarely subjected to official scrutiny. Male privilege, as well as class privilege, was preserved through police inaction. Pressing charges against the men who frequented Ettie Wilson’s brothel clearly did not cross the mind of Sergeant Mitchell. This was not unusual. Throughout the force, and amongst many male members of the community, the use of prostitutes by men was condoned. The trade was, as Chris McConville has said, ‘subject to laws of supply and demand’. But while the demand was to be met, it was only the suppliers, and not the users of the service, who were to be pursued under the law.

Male access to prostitutes could only be maintained through the preservation of a fragile veneer of respectability. The members of Melbourne’s elite avoided overt interaction with prostitutes, and frequently called upon police to remove women of the demi-monde from reputable places and functions. In 1892, the Secretary of the Victorian Amateur Turf Club, wrote to Chomley requesting the services of two or three plain-clothed constables to service Caulfield Racetrack. The club committee was only too willing to pay for the services of the men, in order to ensure that prostitutes were either ejected or prevented from entering the enclosure. As the Secretary put it, ‘Lady Hopetoun and the elite of Melbourne extend their patronage to Caulfield - and it is self

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64 McConville, ‘From “Criminal Class” to “Underworld”’, p.76.
evident how objectionable is the presence on the Lawn or Stand of women of doubtful character.\textsuperscript{65} It is interesting that the secretary emphasised the need to prohibit and remove prostitutes, rather than arrest them. Scenes of apprehension were most likely considered a spectacle too undignified for the sight of the racetrack's respectable visitors. The arrest of high-class prostitutes would also have severely limited the services available to gentlemen, and involved a degree of risk for those gentlemen who had some association with the trade. There was always a danger that delicate information might be either deliberately or inadvertently revealed in court.

Prostitutes who occupied a lower place in the hierarchy of the trade lacked bargaining power and were thus more likely to be prosecuted. Both the vagrancy and importuning provisions singled out 'common prostitutes'; those women who worked mainly in the streets or brothels of the back slums, servicing poor and less reputable men. Lower-class prostitutes who tried to ply their trade in the better parts of the city were most susceptible to arrest. Parliamentarians, businessmen, journalists, moralisers and disgruntled residents were quick to complain about their presence and behaviour and regularly demanded that the police act against these women. The response of the police to such demands was largely determined by their assessment of the character of the complainant. If there was any suggestion that the person was of dubious character, the complaint would be either dismissed or treated with only mild interest. Those who resided in the less reputable parts of the city could expect little assistance.

\textsuperscript{65} Secretary of the Victorian Amateur Turf Club to Chief Commissioner Chomley, 2 May 1892. VPRS 807: Unit 2669.
By contrast, the police were quick to respond to the complaints of respectable and influential citizens. Sometimes, the police acted in direct response to orders issued by a higher authority. Such was the case in October 1886, when the Chief Secretary, Alfred Deakin, directed the police to increase surveillance over 'the objectionable houses' in Lonsdale Street East. According to Chief Commissioner Chomley, this extra attention was intended 'to secure if possible, the conviction of an increased number of the occupants; and generally, to secure the suppression of all openly flagrant conduct in that thoroughfare.' The order undoubtedly stemmed from a discussion in Parliament a few days earlier, when George Coppin had strongly criticized the police for failing to act in regard to these houses, where 'mere youths...were corrupted and led astray'.

Philanthropists and moralisers, who emphasised the need to protect the young and innocent from the evils of prostitution, were also capable of forcing the police into action. In 1889, evangelist Henry Varley scathingly criticized police for failing to mount proceedings against Melbourne's best-known brothel-keeper Madame Brussels and another woman named Lottie. His outburst followed the arrest for two young women, Mary Lawrence and Ellen Golding, on what he described as a 'trumpery charge of vagrancy'. He alleged that the women had provided the police with evidence against the brothel-keepers, who had not been charged because one of the brothel's patrons

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66 Chief Commissioner Chomley to Superintendent Sadleir, 15 October 1886, VPRS 937: Unit 319.

Illustration 3.5
Brothel-keeper Kate McEvoy
Between 1880 and 1909, she was convicted of nine counts of vagrancy and three of robbery. She was sentenced to a total of eleven and a half years imprisonment.
(Central Register of Female Prisoners, VPRS 516: Unit 8: p.156)
was a 'prominent wealthy man well known in Melbourne'. Pressure from the campaigning Varley, and from Colonel Barker of the Salvation Army, eventually led the police to charge Madame Brussells and Lottie with keeping a disorderly house.\(^68\)

Young girls who were found in brothels, opium dens, or wandering the streets with prostitutes were generally arrested on the charge of having insufficient or no visible lawful means of support. Those who were believed to be in moral danger or who were suspected of behaving in a sexually improper manner, were sometimes arrested on warrant. In 1890, for example, Colonel Barker requested that warrants for vagrancy be issued against four teenage girls who had absconded from the Salvation Army Home. One of the girls, Annie Smith, was believed to be at a Chinese Restaurant in Exhibition street, while the other three - Annie Brown, Ellen O'Connor and Nellie Fisher - were said to be residing in brothels. Barker believed that it would 'teach them a lesson' if they were 'found and locked up'. The girls were subsequently taken into custody by the police and tried by the Melbourne Court. Each was bound over in £20 to be of good behaviour for three months and handed over to the care of the Colonel.\(^69\)

Parents, like philanthropists, also occasionally used the vagrancy law to bring recalcitrant children, especially females, into line. In October 1888, Bridget McGee requested that her 16-year-old daughter Ellen be arrested on warrant and charged with having no visible lawful means of support. The girl had been arrested on warrant for

\(^{68}\) File relating to the prosecution of Madame Brussells, May 1889, VPRS 937: Unit 327.

\(^{69}\) Colonel Barker to Chief Commissioner Chomley, 21 July 1890 and Report of Constable Stokes, 31 July 1890, VPRS 937: Unit 330.
Illustration 3.6
(Illustrated Australasian News, 1 September 1893, p.17)
vagrancy before and on that occasion had been discharged into the care of her parents after promising that she would remain at home. Her mother complained that the girl had proven to be beyond their control. She came and went when she chose, and was often seen ‘accompanied by a very old disreputable looking woman’. Bridget wished to see her daughter put somewhere where ‘she would be taught to reform’. 70

Most of the complaints that the police received about prostitutes emanated from indignant businessmen and residents. If a particular complaint was considered worthy of investigation, the police responded by increasing surveillance in the trouble-spot. Plain-clothed constables were assigned to investigate such complaints, for the policing of prostitution was believed to be their duty. 71 Plain-clothed policemen were also more successful than uniformed constables in securing the arrest of prostitutes and other judged to be undesirable. 72 The uniform and the predictable movements of the constable on ‘beat duty’, meant that they could be easily evaded by the experienced street walkers. The immediate aim of the police was to arrest or deter those considered to be undesirables. It was the vagrancy law that was commonly used to

70 File on Ellen McGee, October 1888. VPRS 807: Unit 2704.


72 Meg Arnot has shown that from January to June 1898, four plain-clothed constables - George Appleby, John Stokes, George Scott and Albert Tucker - were the arresting officers in 72.7% of importuning cases bought before the Melbourne Court of Petty Sessions. Plain-clothed constables, including these four men, were also the arresting officers in a large number of the vagrancy cases bought before the court between 1888 and 1901. Arnot, ‘Prostitution’, p.50.
achieve this end. In 1888, for example, complaints were made about 'the conduct of low prostitutes' in Market Street, who allegedly took men 'up the lane at the back of their premises, for immoral purposes.' Police presence in the area was quickly stepped up, and soon Constable Canty was able to report that 'six or seven of the worst prostitutes' who had frequented the area had been arrested for insulting behaviour and vagrancy. According to Canty, the police also cautioned a number of other women whom they 'did not know sufficiently well' to arrest for vagrancy. 73

Six years later, after the introduction of legislation prohibiting common prostitutes importuning in public places, the vagrancy laws were still being used in this way. In 1894, Miss Fleming of The Metropol, lodged a strongly worded complaint about 'the number of females of ill-repute that night after night' would 'swarm' around her place: 'They not only obstruct the footpath and my doorways, but their language is so abominable that numbers of my visitors complained about it'. The police responded promptly. Little more than a month later, Constable Tucker reported that he had arrested, on vagrancy and soliciting charges, a number of prostitutes who were in the habit of frequenting the area at night. So successful were the police efforts, that Miss Fleming was later able to say that 'she had not seen any of the women about her place since she wrote the attached complaint.' 74

74 Miss Fleming to Chief Commissioner Chomley, 6 February 1894 and Report of Constable Tucker, 8 March 1894. VPRS 807: Unit 2.
Through sporadic displays of efficiency such as these, the police were able to quell public complaints about disorder. Bouts of rigorous policing also served to enhance the force's fragile reputation, for they gave an impression that the police performed their duties in a conscientious and effective manner. This, of course, was not always true. For the most part, the police were free to administer the law in whatever way they saw fit. The frequency with which crimes were detected and charges pressed, depended largely upon the alertness and outlook of individual officers. Some policemen were content to overlook minor transgressions, or to give a warning rather than execute an arrest. As McConville suggests, throughout the 1880s and 1890s, the police resisted demands that they clamp down on slum morality. He contends that the police pursued a policy of selective enforcement in order to confine prostitution and other immoralities to one area within the city.\(^\text{75}\) The evidence of Constable Tucker to the Royal Commissioners in 1905 supports the view that the police pursued a policy of containment, rather than prevention or punishment. Tucker described prostitution as 'a necessary evil' which was tolerated within a locality as long as there were no complaints. When quizzed over the presence of 'low houses' close to city factories where young women worked, his response was quite frank:

as long as people do not complain we do not care about shifting them. They would only move into some other locality, and they might be worse there. We never shift them unless the people in the neighbourhood complain of their behaviour; then we shift them at once'.\(^\text{76}\)

\(^{75}\) McConville, 'Melbourne's Prostitutes', pp.86-97.

On the surface, this policy was intended to make the job of policing easier. It also, however, reflected police acceptance of prostitution. It was in relation to prostitution that efforts to 'clean up' the force had proved least successful, or perhaps been most lax. Charges of misconduct against policemen involving prostitutes were quite common. In 1889, Constables Benussi and Manfield suffered the indignity of being found hiding in a water closet in the yard of a brothel occupied by well-known prostitute Annie Wilson. The two had apparently been in the brothel for over an hour. The seriousness with which the offence was viewed can be gauged from the penalties that were imposed against the men. Benussi, whose previous conduct was described by Superintendent Sadleir as 'very unsatisfactory', was dismissed from the force, but Manfield, who had never been reported before, was simply fined £1.77 Manfield's fine was less harsh than most of the penalties handed out to men found guilty of other forms of misconduct. Constable Maher, for instance, was fined £1 10s and warned that another offence would lead to his dismissal, when he was found guilty of soliciting 2s from a man in order to purchase liquor.78 Senior Constable Herbert was reduced to the rank and pay of an ordinary constable after he had been found guilty of general inefficiency and borrowing money from a licensed publican, while Constable Martin was 'allowed to resign' after being found drunk.79 Some citizens doubted the integrity of the police and their willingness to pursue prostitutes. In 1895, 'A Collins St East M.D.',

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77 File relating to Constables Benussi and Manfield, 8 November 1889. VPRS 937: Unit 329.
78 File relating to Constable Maher, March 1895. VPRS 807: Unit 17.
79 File relating to Senior Constable Herbert, March 1895. VPRS 807: Unit 18; File relating to Constable Martin, 26 February 1894, VPRS 807: Unit 3.
wrote to the Chief Commissioner to complain about the behaviour of men who loitered in the street, waiting for prostitutes. He refused to put his name to the letter for fear of reprisal. 'I am led to understand', he wrote,

that if I sign my name to this I will be a marked man both by the policemen on whose beat I reside and by the male friends of the unfortunate women such has been the treatment after a former complaint by a medical friend of my acquaintance.80

The police were more willing to arrest prostitutes who were believed to be suffering from venereal disease. An 1878 Act, modelled on the English Contagious Diseases legislation, provided the police with an avenue to proceed against such women.81 Under the 'Act for the Conservation of Public Health', police sergeants and more senior officers were able to inform magistrates of any known prostitute, or woman who had solicited for prostitution in the previous fourteen days, who was believed to be suffering from syphilis. Magistrates were empowered to order such women to appear before them, and to prove through the evidence of a medical practitioner, that they were free of disease. Women who were able to do this were set free. Those who could not, were directed to place themselves in hospital for treatment. Women who refused to do this could be arrested on warrant and detained in a hospital for up to

80 'A Collins St East M.D.' to Chief Commissioner Chomley, 11 January 1895. VPRS 807: Unit 14A.

three months. This act was criticised for the extensive power it gave to police and its failure to deal with men who suffered from the disease.\textsuperscript{82} The Act was also cumbersome to administer. In 1905, Constable Albert Tucker of the Bourke Street West Station told the Royal Commissioners:

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It is never used here. When we know that a woman is suffering from syphilis and is soliciting about the streets, we get hold of her, and lock her up, charge her with under the Vagrancy Act, and inform the magistrates in the morning, and they will send her to the gaol hospital. There is a provision in the Health Act to deal with that, but it is a round-about way.\textsuperscript{83}

Meg Arnot suggests that the arrest of diseased prostitutes via the vagrancy law was a common practice. She notes that from January to June 1898, fourteen women who appeared before the Melbourne Court of Petty Sessions charged with insulting behaviour, having no visible lawful means of support or being drunk and disorderly, were placed on remand for the purposes of medical inquiry. Eight of these women were later discharged at the expiration of their remand period, leading her to surmise that they had been detained for purposes of medical surveillance and treatment rather than for any criminal offence. She also notes another fifteen cases which she regards as 'suspicious'.\textsuperscript{84}

\textsuperscript{82} These criticisms were most clearly expressed during the act’s passage through parliament. Several members of the legislature heatedly attacked the narrow focus of the act and claimed that its potential misuse might lead to a ‘tyranny of the most cruel character’. It was feared that the reputable as well as the disreputable might be detained under its provisions. \textit{VPD}, 1878, vol.29, pp.957-8 & 1648-652.


\textsuperscript{84} Arnot, 'Prostitution', pp.74-75.
A study of the vagrancy cases brought before the Melbourne Court of Petty Sessions supports the claim that the charge of having insufficient or no visible lawful means of support was used to arrest diseased women. Nevertheless it is difficult to establish just how common this practice was. The 'one in ten' sample indicates that, in the late 1880s and early 1890s, medical inquiry or treatment was not often cited as the reason for the remand of females charged with this offence. Figure 3.8 shows that this justification was most frequently employed in the two years between 1898/99 and 1899/1900, when it affected 6.9% and 15.4% of female defendants respectively.

The number of women remanded without bail and subsequently discharged by the court is perhaps more significant. In most years between 1 May 1888 and 30 April 1901, over 5% of the women tried for having insufficient or no visible lawful means of support were remanded in custody and later discharged. Figure 3.8 shows that, in five of these years, more than 10% of the women tried on this charge suffered this fate. It is highly likely that most of these women were detained as carriers of venereal disease, even though medical treatment was not specifically cited as the reason for remand. This omission on the part of the court may have been quite deliberate, for it was under the Conservation of Public Health Act, rather than the vagrancy provisions, that such women were meant to be detained.

In most years between 1888 and 1901, a far greater proportion of men than women was remanded on medical grounds. At least half of these men were usually discharged at the expiration of their remand period. A larger proportion of men than
women were also remanded in custody without reason and subsequently discharged. In the year 1898/99, almost one third of men charged with having insufficient or no visible lawful means of support were dealt with in this manner. Some of these men suffered from syphilis, but unlike women, they were not specifically targeted and blamed as the carriers of the disease. Their arrest was related more to their poor health, than to the notions of punishment and containment that led to the arrest of diseased women.

Among the men and women remanded for medical inquiry, were some who were suspected of being mentally deranged. Stephen Garton, in his excellent study of insanity in New South Wales from 1880 to 1940, shows that procedures for committing individuals to lunatic asylums followed gender lines and reflected the power imbalance which existed between the sexes in the broader society. He shows that whereas women were most likely to be committed at the request a husband, father, brother or male employer, men were more likely to be committed after they had been arrested by
the police as a consequence of some violent or otherwise unacceptable public action.\textsuperscript{85} His findings have relevance for the administration of Victoria’s vagrancy provisions, for each year, a small percentage of those who were arrested for vagrancy, were diagnosed as insane and forwarded to asylums.

It is clear that men were far more likely than women to suffer this fate. Between 1888 and 1901, almost two-thirds of those committed to lunatic asylums via the vagrancy provisions were male. Most of them had behaved unacceptably in public. William Brown, for example, had silently sat on the staircase of Antonio’s Hotel in Flinder’s Street before being evicted by police at the request of the manager. He was arrested a short time later when, in an excited state, he told a constable that someone was going to cut his leg off.\textsuperscript{86} Similarly, Thomas Barnes, who was sent on remand for trial at the Melbourne Court of Petty Sessions, had been arrested after visiting settlers’ houses at Tarwin in Gippsland and allegedly ‘frightening the women’.\textsuperscript{87} Occasionally, women were also arrested for behaving unacceptably in public. But, in keeping with Garton’s findings, it was far more common for women and girls to be arrested as a direct consequence of a male’s request. Mattie Sempken, for example, was arrested at the request of the manager of the Immigrants’ Home.\textsuperscript{88} Likewise, Leah Ross, was

\textsuperscript{85} Stephen Garton, Medicine and Madness, pp.29-35.

\textsuperscript{86} Admission warrant for William Brown, Yarra Bend Asylum, 1888, no.4951.

\textsuperscript{87} Admission Warrant for Thomas Barnes, Yarra Bend Asylum, 1901, vol.1, no.6783.

\textsuperscript{88} Admission warrant for Mattie Sempken, Yarra Bend Asylum, 1895, no.4102.
arrested on warrant, presumably at the request of her husband.\(^8^9\) It was a power that many women did not have the ability to exercise over men. The case of Mary Davidson provides a graphic example of this. In 1895, her husband Alexander was arrested by the police on a vagrancy charge after obscenely exposing himself to women. In a letter written to Dr Watkin of the Yarra Bend Asylum, she revealed what life with her husband had been like:

> Though he may seem sane to the warder yet I have watched and screened him for 25 years and there was scarcely a day of that time but I suffered mental torture trying to keep him from indecency and immorality [and] to save myself [and] him from the disgrace [and] shame his conduct would bring upon us both....I ask you most respectfully to consider well before you let him at liberty as the consequences may be fatal for I am sure that he would not hesitate in his delusions to take my life. He threatened often to do so [and] for no other reason than because I faithfully tried to restrain his actions within bounds of decency. I destroyed a garden pruning knife [and] other knives that he had sharpened to kill me. I can bring witnesses to prove that he repeatedly removed his clothes and rolled about like an animal. Mrs Gately the wife of the man he accuses with is willing to come to prove that she stayed with me all the night my husband spoke of...

Eight months after this letter was written, Davidson escaped from the asylum.

Ill-health, old-age, unemployment, homelessness and poverty were other important factors in the arrest of many women and men. Nineteenth century Victoria lacked the structures, institutions and attitudes necessary for the adequate care of the old, the ill and the poor. As a consequence, the police and courts were often forced

\(^8^9\) Report of Constable James Barclay, Admission Warrant for Leah Ross, Yarra Bend Asylum, 1894, no.4074.

\(^9^0\) Letter from Mary Davidson to Dr Watkin, 12 December 1895, in Entry for Alexander Davidson, Yarra Bend Asylum, Male Casebook, 1893-6, no.199. Garton describes similar cases in *Medicine and Madness*, pp.128-30.
to take responsibility for such individuals. The charge of having insufficient or no visible lawful means of support was used by the police to deal with those who were in desperate circumstances. A desire to keep the streets ‘clean’ prompted the arrest of some people, but on other occasions legal detention was used as an ad hoc means of providing assistance to the needy. Those with terminal illnesses, such as tuberculosis and cancer, were frequently unable to gain hospital treatment and were thus arrested and committed to a gaol or a lunatic asylum. Others who were arrested under the vagrancy provisions suffered from less serious ailments, alcoholism, exposure or malnutrition. These individuals were more likely to be remanded for medical treatment and then discharged. For some, assistance came too late. On 18 April 1889, Constable Edwin Clements discovered Charles Roberts, sober but ‘in a filthy state and covered with vermin’, lying on the porch of the Mechanics’ Institute. Roberts, who was 63 years old and unmarried, claimed that he had been a captain in the army. He received an allowance of £2 10s from London each week, but spent most of the money on liquor. Prior to his arrest, he had been ‘lying out’ for three weeks and had been drinking. By the time he was remanded to the Melbourne Gaol for medical treatment, he was ‘unable to walk’ and ‘very feeble’. Two days later he died, reportedly from the effects of excessive drinking.’ A post mortem found that he had suffered from severe inflammation of the intestines and heart, degenerating kidneys, a diseased pancreas, a ‘nutmeggy’ liver and 47 gall stones, two and a half dozen of which were the size of beans.91 The fate of others was less open to moralising. In September 1898, Peter Miller was found in a helpless state in Little Bourke Street. The day before he been

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91 Inquest on Charles Roberts. VPRS 24: Unit 397: File 581.
discharged from the Melbourne Hospital, but his weak state was considered sufficient
to warrant his arrest and remand to Melbourne gaol. Twelve days later, he died of
consumption. 92

Arrest and incarceration enabled food, shelter and medical care to be dispensed
to those urgently in need. But this could only be done by branding innocent people
as criminals, thus reinforcing, rather than redressing, existing social inequalities. Little
distinction was drawn between the unfortunate and the criminal, as the case of Emma
Newman illustrates. In 1898, she was conveyed by police from her home in
Wahgunyah to the Central Mission Hospice in Melbourne. Newman was seven months
pregnant, in poor health, and destitute, after being deserted by her husband. On
discovering that she would be confined for the remainder of her pregnancy, Newman
left the Hospice and returned to her home in order, she said, to take out a warrant
against her husband and to earn a little money from washing. The police, however,
interpreted this action as deceitful and expressed doubts about the wisdom of ever
having assisted her. A week later, Constable Middleditch of Wahgunyah, reported that
he did not know ‘what was to become of her’; her situation was still desperate and no
local assistance was forthcoming due to her ‘very indifferent character’. ‘If she again
takes ill’ he concluded, ‘my only course is to arrest her on a charge of vagrancy and
have her remanded to gaol’. 93

92 Inquest on Peter Miller. VPRS 24: Unit 486: File 1243.
93 Reports of Constable Scott, 30 December 1898 and 5 January 1899; and
Constable Middleditch, 13 January 1899. VPRS 807: Unit 92.
Arrest was not always the result of police initiative however. On occasions, individuals who were badly in need of food or shelter would ask to be arrested. Early one morning in July 1900, John O’Donovan, who eked out an existence selling bootlaces and matches in the city streets, approached Constable Thomas Ganderton and asked for assistance. O’Donovan was ‘quite sensible and sober’, but was very weak and feeble’ and hardly able to walk. He told Ganderton that he had no bed to go to and that he had not had anything to eat the previous day. O’Donovan was thus arrested and, on being brought before the City Bench, was remanded for a week to the gaol hospital. He died whilst confined there.\textsuperscript{94} Those who sought a free meal from the state did not always succeed in gaining one. Some were considered too disreputable even to be gaol’d. In January 1894, May Ann Solomon presented herself to Constable Spillane and asked to be arrested. She claimed to be destitute, with neither friends to help her, nor a home. Solomon was promptly arrested, but was discharged by the Melbourne Court. The magistrate asked that enquiries be made concerning the willingness of her relatives to assist her. For Solomon, further investigation proved disastrous. Her daughter described her as an ‘inveterate drunkard of erratic temperament’ and staunchly refused to assist her. So too did her husband who, reported Constable Greenaway, ‘had been totally blind for the last five years or more caused by his wife pulling his eyes out.’ The police soon abandoned her cause.\textsuperscript{95}

\textsuperscript{94} Deposition of Constable Thomas Ganderton, 16 July 1900, Inquest on John O’Donovan. VPRS 24: Unit 505: File 836.

\textsuperscript{95} File relating to Mary Ann Solomon, January to February 1894. VPRS 807: Unit 1.
Police misuse of the vagrancy provisions was sometimes a direct result of the general community’s failure to cater for the needs of the poor, ill and elderly. On other occasions, expedience and bias lay behind the abuse of police powers. The charge of having insufficient, or no visible, means of support was particularly susceptible to misuse, as is shown by the case of Mary Sutton. In September 1894, Sutton was released from Pentridge, having served a three month term for vagrancy. She had been arrested a total of sixteen times. Each arrest had taken place at Clunes, which is where she intended to go upon her release. Prior to the expiration of her sentence, Police Commissioner Chomley, made some enquiries about her situation. He later wrote to Superintendent Sadleir:

I have ascertained that there is no one there who is willing to befriend this woman; and as her past record proves her to be a confirmed vagrant, it is not deemed advisable to send her so far simply to be again arrested and brought back. I beg that Mr. Sadleir will be good enough to take up this matter, to arrest Sutton after her discharge and take her before the local bench to whom the circumstances of the case should be fully explained.  

Sadleir carried out these instructions in full. On 11 September, the day of her discharge, Mary Sutton was arrested for vagrancy, brought before the local bench, and sentenced to twelve months’ imprisonment.

Individuals who possessed criminal records, especially those who had been recently released from gaol, were most susceptible to police harassment. Constables

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96 Memo from Chief Commissioner Chomley to Superintendent Sadleir, 10 September 1894. VPRS 807: Unit 11.
and detectives made a conscious effort to familiarise themselves with offenders. In 1905, Inspector Michael Mahoney told the Royal Commissioners investigating the police, that photographs of recently discharged prisoners were sent 'all round to the various stations.' Each morning at the city watch-house, detectives and plain-clothed constables viewed the parade of prisoners who had been locked up. Past offenders were thus in constant danger of being recognised by patrolling policemen and re-arrested. While some constables may have turned a blind-eye to known offenders, others pursued a policy of blatant harassment against them. Detective Sergeant David O'Donnell, in testifying before the Royal Commission, denied suggestions that the police were known to harass convicted criminals. He claimed that some members of the force helped released prisoners by giving them clothes, money and constant assistance. Inspector of Police, Lawrence Gleeson, likewise claimed no knowledge of police persecution of convicted criminals. He had, however, heard of ex-prisoners being dismissed after policemen had informed their employers of their criminal history. It was an action that Gleeson condoned in some cases. As he put it:

It might be necessary for an employer to be warned of the character of an employe to protect him from being robbed. He might be liberated from gaol after serving a sentence for a class of crime, and perhaps got employment where he could repeat the same class of offence. There are many instances in which it would be wise to let the employer know.

Twenty years earlier, the Secretary of the Victorian Discharged Prisoners' Aid Society

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99 Evidence of Inspector Lawrence Gleeson, ibid, p.160.
had written to Chief Commissioner Chomley complaining about this practice.¹⁰⁰

People who were suspected or known to be petty or professional criminals could be detained on a vagrancy charge, whether or not they had committed a crime. This course was most often adopted when the police lacked conclusive evidence. In such instances, a word to a magistrate sympathetic to the police cause was sometimes enough to secure the defendant's conviction. Individuals against whom convictions could not be secured, might be deliberately kept on remand; their loss of liberty serving as punishment or warning. On other occasions, the charge was used to hold individuals for interrogation. Professional criminals were particularly susceptible to such arrest. In 1882, Sergeant Francis O'Meara informed the Royal Commission on Police, that it was 'an everyday occurrence' for individuals who were suspected of committing robberies to be arrested on vagrancy charges.¹⁰¹ In 1895, for example, Christopher Jackson, alias John Thomas Parkson, alias Patrick Monaghan, had an information of a charge of vagrancy sworn against him, as soon as it was found that he was in Melbourne. Jackson, who was reputedly 'one of the most expert safebreakers in Australia', was believed to be responsible for a number of robberies in the city. Information about Jackson's whereabouts was bought from criminal informers, and he was subsequently found, in the company of five other criminals, and arrested. In court,

¹⁰⁰ Honorary Secretary of the VDPAS to Chief Commissioner Chomley, 21 March 1886. VDPAS Letterbook, 8 July 1884 - 2 October 1893, p.40.

¹⁰¹ Evidence of Sergeant Francis O'Meara, Royal Commission on Police, 1883, p.320.
Detectives Whitney and Manamay described Jackson's expertise in safebreaking and alleged that he had been involved in a number of robberies in Sydney and Melbourne. More serious charges of robbery were not laid against him, presumably because of lack of evidence. The vagrancy charge was nevertheless adequate. Though no specific crime was proven, Jackson was convicted and sentenced to the maximum penalty of twelve months imprisonment with hard labour for having insufficient lawful means of support. The Superintendent of Detectives found it difficult to conceal his joy at the decision and forwarded a report of the case to Chief Commissioner Chomley for his 'favourable consideration'. 'This man', he wrote in reference to Jackson, 'is well out of the way. I have no doubt another safe would have gone last night if he had not been arrested. This man seems to be the master mind of his gang.'

The police used several other vagrancy charges to prosecute professional criminals. Possessing housebreaking implements without lawful excuse was one of these charges, but it was often difficult to prove for it required the production of hard evidence. When adequate evidence did come to light, it was usually in relation to the commission of a more serious offence. As a consequence, the charge of carrying housebreaking implements was often laid in conjunction with the more serious charges of breaking and entering or robbery. In 1895, William and Patrick McDermott tried unsuccessfully to steal spirits and tobacco from a shop at the corner of Argyle and Brunswick Streets in Fitzroy. They were subsequently charged with attempted

102 Report of Detective Manamay's report on the arrest of Christopher Jackson, 23 July 1895. VPRS 807: Unit 25; Melbourne Court of Petty Sessions Register, 23 July 1895, VPRS 1665: Unit 45.
shopbreaking and having housebreaking implements in their possession. Arthur Douglas, James Belmont and Daniel Hutton likewise became the subject of multiple charges, when police disrupted their attempt to break into a jewellery shop in Little Collins Street. Each of the trio was charged with being in possession of housebreaking implements, being found in a public place with intent to commit a felony, and with assaulting a constable in the execution of his duty.

To prosecute a person successfully for possessing housebreaking instruments, the police had to produce evidence that the defendant was carrying a jemmy, skeleton key or some other tool of the trade. It was often far easier to prove that the person was a suspected or known thief frequenting a public place with the intention of committing a felony. This charge was conveniently vague. It did not specify how much or what type of proof of ill-intention was needed to gain a conviction. Evidence, or even mere allegations of a bad character, were often enough to secure the arrest and conviction of an individual under this charge. Those who had a criminal record had little hope of escaping conviction. The same was true of the vagrancy charge relating to persons found in a designated place at night without lawful excuse.

The charge of being found at night without lawful excuse in a designated place

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103 Report of Detective James Cook, 8 February 1892. VPRS 807: Unit 2. In court, the men were given a 'severe lecture' and each sentenced to twelve months imprisonment with hard labour.

104 Brief of case against Arthur Douglas, James Belmont and Daniel Hutton, 21 February 1888. VPRS 937: Unit 324.
was used to prosecute known offenders, and occasionally, individuals who lacked criminal intent. In March and April 1894, a series of raids on the yard of the Princes Bridge Railway Station resulted in the arrest of at least thirty men and children. Those arrested were going 'off to Coolgardie' in search of gold, but the adventurers did not get far. Most of the juveniles arrested in one raid were charged with being neglected children, and were forwarded to reformatories or industrial schools, or placed in the care of their parents. One little girl was handed over to the Salvation Army. The men who were arrested fared little better. They were convicted of being in the railway yards at night without lawful excuse, and were sentenced to terms of imprisonment ranging from three to fourteen days with hard labour. The charge of being found at night in a designated place without lawful excuse was also applied to individuals who followed a 'vagrant lifestyle'. These individuals were often to be found sleeping in empty houses, yards, or in other private or government-owned space. Their dishevelled appearance and irregular behaviour aroused the indignation of the owners and neighbors of the properties that they frequented. In 1891, Robert Bruce, the owner of a foundry in Carlton wrote to Chief Commissioner Chomley to complain about the vagrants who frequented the premises at night, 'sleeping...and destroying the things therein'.

The police used a number of different methods to control the movement of

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105 Melbourne Court of Petty Sessions Registers, 26 March 1894, VPRS 1665: Unit 38; The Argus, 26 March 1894, p.7 and 27 March 1894, p.4.

106 R. Bruce to Chief Commissioner Chomley, 15 October 1891. VPRS 937: Unit 335.
transients. The 'move on' regulation gave the police power to deal with loiterers and
was sometimes used instead of arrest. It allowed the police to single out people who
appeared suspicious or undesirable, and to order them to stop loitering and move from
the place where they had been found. Superintendent Sadleir believed, that in regard
to this regulation, the police should 'be at liberty to exercise their judgement according
to circumstances'. On occasions though, constables patrolling troublesome localities
were told to 'strictly enforce' the 'move on' regulation. Senior Constable Shiels
instructed the constables under his supervision to enforce the regulation, after a man
named Prell complained several times about the presence of loiterers outside his city
business premises. Shiels believed that, if the regulation was strictly enforced, the area
in question would soon be free of 'objectionable persons'. Magistrates sometimes
gave individuals who had been charged with vagrancy a choice of being convicted or
voluntarily moving on. In 1896, four people who had been found living in two
dilapidated houses in Cumberland street, off Little Lonsdale Street, were discharged by
the Melbourne Bench on the understanding that they leave the district. Such a
strategy was a useful way to rid the city of undesirable characters, and was attractive
to the authorities as it placed no burden upon the colony's strained economy or
overcrowded gaols.

107 Memo from Superintendent Sadleir, 1 October 1886. VPRS 937: Unit 319.
106 Report of Senior Constable Shiels, 31 August 1891. VPRS 937: Unit 335.
Files, Series 1, VPRS 3181: Unit 400.
Other individuals who, because of their appearance and behaviour were categorised as vagrants, were arrested for having insufficient or no visible lawful means of support. Arthur Seymour was one such person. He was arrested by Constable McCubbin in October 1894. McCubbin claimed to have known Seymour for about three years and alleged that during that time he had 'not known him to do any work'. He claimed that Seymour did nothing but 'loaf about the streets night and day', living on what he could 'pick up from the streets and lanes'. He claimed to have seen Seymour eating out of rubbish bins. John Anderson, who was arrested in the same month, reputedly 'for his own protection and benefit', was similarly described. According to Constable Kennedy, Anderson had 'been leading a vagrant life on the wharf and eating anything he could pick up'. He had earned money from odd jobs, and 'slept and ate where he could with the most convenience and the least expense'. Importantly no explanation for the lifestyle of these men was offered or even considered; they were judged solely by their habits. It is possible that both men were victims of long term unemployment, either caused or made worse by the depression. Certainly Seymour reacted violently to his conviction and the sentence of six months imprisonment imposed upon him. As he was being removed from the courthouse he attacked a policemen. He was brought back before the bench, but, as soon as he was released by the two officers holding him, he again lashed out. He was finally overpowered, sentenced to another six month's imprisonment, and subsequently


111 Report of Constable Kennedy, 4 October 1894. VPRS 807: Unit 28; The Age, 4 October 1894, p.3. Anderson died in gaol shortly after his arrest.
charged with assaulting police.\textsuperscript{112}

Obscene exposure of the person was another charge occasionally levelled against those who lived in the city's streets and gardens. In 1888, Chomley instructed the police to pay 'special attention to the vagrants who haunt Albert Park'.\textsuperscript{113} His order was in response to a letter he had received from auctioneer William Butcher, who had complained of a 'number of human fiends' who invested the park and took 'delight in exposing their person and chasing little girls upon every possible occasion'. He claimed that his two daughters had been chased several times by such men and that the day prior to lodging the complaint, a man had deliberately exposed himself in full view of a 'bus' filled with ladies.\textsuperscript{114} Some episodes of obscene exposure were intentional, others were less clear cut. Men who followed a vagrant lifestyle were particularly vulnerable to such allegations, for they were usually poorly or inadequately dressed. They were sometimes drunk and always without privacy. On occasions, obscene exposure no doubt occurred accidentally and was devoid of sexual intent. It was not uncommon for more respectable men to be discovered urinating in public places.\textsuperscript{115} Their conduct, however, would have been viewed more sympathetically than

\textsuperscript{112} \textit{The Age}, 9 October 1894, p.6.

\textsuperscript{113} Memo from Chief Commissioner Chomley to Sadleir, 2 March 1888. VPRS 937: Unit 324.

\textsuperscript{114} Wm J. Butcher to the Chief Commissioner of Police, 29 February 1888. \textit{Ibid}.

\textsuperscript{115} Roberts discusses the issue of indecent exposure in relation to the introduction of the British Vagrancy Act of 1822. He suggests that in early nineteenth century London, as a consequence of the non-existence of public toilets, working class people were particularly vulnerable to arrest for indecent exposure. According to Roberts, street prostitutes and their clients, courting couples, as well as those desperate to relieve
that of an individual who was considered a vagrant.

Begging for alms was another vagrancy charge often used by the police. The police were often forced to prosecute beggars as a consequence of public complaint. The existence of beggars, whether male or female, elderly or young, on the city's streets was highly repugnant to Melbourne's respectable citizenry. Thomas Eyton's reaction to beggars was fairly typical. In 1888, this leathergoods manufacturer, entered a formal complaint about a 'dirty loafer' who, he alleged, could be found near his business in Queen street 'singing in his drunken state day after day and begging alms of any passers by'.\(^{116}\) Mrs Harrie, the proprietor of the Thistle Dining Rooms in Collins Street, similarly complained about young beggars who congregated outside her premises.\(^{117}\) Beggars, like vagrants in general, were regarded as immoral and lazy creatures who, given half the chance, would not hesitate to cheat the innocent.

The police used other vagrancy provisions to prosecute those who attempted more sinister forms of deception. The vagrancy clause which dealt with false representation enabled police to act against tricksters who produced false or fraudulent

\(^{116}\) Thomas Eyton to the Chief Commissioner of Police, 31 May 1888. VPRS 937: Unit 324.

\(^{117}\) Report of Constable Wardley, 6 June 1889. VPRS 937: Unit 328.
Melbourne Beggars.

Illustration 3.7
(Illustrated Australasian News, 18 June 1872, p.128)
representations in order to gain money or benefit from individuals or charitable institutions. In 1895, Laurent Vanhee was charged with imposing upon James Madden. Vanhee had advertised as an investor and claimed to have £7,000 with which to purchase a property. He was approached by James Madden, who gave him £2 2s to travel to Ballarat to inspect some property. It was later discovered that Vanhee had no money of his own and that he had never travelled to Ballarat. In the estimation of the police he was ‘nothing but a scheming imposter who [made] his living by imposing on persons desiring to borrow money’.118 The conduct and character of those who attempted to impose upon charitable institutions was looked upon even more darkly. They too were liable to be charged under the vagrancy act with producing a false representation, however, the artful manner in which these acts of deception were carried out, often made arrest almost impossible. The Bower family, for example, who were described as a ‘notorious family of professional beggars’, reputedly enjoyed an extraordinary career of deception between 1888 and 1891. Jacob Goldstein of the COS claimed that the family had regularly imposed upon both individuals and institutions. They would live in a house for only a few weeks and then leave without paying any rent. Though the police regarded the family as ‘imposters’, they were reluctant to act when Goldstein filed a complaint in 1897. The family were not known to have imposed upon anyone within the previous year, and for this reason the police regarded it as too late to proceed against them. Nevertheless, Constable Wardley suggested that the police keep a keen eye upon the family’s conduct and prosecute if any new crime was

118 File on Laurent Vanhee, 1895. VPRS 807: Unit 29.
The Victorian vagrancy law placed immense power in the hands of the police. Under the vagrancy provisions, police were able to use their discretion to an unrivalled extent. This often resulted in the blatant misuse of the vagrancy law. Its provisions were used to arrest a wide variety of people, many of whom had committed no real crime. Social and economic conditions, as well as the idiosyncrasies of individual policemen influenced the way in which the vagrancy provisions were applied. The judiciary, too, played an important and influential role in the administration of the vagrancy law. In the next chapter, the dealings of the Melbourne Court of Petty Sessions in regard to vagrancy cases will be considered.
CHAPTER 4

TRIAL AND ERROR

Individuals who were charged with vagrancy usually appeared in court the day after their arrest. For some, trial constituted the most traumatic part of their involvement with the legal system. Like other offenders, accused vagrants were forced to deal with the unfamiliar and alienating aspects of proceedings. The peculiar environment of the courtroom together with the observance of particular rituals and rules served to intensify the defendant's powerlessness, whilst ensuring the authority of the bench.

In order to preserve the sanctity of the law, vagrancy trials, like all other trials, had to appear fair. An appearance of natural justice disguised the more secretive aspects of the legal process. Sternness and mercy were balanced so as to avoid allegations of undue harshness or lenience. On occasions though, the particular interests and actions of magistrates led to grave injustices. As a rule, accused vagrants had little control over proceedings. It was the inability of these individuals to defend themselves in court that made the vagrancy law so effective.
The Melbourne Court of Petty Sessions

Individuals who were arrested on vagrancy charges in the inner city area were tried by the Melbourne Court of Petty Sessions. For the first few years of the 1880s, this court sat in an elegant granite and bluestone building situated on the corner of Swanston and Little Collins Streets. The building had been erected in 1847-8 to serve the needs of a nascent colonial settlement.¹ By 1884, the city’s progress had rendered it redundant. The building was deemed to be ‘insufficient for the growing requirements of the metropolis’, and the City Court was relocated to the Old Supreme Court building in Russell Street, near the Melbourne Gaol.² The move was intended to be only a temporary one. In 1889, the government passed legislation providing for the acquisition of land and the erection of a new police court, but the act was not put into effect.³ The Magistrate’s Court continued to sit in the Old Supreme Court building until 1910, when the building was demolished to make way for a new court. It was a situation that was considered by some to be an insult to justice and to the city’s standing. In June 1892, The Age described the Magistrate’s Court as

little short of a scandal to the city. It resembles more than anything else the unsavory, inconvenient, palaces of justices that perforce existed in the ‘early days.’ The courts are not only inconveniently small, but are insanitary and in every


² W.J. Cuthill & L.G. Webster, ‘The Magistrate’s Court Melbourne’, La Trobe Library Manuscript MS9472, p.3.

³ An Act to provide for the acquisition of certain lands situate in the City of Melbourne by the mayor aldermen councillors and citizens thereof and for the erection of a new Police Court therein and for other purposes, 1889, 53 Vict. No.1020.
respect unsuitable, whilst the approaches, exits, and cell accommodation are all in the primitive state that readers of fiction are accustomed to associate in their minds with the Marshalsea prison and the 'spunging' houses of London 100 years ago.  

According to The Age, the court was cramped and stuffy. After 'negotiating a perilous flight of steps', the defendant found himself in a crowded little room, with the bench sitting 'cheek by jowl with attorneys' boys, police court lawyers, plain clothes policemen, and loungers.' The paper warned that as a consequence of this experience, there was more than a slight probability that the defendant's 'bodily comfort, as well as his peace of mind, [would] be wrecked for the day.' The members of the court were not believed to be immune from the ill-effects of the surroundings either. On at least one occasion, the paper reported that the court's senior police magistrate, Joseph Panton, had been forced to leave the bench due to a severe bout of rheumatism. Panton's poor health was attributed to the penetrating draughts of the court, which were said to have almost paralysed those who had previously occupied the chairman's seat.  

Victoria's courts of petty sessions occupied the lowest rung of the judicial hierarchy, and were responsible for hearing what were considered to be the least important cases. Summary offences, committal proceedings, and minor civil disputes fell within the

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4 The Age, 11 June 1892, p.15.

5 ibid.

6 The Age, 14 August 1890, p.5.
Illustration 4.1
The Melbourne Magistrate’s Court - Old Supreme Court
(La Trobe Library Small Pictures Collection)
jurisdiction of these courts. Such cases constituted the bulk of the colony's legal
proceedings; their frequency placed a continual and heavy strain upon the lower courts.
The Melbourne Court of Petty Sessions was by far the most overburdened. It was
forced to process a large number of people in a short space of time, and as a
consequence, often resembled a production line more than a court of law.

Through tradition and ritual, the colony's courts of petty sessions managed to
maintain some semblance of dignity and efficiency. Traditionally, the lower courts were
prized as the cornerstone of British justice. It was at this level that interaction between
the judicial system and the people was at its greatest. If respect for the law could not
be instilled in people through the actions of the magistrate's courts, then the
effectiveness and reputation of the legal system as a whole was open to doubt. The
colonial courts of petty sessions were modelled upon, and equated with, the
magistrates' courts of Britain. They were thus seen to embody centuries of tradition.
They were bound by same rules of evidence and procedure as their British
counterparts, and were similarly presided over, by paid police magistrates, and justices
of the peace appointed on an honorary basis.

The office of justice of the peace was one of England's oldest judicial institutions,
having been created in 1361. Appointment to it was considered to be an honour and

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7 For a history of the British magistrate's courts see Frank Milton, *The English
magistrate's courts is provided by T. Weber, 'History of the Magistracy' in *Guilty, Your
Worship: A Study of Victoria's Magistrates' Court*, Legal Studies Department, La Trobe
University, Occasional Monograph no.1, 1980, pp.3-16.
was keenly sought, and almost exclusively reserved, for members of England's landed gentry. In the Australian colonies, settlers who possessed property sought to maintain this elite ideal. Justices of the Peace did not need to possess a formal property qualification, but it was recognised that, 'that as a matter of fact, only men of independent position', who had 'sufficient means to enable them to devote the requisite time and industry' to the work, and 'to rise above the influence of fear or favour', were considered suitable candidates. Appointment often depended upon who, rather than what, one knew. A working knowledge of the law was certainly not a prerequisite. Some men were immediately appointed as justices of the peace upon their election to public office. The Mayor of Melbourne, for example, was ex officio a justice of the peace.

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9 Lorraine Barlow has argued that in early New South Wales, the British ideal of the Justice of the Peace prevailed despite a shortage of leisured gentlemen. The lack of propertied men made the appointment of paid police magistrates inevitable, but their introduction was fiercely resisted by the conservative landowners who dominated the magistracy. David Neal notes that the absence of an extensive property-owning class in New South Wales left positions of authority such as the magistracy open for competition between various social factions. He notes that the honorary magistrates of New South Wales were often poorly circumstanced compared to their British counterparts, but acknowledges the efforts of the elite to distinguish themselves as the rightful holders of the office. Lorraine Barlow, 'A Strictly Temporary Office?: New South Wales Police Magistrates 1830-1860'. Paper presented to the Law in History Conference, La Trobe University, May 1985; David Neal, 'Law and Authority: The Magistracy in New South Wales 1788-1840'. Paper presented to the Law and History Conference, La Trobe University, May 1983.

10 William Irvine, Justices of the Peace: Their Authority and Functions out of Sessions and in Courts of Petty Sessions, Charles F. Maxwell, Melbourne, 1888, p.2.
and therefore entitled to sit on the bench of his local court of petty sessions. All city mayors and shire presidents enjoyed this privilege. Other justices were appointed after being recommended to, and approved by, the relevant government minister.\textsuperscript{11}

Critics of the system argued that the potential for an egalitarian distribution of power and the selection of appropriate candidates was undermined by the method of recommendation and appointment employed.\textsuperscript{12} They alleged that political patronage was used to secure appointments. In 1892, the member for Collingwood, claimed that 'the best supporter of a candidate for Parliament was very often recommended to the position whether he was fit for it or not'.\textsuperscript{13} In 1876, William Vardy, a barrister, launched a scathing attack upon the colony's system of appointing honorary justices. He contended that three categories of men were appointed to the position of Justice of the Peace - 'men of general education and position, men of wealth' and men of a 'non-descript class possessing neither education nor wealth, nor exhibiting any mental or moral fitness for the position they occupy'.\textsuperscript{14} Vardy believed these men, except for a few who had been drawn from the ranks of the legal profession, to be totally ill-suited

\textsuperscript{11} An Act to Amend the Law relating to Justices of the Peace and for other purposes, 1876, 40 Vict. No.565; An Act to Consolidate the Law relating to Justices of the Peace and Courts of General and Petty Sessions, 1890, 54 Vict. No.1105.

\textsuperscript{12} Serious criticisms of Victoria's magistrate's courts emerged during the 1850's and continued throughout the nineteenth century. For an account of these see Weber, 'Magistracy', pp.8-14.

\textsuperscript{13} VPD, 1892-93, vol.69, p.1476.

\textsuperscript{14} W.L. Vardy, The Lower Tribunals: A Treatise upon the present system of administration of justice in Magisterial Courts in Australia, Lee & Ross, Sydney, 1876, pp.9-12.
to the dispensing of justice. He alleged that, as a consequence of their deficiencies, 'ignorance, incompetence, maladministration and the perversion of justice' were rampant within Australia's lower tribunals. Not even the justices who presided over the Melbourne Court of Petty Sessions were immune from such criticisms. Some, like George Craib, a retired draper and distant relation of Sir Graham Berry, no doubt acquired their positions through political patronage. The justices who served in the City Court were predominantly wealthy businessmen whose ignorance of the law was, in some cases, only surpassed by a lack of respect for it.

There were no formal qualifications for Police Magistrates either, but the system under which they were appointed was more closely regulated. As salaried officers, Police Magistrates were appointed by the Governor-in-Council. They were usually drawn from the existing civil service and were judged according to their seniority and merit. Knowledge of the law was not formally required, but some candidates were drawn from the ranks of the legal profession, while others were more generally experienced in public administration. The office of police magistrate was traditionally of little interest to those who already possessed power and property. The members of English gentry had greeted the introduction of the office in the late eighteenth century with hostility. At best, they believed the salaried position of police magistrate to be beneath them. At worst, they considered it to pose a serious threat to their own social standing

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15 *Table Talk*, 29 September 1893, p.4.

and power.\textsuperscript{17} In the colonies, men of property attempted to continue this tradition. Disdain for the position of police magistrate, or perhaps the prospect of greater reward elsewhere, led the colonial elite to channel their energies into government or business. In Victoria, as in Britain, the office of police magistrate was left for diligent, and sometimes ambitious, civil servants to fill. These men acquired power through their appointment to office, rather than through any pre-existing riches.

Joseph Panton, who became a 'Victorian institution' during his 33 years of service on the bench of the Melbourne Court of Petty Sessions, was one such man. Panton was born in Scotland in 1831, the son of a member of the Hudson Bay Company, and was educated at the Scottish Naval and Military Academy and at the University of Edinburgh. In 1850, he aborted his planned military career and emigrated to Victoria. After unsuccessfully trying his hand at farming and gold-mining, Panton applied to Governor for an appointment as a gold-escort. La Trobe considered Panton to have too much potential for such a position, and instead appointed him as a commissioner of crown lands and assistant commissioner of goldfields at Kangaroo Gully, near Bendigo. By 1854, Panton had risen to be resident commissioner of the Bendigo and Sandhurst goldfields, and during the four years of his appointment, earned praise as the warden, magistrate and protector of Chinese. Panton left Bendigo and the civil service in 1858. He sailed for England, but in 1861 returned to the colonies in order to pursue squatting interests in New South Wales. The venture was a failure, as was his subsequent

\\textsuperscript{17} Milton, \textit{Magistracy}, pp.28-38.
Illustration 4.2
Joseph Anderson Panton
(The Australasian, 18 October 1890, p.765;
Inset - Sadleir, Recollections, facing p.67)
attempt to win a seat in the Victorian Legislative Assembly. Panton soon rejoined the
civil service and in 1874, after several magisterial postings, was appointed to the bench
of the Melbourne Court of Petty Sessions. In 1892, he was appointed to the colony's
premier magisterial post of First Metropolitan Police Magistrate, and continued to
preside over the Melbourne Bench until his retirement in 1907.

Panton's background was not particularly noteworthy, but through his civil
appointments and personal charm he was able to establish himself as a member of
Melbourne Society. While stationed at Bendigo in the 1850s, he organised the Bendigo
Industrial Exhibition, served as a commissioner of the 1855 Melbourne and Paris
Exhibition and sat on a Royal Commission which was appointed to investigate the
colony's geological composition. He owned successful vineyards in the district and
was a strong advocate of the local wine industry. In the years that followed, Panton
maintained his busy public life. He served as a Commissioner of the 1880 Melbourne
International Exhibition, was vice-president of the Victorian Branch of the Royal
Geographical Society of Australasia, a founder of the Victorian Academy of Arts and the
first president of the Victorian Artist's Society. In 1895, he was created a Companion
of the Order of St Michael and St George after declining a knighthood. ¹⁸

The Melbourne Court of Petty Sessions was Victoria's leading magistrates' court,
and, as such, it boasted the colony's most senior police magistrates. The men who

¹⁸ For biographical details of Joseph Panton see Percival Serie, Dictionary of
Australian Biography, vol.2, p.214-5; ADB, vol.5, p.396; Table Talk, 27 June 1901, pp.16-
8; The Argus, 27 October 1913, p.8.
joined Panton on the bench between 1880 and 1907 were similar to him in age and outlook. Charles Nicolson, Frederick Call, and Charles Shuter had all been born in the late 1820's or early 1830's, and were experienced civil servants. Nicolson, in particular, could claim a long and close association with the law. He had enjoyed a thirty-year career in the police force, rising to the position of Acting Chief-Commissioner in 1880. In 1882, he was retired from the force as a Police Magistrate, after being condemned by the Longmore Commission for his conduct during the Kelly pursuit.19

Those who criticised the quality of justices of the peace favoured the appointment of more police magistrates. They argued that salaried officers displayed greater responsibility and were better equipped to dispense justice than their honorary off-siders.20 The conduct of police magistrates may indeed have been better than that of justices, yet it was still far from perfect. Police magistrates too were accused of bias and improper conduct in regard to the administration of the law. Some particularly harsh criticism was levelled at Joseph Panton. In court, the colony's leading magistrate cut an impressive figure. 'The most fluent and resourceful liar' it was said, 'was never quite sure of himself when facing the steely eyes and unyielding features of the magistrate.'21 Yet Panton was less than successful in silencing his critics. In 1897, the

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19 According to the Longmore Commission, Nicolson and Superintendent Hare were retired from the force as a consequence of the 'jealousy and dissension' which existed between them, and which prevented them from working harmoniously together. Royal Commission on Police, General Report, 1883, p.vi; Haldane, People's Force, p.94.


socialist paper, The Tocsin described Panton as a 'self-styled Solon' who used bullying, name calling and threats to intimidate his critics. It challenged his right to adjudicate over licensing matters, given his interests in the wine industry, and reminded him that any 'decent self-respecting judge' of his age would have already voluntarily retired. The Tocsin could see no reason why the aging Police Magistrate should not be immediately ejected from the bench.  

Criticism of Panton did not stop there. His decisions in particular cases were disputed. The Tocsin accused him of being 'a snob, and a "Society" sycophant first and an impartial Magistrate last of all'. It was especially critical of his discharge of the aristocratic defendants in the Mercantile Bank case. On various occasions, the propriety of his conduct and the fairness of his rulings was questioned in Parliament. In October 1892, attention was drawn to Panton's handling of a case involving a

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22 The Tocsin, 9 December 1897, p.6.

23 ibid.

24 On 8 March 1893, committal proceedings against the manager, auditors and four directors of the Mercantile Bank were commenced before the bench of the Melbourne Court of Petty Sessions. The defendants, who included such notable persons as Sir Matthew Davies and James Bell, were charged with 'conspiring to issue a false balance sheet'. In an extraordinary decision, Joseph Panton and six JPs found that the defendants had no case to answer. A seventh JP, John McDonald, disagreed, and committed Davies and Frederick Millidge for trial. After much scandal and political manoeuvring, the case against the men was quashed. In August 1893, a depositor to the bank, attempted to launch new proceedings against its directors. Panton, however, refused to issue a summons on the grounds that the defendants 'had been harassed, and the country put to much expense.' Table Talk condemned the magistrate's action as 'the most serious of the long list of grave scandals in connection with the failure of the Mercantile Bank.' For a full account of the case see Cannon, Landboomers, pp.165-77.
German Jew named Israel Solomon. It was alleged that Panton had acted improperly by calling the defendant 'the scum of the earth' and a 'foreigner' and that he had further overstepped the boundaries of judicial discretion by lecturing the man for being associated with a trade union.\textsuperscript{25} Panton was later accused of having 'a peculiar bias against any man who came before him who was connected with the labour party.'\textsuperscript{26} In December of the same year, Panton was criticised for expressing his dislike of teetotallers during a sitting of the Metropolitan Licensing Court.\textsuperscript{27} The following month was no better for Panton, with attention being drawn to his discharge of an 'educated refined larrikan'. According to Mr Winter who raised the issue in Parliament, 'the case was dismissed, although the evidence was of a most conclusive character, and the constable who had charge of the case was mulcted in costs'. Winter suggested that the aging magistrate might not be in possession of all of his faculties and argued that his 'repeated acts of eccentricity' warranted further investigation.\textsuperscript{28}

The lenience that Panton and other members of the Melbourne bench displayed towards hotel licensees, brothel owners and prostitutes was regularly condemned by police and moralisers. In 1883, police witnesses told the Royal Commission into Police

\textsuperscript{25} VPD, 1892-3, vol.70, p.2454.

\textsuperscript{26} ibid, 1892-3, vol.71, p.3881.

\textsuperscript{27} Panton apparently said 'That it would pay to buy every teetotaller out of the country rather than have them here hindering the wine industry'. In his report of the case, Panton said that the remark was made in a jocular way, but it was generally agreed that his statement had been indiscreet. ibid, p.3660.

\textsuperscript{28} ibid, p.3881.
that the bench of the City Court was responsible for much of the immorality in the city due to its willingness to license low houses, the way in which it discouraged police prosecutions and the leniency of the sentences it awarded to convicted persons. Superintendent Winch condemned the bench's practice of discharging prostitutes and then censuring the officers who had arrested them.29 This common police complaint usually related to the court's treatment of upper-class prostitutes. While public pressure occasionally drove the police to act against these women, the city bench, more often than not, maintained its aloofness and refused to bring convictions against those prostitutes who provided services to men of property and status. According to the police, the Metropolitan Licensing Bench also refused to cancel the licenses of hotels in which prostitutes congregated. Senior Constable Bourke created a sensation when he told the Royal Commissioners that the members of the bench were influenced by hotel owners, brokers, licensees, merchants, and by their own friends acting on behalf of a hotel. The chairman of the city licensing bench, police magistrate Mr Call, was singled out for special criticism.30

The members of the bench of the Melbourne Court of Petty Sessions were obviously not above reproach. Like other members of the judiciary, they were influenced by their own position in the class structure, as well as by their personal interests and beliefs. Occasionally, the biases of magistrates and justices led to displays of blatant

29 Evidence of Superintendent Frederick Winch, Royal Commission on the Police Force, 1883, p.152.

partiality and lenience by the city bench. As early as 1870, *The Age* claimed that the Melbourne Court 'surpass[ed] the suburban courts altogether in these objectionable manifestations': Evidence of corruption and overt bias, particularly in the lower courts, threatened the sanctity of the law and the overall effectiveness of the legal system. For the most part, the bias of the judiciary was more subtly expressed in the selective dispensing of justice and mercy. The members of the Melbourne bench, like those of other courts, upheld the tenets of middle-class morality. They acted swiftly against those who appeared to threaten either the material or moral well-being of the community. The standing of the law and the reputation of the bench remained intact, as long as the decisions of the court, appeared equitable and in keeping with dominant middle-class mores. Individuals who were accused of vagrancy were victims of this ongoing battle between the largely incompatible demands of justice and respectability.

Vagrancy Trials

According to the 'Vagabond', a morning in the Melbourne police court was 'a sad study of Melbourne life'. In particular, he noted the plight of the destitute:

the poor creatures charged with vagrancy. Homeless and houseless, they are convicted of the fearful crime of their existence. A sentence of three months is a blessing which they should appreciate. It is commonly reputed that a vagrant gets a heavier sentence than a minor thief; if so, it is the better for both of them.'

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31 *The Age*, 19 August 1870, p.2.

32 'The Vagabond', 'The Outcasts of Melbourne', *The Argus*, 20 May 1876, p.4.
The vagrancy trial, perhaps more than any other type of court case, represented a meeting of the weak and the powerful. Due to the nature of the vagrancy law and the selective way in which it was policed, it was rare for a well-to-do man or woman to appear before the court on such a charge. The accused vagrant was usually unskilled, unemployed, in poor health or destitute. He or she almost invariably lacked familial support, and owing to financial hardship, ignorance, and sometimes fear, was unable to mount a reasonable defence. Individuals who had previously been convicted were more accustomed to the rigours of the courtroom than first time offenders, yet they too found it difficult to withstand the prosecution's attack. They were generally subjected to a more rigorous prosecution than those appearing for a first time, and because of their already-tarnished reputation, stood even less chance of being acquitted.

The vagrancy cases heard by the Melbourne Court of Petty Sessions were presided over by at least one police magistrate, two or more justices of the peace, or most commonly, a combination of both. The men who made up the bench had little in common with the accused vagrants who came before them. They were of superior social standing and enjoyed the benefits of money, education and position. This initial imbalance in status and power was intensified by the rituals and symbolism of the court and by the role that each of these parties played in the proceedings.

Legal theory deemed that those brought before the court were 'innocent until proven guilty'. In practice, however, the organisation of the court and the regulation of
proceedings severely undermined the position of defendants. Guilt was continually implied, even though it was far from proven. The accused vagrant, like other defendants in criminal cases, appeared in court as a prisoner.\footnote{Pat Carlen, \textit{Magistrate's Justice}, Martin Robertson, London, 1976, p.32.} He or she was also referred to as such. Members of the police force were a visible presence in the courtroom and played a primary role in the proceedings. The day that the \textit{Australasian Sketcher} visited the city court in 1888, a row of policemen stood near the door waiting to be called as witnesses, and other constables attended the defendants who stood grouped together at the rear of the court. Inspector Perry took the role of prosecutor, while Sergeant Marwhinney, who occupied a box situated strategically between the dock and the bar, presented the defendants to the court and generally ensured that they behaved themselves during the trial.\footnote{\textit{Australasian Sketcher}, 31 March 1888, p.685.} The defendant's negative status was further emphasized by the physical lay-out of the courtroom. The elevation of the dock ensured that the accused vagrant could be readily seen by those in the court. The defendant appeared, and probably felt, vulnerable and isolated. The rails which surrounded the dock were 'symbolic of the defendant's captive state', and ensured that the accused was both physically and symbolically separated from all others.\footnote{Carlen, \textit{Magistrate's Justice}, p.21.} This isolation was complete if the defendant had no counsel or defence witnesses. Without anyone to speak on his or her behalf, the accused vagrant stood in a 'fundamentally discredited position'.\footnote{Robert E. Emerson, 'Court Responses to Juveniles', in \textit{Deviance: the Interactionist Perspective}, eds E. Rubington and M.S. Weinberg, Macmillan, New York, 1968, p.224. Harold Garfinkel describes the court trial as a type of 'degradation ceremony'. He argues that by drawing attention to the defendant's alleged crime and...}
Police control over the staging and prosecution of criminal business in the court of petty sessions also undermined the ideal of equality within the adversarial system, for it meant that the prosecution had greater credibility and power than the defence.\(^{37}\)

The authority enjoyed by the police within the community, carried over into the courtroom. They supervised the accused in court, decided what charges were to be answered, and were responsible for conducting the whole of the prosecution case. It was only at the time of pleading that control over the direction of the trial momentarily passed to the defendant. By registering a plea, the defendant signalled whether or not some form of defence was intended. If the defendant pleaded guilty, control of the trial passed fully into the hands of the police and the judiciary. The police, upon the request of the bench, presented evidence pertaining to the crime, character and past history of the defendant, and on this basis, sentence was passed. Individuals who pleaded not guilty retained more power over the course of events, and had at least had some hope of escaping conviction. Yet, as previously suggested, their ability to launch a successful defence was often severely limited. Few accused vagrants could afford the suspicious character, the trial serves to arouse moral indignation, which in turn, invokes the individual's ritual denunciation. For the ceremony to be successful, the defendant must be removed from the realm of ordinary existence and seen in relation to the crime and nothing else. Harold Garfinkel, 'Conditions of Successful Degradation Ceremonies' in Rubington & Weinberg, Deviance, pp.141-47.

\(^{37}\) Pat Carlen, Magistrate's Justice, p.20. Carlen's study is based upon proceedings within two present day London Courts, but her analysis of power and ritual is illuminating when considered in regard to nineteenth century Australian Courts of Petty Sessions. The rituals and proceedings within these lesser courts have not fundamentally changed, and many of the trial aspects to which Carlen points, can be identified in trials of the 1880s as well as those of the 1980s.
luxury of legal representation and most were thus forced to rely upon their own limited resources and the goodwill of the court.

The members of the bench were the ultimate adjudicators in cases brought before the court of petty sessions, and thus the most powerful participants in any vagrancy trial. E.P. Thompson argues that the power and acceptability of English criminal law depended upon the equality and universality of its principles; for the law, to be effective, all people had to feel that they were equally bound and protected by it. The same can be said of Victoria's legal system. Its power derived ultimately from the people's acceptance of the laws and their belief that the judicial system was based on the principle of justice for all people. The authority of magistrates, who could both enforce stern justice and dispense mercy to those who appeared before them, served to legitimise the power of the court and to reinforce notions of equality before the law. To achieve maximum effect, the members of the bench had to appear to be free of 'fear or favour'. They had to present themselves as acting on behalf of the state and in the interests of the people. Even more importantly, they had to be seen as speaking in the name of justice. The status and power of the magistrates of the Melbourne Court of Petty Sessions was emphasized through a variety of traditional means. The bench was elevated and was positioned at the head of the court, which enabled the members of the bench to look down on proceedings, and ensured that everyone in the


court could see the law being dispensed. The ability of the magistrates to instruct the
court, and the respectful way in which they were addressed by others, also served to
enhance their authority.

Formality and ritual were important elements in the legal process, though less
significant in the courts of petty sessions than in the higher courts. The cases dealt
with by the lower courts were less serious in nature than those that came before either
County or Supreme Courts. They also tended to be more parochial. The members of
the bench were often familiar with the men and women who were brought before them;
this was particularly true in regard to repeat offenders. Occasionally, the appearance
and behaviour of an accused vagrant, or the circumstances surrounding his or her
arrest, threatened to upset the order and formality of proceedings. Henry Rogerson,
for example, better known as 'the wild man of the wharves', was 'immediately an object
of curiosity' when he was brought before the city bench in 1891. He was described by
one observer as 'an extraordinary specimen of humanity':

45 to 50 years of age, short in stature, with a shrivelled dirty face, shaggy locks,
and a sullen, crouching demeanor, wearing very old and tattered clothing, hanging
loosely about him, his whole appearance indicating at a glance that he must have
been unearthed from some very uncanny spot.\footnote{The Age, 13 May 1891, p.6.}

Rogerson certainly had been. For the 10 years prior to his arrest, he had lived under
the city wharves, among the planks and rafters that hung just above the water's
surface. He had emerged at night to forage for food, but at other times had remained
hidden. The story of his haphazard capture was related to the court by two constables
and caused much hilarity amongst the members of the gallery. Police Magistrate
Panton was clearly less amused by the proceedings, and sentenced Rogerson to twelve months imprisonment.

The sheer volume of cases dealt with by the lower courts also meant that there was less time to observe traditional niceties. Offenders were processed in rapid succession, with some cases only lasting a few minutes. The day’s proceedings were organised according to the time each case was expected to take. Drunk and disorderly cases, which were the quickest to hear and usually accounted for over half of the total number of cases, were dispensed with first. These were followed by cases involving insulting behaviour, offensive language, gambling, vagrancy and other summary offences. The most complex proceedings were left until last, or, on especially busy days, were remanded to a later session.

Vagrancy cases were generally quite short in duration. As a rule, the police opted for the approach which offered the greatest reward for the least effort. Some vagrancy charges, such as those relating to the carrying of housebreaking implements or an offensive weapon, required the production of particular evidence. The police sometimes dropped these charges if the defendant agreed to plead guilty to the less specific offence of having insufficient or no visible lawful means of support. In this way, the police saved themselves the trouble of mounting an elaborate and possibly difficult prosecution, whilst the defendant was able to escape the risk of being convicted and punished for a more serious offence. On other occasions, charges relating to robbery and theft were replaced with vagrancy charges. In 1892, William and Patrick McDermott
opted for the lesser of two evils when they pleaded guilty to the charge of having housebreaking implements in their possession. The two had been arrested whilst trying to break into a Fitzroy shop. Despite the circumstances of their arrest and an informant's claim that the act was part of a 'big robbery', a more serious charge of attempted shopbreaking was withdrawn by the police. Each of the men was still sentenced to twelve months imprisonment with hard labour for vagrancy.41

Prior to 1898, when the vagrancy law was at its strongest, it was not necessary for prosecutors to prove that accused vagrants had committed specific crimes.42 The charge of having insufficient or no visible lawful means of support was the most popular with police, because its flexibility and vagueness made it especially easy to prosecute. Evidence - or sometimes a mere suggestion - that a defendant was of poor character, was routinely accepted as proof of guilt. Innocence or guilt in regard to other vagrancy charges that targeted suspected persons, reputed thieves, known cheats, habitual drunkards and common prostitutes, was also determined by an assessment of the defendant's character. This judgement was based upon details of the defendant's lifestyle, habits, acquaintances and past criminal record, as provided by the police and other witnesses.

41 Report of James Cook, 8 February 1892, VPRS 807: Unit 2. The register of the Melbourne Court of Petty Session contains many cases of individuals who, having pleaded guilty to vagrancy charges, had other more serious charges against them dropped.

42 The verdict in the appeal case Whitney v Wilson, which was handed down in 1898, severely limited the type of evidence admissible during vagrancy trials. This ruling, and later ones which further limited police powers, are discussed at length in Chapter 6.
Constable John Barry, in his *Police Guide*, advised policemen to be 'strictly truthful and straightforward' when providing testimony in court. He cautioned constables against deliberately misrepresenting the facts, omitting information that was favourable to the defendant, exaggerating, and appearing too eager. 'Some of the leading judges, text writers, and other eminent authorities', he warned, 'are of the opinion that the evidence of the police should be taken with the greatest caution at all times.'\(^{43}\) In practice, the police adopted a more cavalier approach to prosecutions. Every effort was made to gather evidence against defendants. According to Sergeant Francis O'Meara, the detective branch was always consulted when an individual was charged under the vagrancy act, for it was hoped that its members might possess additional information about the defendant. He told the 1883 Royal Commission, that it was not unusual for seven or eight detectives to testify against an accused vagrant.\(^{44}\) Inspector of Police, Lawrence Gleeson, believed that such information was invaluable in determining the outcome of vagrancy cases:

> for years the police, when they were enforcing the provisions of the Vagrant Act, were allowed to give evidence of a man's career, his character, his habits, his associates, and that, apart altogether from whether he had lawful means of support, and that evidence very often weighed very materially with the justices in arriving at a decision as to the guilt or innocence of an offender.\(^{45}\)

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\(^{44}\) Evidence of Sergeant Francis O'Meara, Royal Commission on the Police Force, 1883, pp.320-1. Civilian witnesses were also invited to testify on behalf of the prosecution and were reimbursed for the wages that they lost according to a fixed scale. This placed the prosecution at an advantage, as most defendants would have been unable to promise reimbursement to potential witnesses. VPD, 1891, vol.66, pp.942-3.

\(^{45}\) Evidence of Inspector Gleeson, Royal Commission on the Police Force, 1906,
While Gleeson's carefully worded statement implied that both innocence and guilt could be proven through the inclusion of such testimony, it is obvious that the police used it only in order to secure conviction. The evidence put forward by the prosecution was intended to highlight the negative rather than positive aspects of the individual's past and being. According to the legislation, a person was deemed to be idle and disorderly only after it was found that he or she had no visible lawful means of support. In practice, this process was reversed, with evidence of a poor character or improper past behaviour, being accepted as proof of guilt in regard to the alleged offence.

Different criteria were used to establish and assess the guilt of males and females who were accused of vagrancy. Males were judged primarily upon their willingness to participate in the labour market. Chief Commissioner of Police, Thomas O'Callaghan, believed that the vagrancy law should be applied to 'any one not getting his livelihood in an honest way - the man who has no visible means of getting a living. He may be a mere miserable beggar man or a criminal who will not work. I think they should be arrested on sight.'\(^\text{46}\) Women, on the other hand, were generally judged according to their sexual conduct and their willingness to fulfil their designated role as wives and mothers. Whereas men were required to be 'the chief producers of goods', women

\[\text{p.158.}\]

\(^{46}\) Evidence of Chief Commissioner Thomas O'Callaghan, *ibid*, p.45.
were expected to function primarily as the 'nurturers of the next generation of producers'.

These different criteria determined not only which men and women were arrested and tried in court, but also how the cases proceeded once they reached the judicial arena. While men and women were charged under the same vagrancy provisions, they were tried for very different offences. Cases involving male defendants generally related to offences against property and to non-work, and revolved directly around questions of criminality and poor character. The primary aim of the prosecution was to establish that the defendant was of a deceitful disposition. An impressive array of witnesses was often called upon to attest to the defendant's bad reputation and past misdeeds. When William Minogue was tried at the Fitzroy Court, prosecution witnesses were able to identify him as 'a man of exceedingly bad repute', who had been convicted at least twenty times and whose brother had a week earlier been convicted and sentenced to death for a villainous act. Minogue was subsequently found guilty of being a rogue and vagabond, and sentenced to twelve months imprisonment with hard labour. Often, the evidence submitted to the court bore little or no relation to the charge under consideration. This is illustrated by the case of Gordon Lawrence, who was charged with having no visible lawful means of support after being found dressed as a woman at the Centennial Exhibition. To secure his conviction, the police pointed to the


48 The Age, 5 March 1889, p.6.
defendant's history of sodomy. The circumstances of Lawrence's arrest were detailed by police, and attention was drawn to the items found in his lodgings. Then a number of witness attested to his 'long career of nameless immorality.'\textsuperscript{49} Though the evidence was of no relevance to the charge, it was accepted as ample proof of Lawrence's poor character, and was therefore enough to secure his conviction.

Allegations of sexual impropriety or immorality were rarely made against men who were accused of vagrancy. As a rule, the sexual standards and practices of male defendants only became an issue when the offences they were accused of, were clearly of a sexual nature. Even then, it was an image of sexual perversion rather than mere immorality that the prosecution sought to establish. The trial of Hyam D. Hyams, for example, who was accused of wilful and obscene exposure, was carried on behind closed doors. The next day \textit{The Age}, which had presumably been privy to some of the more sordid details, described it as a 'disgraceful case'.\textsuperscript{50} The Prahran bench used even stronger words when condemning the actions of Robert Jackson, who had been found at the rear of the ladies' waiting rooms at the Hawkesburn Railway Station committing a 'foul, low and blackguardly' act.\textsuperscript{51} Such cases, however, were few and far between. Men charged under the vagrancy act, had generally not been arrested for offences that related explicitly to sexuality and, more importantly, sexuality was not regarded as a yardstick by which men's respectability could be judged.

\textsuperscript{49} \textit{The Age}, 2 October 1888, p.7.
\textsuperscript{50} \textit{The Age}, 28 August 1894, p.6.
\textsuperscript{51} \textit{The Age}, 5 March 1889, p.6.
For female defendants, the position was quite different; the vagrancy law was routinely used to regulate their sexual behaviour. In the absence of effective anti-prostitution laws, the police used the vagrancy provisions to arrest prostitutes, as well as women suspected of having venereal disease. Adolescent girls were also in danger of being arrested if they displayed any signs of sexual waywardness. In 1886, George Guilluame, the Secretary of the Department of Industrial and Reformatory Schools claimed that the only legal measure that was available to hinder the young girl's slide into debauchery was a prosecution for vagrancy. But this measure, he argued, was highly ineffective due to the tendency of magistrates to inflict terms of only fourteen days imprisonment.52

Sexuality was a key factor in vagrancy trials involving female defendants. That girls and women were the victims of a sexual double standard is illustrated by the case of Lena Sheritt, who was brought before the Fitzroy Court in 1896, charged with vagrancy. Sheritt had been arrested in her home - a passage in a Fitzroy building. She had been found lying on some bags on the floor, in a semi-nude state, in the company of a man named Johnston. The day before, the police had visited the building and discovered her in exactly the same circumstances. Sheritt alone was arrested, and at the subsequent trial, attention was focused upon her 'immoral life'. The fact that she and Johnston may have been cohabitating was not mentioned. Her immorality was accepted

as indisputable and she was sentenced to twelve months imprisonment. In cases involving known prostitutes, explicit allegations of sexual impropriety formed an important part of the prosecution's attack. When Georgina Meredith appeared before the Carlton Court in 1889, Constable McDonald gave evidence that the defendant was 'a notorious character'. He testified that he had arrested her while she had been soliciting prostitution in Faraday Street, and that she was the occupier of a small brothel off Rathdowne Street. Meredith was subsequently convicted and sentenced to three months in gaol. In other cases, sexual impropriety was implied rather than explicitly stated. It was often noted, for example, that female defendants had been seen in the company of men either prior to, or at the time of, their arrest. Two 13-year-old girls Cissy Archer and Mary Evage had frequently been seen on the streets late at night drinking beer with boys. These girls, like many others who were accused of vagrancy, may not have been sexually active, but their behaviour still contravened accepted standards of female behaviour and was considered to be an indicator of future immorality.

In vagrancy trials, the onus of proof was thrust upon the defendant, not the prosecutor. Accused vagrants were required to prove their innocence, but this was far from an easy task. Doubts cast upon their character adversely affected the reception of their testimony by the court. According to Inspector of Police, Lawrence Gleeson, the

53 Fitzroy City Press, 10 September 1896, p.3.
54 The Age, 24 January 1889, p.7.
55 The Carlton Gazette, 8 January 1887, p.3.
word of one reputable person was preferable to that of six rogues and vagabonds.\textsuperscript{56} The evidence of women was sometimes received even more skeptically than that of men. Harry Gell, editor of the \textit{Magistrate's Pocket Help} and the President of the Justices' Association of South Australia, instructed his readers that women were less credible witnesses than children. He claimed that children, owing to their innocence were 'incapable of sustaining an untruth', whilst women because of their 'innate love of the marvellous, [were] more often prone to exaggeration'.\textsuperscript{57}

Defendants adopted a variety of different tactics before and during their trial. Only those like brothel-keeper Madame Brussells, who were unusually well-off, could afford the luxury of employing a counsel; most accused vagrants had to fend for themselves. Individuals who attempted to mount a defence met with varying degrees of success. Annie Simmons tried in vain to convince the City Bench that she had 'a comfortable home and a nice husband to go to'. Her downfall came when the presiding justice asked why she had been found the previous night sleeping under a Pittosporum bush in the Fitzroy Gardens. Simmons was unable to answer his query and was sent to gaol for three months.\textsuperscript{58} By contrast, Mary Ann O'Brien's ploy of producing in court her day old marriage certificate and her husband, resulted in an acquittal.\textsuperscript{59} In 1890, William

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{56} Evidence of Inspector Lawrence Gleeson, Royal Commission on the Police Force, 1906, p.155.
\item \textsuperscript{57} Harry D. Gell, \textit{The Magistrate's Pocket Help}, Vardon & Pritchard, Adelaide, 1903, p.21.
\item \textsuperscript{58} \textit{The Herald}, 30 December 1889, p.2.
\item \textsuperscript{59} \textit{The Age}, 29 December 1894, p.5.
\end{enumerate}
\end{footnotesize}
Ettershank and James Duggan mounted an equally spirited and successful defence. Upon hearing the vagrancy charge against them, the men reportedly 'broke out into angry remonstrance, protesting that they were not vagrants, but hard-working citizens'. They proceeded to challenge rigorously the evidence of Constable Whitaker, who claimed that the men were 'notorious vagrants' and that 'he had never known them to do a stroke of work for over two years'. 'How do you know I have never done any work during that time?', Ettershank demanded to know. Inspector O'Callaghan, who was conducting the police prosecution, sought to elicit some substantial evidence from Whitaker, but was sorely disappointed by the constable's vague response. Without any firm proof against the men, the prosecution's case was left in tatters. The men were discharged by Police Magistrate, Mr Call, but not before the police had been chastised for performing an improper arrest.60

Other defendants, like Gordon Lawrence who had been arrested in female attire at the Exhibition, attempted to overcome their powerlessness by turning their court appearance into a performance. The unusual circumstances of Lawrence's arrest had aroused great public excitement, and on the day of his trial, the courtroom was filled to overflowing. The Age reporter, like nearly everyone else it seems, delighted in the drama:

His appearance caused a decided sensation. Dressed in a red skirt, and a close fitting jacket of blue, striped with white, the outline of his figure wonderfully resembled those of a woman, and the deception was still further increased by a flaxen wig, surmounted by a jaunty hat...As he lent easily upon the bar, his eyes modestly downcast, and one silk-gauntleted hand fingering with the imitation diamond cross, which rose and fell perceptibly at his breast, there was nothing

60 The Herald, 29 January 1890, p.2.
whatever to betray his sex. In every look, in every motion, in every line of his figure he was a woman...When, a moment later, the prisoner uttered a brief denial of the charge, in a voice that, despite its affectation, was yet a woman's voice, a thrill ran through the court.61

Illustration 4.3
Gordon Lawrence
(Central Register of Male Prisoners, VPRS 515: Unit 40: p.408)

61 The Age, 2 October 1888, p.7.
Within half an hour, Lawrence's trial was over. He was found guilty of having no visible lawful means of support and sentenced to six months imprisonment. The trial reached its dramatic conclusion with the pronouncement of the sentence. Upon hearing his fate, Lawrence reportedly 'threw up his arms, uttered a wild shriek and fell headlong to the ground'. He was picked up by two policemen and carried 'rigid and senseless to an outer corridor, where he immediately opened his eyes and winked at the constables. Despite his best efforts, Lawrence failed in his attempt to undermine the dignity of the court. The evidence produced by the prosecution effectively stripped him of his mysterious persona, while the magistrates and justices of the bench retained the power to determine his fate. The Age reporter followed the lead of the court, and took great satisfaction in finally exposing Lawrence as 'a sallow faced and unpleasant looking man of rather vulgar type'.

Some individuals made no attempt to defend themselves. Occasionally, accused vagrants admitted guilt in the hope of being treated more leniently by the authorities. Those who were professional law-breakers often realized that they stood little or no chance of escaping conviction, and thus agreed to plead guilty if the police brought a less serious charge against them. This tactic was most often employed by those charged with property-related offences. Other accused vagrants pleaded guilty as a matter of expediency. They knew that could not prove their innocence, even if they were innocent, and that a protracted trial would almost certainly lead to a harsher
penalty being imposed upon them. Some defendants pleaded guilty as a consequence
of necessity. Those who were in poor health, or who lacked food or shelter, frequently
admitted guilt in the hope of gaining some relief.

Accused vagrants were generally unable to defend themselves adequately in court.
They lacked the material resources necessary to employ counsel, and few had relatives,
friends or employers who could vouch for their good character and lawful conduct.
Poverty, isolation, ignorance of the legal system and fear, disadvantaged them during
their trial, and prevented those who were convicted, from lodging appeals. Acquittal in
vagrancy cases was rarely the result of a strong defence; it was more often due to a
technical hiccup, a weakness in the tactics or evidence of the prosecution, or to
particular doubts or idiosyncracies of the bench. Indeed, the effectiveness of the
vagrancy law depended primarily upon the powerlessness of those prosecuted under
it.

Verdicts and Sentences

Douglas Hay, in his study of eighteenth century British criminal law identifies majesty,
justice and mercy as three essential aspects of the law as ideology. He argues that
these elements combined together to maintain the law's power and to perpetuate the
people's acceptance of it.\textsuperscript{63} Vagrancy trials held at the Melbourne Court of Petty

\textsuperscript{63} Hay, 'Property, Authority and the Criminal Law', p.26.
Sessions were far less grand and awesome than the capital trials that Hay describes, yet their credibility too depended upon the extent to which they embodied these three elements.

The performance of the bench was of the utmost importance. The magistrates who presided over vagrancy trials needed to give an impression of wisdom, impartiality and respect for the law.\textsuperscript{64} Their duties were three-fold. They were required to oversee the trial and ensure that the rules of evidence and procedure that bound the court were observed by both prosecution and defence. This maintained a semblance of justice; it appeared that the actions of both sides were regulated so as to prevent either gaining an unfair advantage. The bench's second function was to determine the innocence or guilt of the accused. If the accused pleaded guilty or was found guilty, the bench then faced the additional responsibility of sentencing the offender. To be fully effective, the law had to be seen as treating all people equally. It was thus important that the verdicts and sentences handed down by the court appeared both fair and consistent. Verdicts had to be seen as based upon the evidence presented in court, and not upon the interests or prejudices of the magistrates involved. Similarly, sentences had to appear appropriate to the particular crime and comparable to other punishments meted out by the court.

The members of the bench carefully balanced sternness with paternalism, so as to appear neither too lenient nor too harsh. Pronouncing sentence on convicted people

\textsuperscript{64} ibid, pp.28-9.
provided magistrates with an opportunity to vilify those who were guilty of transgressions. In 1898, Police Magistrate Call denounced 'expert tool stealer', Walter Bates, when sentencing him to three months' imprisonment for vagrancy. In pronouncing sentence upon the prisoner, Call described 'thieves who robbed workmen of their tools' as 'the meanest class of criminals, for they deprived the workmen of their means of living'. With this statement, Call presented himself as the representative and protector of the community. But severity had to be balanced with mercy. Lenience was sometimes shown to accused vagrants who were elderly, young, ill or poor. In July 1886, the city bench discharged James and Theresa Flynn, an elderly couple who had been charged with occupying a house frequented by persons having no visible means of support. Though their visitors were sentenced to twelve months each for being idle and disorderly persons, the bench expressed their belief that the Flynns would live quietly if their visitors were kept away, and subsequently acquitted them. Such occasional displays of mercy strengthened, rather than weakened, the power of the court.

Pat Carlen describes the magistrate's court as an 'institutional setting charged with the maintenance and reproduction of existing forms of structural dominance'. The Melbourne Court of Petty Sessions, like all other courts, had a regulatory function, but this was disguised by the court's facade of natural and impartial justice. Throughout the
trial, ritual and symbolism, the designation and performance of particular roles, and the observance of formal procedure combined to hide the informal and secretive aspects of the legal process.

The verdicts and sentences handed down by the court on vagrants were often predetermined. An acceptable trial outcome could be formulated through private negotiations between various trial participants prior to the case coming to court. Sometimes, the accused vagrant played a part in these negotiations. In 1899, Margaret Reilly, who was suffering from ill-health, was released from Pentridge Prison. She was immediately re-arrested on a charge of having insufficient means of support and 'at her own wish' sentenced to another term of six month's imprisonment. On this occasion, arrest, conviction and sentencing was the result of negotiations between the defendant, the police, the prison doctors and the bench.\textsuperscript{68} It is impossible to know, however, to what extent if any, Reilly was a willing participant in these negotiations. As a rule, it was the police who had the upper hand in pre-trial negotiations. They were obviously in a better bargaining position than the accused and were able to use either threats or incentives to secure his or her cooperation. The threat of a merciless prosecution, or the promise of a less serious charge being laid, could be used to secure a guilty plea. Under these circumstances, the accused vagrant could do little else but choose the option that appeared the least unattractive.

\textsuperscript{68} Report of Constable Wardley, 10 February 1899, VPRS 807: Unit 93.
The direction that police negotiations took depended primarily upon an assessment of the accused vagrant's character and situation. Those individuals who were believed to be irreformable offenders, or who were generally considered to be of poor character, could expect little sympathy. Others who were judged to be more reputable and who were the victims of poor circumstances, were treated more leniently. The police sometimes approached charitable institutions and asked them to assist accused vagrants who were young, old, poor or ill. On other occasions, assistance was initiated by the bench or by the representatives of charitable agencies. The Salvation Army followed up its policing activities by requesting guardianship of many of the girls and young women who were brought before the court. In a typical incident in 1895, Sister Hanna successfully applied for custody of two young female offenders named Bessie Robinson and Ada Hamilton. Singleton's Home for Friendless and Fallen Women and various other refuges around the city received young female vagrants via the courts, while the Melbourne Benevolent Asylum and the Immigrant's Home regularly took in vagrants who were elderly or destitute. Octogenarian Daniel O'Connor, who was brought before the City Court on a vagrancy charge in 1895, proved a surprisingly valuable acquisition to the institution that took him in. The old man had no home and no friends, but he did possess the extraordinary sum of £398. The Little Sisters of the Poor eagerly extended their helping hand to O'Connor who 'gladly accepted' it, and promised Mr Panton that he would bequeath all of his money to the organisation.

69 *The Age*, 1 May 1895, p.7.

70 *The Age*, 31 December 1895, p.6.
O'Connor at least played some part in determining his future. Others accused vagrants were not so fortunate. Known offenders were most likely to suffer the negative effects of collusion between the police and the bench. In 1906, Constable Albert Tucker, told the Royal Commission into Police that women suspected of having venereal disease were arrested under the Vagrancy Act; next morning, the magistrates were informed of the situation and they subsequently sent the women to the gaol hospital.  

In regard to these cases an understanding obviously existed between the police and the judiciary. Repeat offenders like Mary Sutton, who were arrested and reconvicted immediately upon their release from gaol, were also victims of collusion between the police and the bench. The inherent flexibility of the vagrancy law rendered it vulnerable to such abuse, and it is indeed likely that the outcome of many vagrancy cases, especially those involving known offenders, was determined before the trial. In dealing with accused vagrants in this way, the police and bench effectively and intentionally circumvented the theoretical processes and standards of the adversarial system, and totally disregarded the rights of the accused.

The relationship between the police and the judiciary was not always harmonious, however. In particular, the police complained that the bench of the Melbourne Court

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72 Raelene Davidson has shown that in Western Australia during the early years of the twentieth century, the police and judiciary acted in collusion to secure the imprisonment of diseased women. Davidson, 'Dealing with the "Social Evil"', pp.175-6.

73 Mary Sutton's case is discussed in Chapter 3, p.203.
of Petty Sessions was too lenient in its treatment of prostitutes. More often than not, police efforts to prosecute Melbourne’s elite brothel-keepers under the vagrancy law failed. In 1889, for example, an ‘unusually full’ Bench, comprising Panton and seven Justices of the Peace dismissed charges against Madame Brussels. She had been charged with occupying a house frequented by individuals who had no visible lawful means of support. In handing down the decision, Panton claimed that he and several others on the bench believed that the charge had been proven. It was in deference to the wishes of the majority, he said, that the case was dismissed. Yet it is clear from Panton’s statements that he was far from convinced of the need to prosecute Brussels. He enquired why she had been singled out for prosecution when ‘the locality was known as one of the worst plague spots in Melbourne.’ He went on to tell the court of other practices, which he believed to be more damaging to the youth of the colony than the presence of disorderly houses such as the one run by Madame Brussels:

more harm is done by the loose way parents look after their children and allow them to wander about the streets at night frequenting these damnable dancing houses than in any other way. The free love encouraged in this country by these resorts...do more real harm than disorderly houses of the kind before us, and anyone with experience knows this is the case, and it is disgraceful that the disgusting sights at some of our public gatherings are not suppressed.74

In the years that followed, successive attempts to prosecute Madame Brussels failed dismally. In 1898, a charge arising from a raid on her Lonsdale Street brothel was dismissed, but not before the police had received a stern lecture from one of the

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74 The Herald, 8 May 1889, p.3; File relating to prosecution of Madame Brussels, May 1889, VPRS 937: Unit 327.
magistrates.\textsuperscript{75} The police brought the decision to the attention of the Supreme Court which ruled that there was evidence for a conviction and that the case should be reviewed by the magistrates. The retrial proved to be a farce. Madame Brussels was convicted and sentenced to be imprisoned until the rising of the court. The court rose immediately! The police regarded the situation as impossible. If the magistrates were unwilling to convict brothel-owners, there was little that the police could do. As constable Albert Tucker pointed out, the power to remove prostitutes rested ultimately with the magistrates:

> We bring these people up before the magistrates, and give all the evidence necessary to prove the charge that it is a disorderly house, and it then lies with the bench to do the rest. We cannot do anything more. If we wanted to clean the whole of Melbourne out, we could bring them all up to-morrow, and then it would lie with the magistrates to deal with them.\textsuperscript{76}

The actions of the Melbourne Bench were marked by a clear class bias. The keepers of elite brothels, together with high class prostitutes, were unlikely to be found guilty by the court. The fate of women who were deemed to be 'common prostitutes' was far less secure. Although there was some inconsistency in the court's treatment of such women, they were generally treated more harshly than their better-off sisters. It was not unusual for them to receive sentences of up to twelve months imprisonment with hard labour. In a similar way, reputable individuals who suffered the indignity of being arrested as vagrants were more likely to be treated leniently than working-class

\textsuperscript{75} \textit{The Herald}, 5 August 1898, p.1.

\textsuperscript{76} Evidence of Constable Albert Tucker, Royal Commission on the Police Force, 1906, p.452.
defendants. One such person was Hyam D. Hyams - a respectable businessman who was brought before the bench in 1894 charged with indecent exposure. Mr Panton considered it 'sad that a man holding a respectable position like the accused should have so far forgotten himself.' But the evidence, he said, was clear. There had been 'wilful, determined exposure', and as a consequence, Hyam was found guilty and sentenced to one month's imprisonment. This penalty was in itself extraordinarily light. Those convicted of obscene or indecent exposure were generally sentenced to at least three months' imprisonment with hard labour; indeed, twelve months' imprisonment with floggings were not uncommon. Despite the lenience of the sentence, the defendant's counsel pleaded that a fine be imposed instead. Mr Panton resolved to consider it and the next day, he generously deferred to the counsel's wishes and altered Hyam's penalty to a fine of £25 with 15s costs.

Race also played an important part in some vagrancy trials. Women who were found in the company of Chinese men were regarded with particular disdain, and tended to be treated harshly if they appeared at all unrepentant. In 1894, the Melbourne bench sentenced Mary McDonald and Laura Forwood, to three months' imprisonment each. The women had been found in a Chinese opium den and were condemned by the presiding Police Magistrate as 'a disgrace to their country and their sex.' Four years later, during one of Madame Brussells' many trials, Joseph Panton made his dislike of foreigners perfectly clear. Panton questioned one of the police witnesses over the

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77 The Argus, 28 August 1894, p.6 & 29 August 1894, p.6.
78 The Argus, 1 March 1894, p.6.
efficacy of prosecuting the brothel-keepers of Lonsdale street. The magistrate demanded to know who would take up residence in the area if the prostitutes were driven out. Would it be Syrians or Greek gypsies? His questions were greeted with peels of laughter by the gallery, and were followed up by the probings of the defence counsel who asked Senior Constable Canty if the street would be improved by the presence of 'Syrians, Hindus and Chinese, and the usual draggle tailed crowd'. It was quite clear that Panton, at least, believed it would not be. Needless to say, the case was dismissed.

In the late 1880s and early 1890s, conviction and imprisonment was the most common outcome of vagrancy cases heard by the Melbourne Court of Petty Sessions. Figure 4.1 shows that in each of the survey years from 1 May 1888 to 30 April 1897, over half of those charged with vagrancy offences were found guilty and sentenced to periods of imprisonment. This reached its peak in the depression year of 1892-93, when over 65% of defendants were gaoled. After April 1897, the percentage of defendants gaolèd, fell significantly; in 1899/1900, less than 36% of those brought before the court on vagrancy charges suffered this fate. This decline in the frequency of imprisonment coincided with an increase in the proportion of defendants discharged by the court. Between May 1888 and April 1891, less than 30% of accused vagrants were acquitted. This proportion gradually increased during the 1890s until, by the end of the century, almost half of the defendants who appeared before the Melbourne

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79 The Herald, 5 August 1898, p.1.
80 See Appendix 3.4.
Figure 4.1
'1 in 10' Sample - Percentage of Accused vagrants imprisoned and Discharged by the MCPS, 1888-1901

Figure 4.2
'1 in 10' Sample - Percentage of Accused Vagrants tried for NVLMS/ILMS and imprisoned or Discharged by the MCPS, 1888-1901
Bench were discharged. An increasing proportion of cases ended with the police withdrawing the charges that they had laid against the defendant. Whereas this practice was relatively uncommon in the late 1880s, by 1900, it was affecting approximately 5% of all vagrancy cases heard by the City Court. These trends occurred even more dramatically in relation to cases specifically involving the charge of having insufficient or no visible lawful means of support. The proportion of these cases which ended in the discharge of the defendant rose from approximately 18% in 1888/89 to over 53% in 1899/1900.

These overall trends were shaped primarily by changes in the conviction and sentencing of individuals tried for having insufficient or no visible lawful means of support. Such cases constituted the bulk of vagrancy trials; any significant alteration in their handling strongly affected the broader results. Figure 4.2 illustrates the percentage of individuals imprisoned and discharged after being tried by the City Court on this charge. There is a striking similarity between the outcomes of these cases and the total outcomes of all vagrancy cases. Both Figures 4.1 and 4.2 show a clear decrease in the use of imprisonment after April 1897, and an accompanying increase in the percentage of defendants discharged by the court. The reasons for this shift will be discussed in Chapter 6.

81 See Appendix 3.7.
Figures 4.3 and 4.4 show that both male and female defendants were affected by this change in the conviction and sentencing of accused vagrants. The percentage of females defendants discharged, rose from 18.2% in 1888/89 to a high of 53.3% in 1899/1900. Meanwhile the percentage of females defendants imprisoned, fell from 69.7% to 33.3%. The pattern was similar but less pronounced for men and boys. Between 1888/89 and 1899/1900, the percentage of male defendants discharged rose from 30.5% to 46.7%, while the percentage of male defendants imprisoned fell from 49.2% to 36.7%.

Figure 4.3:
'1 in 10' Sample - Percentage of Male and Female Defendants tried for Vagrancy by the MCPS and Imprisoned, 1888-1901

See Appendices 3.5 & 3.6.
Figures 4.5 and 4.6 show that these trends also existed in relation to males and females who were tried specifically for having insufficient or no visible lawful means of support. In 1888/89, 18.8% of females charged with this offence were discharged. By 1899/1900, this percentage had increased to 61.5%. At the same time, the percentage of male defendants discharged rose from 31.1% to 52.9%. In contrast, there was a decrease in the proportion of male and females who were sentenced to periods of imprisonment. The percentage of females imprisoned fell from 68.8% in 1888/89 to 23.1% in 1899/1900. The percentage of males imprisoned fell from 53.3 to 23.5 during the same interval.

83 See Appendices 3.8 & 3.9.
Figure 4.5

'1 in 10' Sample: Percentage of Male and Female Defendants tried for NVLMS/ILMS by the MCPS and Discharged, 1888-1901

Figure 4.6:

'1 in 10' Sample: Percentage of Male and Female Defendants tried for NVLMS/ILMS by the MCPS and Imprisoned, 1888-1901
This overall decline in the proportion of defendants sent to gaol was accompanied by changes in the length of the sentences handed down by the court. Figure 4.7 shows that in the late 1880s, short sentences ranging from a few hours to two months imprisonment with hard labour were the most common penalty. These were applied to more than one quarter of defendants. The 1890s, however, was marked by a dramatic reduction in the use of short sentences, and by the turn of the century, they were applied to less than 5% of defendants. Sentences of twelve weeks to five months imprisonment were also decreasingly used. Approximately 16% of defendants received such sentences in 1888/89, compared with around 10% in 1900/01. By contrast, the court made increasing use of sentences of six months imprisonment or more. Between

Figure 4.7:
‘1 in 10’ Sample - Terms of Imprisonment imposed on Convicted Vagrants by the MCPS, 1888-1901

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84 See Appendix 3.4.
1888/89 and 1900/01, the percentage of defendants sentenced to between six and eleven months imprisonment 5.4 to 20.4. During the same period, the percentage of defendants committed to gaol for at least a year, more than doubled. Figure 4.8 illustrates that identical trends are discernible in relation to defendants tried specifically for having insufficient or no visible lawful means of support.\(^\text{55}\)

Despite the similarity in these overall trends, there is evidence to suggest that males and females fared somewhat differently in court. In general, female defendants were less likely to be discharged and more likely to be imprisoned, than their male counterparts. Figure 4.4 shows that, in nine of the thirteen years surveyed, a higher

\(^{55}\) See Appendix 3.7.
percentage of females than males was imprisoned. This discrepancy was greatest in 1888/89 when almost 70% of female defendants were gaol ed, compared to just under 50% of men. In the late 1880s, sentences imposed on women were generally of a shorter duration than those handed down to their male counterparts. This difference gradually lessened towards the end of the century, with the abandonment of short sentences. There was a notable difference also in the percentage of male and female defendants discharged between 1888/89 and 1892/93. In four of these five survey years, the percentage of males discharged was more than 10% higher than the percentage of females discharged. A similar disparity is apparent in regard to the cases which involved individuals specifically tried for having insufficient or no visible lawful means of support.

Women, like men, were quickly punished if they appeared aggressive or hardened. In 1886, the court sentenced Ellen Brennan to twelve months imprisonment for vagrancy. She was shown little mercy by the bench, as the prosecution established that she had persuaded a twelve-year old girl to smoke opium and drink spirits at the home of Chinese gardiner, Ah Mouy. Women who had multiple convictions, like their male counterparts, could also expect little leniency. Annie Hicks' experiences were fairly typical. She first appeared before a court in 1882 charged with insulting behaviour. She was found guilty and given the option of paying a fine or spending fourteen days

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86 See Appendices 3.5 & 3.6.
87 See Appendices 3.8 & 3.9.
88 The Age, 26 March 1886, p.3.
in prison. Three months later, she was found guilty of vagrancy and sentenced to three months' imprisonment. By the early 1890s, with numerous convictions to her name, she had graduated to sentences of twelve months'. In five successive appearances before the Melbourne Court of Petty Sessions, between October 1890 and November 1893, she was sentenced to three terms of twelve months' imprisonment, one of which was with hard labour, and two terms of six months imprisonment with hard labour. 89

Illustration 4.4
Annie Hicks
(Central Register of Female Prisoners, VPRS 516: Unit 10: p.442)

89 Central Register of Female Prisoners, VPRS 516: Unit 10: No.5657.
The discrepancy in the discharge and imprisonment rates for males and females suggests that female defendants were generally treated more harshly than their male counterparts. An impression of judicial lenience, however, was created and maintained through displays of paternalism. Feminist theorists have pointed to the effect of the 'chivalry factor' upon women at various stages of the legal process. Rafter and Natalizia have shown that traditional notions of women as weak and in need of extra protection due to their femaleness, have resulted in women and girls being prosecuted for 'unfeminine' behaviour. As previously argued, most of the females who appeared before the City Court on vagrancy charges were there because they had acted in a manner that conflicted with society's expectations of their gender.

Paternalism played a important role in both the arrest and trial of women for vagrancy. In general, women and girls were more likely than their male counterparts to be judged in need of protection by the police and courts. While boys and men convicted of vagrancy were usually forwarded to reformatories and prisons respectively, it was not uncommon for women, especially adolescents, to be placed in the protective care of a charitable institution or individual. In 1891, the informal practice of sending females to charitable institutions rather than gaol, was officially recognised. An amendment to the Police Offences Act allowed women and girls found guilty under the vagrancy provisions of being habitual drunkards or common prostitutes behaving in a riotous or indecent way, to be discharged into the protective care of particular

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90 Rafter & Natalizia, 'Marxist Feminism', p.84.
institutions. This procedure continued to be informally used for young women convicted of having insufficient or no visible lawful means of support. The practice of committing women to protective care enhanced the court's image as a bestower of justice and mercy, yet also ensured that women remained subject to some formal control. Protective care had the advantage of being less costly than penal sanctions, and, moreover, met the demands of social reformers who argued against the evils of imprisonment. Protective care, they claimed, was the only effective means of reintroducing women to respectable habits.

Such paternalism was certainly not shown to all women and girls. Protective care was selectively dispensed to those who showed signs of remorse and a willingness to reform. In 1889, Colonel Barker of the Salvation Army was awarded custody of three young girls, who had each produced a written statement for the court. The statements detailed their respective falls from grace, and more importantly suggested that the girls were the innocent victims of other people's villainy. Lottie Morris stated that she had come to Melbourne in search of a position but had been seduced by a man who had forcibly entered her room at a coffee palace. Her companion Marion Goudie testified that she had been engaged as a general servant through a registry, only to find herself an 'inmate of a house of ill fame'. The third girl, Minnie Pickett, presumably told a similar story. Seven years later Ellen Whiteside and Jane Keast, who were arrested in the home of a Chinese man, appeared before the court. The two girls, who were

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91 An Act to amend the Police Offences Act, 1891.
92 The Age, 13 April 1889, p.11.
from Bendigo, explained that on a visit to Melbourne, the previous year, they had met Louey Sim. They told the court that they had kept up a regular correspondence with him, and that when Ellen Whiteside returned to Melbourne, she had rented a room in his house for three shillings per week. Jane Keast had been visiting her friend when they had both been arrested. Throughout the trial, the girls sat sobbing and shaking their heads. Their conduct seemingly stirred some sympathy in Panton who ordered that the girls be committed to the care of Sister Hannah of the Salvation Army and returned to Bendigo. The magistrate was quick to temper his actions with a few stern words. Before discharging the girls, he told them that they ought to be thoroughly ashamed of themselves and warned that if they were ever brought before the court again they would be gaol. 93

Vagrancy cases involving juvenile offenders were amongst the most difficult for the courts to decide. In these cases, the bench had to determine whether the child's waywardness was the result of parental neglect or the consequence of a more deep-seated rebelliousness. An important task was therefore to determine the suitability of the parents. Parents who had issued warrants for the arrest of their offspring, were generally judged to be responsible individuals and had their children returned to them. Others who attended the court and appeared to be respectable and capable, were likewise granted custody. In 1887, for example, Mary Evage was discharged to the care of her 'very respectable looking' father, after he promised to look after her. 94

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93 The Age, 18 February 1896, p.3.

94 The Carlton Gazette, 8 January 1887, p.3.
White's father was perhaps not as well circumstanced and found it more difficult to meet the court's expectations. When asked by the bench why he allowed his son to wander about the streets, White replied 'that it took him all his time to get food and clothes for his family without looking after his son'. White nevertheless promised to take better care of Henry, and the boy was discharged with a caution. The criteria of respectability used by the courts severely disadvantaged working class families and individuals who appeared rough in dress and manner.

Children who were deemed to be neglected, or in moral jeopardy due to their surroundings, were usually committed straight to an industrial school, or, from the late 1880's onwards, to the Department of Neglected Children for eventual placement in a foster home. Children who were deemed to be uncontrollable or delinquent were dealt with differently. Occasionally, magistrates chose to impose a brief and immediate form of punishment upon a young offender. Frederick Call believed that boys who misconducted themselves should be flogged. A few hours or days in gaol, with or without a whipping, was sometimes meted out to a wayward youngster, but Joseph Panton was of the opinion that such penalties did more harm than good.

95 The Carlton Gazette, 13 November 1888, p.3.
96 McConville, 'Outcast Children', p.44.
98 The Argus, 8 May 1887, p.9.
often, the bench of the city court preferred to commit difficult children and youths to reformatories.

Men and women who were ill, old or destitute presented the bench with a different sort of problem. Magistrates were required to deal with the particular needs of these individuals, but were severely limited by the lack of resources available to them. A small number of those who were in need of long-term care, owing to illness or old-age, were committed to charitable institutions. According to Panton, the more reputable men and women were sent to the Melbourne Benevolent Asylum, while those with previous convictions were forwarded to the Immigrant's Home. Nevertheless, the constant shortage of charitable relief, and the harsh manner in which it was distributed, meant that many more needy men and women had to be committed to overcrowded and inappropriate government institutions. Those who were in ill-health were often remanded in gaol for weeks on end. Upon their recovery, they were generally discharged. Others who were diagnosed as terminally ill, or whose unruly or non-conformist behaviour was attributed to mental instability, were committed to the Yarra Bend Lunatic Asylum. In most years, between 2 and 5% of the vagrants brought before the Melbourne Bench were dealt with in this way.

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100 See Appendix 3.4.
The courts thus had a variety of options open to them when dealing with accused vagrants. The perpetual challenge for the members of the judiciary was to balance sternness with mercy, so as to appear neither too harsh nor too lenient. The existence of both penal and non-penal measures provided them with at least some flexibility. In Chapter 5, the various institutions which received accused and convicted vagrants from the courts will be discussed.
CHAPTER 5

PUNISHING AND REFORMING

The courts forwarded vagrants to a variety of institutions. Men and women who were considered to be habitual or professional criminals were incarcerated in gaols, along with a spattering of youthful, elderly and more innocuous offenders. Some juveniles were committed to reformatories and industrial schools, while a small proportion of adolescent girls and young women were forwarded to refuges run by religious and philanthropic organizations. Elderly, ill and destitute offenders were also often placed in the care of charitable institutions. Those who were diagnosed as mentally deranged were committed to lunatic asylums.

Gaols were the most explicitly penal of these institutions, yet all of the establishments which received vagrants, possessed some penal characteristics. These institutions shared a common philosophy which was focused on the twin objectives of punishment and reform. By the 1880s, remnants of the punitive approach that had characterised colonial institutions early in the nineteenth century, were surviving alongside a new regulatory regime which focused upon individual reform. The process of punishment and reform which resulted from the fusing of these approaches, was highly intrusive and involved the increased classification of offenders both between and within institutions. Surveillance, strict discipline, regular employment and religious and moral training were fundamental elements of this process.
Between 1880 and 1907, convicted vagrants who were sentenced to less than three weeks imprisonment by the City Bench were forwarded to the Metropolitan Gaol, which was otherwise known as Melbourne Gaol. So too were individuals remanded on vagrancy charges. Convicted vagrants who were sentenced to three weeks imprisonment or more were forwarded to Pentridge Prison. After 1894, this gaol also received all female prisoners. Pentridge Prison was larger and more modern than the Metropolitan Gaol, and enabled prisoners to be more efficiently introduced to the order and discipline of prison life.

The physical presence of these prisons served constantly to remind Melbourne's citizens of the power of the law. Melbourne Gaol, which stood adjacent to the City Court, was a 'traditional English-style bluestone prison'. Reverend H.F. Scott, who was appointed gaol chaplain in 1882, described it as 'a huge, gruesome structure...massive and sombre.' In 1905, journalist Helen Davis noted how the gaol dominated the city's skyline, as well as the psyches of its inhabitants:

'It stands like a remnant of medievalism, the stronghold of force when might was right, almost in the middle of our great southern city, throwing its shadow across some of the busiest thoroughfares, and undeniably it seems to me, over every man, woman and child that must pass it by.'

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2 Reverend H.F. Scott, 'Jottings from Gaol', no.1, H.F. Scott Collection.

3 Helen Davis, 'Behind the Bars', New Idea, 6 January 1905, p.618.
Illustration 5.1
View of Melbourne by Nettleton, c.1880
The Melbourne Gaol (top centre) occupies the highest ground.
(La Trobe Library Small Pictures Collection)
Pentridge Prison was located several miles from the city centre, but it had an equally strong effect upon those who lived in close proximity to it. The residents of Pentridge were so haunted by the gaol's 'massive bluestone buildings and high walls' that they demanded that their suburb be renamed Coburg. Repeated demands for the removal of the prison fell upon deaf ears. The residents' response to it, merely affirmed the structure's symbolic potency. After all, the prison's sombre facade and massive scale was intended 'to symbolize on the outside the terrors to be expected within, and thus to deter any potential evil-doer from ever entering its portals.'

The men and women who were imprisoned as vagrants were almost invariably of working-class, Anglo-Saxon origins. But differences in their sex, age, occupation and health, meant that there was some variation in their experiences of gaol. While all prisoners were subjected to the same general rules of conduct, the classification of inmates by penal authorities meant that inmates inhabited different sections of prisons and spent their days in different ways. By the 1880s, classification and segregation were being promoted as the keys to effective punishment and reform. In 1889, the Inspector-General of Penal Establishments reported that his department was steadily

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moving towards the attainment of the ‘one prisoner, one cell’ ideal. The separation of one prisoner from another, he advised, ‘is the only sound basis on which a reformatory discipline can be established with any reasonable hope of success.’ Pentridge Prison, and to a lesser extent Melbourne Gaol, were built in the approved fashion of modern penitentiary architecture, and reflected the notions of classification, segregation, discipline and order that dominated the thoughts of nineteenth century penal reformers. Space was carefully structured, with the intention of minimising contact between inmates, but at the same time, allowing maximum supervision of them

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6 Country gaols and non-penal institutions such as reformatories, lunatic asylums, refuges and charitable institutions, were increasingly used to segregate offenders. By mid-1887, some first-time male offenders who were sentenced to less than six months imprisonment, were being sent to the Castlemaine Gaol. This gaol was the first in Victoria to boast a well-developed ‘separate system’ for first offenders. The Geelong Gaol, on the other hand, served as a district prison, and as a place of confinement for ‘disabled, decrepit, semi-lunatic, semi-imbecile, or aged prisoners from Pentridge and all the gaols.’ The Juvenile Offenders Act of 1887 enabled the penal authorities to extend the system of classification beyond the gaols. Under this Act, inmates who were under eighteen years of age, could be transferred to reformatories. Similarly, older females were sometimes transferred to refuges, whilst the aged, ill and destitute were forwarded from gaols to charitable institutions. Report of the Inspector-General of Penal Establishments and Gaols for the Years 1887 and 1888, VPP, 1888, vol.3, pp.5-6 and 1889, vol.3, pp.5 & 11.


by warders. A radial design was employed in both gaols to achieve this end. The three wings of Melbourne Gaol, each comprising three layers of cells, extended from a central point. Pentridge Prison's 'A Division', which was known as the 'Panopticon', after Jeremy Bentham's 1791 penitentiary model, was of a similar design but its wings comprised only two tiers of cells. The wedge-shaped cages of the gaols' radial exercise yards were similarly used to segregate prisoners.

In the 1890s, the classification system was extended through the expansion and remodelling of Pentridge Prison. A new female prison, comprising three distinct buildings, was opened at Pentridge in 1894. The prison proper contained 198 cells, and was used to house able-bodied prisoners. 'Jika' division accommodated 'decrepit and infirm' female prisoners, and vagrant women who were physically unable to work and ineligible for admission to charitable institutions. A workroom and laundry for the employment of able-bodied women was included in this division. The 'Coburg' Division provided hospital accommodation for ailing prisoners and workrooms for first offenders and 'special cases' - those who were believed likely to respond to special reformatory efforts. In 1897, a new hospital was opened at the female prison to allow greater

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9 Broome, Coburg, p.116.


THE WOMEN'S PENITENTIARY AT COBURG, MELBOURNE.

Behind the bars of each window is confined some woman, who may be "doing a term" of anything from three weeks to twenty years' imprisonment. A section only is shown in this photograph.

Illustration 5.2
(New Idea, 6 January 1905, p.617)
differentiation between ill prisoners. The classification system for male prisoners at Pentridge was refined with the completion of 'A' division for 'special cases' in 1899.

Particular emphasis was placed on the need to save first offenders from the unsavoury influences of habitual and professional criminals. More experienced offenders were also graded into classes according to the seriousness of their crimes. Vagrants who were sentenced to less than six months imprisonment, were ideally kept in separate confinement for the whole of their incarceration. The inmates of Pentridge's A division, among them a small number of previously unconvicted or youthful vagrants, were either employed at agricultural labour within the division's enclosure or put to work in one of the prison's workshops. In regard to the latter, the Inspector-General reported:

> everything possible under the circumstances is done to guard against contagion. The special class men are taken to and from their work by the officer of their division, and are placed as far as practicable from others in the shops. No special prisoners, however, are allowed to be placed at work in shops such as shoemakers and tailors, owing to the impossibility of keeping them apart. I am hoping that, to some extent, separate workshop accommodation will, during the current year, be provided for these men.

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CORRIDOR OF CELLS IN THE WOMEN'S PENITENTIARY.

This picture shows the ground-floor corridor; above it are two other tiers of cells exactly similar.

Illustration 5.3
(New Idea, 6 January 1905, p.619)
Female vagrants who were classified as 'special cases' were subject to similar arrangements. In 1901, the Inspector-General reported that the prisoners housed in the Coburg division of the women's prison at Pentridge were 'kept entirely apart' from other prisoners during both working and off hours. He added that care was taken to exclude from this division anyone who might have a bad influence upon others. Men and women who were sentenced to six months imprisonment or more, were also subjected to separate confinement. Brief periods in isolation marked the beginning and end of their imprisonment. It was intended that they leave gaol with a 'vivid recollection of the most unpleasant part of the time spent there.'

Within the prisons, time and behaviour were as carefully ordered as space. Convicted vagrants, like all other prisoners, were subjected to strict regulation and surveillance. Upon their reception, they were searched for injurious or contraband items, and for marks which would serve to identify them. Their personal details were recorded in the gaol's register and their personal possessions stored away, in anticipation of their release. By 1905, fingerprinting and photographing had been added to the admission procedure. A bath was another standard feature of this process. In the case of vagrants, it was often well needed. When Charles Roberts was admitted to gaol in

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18 Helen Davis, 'Behind the Bars', New Idea, 6 January 1905, p.620.
1889, he was covered with filth and vermin, and his clothes had to be burnt. William Lake was similarly infested with undesirable wildlife when he was received in 1890. Only in cases of extreme illness was the compulsory ablution bypassed. John McGregor, for example, was 'very dirty' when admitted to gaol, but he 'was in such a weak state that he was unfit to be put in a bath'. Five days later he died.

The prison day followed a carefully ordered pattern. The captive population was woken each morning by the ringing of a bell. At the sound of it, the inmates were expected to launch themselves into a number of tasks:

- He must rise immediately the first bell sounds, neatly fold his bedding and place the same in the appointed position. He must then sweep and clean his cell, and its furniture. When the cell door opens, he must stand at once, in the centre of his cell, at attention. He must observe rigorous silence...No communication is supposed to take place between prisoners.

Throughout the day, silence was to be maintained. The ringing of bells imposed an external order on the inmates' lives, signalling when they should pray, eat, work, exercise and sleep. This inescapable and artificial ordering of time and behaviour was intended to instil a sense of discipline into the prisoners, and lead them to reflect upon

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19 Deposition of Peter Dwyer, Governor of Melbourne Gaol, 23 April 1889, Inquest on Charles Roberts. VPRS 24: Unit 379: No.581.

20 Deposition of Frederick Bull, Governor of Melbourne Gaol, 5 July 1890, Inquest of William Lake. VPRS 24: Unit 395: No.926.


their past crimes and future prospects. As the Inspector-General observed

An indispensable characteristic of a good system of prison discipline is that the prisoner should be placed in such circumstances as shall most powerfully lead him to reflect upon his condition, and dispose him to receive with docility and reverence the instructions and admonitions of those appointed to teach and advise him.\textsuperscript{23}

Gaol chaplains, 'lady visitors', and representatives from religious and philanthropic organisations such as the Salvation Army and the Victorian Discharged Prisoner's Aid Society, regularly visited prisoners. They preached humility, repentance and compliance with middle-class mores. Prisoners were urged to relinquish their vicious habits and to adopt a more respectable and purposeful course in life.

While some inmates took the pledge of temperance or agreed to place themselves in the care of a charitable institution upon their release, some penal administrators doubted the effectiveness of such a soft approach. Inspector Brett believed that it was more helpful to expose prisoners to the full rigour of prison life. He recommended strict discipline, constant surveillance and regular work as the most effective means of dealing with vagrants and other habitual offenders. Work was prized as a means of both punishment and reform. In 1882, J.B. Castieau, the then Inspector-General of Gaols, noted that a lack of steady occupation was 'injurious to prison discipline', and urged the reintroduction of the treadmill and crank to Victoria's gaols.\textsuperscript{24}

One of Castieau's successors, James Evans, agreed with these sentiments but also


argued that there was some reformatory value in allowing inmates to pursue or acquire a trade.\textsuperscript{25} Irish ex-prisoner and penal reformer, Michael Davitt, visited Pentridge in the late 1890s, and later recalled Evans' approach to labour and reform:

The Inspector-General spoke very highly of the beneficial effects of these workshops, and of the labour spirit which they are calculated to create in prisoners who pass through them. It is a practice with him to encourage men who have learned any of the trades carried on at Pentridge to go on discharge to places noted for that particular industry. In this way there is every inducement given to the liberated prisoner to profit by what he has practised while in gaol, and to keep away from the place and influences associated with the crime for which he was punished.\textsuperscript{26}

All prisoners who were in good health, with the exception of those who were on remand, were expected to do a full day's work. Convicted vagrants were perhaps considered most in need of this reforming practice, for their crime involved refusing or failing to undertake regular employment. Vagrants and other prisoners were assigned to work according to their gender, skill level, classification, and the facilities that were available. The work performed within the gaols was gender-specific. Men were trained for their re-entry into the labour market. If they possessed a trade, or appeared amenable to training, they were employed in a workshop. At Pentridge Prison, male inmates pursued printing and bookbinding, joinery, blacksmithing, weaving, ironwork, and brush and mat making. Relatively few vagrants, however, were employed in the gaol workshops; most of these men lacked trade skills and few were considered worthy


\textsuperscript{26} Davitt, \textit{Life and Progress}, p.441.
of industrial training. As a consequence, they were usually relegated to the more traditional and laborious occupations of stone-breaking and oakum-picking. At Pentridge, some unskilled prisoners performed agricultural work. Female prisoners were employed at a narrower range of tasks than their male counterparts. The lack of variety that characterised their work directly mirrored the limited opportunities available to them outside of gaol. Domestic service remained a common form of female employment, whilst marriage and motherhood presented itself as the most virtuous and 'natural' option. Prison work was intended to prepare women for these careers. During their incarceration, able-bodied women were employed at knitting, sewing, laundering and other miscellaneous domestic duties. At Melbourne Gaol, the dictum 'cleanliness is next to Godliness' was taken to its extreme with the installation of 'a fine laundry and steam drying process' in the prison chapel.

27 Oakum is loosely twisted fibre which is used for caulking wooden ships. Oakum-picking was a popular form of work in most nineteenth century institutions and involved picking rope to pieces.

28 In 1889, Inspector-General William Brett reported that the occupations best suited to unskilled prisoners were soil cultivation, ground reclamation, earthworks and quarrying. He recommended that prisoners be used on works of public utility. Report of the Inspector-General of Penal Establishments for 1888, p.6.

29 Scott's description of the conditions in the chapel/workshop are reminiscent of accounts of Paramatta's infamous Female Factory. According to Scott, the chapel had been declared 'unsafe' during the gold-rushes, and had been 'reduced to the level of a workshop'. Overcrowding in the gaol meant that the facility sometimes doubled as the women's sleeping-quarters. He recalled how, during one particularly busy period, between 30 and 60 women had slept in the workroom each night. Scott, 'Recollections of a Prison Chaplain', The Herald, 19 January 1900.
The type of work convicted vagrants and other inmates performed in gaol was largely determined by the internal economy of the prison system. A self-sufficient gaol network was the much-discussed, but never-achieved, goal of Victoria's penal administrators. The prisoners' labour, however, did help to reduce the high cost of maintaining the prison system. Many of the needs of the gaols were serviced directly by the inmates. Women attended to the gaols' laundry requirements and manufactured clothing and other essential items. Men were put to work erecting and repairing prison buildings, and they too, made goods for use inside and outside the prison system. In 1888 alone, the estimated value of the prisoner's labour amounted to almost £40,000.\(^3\)

Much to the chagrin of penal administrators, it seemed that even the discipline of prison life, failed to deter some individuals from reoffending. Vagrants and other offenders who returned to gaol at regular intervals were accused of living off the system. 'They get their washing done here', mused the disgruntled Governor of Melbourne Gaol.\(^3\) Inspector-General, William Brett, was of a similar opinion:

Among the vagrants committed to gaol there is a large number who positively refuse to accept admission to a Benevolent Asylum. There are others who have misconducted themselves whilst in charitable institutions, whilst others have left them without authority. In such instances every opportunity should, in my opinion, be taken to impress upon such prisoners the fact that a prison is no place for comforts or privileges. I have taken steps to carry out this view, and unless the medical officer is able to certify that a departure from the Regulations is necessary on medical grounds, the ordinary prison routine will be followed.\(^3\)


\(^{32}\) Report of the Inspector-General for Penal Establishments for the Year 1890, **VPP**.
The practical difficulties that vagrants experienced, before and after imprisonment, were rarely recognised. Failure to reform was instead attributed to a lack of moral fibre. First-timers were believed to be more amenable to guidance than those who had been previously imprisoned, while women were generally considered to be more difficult to reclaim than men. Reverend Scott was typical in his attitude to female prisoners: 'A really bad woman', he mused 'is worse than a bad man, and while an amiable good woman is almost angelic, a vicious debased woman is almost devilish.' Scott believed that the worst of the women took 'unfeminine delight in persecuting and trying to demoralize the better class of their associates'. The Inspector-General also made special mention of the difficulty of reforming 'the most depraved class' of female prisoners. In 1895, he reported that these 'miserable creatures' were admitted to gaol in a 'terribly filthy condition'.

Both Scott and Evans presumably included vagrant women amongst the worst of the females, for many of them were arrested and condemned for sexual promiscuity and general immorality. The 'filthy condition' to which Evans referred, was undoubtedly venereal disease, an affliction which was relatively common amongst incarcerated vagrant women. Sarah Urquhart, who was committed to Melbourne Gaol in 1900, was one of many diseased women rounded-up under the vagrancy provisions. She was

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aged between 29 and 35 years, was Victorian-born, Protestant, and listed her occupation as servant; the police, however, knew her better as a ‘woman of the Town’. She was arrested for vagrancy at the Melbourne Hospital, after being deemed ‘not a fit patient’ for that establishment. She was remanded to the hospital at Melbourne Gaol. Clarence Godfrey, the gaol surgeon, described what then happened:

She was in a weak and helpless state on admission and suffered from General Paralysis of the Insane, and was put to bed on admission. She had some remains of an epileptiform convulsion, and was paralysed in the lower extremities. She remained unchanged for several days and about a fortnight later she developed bedsores on the hips and sacrum. She gradually grew weaker and sank & died at 3 p.m. on the 26 inst.

Urquhart was in the tertiary stage of syphilis when admitted to gaol. There was no chance of her survival, much less her reform. Evans held out hope for the reform of some women, but he believed their greater degeneration could only be offset by longer periods of incarceration. He argued that brief periods of imprisonment merely served to aggravate women’s desire for drink and vice, and he therefore suggested that the short sentences meted out for vagrancy, drunkenness and insulting behaviour, be extended, so as to allow reformatory efforts to take effect.

Individual offenders understood and responded to their experience of

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35 Deposition of Thomas Meagher, Governor of Melbourne Gaol, Inquest on Sarah Urquhart. VPRS 24: Unit 504: No.651.
36 Deposition of Constable E.J. Britt, 29 May 1900. ibid.
37 Deposition of Clarence Godfrey, Surgeon at Melbourne Gaol. ibid.
38 Reports of the Inspector-General of Penal Establishments for 1895, p.3, and for the Year 1902, VPP, 1903 (2nd Session), vol.2, pp.5-6.
incarceration in different ways. Some vagrants posed a direct threat to penal order, by refusing to submit to prison discipline. Young inmates, and older men and women serving their first, second or third term, tended to be the most troublesome. Louisa Eaton was 44 years old and had two prior convictions when she was imprisoned for vagrancy in 1882. Her six month sentence was spent in Melbourne Gaol and was marked by moments of rebelliousness. During her incarceration she was charged with having money in her possession, being insolent in the yard, making noise in her cell, using improper language, and disobeying orders. Her punishments ranged from the loss of remission days and the forfeiture of illegally possessed money, to two days in solitary confinement with half rations. Female prisoners were generally regarded as more immoral and troublesome than their male counterparts, and this perception affected their treatment. The dreaded 'dark cells' at Melbourne Gaol were situated in the women's cell block. According to Scott, 'refractories' were placed in these cells after milder measures had failed, and until they 'agreed to submit to authority'. 'It is a barbarous form of punishment', he concluded, 'but at times essential. A very few recalcitrants can endure it for long.'

It is possible that imprisonment became an almost routine exercise for other vagrants who were regularly exposed to it. Some prostitutes and petty criminals may in fact have perceived imprisonment as an unfortunate side-effect of their occupation.

39 Entry for Louise Eaton, Central Register of Female Prisoners, VPRS 516: Unit 8: No.4875.

Men and women, who had a history of incarceration, tended to resign themselves to the gaol routine. The compliance of some, was no doubt motivated by a desire to be free as quickly as possible. Good behaviour inside and outside working hours could result in a sentence being remitted by almost one-third. Prisoners who were in the second half of their sentence could also earn small indulgences such as a pipe of tobacco, an extra ration of sugar, or a privilege such as the right to talk.\textsuperscript{41} These rewards were obviously intended to improve discipline by winning the prisoners' cooperation, yet they must have also made prison life a little more bearable for those inmates who acquired them.

Elderly, ill and destitute people who were imprisoned as vagrants rarely disrupted prison discipline. Shelter, adequate food, and medical attention - commodities which were impossible for some to obtain in the outside world - were guaranteed in gaol. By observing prison rules, such prisoners ensured that their existence in gaol was non-eventful and as comfortable as possible. Some vagrants were incapable of resisting, even if they had wanted to. Those who suffered from chronic or terminal illnesses, malnutrition, exposure, or from the effects of excessive drinking were often extremely ill when admitted to gaol, and died soon after. Downward social mobility, brought about by old-age and ill-health, often characterised the final stages of their life. A year before his final arrest in 1889, Frank Dixon had earned good wages working at the wharf. Chronic illness had finally brought his labouring days to an end, and with no home to go to, he had soon become familiar to the police. He was eventually arrested.

\textsuperscript{41} Davitt, \textit{Life and Progress}, pp.439-440.
and being found to be in 'a bad state of health', was forwarded to Melbourne Gaol where he died less than a week later of lung disease. Others such as John McGregor and Peter Miller died in gaol, after being turned away from hospitals. Successive Inspector-Generals complained of the cost, dangers, and injustice of incarcerating the ill and needy. William Brett drew attention to the issue in his report for 1890:

Permit me to refer to the injustice of committing to gaol those who have been guilty of no other offence, if it may be so termed, than that of being destitute. Committals are also made to the Gaol Hospital for no other reason than that such persons so committed may receive medical treatment. For dealing with such cases there is neither proper accommodation nor nursing provided, and surely such committals are to be deprecated. There is much trouble involved in endeavouring to secure the transfer of suitable cases to a charitable institution, whilst in the prison these unfortunate people are forced to associate with vice in its worst form, and there is risk of interference with the rigour of prison discipline.

Confronted by such practical difficulties, penal administrators like Brett, maintained that the aim of imprisonment was to punish and reform the criminal, rather than feed and nurse the needy. For the most part, however, their concerns were lost amid public apathy. Through the implementation of the vagrancy law, the poor and ill were criminalised. Gaols thus served as a convenient dumping-ground, for those individuals, society neglected and rejected.

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42 Depositions of Dr Andrew Shield and Constable James Price, 2 January 1889. Inquest on Frank Dixon, VPRS 24: Unit 375: No.3.

43 Deposition of Constable Whitaker, 6 February 1889, Inquest on John McGregor, VPRS 24: Unit 377: No.230; Depositions of Dr Shield and Constable Patrick Berkery, 26 September 1898, Inquest on Peter Miller, VPRS 24: Unit 375: No.1243.

Discharged Prisoners' Aid Societies

Once released from gaol, convicted vagrants faced the difficulty of re-establishing themselves in society. For many, the difficulties that had led to their arrest in the first place remained, and were in fact multiplied by the stigma of conviction. Very few had friends or relatives who were willing or able to assist them. Employment and accommodation were difficult to come by, and charitable assistance, if available, was limited. Police harassment presented a further problem. For a large percentage of vagrants, a first conviction and term of imprisonment was followed by a second and then a third. The chances of escaping this cycle of arrest, conviction and imprisonment decreased, as the number of convictions recorded against the individual increased. Reverend Scott estimated that seven out of every ten discharged prisoners reoffended. He attributed this to the injurious effect of imprisonment, and to the difficulties individuals faced upon their release. He believed that, for women in particular, the chance of reform was small:

...even they might have recovered from the effects of their first lapse, were it not that society and particularly, their own sex make restoration difficult, if not impossible. It is a strange paradox in contemplating the complex nature of women, that they will forgive a man anything and a woman nothing.\textsuperscript{45}

The Prison Gate Brigade became known to prisoners through the endeavours of its founders, salvationist Major James Barker and philanthropist John Singleton.\textsuperscript{46}


\textsuperscript{46} Dr John Singleton, \textit{Narrative}, p.311.
The two regularly visited gaols, and were permitted to interview prisoners in a private cell, especially set aside for the purpose. A notice on the cell wall encouraged prisoners to seek the Brigade's help.\(^{47}\) It was at the prison gates, however, that most discharged prisoners came into contact with the society. A Salvation Army Officer was appointed to stand at the gates and greet those who were released. This practice was based on a belief that an ex-prisoner's experiences immediately upon leaving the gaol, played an important role in determining his or her future. According to the Brigade, some discharged prisoners were tempted to return to their previous lifestyle by old associates who met them at the gates. Others who had no one to meet them, and few resources to call upon, were known to drift to the city slums.\(^{48}\) The salvationists believed that if discharged prisoners could be met at the prison gates, and provided with encouragement, a promise of shelter and some hope of employment, they might be saved. William Shepherd, the first officer to perform this duty, had a previous criminal record, and was able personally to attest to the possibility and desirability of reform.\(^{49}\)

The Brigade believed that no individual was beyond personal salvation and thus


\(^{49}\) William Shepherd worked with the Melbourne City Mission prior to his involvement with the Salvation Army and the Prison Gate Brigade. He later returned to missionary work and eventually served for 31 years with the City Mission. See Roslyn Otzen, 'Charity and Evangelism', pp.67-8.
offered assistance to all discharged prisoners. Convicted vagrants were among those who were greeted at the prison gates and invited to have a free breakfast at a Prison-Gate Home. If responsive to the Brigade's overtures, they were invited to stay there until they could find suitable work. Separate homes were established for male and female ex-prisoners, but a common philosophy similar to that which dominated penal reform, ruled both. Discipline, work, and religious and moral instruction were regarded as essential elements in the reformation of both men and women. The women who resided in the Prison-Gate Home, like those who were still imprisoned, were trained in domestic skills, so as to prepare them for marriage and employment. Men were put to work in the Home's garden or else found odd jobs in the city. They, too, were expected to cook and clean, and to wash and mend their own clothes. According to the Brigade, the residents of the Homes were supervised closely. They were not permitted to go out on certain nights, and, if they left the Home at any time, their whereabouts were always said to be known. The Salvationists claimed, a little unrealistically, that most residents left the Homes at night only to wend their way to an Army meeting.

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50 The Victorian branch of the Salvation Army was able to claim the world's first Prison Gate Brigade and Prison Gate Brigade Home. The Home for men was originally opened in 1883. It was situated close to the Melbourne Gaol at 37 Argyle Place South, Carlton. Due to the ever-increasing demand for accommodation, the home was relocated several times. By 1888, it was situated in La Trobe Street East. In 1884, a Women's Prison-Gate Home was established in Carlton. This home too was relocated several times and on one occasion even occupied an ex-brothel in Lonsdale Street. Dale, Salvation Chariot, p.149; Barbara Bolton, Booth's Drum: The Salvation Army in Australia 1860-1980, Hodder and Stoughton, Lane Cove, 1980, pp.109-110.

51 The Age, 22 January 1891, p.6.
Despite the restrictions it placed upon residents, the Brigade was able to claim that, by 1888, it had served 49,965 meals and provided 13,586 beds to discharged prisoners at the men's Prison-Gate Home.\(^{52}\) Such indiscriminate benevolence was not welcomed by conservative charitable agencies such as the COS or by the police. Chief Commissioner Chomley's support for the Brigade disappeared by 1890. Drawing upon the testimonies of less senior officers, Chomley claimed that the aid given by the Brigade was 'not infrequently misapplied' and that the Brigade's Homes were 'merely used as a resting place by utterly irreclaimable offenders' who continued to 'carry out their operations under the mask of an assumed piety'.\(^{53}\)

The Victorian Discharged Prisoners Aid Society, in its dealings with ex-prisoners, relied less on moral persuasion and more on the conservative philosophies and methods of mainstream charity. Its conservative stance won it approval from members of the government, police, judiciary and other charitable organizations.\(^{54}\) In 1887, the

\(^{52}\) COS, *Guide*, p.55.

\(^{53}\) The Age, 16 January 1891, p.4; Copies of these reports can also be found in the Chief Commissioner's Correspondence, VPRS 937: Unit 129. Two years after the Brigade was established, Chomley had warmly praised its work: 'I beg to state that enquiries which I have made convince me that the organisation in question is rendering very good service to the community. The Superintendent of metropolitan police and the divisional officers under his command are unanimous in their testimony on behalf of the Brigade. I am of the opinion that the Prison-gate Brigade succeeds in reaching a large class of unfortunates whose depravity defies the ordinary measures of the charitably and humanely disposed.' The reason for Chomley's change of mind is unclear, but it is likely that he was strongly influenced by Sadleir and other officers, who considered the Army's anti-brothel stance to be more of a hindrance than a help. Dale, *Salvation Chariot*, p.20.

\(^{54}\) The VDPAS included amongst its members and supporters, some of the colony's best-known politicians, judges and philanthropists. The position of Patron of
Inspector-General of Gaols, described the Society as a 'valuable auxiliary' to his own department. In the early 1890s, William Zeal, the President of the Legislative Council, approvingly noted that the VDPAS afforded to discharged prisoners, what the COS afforded to the ranks of the unemployed. In the best tradition of discriminating almsgiving, the VDPAS sought to distinguish between deserving and undeserving applicants. The Society's criteria and procedures for selecting worthy candidates were intended to deter the insincere from applying, and to thus guard against the dangers of indiscriminate charity. The Inspector-General believed that this judicious style of distribution made the Society deserving of public support.

The VDPAS used its role as the distributor of government gratuities to make

the society was held by the Governor, the Earl of Hopetoun, in the late 1860s and early 1890s, and was then handed over to Lord Brassey when he took up the vice-regal appointment. Politicians James McBain and Edward Zeal lent their support as Vice-Patron and the position of President was occupied, in turn, by Mr Justice Higinbotham and Chief Justice Sir John Madden. Philanthropist and parliamentarian Ephraim Zox was one of the longest-serving, and perhaps hardest-working, members of the Committee. Subscribers included Mr Justice Thomas A'Beckett, Sir Robert Molesworth, Mathew Davies M.L.A, Dr John Singleton and the Bishop of Melbourne.

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55 Report of the Inspector-General of Penal Establishments for 1887, p.8. The Inspector-General's praise was warmly welcomed by the Society and was quoted in the Society's Annual Reports. For example, the 1887 comments were quoted in the VDPAS 16th Annual Report, 1888. Copies of the Society's annual reports, 1872-1906, are contained in Box 102, Prisoner's Aid Society Collection, La Trobe Library.

56 VDPAS 21st Annual Report, 1893, p.4.

contact with discharged prisoners. The Society’s hopes of furthering its cause through these interactions, however, were often dashed by the prisoners’ desire to take the money and run. Theoretically, prisoners who wished to avail themselves of the society’s assistance could initiate contact by applying to their prison governors. Details of individual cases were forwarded to the Society seven days prior to the prisoner’s anticipated date of release. The criminal record and personal circumstances of each applicant were investigated, and upon discharge, Melbourne applicants were expected to appear before the Society’s Chairman, Secretary, Committee or a Committee member, and provide some evidence of their willingness and ability to reform. Non-appearance was usually interpreted as a sign of insincerity and resulted in the applicant’s request being refused. Poor character references were also grounds for rejection. First-offender Patrick O’Meara, for example, who had been sentenced to twelve months imprisonment for vagrancy, was denied assistance on the basis of an unfavourable police report. Those who were fortunate enough to be judged worthy, received practical aids such as tools, clothes, railway passes, and sometimes, money.

The conservatism of the VDPAS severely hindered its ability to assist ex-prisoners. The methods and criteria it employed, deterred many inmates from seeking assistance. In 1881, the Inspector-General complained that there were comparatively

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58 Gratuities were issued to prisoners upon their release as payment for work they had done whilst in gaol. VDPAS 25th Annual Report, 1896-7, p.7.

59 VDPAS 19th Annual Report, 1891, p.4.

60 Minutes of the Committee Meeting, 18 November 1889, VDPAS Minutebook, 7 February 1887 - 9 July 1894, Prisoners’ Aid Society Collection, La Trobe Library.
few discharged prisoners who were 'eager to avail themselves of the efforts made to induce them to return to honest and temperate life'.\textsuperscript{61} Convicted vagrants, in particular, were gravely disadvantaged by the need to prove good character, for the very crime of vagrancy was attributed to deceitfulness, laziness and viciousness. They had little chance of gaining assistance, and therefore, refused to seek it. In 1875, three years after its establishment, the Society reported that it was mainly vagrants and drunkards who were denied assistance. The Society argued that drunkards were better suited to the work of a total abstinence organisation, while vagrants required a 'labour test of some duration' before a decision regarding their fitness for aid could be given.\textsuperscript{62} The Society claimed that arrangements for such a test had not been made, yet a letter to a country agent suggests otherwise:

\begin{quote}
When an applicant shows by his conduct, or his past history is not so well known, that we have reason to suspect he is insincere in his professions of a wish to lead a better life, and intends to make a bad use of the help extended to him, he is sent to the 'Immigrants' Home' for a fortnight or so; if he shows by steady perseverance that he is willing to work, the help asked for is given him. This plan is found to work very well.\textsuperscript{63}
\end{quote}

The question of whether habitual offenders should be assisted plagued the Society. In 1892, \textit{The Age} reported that members of the Society disagreed over the wisdom of granting aid to individuals who had multiple convictions. Reverend Scott

\begin{flushleft}
\textsuperscript{62} VDPAS 3rd Annual Report, 1875.
\textsuperscript{63} Letter to Rev. R. Short, Castlemaine, 19 June 1874, VDPAS Letterbook, 30 July 1872 - 22 June 1874.
\end{flushleft}
argued that the society had no responsibility towards those who had been convicted more than once, but that fortunately aid was given where merit could be shown. The society’s 1895-96 report displayed little sympathy for the offender who had been convicted three times or more:

Experience has shown that those who have become habituated to crime and hardened in their vicious courses have (except in rare instances) no inclination or desire to reform. When they are discharged from prison they rejoin their criminal associates, and plunge again into crime. To assist such persons would be a mistake; they are not deserving of sympathy.

The assumption that repeat offenders were not worthy of assistance had serious implications for many convicted vagrants. Those who had three or more convictions were generally dismissed as ‘confirmed criminals’. Thirty-six year old Daniel Ryan, for example, was refused assistance after serving one month’s imprisonment for vagrancy. It was his third offence. Elisle Harris was no more successful in his attempt to gain aid, but this was hardly surprising given his fourteen previous convictions.

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64 The Age, 14 September 1892, p.4.

65 VDPAS 24th Annual Report, 1895-6, p.7. It was suggested in London in 1885 that prisoners who misconducted themselves or showed no disposition to earn an honest living whilst being assisted by the society, should upon their reconviction, be treated as determined criminals and sentenced to a proportionately longer period of imprisonment. See T. L. Murray Browne, Modes of Increasing the Efficiency of Discharged Prisoner’s Aid Societies, Reformatory and Refuge Union, London, Box 107, Prisoner’s Aid Society Collection.

66 Minutes of the Committee Meeting, 26 November 1988, VDPAS Minutebook, 7 February 1887 - 9 July 1894.

67 Minutes of Committee Meeting, 14 January 1889, VDPAS Minutebook, 7 February 1887 - 9 July 1894.
Women and girls were also identifiable casualties of the Society's priorities. The President, Mr Justice Higginbotham, represented the view of the majority of members when he emphasized the importance of reclaiming young men. The reclamation of women, it seems, was of secondary importance. As early as 1882, the male-dominated General Committee of the VDPAS had signalled its lack of interest in women's reform by establishing a separate Ladies' Committee to deal with female ex-prisoners. By 1887, the Ladies Committee had resigned en masse after being frustrated by the constant interventions of the General Committee. Responsibility for female ex-prisoners was taken up by the founder of the Elizabeth Fry Retreat, Sarah Swinborne, who was appointed as the Society's Ladies' Agent.

A small number of carefully-chosen women and girls, including a few convicted vagrants, were accepted into Swinborne's retreat and provided with food, shelter, clothing and Christian instruction. Each was trained in domestic duties and provided with a position as a servant upon leaving the retreat. The Society had previously emphasized the need to establish a retreat for women where they could be kept under

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68 VDPAS 21st Annual Report, 1893, p.3.

69 Roslyn Otzen provides an account of the conflict between the General Committee and the Ladies Committee in 'Charity and Evangelism', pp.222-226.

70 For biographical details of Sarah Swinborne see Roslyn Otzen, 'Charity and Evangelism', pp.205-208.

71 ibid, p.212.
close personal supervision, but Mrs Swinborne was criticized for failing to comply with the committee's demands. In May 1888, the Committee terminated Mrs Swinborne's engagement, citing her 'small results' and the 'low state of the funds' as the reason for her dismissal. Though the Society continued to express its willingness to receive and consider applications from women, few were forthcoming. The Society considered the little assistance which it gave to women 'as a material extra tax on [its] resources'. The sacking of Sarah Swinborne enabled the Society effectively to end its involvement in women's reform.

While most convicted vagrants failed to meet the Society's criteria, a few did manage to gain assistance. Great emphasis was placed upon the need to reclaim young offenders and those who had never been convicted before. One 19-year-old male, simply referred to as M.M., received trousers, boots and a railway pass after his second conviction. Similarly, 32-year-old carpenter, Phillip Werth, was granted 15 shillings 'to redeem his tools from pawn'. It was the relative youth of these applicants, and their perceived ability to earn a living, which secured such favourable

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72 Letter from Secretary to Miss Jennings, Ladies Committee 22 March 1886, VDPAS Letterbook, 8 July 1886 - 2 October 1893, p.39.

73 Minutes of the Committee Meeting, 21 May 1888, VDPAS Minutebook 7 February 1987 - 9 July 1894.

74 VDPAS 15th Annual Report, 1887, p.3.

75 VDPAS 23rd Annual Report, 1894-5, p.11.

76 Minutes of Committee Meeting, 26 August 1889, VDPAS Minutebook, 7 February 1887 - 9 July 1894.
Elderly and disabled vagrants also tended to receive a sympathetic hearing. There was some recognition that these individuals were not entirely responsible for their situation. In February 1890, the Secretary and the Chairman of the Society's Committee, complained to the Chief Secretary about the number of innocent individuals who were arrested and imprisoned simply because of their inability to work, and the lack of places available in subsidised benevolent asylums. They asked that the government give its earliest consideration to the problem.\textsuperscript{77} Five years later, the society was still complaining about the problem which it described as 'an outrage to humanity - a disgrace to our civilization'.\textsuperscript{78} The Society provided meagre assistance to such individuals. One convicted vagrant, a labourer by the name of Northcote who was 'blind and destitute', was given a hat and trousers.\textsuperscript{79} Francis Callaghan, who had several prior convictions but had also 'lost a leg', received a set of blacking brushes and a bottle of blacking.\textsuperscript{80} Clerk John Lamore was granted trousers, vest, hat, socks, shirt and overcoat 'solely for the reason that [he] had lost his right arm', while 74-year-old Patrick Casey received a pair of blankets 'on account of [his] great age and it being

\textsuperscript{77} Chairman and the Honorary Secretary to the Chief Secretary, 12 February 1890, VDPAS Letterbook, 8 July 1884 - 2 October 1893, pp.103-9, Box 5, Prisoner's Aid Society Collection.

\textsuperscript{78} VDPAS 24th Annual Report, 1895-6, p.8.

\textsuperscript{79} Minutes of the Committee Meeting, 28 November 1887, VDPAS Minutebook 7 February 1887 - 9 July 1894.

\textsuperscript{80} Minutes of the Committee Meeting, 1 December 1890, VDPAS Minutebook, 7 February 1887 - 9 July 1894.
Such acts of benevolence, however, were relatively few and far between. Usually, the assistance rendered by the society was limited to one or two practical items and was distributed in a cautiously discriminating manner. The Society's refusal to assist all ex-prisoner's regardless of their criminal history reinforced the polarised stereotypes of the 'deserving' and 'undeserving', and hindered those discharged prisoners who, though judged unworthy, sought to re-establish themselves within the community. The Prison Gate Brigade employed a more personal approach, but, like the VDPAS, assumed that discharged prisoners needed to be 'reformed'. Both of these organizations ultimately sought to restore convicted vagrants and other law breakers to respectability through the diffusion of middle-class values and habits.

Reformatories

By the late 1880s, doubts were being expressed about the propriety, effectiveness and cost of gaoling particular sorts of offenders. In 1886, the Inspector-General of Gaols complained of the injustice of imprisoning people who were severely ill. Prison, in his opinion, was not a 'proper scene for a death-bed', and ought not be

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81 Minutes of Committee Meeting, 1 July 1889 & 30 December 1889, VDPAS Minutebook 7 February 1887 - 9 July 1894.
converted into a hospital. 82 Two years later, Brett extended this criticism, by expressing his opposition to the gaoling of destitute, aged and infirm individuals. 83  

Imprisoning young offenders also concerned him. Successive Inspectors-General argued that children faced 'considerable dangers' in prison and that their presence posed serious disciplinary and administrative difficulties for gaol staff. 84

Such complaints resulted in the increased classification of individuals. This process was most evident in regard to juveniles. In 1887, pressure from philanthropists and social reformers, including George Guillaume, the Secretary of the Department for Neglected Children and Reformatory Schools, resulted in the introduction of two acts, one dealing with neglected children and the other with juvenile offenders. 85 These acts extended state responsibility in the area of child welfare and were intended to distinguish more clearly between the neglected child and the young offender. Separate departments were established for reformatory schools and neglected children, although

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a single officer continued to be responsible for the administration of both.86 The
definition of 'neglected' was broadened to include children found working at particular
times of the year, and provision was made for the apprehension of 'brothel children'.

Under the new provisions, the courts were granted greater discretion in dealing
with juveniles who were brought before them as vagrants. Children and adolescents
who were deemed by the court to be neglected, or in jeopardy due to immoral
surroundings, could be committed directly to an Industrial School and their parents
ordered to make some contribution to their upkeep. In 1888, the father of Alfred Davis
was ordered to pay 10 shillings per week towards his son’s maintenance in an
Industrial School.87 These institutions were intended to prepare children for a
respectable and steady future, by providing them with the physical care and moral
guidance that they supposedly lacked, and by teaching them a useful trade. By the late
1880s, criticism of the cost and efficiency of industrial schools meant that this option
was only occasionally utilized.88 The judiciary increasingly committed neglected and

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86 Jaggs, Neglected and Criminal, pp.422 & 72.

87 Court of Petty Sessions Register, 1 November 1888, VPRS 1665: Unit 3.

88 In 1871 and 1872, two royal commissions, one on penal and prison discipline
and the other on industrial and reformatory schools, presented a number of reports
condemning the existing arrangements for juveniles. They found the facilities at the
Industrial Schools to be inadequate and the environment not conducive to reform.
Report (No.3) of the Royal Commission on Penal and Prison Discipline, Industrial and
on Industrial and Reformatory Schools and the Sanatory Station, VPP, 1872, vol.3. pp.5-
11. For a brief account of the findings of the Commissions see Jaggs, Neglected and
Criminal, pp.31-40.
Illustration 5.4
(Leaflet of the La Trobe St Ragged School Mission and Boys Home.
Copy contained in Chief Commissioner of Police Inward Correspondence, VPRS 807: Unit 91)
endangered children to the care of the Department of Neglected Children, for eventual
placement in foster homes.\textsuperscript{89} According to its advocates, the practice of 'boarding-
out' offered children the advantages of family life, and removed them from the
corrupting influence of other neglected and wayward youngsters.

The Neglected Children's Act also contained provisions for the transfer of
neglected children into private hands; licensed individuals were empowered to remove
children from unfit homes and to take them under their own guardianship. Selina
Sutherland, the co-founder of the Scots' Church Neglected Children's Aid Society, and
later the head of the Presbyterian Neglected Children's Aid Society, was the first person
to be licensed under the act.\textsuperscript{90} She took responsibility for the care of hundreds of
children, whom she collected from streets, homes, the Department of Neglected
Children, and the courts. Sutherland often appeared in court, declaring her willingness
to take responsibility for youthful defendants. In 1895, for example, she applied for
guardianship of Annie Rose who stood before the city bench charged with vagrancy.\textsuperscript{91}
The courts were authorised to grant guardianship rights to both charitable institutions
and private persons.

\textsuperscript{89} In his report for 1887, Guillaume claimed that it was no longer necessary to
design improved methods of industrial training as nearly all of the department's wards,
with exceptions, had been distributed to foster homes. Report of the Secretary for the
Department of Neglected Children and Reformatory Schools for the Year 1887, \textit{VPP},

\textsuperscript{90} Swain, 'Selina Sutherland', pp.109-110.

\textsuperscript{91} Melbourne Court of Petty Sessions Register, 8 April 1895, VPRS 1665: Unit 44.
But not all children were considered suitable candidates for industrial schools or private guardianship. Those whose behaviour was attributed to deep-seated rebelliousness, rather than neglect or abuse, were believed to require more stringent measures. They were usually sent directly to gaol or to a reformatory. The 1887 legislation permitted the transfer of juvenile offenders from prisons to reformatories, and thus a small number of juveniles experienced both types of institution. By the 1880s, Victoria’s reformatory system comprised both state and private establishments. A government receiving house was situated at Royal Park, and a government reformatory at Ballarat catered for boys. After the latter was closed in 1892, boys were committed to various small farm reformatories run by religious organisations and private individuals. Non-Catholic girls were sent to either the Jika Girl’s Reformatory, which was situated in the extensive grounds of Pentridge Prison, or to a smaller institution at Yarra Park. In 1887, a wealthy philanthropist, Mrs Elizabeth Rowe, opened the Brookside Reformatory at Cape Clear. Within five years of its opening, it had replaced the Jika complex as the colony’s main reformatory for non-Catholic girls. Smaller religious institutions at Abbotsford, Oakleigh and Geelong received Catholic girls.

In George Guillaume’s opinion, committal to a reformatory, like committal to an industrial school, was intended to be an ‘educative’ rather than ‘penal’ process. Yet it is obvious that the reformatories had a more punitive aspect than either the industrial schools or the boarding-out system. The boys and girls who were forwarded to them

92 Report of the Secretary for the Department of Neglected Children and Reformatory Schools for 1887, p.8.
were judged to be more wayward than neglected children, and were treated accordingly. Rather than being bound by the less formal controls of the family environment, these children usually remained institutionalised until they were placed in service. Their treatment was regulated by the same ideology that informed penal practice. Classification, discipline, hard work, education, and moral and religious training were regarded as essential elements in the reclaiming of both reformatory children and prisoners. Rudimentary classification systems were employed in reformatories to minimise contact between the least and the most wayward children. Depraved youngsters, like hardened criminals, were believed to have a harmful effect upon the more innocent. Teachers provided the children with a basic education, whilst ministers, Sunday school teachers and benevolent visitors dealt with moral and religious matters. According to Guillaume, the Roman Catholic reformatory at Abbotsford was particularly advantaged for it had at its disposal, the 'gratuitous services of a considerable body of devoted ladies superintending all its operations and exercising constantly over the inmates an elevating influence.'

In reformatories as in prisons, discipline and hard work constituted more earthly elements of the reform process. Order was maintained through a system of rewards and punishments. Half-holidays, special outings, small monetary rewards, and privileges such as the right to attend weekly singing lessons, were granted to those

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93 Report of the Secretary of the Department of Industrial and Reformatory Schools for 1886, p.8.
who were well-behaved. On the other hand, children who failed or refused to conform could expect to be punished. In 1899, journalist Alice Henry condemned the disciplinary practices employed at Brookside Reformatory. Of the punishment book, she wrote:

It is a sickening record; none the less so because, possibly no excessive physical pain may have been inflicted. For absconding, a recognized offence, the penalty has been to have their hair cut off, boots and stockings taken away, and sometimes isolation as well. Canings appear so frequently that one would think their futility with such big girls would have suggested itself by now....For eating green apples one culprit received a dose of castor oil; one may charitably hope with some remedial end in view, but it is recorded as a punishment. One girl was isolated both Christmas Day and Boxing Day. Another entry is of three hours exercise (walking round the house in sight of all) tied up in a straight-jacket. About as sensible as the obsolete treadmill.

Henry concluded that, while the Brookside girls were not 'half starved', 'insufficiently clothed', 'cruelly overworked' nor 'beaten black and blue', they were subjected to a system that 'sav[ed] of the dark ages'. In her opinion, punishment based upon psychological repression, was not at all conducive to reforming the young.

The aim of the reformatories was ultimately to turn wayward juveniles into respectable, law-abiding and productive adults. For girls, the regulation of sexual conduct and training in domestic duties were accepted as the key elements of successful reclamation. Reformatory girls thus received moral and religious instruction and were routinely employed at tasks such as laundering and needlework. For boys, the acquisition of a work ethic and useful skills were considered paramount in order to

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95 The Argus, 2 August 1899, p.4.
prepare them for future life as a worker and breadwinner. At the Ballarat Reformatory, boys were kept busy at farmwork. Like other institutions, reformatories for both sexes utilised the free labour of inmates to help offset their high running costs.

Placing juveniles in service was another way of reducing costs, and was regarded by some as more beneficial than long-term institutionalisation. In Guillaume's view, the 'early placing out of lads for individual treatment in carefully chosen service homes [was] the most effectual guarantee of a permanent reform.' In 1887, he reported that the number of farmers and selectors who sought the services of reformatory boys was always far in excess of the number available. This was quite understandable. As Guillaume explained, young reformatory boys were cheaper to employ than older free youths, were easier to house, and were more amenable to discipline as a consequence of their previous close supervision. For both the farmers and the government, the service system represented a bargain. In 1888, Guillaume was able to quote no fewer than twenty six employers, all of whom commented favourably upon the character and conduct of the boys in their service. The following passages are typical: 'His two special traits are industry and truthfulness'; 'I trust him as one of my own sons'; 'he is very truthful and obedient'; 'Quiet and contented as ever. A good boy and very willing.'; 'I am sure he will make a useful member of society.' It is

96 Report of the Secretary of Industrial and Reformatory Schools for 1886, p.5.
97 ibid. p.7.
impossible to know whether Guillaume's ideal of reform was really achieved. Some boys may have reverted to their old habits upon leaving their employer's service; others may never have been wayward at all. Such testimonies nevertheless enabled the Secretary to argue that his department was achieving its aim of reclaiming delinquent boys.

Guillaume was unable to claim equal success in the reform of girls. Like older women, female children and adolescents were regarded as more depraved than their male counterparts. Girls were considered to be particularly rebellious; their habit of absconding from custody reinforced this view. In 1894, 16-year-old Emily Kiley escaped from a reformatory. She later horrified the Melbourne Bench by admitting that she had married a 'Chinaman' during her brief period of freedom. Guillaume explained such recalcitrance by arguing that the type of offences committed by young females rendered them resistant to the overtures of rescuers:

A larger amount of disappointments and discouragements can hardly fail to be experienced in efforts for the reclamation of girls than of boys. The boy's offences are commonly more on the surface; those of the girl tend to mar and destroy the best instincts of her nature, and so to make her averse to co-operate with those labouring for her reform.

Although Guillaume does not specify the character of the girl's offences, there can be little doubt that he was referring to their alleged sexual promiscuity, misconduct and general immorality. The Secretary complained that some girls who were sent to

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99 The Age, 19 January 1894, p.5.

100 Report of the Secretary of the Department of Industrial Schools and Reformatory Schools for 1886, p.8.
reformatories were of 'almost hopeless depravity'. In his opinion, females needed to be exposed to reformatory treatment 'at an earlier stage...before [they] had become well nigh irretrievably demoralized.'\textsuperscript{101} It is no accident that reformers stressed the need to rescue young girls before they reached twelve or thirteen years. Puberty, though never mentioned, was earmarked as the critical stage in a girl's development; a time of increased vulnerability due to her changing body and the supposed arousal of new and dangerous impulses. Selina Sutherland claimed that girls over twelve years of age, who were exposed to 'the demoralizing influences' of street life, 'contracted habits which render[ed] the quiet routine of a home life irksome'. She and other rescuers believed that reform was made harder by the passing of years. She thus mused that she had found 'more trouble and anxiety with a girl of fourteen than with ten girls who were taken under that age.'\textsuperscript{102}

The supposed immorality of the girls led to some disagreement over how they should be treated. In 1899, parliamentarian John Bird wrote a letter to The Argus, in which he defended the way girls were treated at Brookside Reformatory. Apart from performing domestic duties, the inmates at this institution tended farm animals and worked the land. They chopped wood, carted gravel and emptied nightpans, and according to local rumour, were also employed at dam sinking and fencing.\textsuperscript{103} Bird

\textsuperscript{101} ibid.


\textsuperscript{103} Report of the Secretary for the Department of Neglected Children and Reformatory Schools for 1888, pp.11-13.
considered this work fitting for girls of their background and character. 'Let us look the thing straight in the face', he implored:

What are these girls morally fit for with their characters against them? They would ruin the morals of any factory they entered (their language being of the vilest character). No lady would take them for service in town. There is only one class of work they are fit for - that is for rough farm work and for this they are fitted naturally.  

Doctor Norman Dowling, who was employed by the Department for Neglected Children and Reformatory Schools, concurred with Bird. He considered this type of employment wholly suitable, in view of the 'defective condition, physical, mental and moral' under which he believed the girls laboured. Alice Henry's view was more representative of mainstream thought and practice. She argued that the work done by girls at Brookside was 'rough and unsexing' and that it failed to prepare them for their future life. 'Making all due allowances', she wrote, 'wood-chopping etc is of no use in qualifying them to earn their living, still less is such experience needful in the training of a wife and mother'. The conventional view was that reformatories should mould the recalcitrant boy into a manly man and the wayward girl into a 'womanly woman'. The Argus spoke for the majority when it warned that any philanthropist who followed a course 'opposed to nature' would inevitably fail.

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104 The Argus, 5 August 1899, p.7.
105 Quoted in Daniels and Murnane, Uphill All the Way, p.42.
106 The Argus, 2 August 1899, p.4.
107 The Argus, 4 August 1899, p.4.
Refuges

According to Nicole Rafter, in late nineteenth century America, separate institutions for the incarceration of women were established and run with two related objects in mind - to regulate women's sexual behaviour and to acquaint them with domestic life.\textsuperscript{108} As already indicated, such motivations influenced the treatment of young females in Victoria. Throughout the colony, various refuges were established for the purpose of reclaiming girls and women. In Melbourne, the Elizabeth Fry Retreat, the Carlton and South Yarra Refuges, and the homes for women established by Dr John Singleton and the Salvation Army, regularly received female vagrants from the courts and gaols. According to their founders, these institutions provided a more wholesome environment than gaols and were better equipped to deal with the particular needs of fallen women and young girls who were already on a downward descent.

The refuges certainly provided a physical environment that was more pleasant than gaol. They were relatively small institutions and were intended to evoke, both materially and socially, the atmosphere of a home. The more informal and intimate nature of the refuges was emphasized. The Elizabeth Fry Retreat was described by one admirer as 'a comfortable, homely kind of place'.\textsuperscript{109} Another correspondent likened the Retreat to a home and suggested that the ferns on the verandah, and the open door through which the word 'welcome' was clearly visible, were an 'outdoor sign of all the


\textsuperscript{109} \textit{The Herald}, 13 December 1889, p.4.
warmth within'. \textsuperscript{110} John Singleton described his Home for Friendless and Fallen Women in similar terms:

it has always been constructed as a home in the best sense; the home, no doubt, of a large and often changing family, but all the same a home of peace and piety, of industry and thrift, of kindness and forbearance, and affection, where each feels for each, and the goodness of God is all over. \textsuperscript{111}

The refuge environment was no doubt preferable to prison, but it is likely that it was not as genial or as free as philanthropists such as Singleton would have us believe. The ultimate aim of the refuges was to restore women to respectability, or, as the Salvation Army put it, 'to use every effort to save them from drifting back into the vortex of misery, sin and shame'. \textsuperscript{112} Though the refuges appeared to adopt a more gentle approach to reform, their methods were informed by the same ideology that shaped penal and reformatory practices. Moral and spiritual guidance, discipline and work formed the basis of reform in all of these institutions. It is clear that refuges, like gaols and reformatories, performed a custodial function especially in regard to those women who had been forwarded to them by gaols and courts.

There was some difference in the degree of latitude which the various refuges gave to inmates. The Protestant refuge at Carlton demanded that new inmates pass through 'a probation of seven days "in solitary confinement", as a preliminary test of

\textsuperscript{110} ibid.
\textsuperscript{111} Singleton, \textit{Narrative}, p.249.
\textsuperscript{112} COS, \textit{Guide}, p.54.
their sincerity, after which they were required to remain in the institution for a year.\textsuperscript{113} In 1891, the Royal Commission investigating Charitable Institutions, noted this institution's hard-line, and suggested that the refuge be moved to the country where there would be 'no necessity to place women within prison-like walls.'\textsuperscript{114} The Carlton Refuge was not unusual in its demand that women remain institutionalised for a particular length of time. The South Yarra Home for Fallen Women required inmates to sign in for nine or twelve months, and during that time, to 'never go outside the door'.\textsuperscript{115} John Singleton broke this practice by specifying a maximum, rather than an exact, period of residence, and allowing residents a degree more freedom. He allowed women to remain in his home for only three months, although during this time, he claimed 'every reasonable means were used to train them to useful and industrious habits, so as to fit them for a respectable and happy future.'\textsuperscript{116}

The refuges were founded and run by religious orders and evangelical philanthropists. As a consequence, spiritual and moral training was a key feature of refuge practice. The South Yarra Home for Friendless and Fallen Women embraced Protestant evangelical principles. The provision of Christian counselling was listed as

\textsuperscript{113} Singleton, \textit{Narrative}, p.246.

\textsuperscript{114} Report of the Royal Commission on Charitable Institutions, \textit{VPP}, 1891, vol.6, p.xi.

\textsuperscript{115} Evidence of Mrs A.V. Wymond, Treasurer of the South Yarra Home for Fallen Women. Royal Commission into Charitable Institutions, Minutes of Evidence, p.1265.

\textsuperscript{116} COS, \textit{Guide}, p.57.
one of its primary objectives. Similarly Singleton's Home for Friendless and Fallen Women was conducted on unsectarian, but 'strictly religious', principles:

No distinction is made as to those admitted in creed or nationality and all are treated alike... All work together, under the excellent Christian work-mistress, some better, some worse, but all willingly. They can sing the same hymns, converse freely with each other, and show each other mutual and equal kindness, be they whom they may or come from where they will. Their life is thus literally the life of a home, often recalling the better times of their earlier days, and tending to lead them back to purity, and virtue, and God; and to everyone is given on leaving a copy of the New Testament and a Hymn-Book - mementoes of the truths they had learned.

Work also constituted an important part of refuge life. All of the refuges identified the acquisition of domestic skills as an essential ingredient of reform. The Elizabeth Fry Retreat went so far as to list the training of 'females...for useful service' as its sole objective. In part, this emphasis on work reflected an acknowledgement of the women's practical needs. It was recognised that women often suffered economic insecurity and that if they were successfully to re-establish themselves in society, they would need some marketable skills. On another level, however, work was intended to reclaim women 'from their evil courses, and render them useful members of society'. Regular labour was designed to discipline women, and to introduce them to habits of respectability and industry in keeping with their gender. At the Salvation Army's

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117 ibid, pp.65-6.
118 Singleton, Narrative, p.249-250.
120 ibid, p.50.
Rescued Sister's Home, the residents were 'generally occupied from morning to night', washing, ironing, cooking and sewing. According to the Army, such employment was 'good for them mentally and physically'. The work that was performed by the women was also considered vital to the economy of the refuges. Refuges received small government grants each year, but these were insufficient to cover running costs. Extra funds had to be raised through public appeals and the labour of inmates. Refuge inmates cut costs by servicing the laundry needs of their institutions, and doing additional work for private clients. The Salvation Army reported that the women in their home earned enough to pay for their maintenance. Similarly, the inmates of the Elizabeth Fry Retreat raised over £236 in their first year of laundry work. The smaller refuges in particular, relied upon this sort of income for their survival.

By doing laundry work and training women as domestics, the refuges also served the needs of the well-to-do men and women who supported and directed Melbourne philanthropy. The work requirement was a safeguard against abuse of the charity system, intended to ensure that money was spent only upon those who were willing to be reformed. It also eased the domestic burdens of the upper-classes by providing them with efficient laundry services and creating a pool of servants upon which they could draw. On returning from a trip abroad, Professor Morris, the

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121 The Age, 22 January 1891, p.6.
122 Ibid.
123 Roslyn Otzen, 'Charity and Evangelism', p.209. The final chapter of Otzen's thesis provides a detailed discussion of the founding and work of the Elizabeth Fry Retreat.
President of Melbourne's COS, approvingly noted that the COS laundry in New York, formed 'a class of expert laundresses whose names and addresses [could] be obtained at the laundry.' In Melbourne, the refuges performed a similar service, with women often being placed directly into service upon their release. The regulatory role of the refuges sometimes continued even after a woman had been placed in a position. The Matron of the South Yarra Home for Fallen Women, for example, received the women's wages and did their banking for them. In 1891, she had the bank-books of approximately twenty former residents in her possession. It is clear that the refuges performed an important regulatory function, though not as overtly as did prisons and reformatories.

Charitable Institutions

Elderly, ill and destitute people who were arrested as vagrants were sometimes forwarded to charitable institutions. The Melbourne Court of Petty Sessions usually committed such people to the Melbourne Benevolent Asylum and the Immigrants' Home. John Singleton's temporary night shelters and St Vincent de Paul's Home for Men accepted a few cases. The willingness and ability of these institutions to accept vagrants varied according to their ideology and resources, but the government took

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125 Evidence of Mrs A.V. Wymond, Royal Commission on Charitable Institutions, Minutes of Evidence, p.1265.
steps to force their cooperation. After 1890, Victoria's Treasurer reserved the right to transfer suitable individuals from gaols and lunatic asylums to those charitable institutions that received government grants. As a consequence, the immigrant's Home and the benevolent asylums were obliged to accept vagrants who needed long-term care and shelter.

The desirability of this practice was contentious. For the government, the practice of committing needy individuals to charitable institutions had obvious advantages. It reduced the strain on government establishments and ensured that the state received at least some benefit from the money it allocated each year to charity. Charitable institutions, on the other hand, could point to the strain which the arrangement placed upon them and the dangers which might result from the inadequate classification of inmates in the asylums. Some vagrants also had reservations about the practice. In 1891, the Royal Commissioners investigating charitable institutions were told that many poor people who were arrested as vagrants preferred to be gaolled rather than sent to a philanthropic establishment. Magistrate Joseph Panton partly blamed the physical squalor of some institutions for this situation. 'In one of the public institutions', he testified, 'I have heard of the men complain that the place is so lousy and filthy that they dread to go to it.' He also drew attention to the adverse effects which overly harsh management could have upon the happiness of the inmates. In his opinion, a strict disciplinarian had the capacity to turn a charitable

\[126\] Evidence of David G. Stobie, Secretary and Superintendent of the Melbourne Benevolent Asylum, ibid, p.352.
institution into a 'hell' rather than a 'home'.

The physical conditions at both the Immigrants' Home and the Melbourne Benevolent Asylum left much to be desired. The former establishment comprised two institutions; one on St Kilda Road which provided casual accommodation for the homeless, and a second at Royal Park, which catered for men in need of permanent care. The institution had originally been set up in the 1850s to assist newly arrived immigrants. By the 1880s, the home functioned as a casual shelter for Melbourne's needy, a permanent asylum for the poor, decrepit and disabled, a hospital for the chronic and incurably diseased, an emergency hospital for acute cases refused assistance by other institutions, and 'as an overflow pipe for all the other hospitals.'

This extension of the home's functions severely over-stretched its resources. The facilities at Royal Park were considered adequate for the care of the elderly and ill, and it was to this depot that the more fortunate male vagrants were sent. Females, some terminally ill vagrants, and those men who were not in need of permanent care, were committed to the St Kilda Depot. As early as the 1860s, John Singleton had found the conditions at that facility to be totally inadequate. On one visit, he had found about thirty women and children crammed into two small, badly-ventilated rooms of a wooden cottage. A large adjoining room housed between eighty and one hundred men.

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128 Evidence of D. Grant, M.D., Honorary Officer of the Melbourne Hospital. ibid. p.410.
had only a blanket for covering.\textsuperscript{129} When 'the Vagabond' entered the home in 1876, conditions were no better. He found the dormitory in which he was to sleep, dirty, decrepit and flea-infested: 'The smell is sickening: everything is foul - rugs, mattress, floor, and walls...'.\textsuperscript{130} In 1886, the Public Health Department warned that the Home, especially the women's section, was frequently so overcrowded that it posed a danger to health.\textsuperscript{131} In 1890, David Grant who had worked as a medical officer at the depot, drew attention to its disgusting state and alleged that the situation was exacerbated by the committee's refusal to turn any applicant away.\textsuperscript{132} The Royal Commission on Charitable Institutions took heed of Grant's claims and recommended that the St. Kilda depot be removed immediately. The Melbourne Benevolent Asylum, which was situated in Victoria Street, North Melbourne, employed rigorous selection procedures. It provided a permanent home for deserving individuals who were infirm and destitute, but the Royal Commission found this establishment too to be obsolete and overcrowded and called for its removal.\textsuperscript{133}

As well as coping with inadequate facilities, the residents of these institutions

\textsuperscript{129} Singleton, \textit{Narrative}, pp.318-9.

\textsuperscript{130} 'The Vagabond', 'A Day in the Immigrant's Home', \textit{The Argus}, 29 April 1876, p.4.

\textsuperscript{131} Secretary of Public Health Department to Chief Commissioner Chomley, 27 November 1886, VPRS 937: Unit 319.

\textsuperscript{132} Evidence of D. Grant. Royal Commission on Charitable Institutions, Minutes of Evidence, p.412-4.

\textsuperscript{133} First Progress Report of the Royal Commission into Charitable Institutions, pp.vi-vii.
had to endure a serious loss of personal freedom. At both the Melbourne Benevolent Asylum and the Immigrants' Home, the actions and movements of residents were restricted by numerous regulations. Inmates were not permitted to smoke, drink or to play cards or dice in the house, and were required to hand over any money or property they possessed to the supervisor. At the Melbourne Benevolent Asylum, a strict routine governed the day. Residents were expected to rise at six or seven o'clock in the morning, depending on the time of the year, and to have their lights out by eight o'clock at night. Meals were taken at stipulated times and those residents who were capable of working were expected to labour for five hours a day. Men were employed at gardening, picking oakum, stuffing mattresses, cobbling boots, tinkering pannikans and making coffins. Able-bodied women knitted socks and made shirts, dresses and underclothing. At the Immigrants' Home, the life was similarly ordered. During the day, men were employed at stone-breaking and oakum picking. All of the home's domestic needs, including the nursing of the sick, were attended to by inmates, who were also sent out to do odd-jobs for private individuals. Residents earned two shillings a day for private work; half of this was given to the home. In function and conditions, the Immigrants' Home was little better than a British workhouse.

134 'The Vagabond', 'Three Days in the Benevolent Asylum', The Argus, 3 June 1876, p.4.

135 ibid, 10 June 1876, p.4.

136 'The Vagabond', 'A Day in the Immigrants' Home', The Argus, 29 April 1876, p.4.

137 Evidence of James S. Greig, Secretary and Superintendent of the Immigrants' Home. Royal Commission on Charitable Institutions, Minutes of Evidence, p.374.
PICKING OAKUM IN THE MORNING AT THE IMMIGRANTS' HOME.

Illustration 5.5
(Illustrated Australasian News, 11 July 1868, p.5)
The experiences of the men and women in these charitable establishments paralleled the experiences of inmates in state institutions. As in prisons, reformatories, and refuges, the labour of residents was used to offset running costs and to introduce individuals to disciplined habits. Residents in charitable institutions were also exposed to the harping of middle-class reformers who sought to inform them of the dangers of vice and immorality. A weekly leave of absence provided the frail but able-bodied residents of the Benevolent Asylum with an opportunity to visit relatives and friends, if they had any. One resident told the Vagabond, that if it wasn't for that, the place would be 'just the same as a prison.'

Lunatic Asylums

A small proportion of the accused vagrants brought before the Melbourne Court of Petty Sessions were deemed to be insane and were forwarded to the Yarra Bend Lunatic Asylum. There were at least two reasons for the certification of accused vagrants. Firstly, the vagrancy law provided the police with a convenient mechanism for the arrest of people suspected of being mentally deranged. These provisions were easier to administer than the lunacy law and required less judgement on the part of the arresting policeman. Secondly, the asylums, like gaols and charitable institutions, were used to accommodate elderly, ill and destitute citizens. The finding of insanity was

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138 'The Vagabond', 'Three Days in the Benevolent Asylum', The Argus, 10 June 1876, p.4.
sometimes used to justify the incarceration of individuals who, though in need of care and shelter, were judged to be unfit for admission to benevolent asylums, hospitals and prisons.

Ideally, lunatic asylums were intended to provide an environment in which the insane could be restored to reason and health. In Britain, in the early nineteenth century, outrage over the neglect and abuse suffered by the mentally ill at the hands of private asylum owners, had led to the establishment of county lunatic asylums. Reformers who advocated the introduction of lunacy legislation, and the establishment of government institutions, argued that the insane deserved to be treated more humanely. They maintained that the slide into insanity was not an irreversible reversion to animalism and that exposure to a therapeutic environment and moral practices could lead to the return of reason. Successful reclamation, they argued, could only occur within an asylum specifically designed to cater to the needs and treatment of the insane. The building itself was to be 'a special apparatus for the cure of lunacy'. Ideally, the asylum was to be small and homelike. It was to be situated in pleasant natural surroundings so that patients could enjoy the benefits of fresh air and exercise and be diverted from the temptations and confusions which had contributed to their decline. Discipline and order were to be rigorously maintained. Patients were to be

139 Scull, Museums of Madness and 'A Convenient Place to get rid of Inconvenient People: the Victorian Lunatic Asylum', in King, Buildings and Society, pp.42-4.


141 The reformers pointed to the example set by York Retreat which had been established by Quaker Samuel Tuke in 1785. There physical force had been minimized in favour of 'a mild system of treatment' which appealed to the patient's rationality. For
classified and segregated according to the degree of their derangement, and activities, including moral and religious instruction, exercise and work, were intended to occupy and shape their day. The inmates of asylums, like those of gaols, were to be subjected to a new form of control; one which emphasized conformity and order, rather than physical punishment or restraint.\textsuperscript{142}

Of all Victorian asylums, Yarra Bend most closely fitted this ideal. This asylum was situated at the junction of Merri Creek and the Yarra River; a site which, according to poet and dramatist Richard 'Orion' Horne was perfect for an asylum: 'airy and sheltered, equally picturesque and commodious, well wooded, well watered, and removed from the turmoil and distractions of every-day life, and its complex avocations'.\textsuperscript{143} By the 1870s, the asylum resembled a village, with numerous small buildings scattered throughout its extensive grounds. When 'The Vagabond' visited the asylum in 1876, he described its atmosphere as 'soothing and home-like'.\textsuperscript{144} Nine years later, Richard Youl told the Zox Commission that Yarra Bend was often praised by international visitors as one of the best public institutions they had ever seen. In Youl's opinion, the asylum's greatest asset was its physical layout and the advantages it offered for classification. 'It is not a barrack, it is a village,' he told the commission.

\textsuperscript{142} Michel Foucault, \textit{Discipline and Punish} and \textit{Madness and Civilization}.

\textsuperscript{143} \textit{The Argus}, 14 March 1853, p.6.

\textsuperscript{144} \textit{The Argus}, 26 August 1876, p.9.
'and you can put the people so as to suit each other, and make them into little families. All those cottages are of immense advantage; and those are the lines on which a lunatic asylum should be constructed.'

In lunatic asylums, as in other custodial institutions, classification was regarded as the cornerstone of effective inmate management and treatment. On being forwarded by the courts to the asylum, accused vagrants were transformed into patients; their subsequent experiences were determined by a formal assessment of their mental and physical condition. The classification process began as soon as they entered the asylum. Like other new arrivals, individuals who had been arrested as vagrants, spent three days in the receiving ward. During this time, they were watched for dangerous, suicidal or epileptic tendencies. Those who were found to be violent or refractory remained in this section of the asylum. Single rooms and padded cells were used to confine those whose insanity made them prone to violent outbursts. Patients who were paralysed, or simply old and feeble, were taken straight to the asylum’s upper division. This was a long enclosure, embracing hospital buildings, wards for epileptics, imbeciles and other less troublesome patients, and cottages for those who were

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146 Evidence of Timothy Ryan, Deputy Medical Superintendent of the Yarra Bend Asylum. ibid. p.483.

The classification of asylum patients revolved around three main categories of mental derangement: mania, which was sometimes more specifically labelled as delusional insanity; dementia; and melancholia. Mania was the most common reason given for the committal of accused vagrants to lunatic asylums. This was defined by W. Beattie-Smith, one of Victoria's best known asylum administrators, as the 'expansion or elation of self, accompanied by changed habits and modes of life, by loss of power or self-control, by outward muscular excitement and usually insane delusions'. According to Beattie-Smith, there were scarcely any limits to the delusions an individual might have. People committed to asylums via the vagrancy law were, like the rest of the colony's asylum population, subject to two dominant forms of delusion. The most exotic resulted in its victims labouring under extraordinary delusions of grandeur and wealth. Benjamin Raynor, for example, believed that he was a member of the Royal family and claimed the Exhibition Buildings on their behalf. Frederick Barkwith, on the other hand, claimed a gold reef and £3,000 as his own. Delusions of grandeur were sometimes accompanied by feelings of persecution. Francis Harkness told asylum authorities that he had over £2,000 lodged in the bank of New South Wales, but also

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148 ibid.

149 W. Beattie-Smith, 'Insanity in its relations to the Practitioner, the Patient, and the State', Australasian Medical Gazette, vol.22, 1903, pp.47-9.

150 Entry for Benjamin Raynor, Yarra Bend Asylum, Male Casebook 1888-1891, no.20.

151 Entry for Frederick Barkwith, Yarra Bend Asylum, Male Casebook 1901-3, no.16.
claimed to have been drugged whilst in a hotel. More often, feelings of persecution lacked a brighter side. Many accused vagrants complained of hearing voices or of being followed. August Zurn believed that for the past four years he had been followed by 'unionists' and 'non-unionists'. Mary Younghusband believed that other patients were her husband in disguise, while Robert Hannah attributed the ulcer on his chest to the maliciousness of unidentified predators.

Manic patients were regarded as the most difficult to manage. They were often noisy or violent and their behaviour was readily blamed for disruptions to asylum discipline and routine. Annie Knight was identified as a nuisance by at least one attendant: 'Noisy and troublesome all day. Incites the other patients to mischievous acts. Is kept constantly in B Ward.' Joseph Savage, who was gripped by religious mania and who 'felt impelled to make known to everyone what they should do to be saved', was also regarded as a nuisance, but patients who were prone to violent fits were considered a more serious problem. They were believed likely to cause harm to themselves or others, and thus tended to be kept in close confinement. Epileptic Olaf Ohlsen, for example, was deemed 'to be unfit to be at large' due to his constant and

152 Entry for Francis Harkness, Yarra Bend Asylum, Male Casebook 1888-91, no.15.
153 Entry for August Zurn, Yarra Bend Asylum, Male Casebook 1893-6, no.16.
154 Entry for Mary Younghusband, Yarra Bend Asylum, Female Casebook 1890-94, no.166. Admission Warrant for Robert Hannah, Yarra Bend Asylum, 1888, no.4993 and entry in Male Casebook 1888-91, no.30.
155 Entry for Annie Knight, Yarra Bend Asylum, Female Casebook 1890-94, no.165.
156 Entry for Joseph Savage, Yarra Bend Asylum, Male Casebook 1893-6, no.80.
sometimes very violent fits. After his committal to Yarra Bend, his seizures continued unabated. Two months prior to his death, he was described as being in a 'dazed shaken condition with fits - falling and injuring himself.'

Accused vagrants whose communications were rambling or incoherent, or whose behaviour was characterised by forgetfulness or lack of orientation, were likely to be diagnosed as suffering from dementia. There were several different forms of dementia, the commonest of which was senility. Beattie-Smith believed that good nursing, routine management, a healthy diet and exercise were necessary for the elderly person whose behaviour took on the characteristics of a 'second childhood'. The asylum was accepted by Beattie-Smith as the final home of those elderly individuals who had no-one willing or able to care for them.

Sixty-one-year old Michael O'Connor, arrested for vagrancy in 1901, was one such person. He was found wandering in Fitzroy Gardens in a 'helpless state' and could not give any account of himself, nor details of any relatives. He was diagnosed as suffering from senile dementia and was committed to the Yarra Bend Asylum. He remained in the asylum system until his death in 1912.

Younger people who acted erratically were also sometimes categorised as demented. Thirty-six-year-old Thomas Roche, who took up residence in a boarding house after disembarking from his ship in 1888, was arrested for vagrancy when he was found

157 Entry for Olaf Ohlsen, Yarra Bend Asylum, Male Casebook 1898-1900, no.333.
158 Beattie-Smith, 'Insanity', p.50.
159 Admission Warrant for Michael O'Connor, Yarra Bend Asylum, 1901, vol. 1, no. 6765; Yarra Bend Asylum, Male Casebook 1901-3, no.44; Beechworth Asylum, Male Casebook 1901-8, no.47.
wandering aimlessly. On the night prior to his apprehension, Roche had opened the
doors of various houses, locked in and then fled. His behaviour, although peculiar, was
certainly not dangerous. As in the case of the senile, it was his inability to care for
himself which ultimately resulted in his committal to an asylum.160

The cause of Roche’s odd behaviour was not diagnosed, but in other cases,
doctors were eager to offer explanations. Genetic weakness was often cited as the
source of dementia. Twenty-year-old Mary O’Halloran, who was arrested for vagrancy
after wandering from her home, was deemed to have been ‘silly from birth’. She was
condemned by one examiner as ‘a case of imbecility, very stupid looking’.161 Another
form of dementia was attributed to general paralysis of the insane.162 When noting the
decline of syphilitic patients such as Thomas Prothero, asylum attendants noted both
their physical and mental deterioration: ‘Tremor of tongue [and] lips, pareses of
muscles of expression. considerable degree of ataxia of lower limbs. Mentally shows
an advanced degree of mental enfeeblement...’163

Excessive alcohol consumption was identified as the cause of a third form of

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160 Admission Warrant for Thomas Roche, Yarra Bend Asylum, 1888, no. 4950.
161 Admission warrant for Mary O’Halloran, Yarra Bend Asylum, 1895, no.4190; Female Casebook 1894-7, p.151.
163 Entry for Thomas Prothero, Yarra Bend Asylum, Male Casebook 1893-6, no.11.
dementia, delirium tremens. This dementia was characterised by depression, with hallucinations, suicidal tendencies and sometimes unconsciousness. Physical symptoms, such as restlessness, a lack of appetite, digestive disorders and sleeplessness, were also noted.\textsuperscript{164} George Weir, who was arrested for vagrancy in 1894 and again in 1895, was diagnosed as suffering from recurrent mania caused by heavy drinking. Weir claimed that he went on a ‘spree once a month regularly’. The brief intervals he spent in asylums forced him to ‘dry out’.\textsuperscript{165} Drunkenness in women, particularly when coupled with allegations of sexual promiscuity, provoked harsh comments. Agnes Blood was officially described as a ‘prostitute and notorious drunkard’ and a full account of her various convictions for drunkenness, vagrancy and obscene language accompanied her to the asylum.\textsuperscript{166} While drunkenness sometimes led to the temporary confinement of accused vagrants, on other occasions, the physical effects of chronic alcoholism resulted in long term confinement and sometimes death.

Other accused vagrants were diagnosed as suffering from melancholia; a condition which Beattie-Smith defined as ‘a painful self’, characterised by severe depression and suicidal tendencies.\textsuperscript{167} Delusions were sometimes said to accompany these feelings. Terminally ill William Maltby was described as suicidal and

\textsuperscript{164} Beattie-Smith, ‘Insanity’, p.51.
\textsuperscript{165} Entry for George Weir, Yarra Bend Asylum, Male Casebook 1893-6, no.208.
\textsuperscript{166} Admission warrant for Agnes Blood, Yarra Bend Asylum, 1895, no.4142.
\textsuperscript{167} Beattie-Smith, ‘Insanity’, p.47.
hypochondriacal, and believed that he was being ‘mistreated by everyone’.\textsuperscript{166} Annie Mulligan was similarly diagnosed as melancholic, but was probably no more depressed than could be expected in a woman suffering from advanced breast and bowel cancer.\textsuperscript{169} Another accused vagrant and melancholic, Charles Boulter, was so depressed that he refused to take food. He only relented after being ‘threatened with the stomach pump’.\textsuperscript{170} Lim Tuck Nin went one step further, hanging himself thirteen days after his admission to Yarra Bend.\textsuperscript{171}

For most inmates, asylum life was less dramatic. Their days were shaped by a routine intended to reintroduce them to a sane and respectable existence. Inmates were encouraged to take part in social and sporting activities. Once a fortnight, the recreation hall at Yarra Bend was transformed into a ballroom with male and female patients, attendants and their friends enthusiastically dancing jigs, polkas and quadrilles.\textsuperscript{172} Amateur theatrical performances, concerts and wagonette rides also provided welcome breaks to the monotony of asylum life. Football, cricket, and indoor games such as dominoes, cards and chess, provided daily amusement, while a ready

\textsuperscript{166} Admission warrant for William Maltby, Yarra Bend Asylum, 1901, vol.1, no.6757; Male Casebook, 1901-03, no.24.

\textsuperscript{169} Entry for Annie Mulligan, Yarra Bend Asylum, Female Casebook 1887-1890, no.152.

\textsuperscript{170} Entry on Charles Boulter, Yarra Bend Asylum, Male Casebook 1888-91, no.82.

\textsuperscript{171} Entry for Lim Nin Tuck, Yarra Bend Asylum, Male Casebook 1896-8, no.324.

\textsuperscript{172} ‘The Vagabond’, ‘A Month in Kew Asylum and Yarra Bend’, \textit{The Argus}, 26 August 1876, p.9.
supply of books was always on hand.¹⁷³ Such activities were fundamental elements of a therapeutic approach that emphasized the need to distract patients from the preoccupations that disturbed their minds. Social activities were intended to provide individuals with an opportunity to relate harmoniously with one another. As in other institutions, the adoption of an acceptable code of morality was encouraged through religious instruction.

A sense of order and self-discipline was to be gained through hard work and adherence to a daily routine. As in other institutions, a high priority was placed upon the individual's ability and willingness to labour. According to Thomas Dick, the Inspector of Lunatic Asylums between 1883 and 1894, 'the importance of occupation as an element in the treatment of insanity [could] scarcely be over-estimated.'¹⁷⁴ Richard Youl likewise believed that the curative value of an asylum depended upon the 'variety and quantity of employment' it offered.¹⁷⁵ The work that patients performed depended upon a number of factors, including their gender, illness, physical condition, the availability of attendants and the type of work available. At Yarra Bend, 55 acres of farm land was set aside for the cultivation of root crops and potatoes.¹⁷⁶ The sturdiest


¹⁷⁴ ibid, p.16.


¹⁷⁶ 'The Vagabond', 'A Month in Kew Asylum and Yarra Bend', The Argus, 26 August 1876, p.9.
and least skilled men tended to farm work, while others were employed at carpentry, black-smithing and matress-making. Women attended to the traditional female tasks of laundering and sewing. In 1887, Dick was able to report that all of the clothing worn by the colony’s lunatics, with the exception of the boots, socks, stockings and hats, were produced within the asylums. This achievement was largely due to the efforts of the female patients who manufactured and repaired a vast quantity of items each year. Patients also helped to offset the system's running costs by assisting in the asylum's kitchens, stores and wards.

As well as contributing to the economy of the institution, work habits were believed to reflect a patient's overall progress or regression. Annie A'Hearne's readiness to work was accepted as evidence of her improvement: 'Patients bodily health much better. She now makes herself useful...as she is able. There is also some mental improvement visible.' Annie Benvenuti, on the other hand, clearly failed to adhere to the work ethic. It was noted with disapproval that she was silent and morose and that she was untidy in her dress. Although she later engaged herself in a little occasional labour, she was condemned as a 'non-worker' when she was eventually transferred to the Ararat Asylum. In 1902, the condition of Mary O'Halloran, who had

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178 Entry for Annie A'Hearne, Yarra Bend Asylum, Female Casebook, 1887-1890, no.176.
179 Entry for Annie Benvenuti, Yarra Bend Asylum, Female Casebook, 1894-1897, no.9: Ararat Asylum, Female Casebook, 1892-1900, no.223.
been transferred from Yarra Bend to Beechworth, was summed up in just three words: 'clean - sexual - unemployed'. Both Benvenuti and O'Halloran remained in the asylum system until their death.

Approximately three-quarters of the accused vagrants committed to asylums by the City Court, died whilst still institutionalised. Most passed away within two and a half years of admission, suggesting that poor physical health, rather than mental instability, was the prime reason for their committal. Syphilis, pneumonia, cancer, tuberculosis and diseases of the heart and other organs, were most often cited as the cause of death. In 1885, Dr Richard Youl, the Chairman of the Metropolitan Board of Visitors to Lunatic Asylums described the slow and painful death that some inmates suffered:

If you will go and spend twenty-four hours in the Yarra Bend hospital, and see those patients during the termination of their life, that is extending over a year or two, you can easily understand why the managers of benevolent asylums object to have lunatics. They are dirty, paralysed, and helpless. They soil their beds and their clothes, do what you will with them. Those persons with paralysis get a sort of chronic diarrhoea, and are offensive in every way...Their tenacity for life is marvellous. You see them week after week, at Yarra Bend, apparently in a dying state, and yet they go for years sometimes.\textsuperscript{181}

The plight of accused vagrants within asylums was merely a symptom of society's neglect. As early as 1870, Dr Edward Paley, Inspector of Lunatic Asylums,\footnote{Beechworth Asylum, Female Casebook 1892-1904, no.168.} \footnote{Evidence of Dr Richard Youl. Report of the Royal Commission on Asylums for the Insane and Inebriate, Minutes of Evidence, p.381.}

\textsuperscript{180} Beechworth Asylum, Female Casebook 1892-1904, no.168.
had described Victorian asylums as a 'refuge for all who [could] be declared lunatics, idiots, or of feeble or unsound mind in any shade or degree'. In particular, he condemned the accumulation of incurable but harmless patients, who were marked by mental deficiency rather than mental aberration; the mind being partially extinguished rather than insane... Amongst them are to be found idiotic children; semi-idiotic adults; the paralysed or infirm, in whom weakness of mind has followed weakness of body; old men or women in their dotage; confirmed epileptics who are not violent; vagrants worn out in body and mind; and the simply imbecile who have not sufficient sense to look after themselves and earn their own livelihood.\textsuperscript{182}

Sixteen years later, the findings of the Commission, appointed to inquire into lunatic and inebriate asylums, indicated that little had changed. The Commission focused upon the poor physical state of the asylums and pointed to inadequacies in their management.\textsuperscript{183} In its final report, published in 1886, the Commission drew attention to the gross overcrowding prevalent in the colony's asylums and suggested that this severely hindered proper classification and treatment: 'When a patient is received at Kew or Yarra Bend, the asylum is found to be crowded with incurable cases


\textsuperscript{183} In 1885, two member of the Zox Commission visited Yarra Bend. They subsequently compiled a list of eleven complaints. Amongst other things, the commissioners complained that the bedding used by some patients was stained by excrement, that the men's closets were 'dirty and offensive' and that the women's closets were 'open and insufficiently screened'. They criticized the lack of patient classification and alleged that they had seen a harmless patient confined in the refractory ward. Report of the Royal Commission on Asylums for the Insane and Inebriate, Minutes of Evidence, pp.481-8.
- noisy, excitable, dirty lunatics as well as idiots, dotards, and imbeciles.\textsuperscript{184} In the Commission's view little had changed since another government inquiry, a decade earlier, had found that the public regarded the colony's lunatic asylums as a "rubbish bin" for the reception of cast-off and useless humanity.\textsuperscript{185} This verdict could be applied more broadly to the other institutions. For the authorities, and the community in general, lunatic and benevolent asylums, gaols, reformatories and refuges were all convenient places to get rid of inconvenient people.

\textsuperscript{184} Report of the Royal Commission on Asylums for the Insane and Inebriate, p.xxxviii.

\textsuperscript{185} Report from the Board Appointed to Inquire into Matters relating to the Kew Lunatic Asylum, 1876, quoted in \textit{ibid}, p.lxxxvi.
CHAPTER 6

A SYSTEM IN CRISIS

Given the way in which the Victorian vagrancy legislation was used by the authorities, one might expect that the occurrence of a serious economic depression would lead to a great increase in the number of people arrested and prosecuted as vagrants. During the 1890s depression, however, there was a clear decline in vagrancy arrests in central Melbourne, and in Victoria as a whole. This overall decline in the use of the vagrancy provisions was accompanied by other significant changes. During the depression years, a higher proportion of vagrancy cases heard by the Melbourne Court of Petty Sessions, involved female defendants. By the mid-1890s, the court had stopped committing vagrants to short periods of imprisonment. Fewer vagrants were imprisoned overall, but those who were gaoled, faced harsher penalties. Understandably, this shift coincided with a substantial rise in the number of accused vagrants discharged by the court.

Numerous inter-related factors contributed to the emergence of these trends. The introduction of new legislation dealing with criminal offences, the transformation of the so-called 'criminal class' into a professional 'underworld', and the changing nature
of the city, all contributed to the gradual decline in the use of the vagrancy provisions as a means of maintaining law and order. Most important, however, were changes in the socio-economic context. Widespread poverty and unemployment enlarged the pool of people susceptible to arrest, and led to an acknowledgement of the arbitrariness of the process by which individuals were designated as vagrants. It became clear to all that aged, ill and poor people, as well as the criminal and immoral, were in danger of being arrested under the vagrancy provisions. This was coupled with an increasing realisation that, even when applied to 'true vagrants', legal detention was ineffective and costly. As a consequence of growing public concern, police powers and practices, together with the actions of the lower courts, were subjected to increased scrutiny. A series of appeal decisions handed down by the Supreme Court between 1898 and 1906, sought to preserve the sanctity of the law by effectively limiting police use of the vagrancy provisions. These decisions sounded the death-knell for the existing vagrancy law.

The Demise of the Vagrancy Law 1880-1907

Labour market theories argue that a correlation exists between unemployment levels and the extent and form of state regulation. They suggest that, during times of high unemployment, the existing social order is protected and maintained through increased supervision and regulation of the population, especially surplus labour. Rusche and Kirchheimer's 1939 work, *Punishment and Social Structure*, explored the
relationship between legal punishment and economic development in Europe and the USA, and argued that the use of particular forms of sanction during different historical periods has been determined by the state of the labour market.¹ Studies by Richard Quinney and Ivan Jankovic have focused more directly upon imprisonment as a means of social control. They have argued that, during times of high unemployment, imprisonment rates have increased, as the state has sought to curb the threat that the dispossessed have been perceived as posing to social order.² A materialist approach to social control has also been applied to the study of other forms of regulation and incarceration. Piven and Cloward, for example, have argued that the provision of social welfare has been inextricably linked to the state of the labour market.³ Similarly, Brenner has asserted that a positive correlation exists between unemployment levels and rates of admission to mental hospitals.⁴

Historical analyses of vagrancy have, in varying degrees, been influenced by labour market theories. This is hardly surprising given that vagrancy has traditionally been defined as the crime of non-work. Ribton-Turner laid the basis for a materialist explanation of vagrancy, when he linked the evolution of the vagrancy laws to economic

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³ Piven & Cloward, *Regulating the Poor*.

circumstances and the state of the labour market.\(^5\) William Chambliss has pointed more specifically to the connection between socio-economic circumstances and the increasing criminalisation of vagrancy.\(^6\) Other historians have argued that vagrancy laws have been most vigorously enforced during times of economic depression. Jeffrey Adler, in his study of vagrancy in St. Louis, argues that, during the less prosperous years of the late 1850s, prior to the outbreak of the civil war, that city’s vagrancy law was legislatively broadened and more stringently enforced.\(^7\) In a similar vein, Robert Haldane asserts that, with the advent of depression in Victoria during the 1890’s, ‘policing the unemployed became a “growth industry” and poverty a “crime”. Arrests for vagrancy ranked second in number only to drunkenness.’\(^8\)

While labour market theories raise important questions about the relationship between economic circumstances and state regulation, Stephen Garton warns of the danger of material reductionism. He states that these theories have paid inadequate attention to specific historical circumstances, and have failed to address the important issues of gender, intra-class conflict and structural shifts in the form of regulation used by the state.\(^9\) An examination of the use of the vagrancy laws in Melbourne between

\(^{5}\) Ribton-Turner, *Vagrants and Vagrancy*.

\(^{6}\) Chambliss, ‘Sociological Analysis’.

\(^{7}\) J. Adler, ‘Vagging the Demons and Scoundrels’, pp.20-1.

\(^{8}\) Haldane, *The People’s Force*, p.118.

1880 and 1907, provides support for Garton's arguments. Economic factors must be taken into account when assessing changes in the use of the vagrancy law, but labour market theory, as such, cannot explain why, in Melbourne during the late nineteenth century, economic depression and rising unemployment were accompanied by a decline, rather than an increase, in vagrancy arrests and convictions. A less rigid, more complex approach, is required to explain this phenomenon.

As argued in Chapter 3, the 1890s were characterised by an extraordinary decline in the number of vagrancy cases heard by the Melbourne Court of Petty Sessions. The number of vagrancy cases exceeded 1000 in 1889/1890, just prior to the onset of the depression, but then declined as economic conditions deteriorated. In 1892/93, the worst year of the depression, only 800 vagrancy cases were heard by the court. By 1900, the economy was recovering from the depression, but the decline in the use of the vagrancy provisions continued with fewer than 500 vagrancy cases being heard annually. This decline is not merely a statistical artifact. Though Melbourne's inner city population fell dramatically with the onset of economic depression, from 76,536 people in 1889 to 65,541 people in 1894, this change does not explain the declining number of vagrancy cases.\textsuperscript{10} Figure 6.1 which shows the ratio of vagrancy cases per 10,000 of population clearly reveals that, by 1900, people were far less likely to stand trial for vagrancy. There were 121.59 vagrancy trials for every 10,000 inner city residents in the year 1888/89. This ratio rose to 137.43 trials in

1889/90, but fell to 123.66 in 1892-93 when the depression was most severe. By May 1900, there were only 62.96 trials per 10,000.11

Figure 6.1: Ratio of Vagrancy Cases heard by the MCPS per 10,000 Population, 1888-1901

This decline was part of a broader trend which affected the whole of the colony. In Victoria, apprehensions for vagrancy were most common during the heady days of the late 1880s. In each of the years between 1880 and 1886, the number of vagrancy arrests per 10,000 of population fluctuated between 22 and 25. The ratio was slightly

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11 The population statistics for inner Melbourne have been derived from the Statistical Registers which appear in the Victorian Parliamentary Papers. The population for each of the survey periods represents the average population for the relevant years. For example, the population for the period 1886/69 is the average of the populations for the years 1886 and 1889.
higher in the following two years, and in 1889, it reached a peak of 28.3 apprehensions. Arrests gradually grew less frequent after 1889. In 1894, the number of vagrancy apprehensions per 10,000 head of population fell below 20. By 1907, the ratio had fallen to a mere 5.9. Thus between 1889 and 1907, the actual number of vagrancy arrests performed by the Victorian police fell by over 75%.

During the 1890s, other notable changes occurred in the application of the vagrancy provisions. After 1893, the police placed less reliance upon the charge of having insufficient or no visible lawful means of support. In 1892/93, 92% of all
vagrancy cases heard by the Melbourne Court of Petty Sessions involved this charge. By the turn of the century, they accounted for only around 70% of vagrancy cases. Alternative vagrancy charges accounted for an increased proportion of vagrancy trials, but this did not reflect a marked increase in their number.

It was also noted in Chapter 3 that, during the 1890s, the proportion of vagrancy cases involving male and female defendants altered. Between 1888/89 and 1891/92, the proportion of cases involving women and girls rose dramatically from approximately 36 to 59%. An even more dramatic increase was recorded for cases involving the specific charge of having insufficient or no visible lawful means of support. Female defendants featured in approximately 42% of these cases in 1888/89; by 1891/92, they featured in over 62% of them. In most of the surveyed years that followed, male defendants were involved in a higher proportion of vagrancy cases than female defendants. Nevertheless, women and girls continued to appear as defendants in more than 40% of cases involving the charge of having insufficient or no visible lawful means of support. In most years, they also featured in more than 35% of all vagrancy cases heard.

Important changes in the conviction and sentencing patterns of the Melbourne Court of Petty Sessions in relation to vagrancy cases were outlined in Chapter 4. During the 1890s, there was an overall increase in the proportion of accused vagrants discharged by the court. In the ten years between 1888/89 and 1698/99, the proportion of vagrancy cases which ended in the acquittal and discharge of the accused rose by
almost 25%. In addition to this, an increasing proportion of cases ended with the police withdrawing the charges they had laid against the defendant. This increase was even more pronounced in cases of having insufficient or no visible lawful means of support. The proportion of these cases ending in the discharge of the defendant increased by approximately 35% between 1888/89 and 1899/1900.

In Chapter 4, attention was also drawn to the fact that, as the 1890s progressed, the Melbourne Court of Petty Sessions made decreasing use of imprisonment as a sentence for convicted vagrants. In 1892/93, the worst year of the depression, almost two-thirds of all convicted vagrants were gaol. By 1899/1900, this proportion had almost halved, with only slightly over one-third of vagrants being imprisoned. These changes in the rates of discharge and imprisonment were more pronounced for female defendants than for their male counterparts. This was partly due to the other changes in sentencing practices. While fewer vagrants were forwarded to prison by the end of the century, those who were, could expect to be incarcerated for a longer period. Short sentences of a few hours or days came to be used far more sparingly in sentencing convicted vagrants, and were effectively eliminated as a sentence for individuals found guilty of having insufficient or no visible lawful means of support. This particularly affected women who had been arrested for engaging in prostitution. With the abandonment of these sorts of sentences, such women tended to be either discharged or imprisoned for a longer period. Alternative forms of incarceration, including committal to lunatic asylums, refuges, reformatories and charitable institutions, were employed to varying degrees throughout the surveyed period and this also affected rates of
discharge and imprisonment.

These findings directly challenge Robert Haldane's claim that, during the 1890s depression, the vagrancy law was applied with unprecedented harshness. Claims such as his are coloured by economic determinism and can lead to a dangerous underestimation of the enduring importance of vagrancy laws. Haldane fails to recognise that the Victorian vagrancy law was, at all times, acknowledged and prized by statute makers and law enforcers as an irreplaceable tool in the struggle to maintain law and order. The vagrancy law was widely used throughout the prosperous 1880s, and, contrary to the expectations of labour market theorists, fell into increasing disuse during the depressed 1890s.

Explaining the Demise of the Vagrancy Law

When vagrancy arrests peaked in 1889/90, most Victorians were yet to feel the effects of the downturn in the economy. According to Boehm, the first stage of the depression lasted from the collapse of the land boom in October 1888 until mid-1891. Speculators and financial institutions were hard hit by the sudden demise of the speculative market and the withdrawal of foreign capital, yet, for most people, the depression had not yet arrived. As Boehm explains, 'there was not a quick and headlong dive into depression. Full exposure of the weaknesses of the excessive
speculation and unsound activities was delayed'.

The depression's gradual development is illustrated by unemployment levels. From 1890, the number of unemployed men and women began to rise. The census of 5 April 1891 found that 5.25% of Victoria's male workers and 2.91% of its female workers were without employment. The level of unemployment soared in the following two years. According to Macarthy, the unemployment rate increased from 17.6% in 1892 to 28.3% in 1893, and persisted at a high level long after this peak had been reached. He has estimated that in 1894 and 1895, unemployment affected 24.9 and 21.7% of the workforce respectively, and that it was not until 1896, that it fell to near pre-depression levels. It is unlikely, however, that Macarthy's estimates, which are derived from a combination of census data, general trade union statistics and

12 Boehm dates the second phase from mid-1891 into 1892 and argues that this period was characterised by the tightening of the money market and the restriction of credit in Australia. He suggests that the third phase, which covered 1892 and 1893, involved the collapse of companies and banks involved in land speculation. Boehm, Prosperity and Depression, pp.255-7.

13 Davison, Marvellous Melbourne, p.211.

14 Macarthy, 'Wages in Australia', p.69. Sinclair suggests that Victoria's economic recovery involved four different phases. He dates the first phase of slow recovery from early in 1894 to March 1895. From that date till the end of 1896, he categorizes as the second phase of recovery which was characterised by an upturn in the economy but a continuation of the agricultural depression. He suggests that the third phase of recovery lasted from the beginning of 1897 to the spring of 1898, a period when drought significantly affected the dairying and pastoral industries. He dates the fourth and most prosperous period of recovery from the lifting of this drought in the third quarter of 1898 to the end of 1899. W.A. Sinclair, Economic Recovery in Victoria, 1894-1899, Australian National University, Social Science Monograph no.8, Canberra, 1956, pp.18-38.
engineering unemployment figures, reflect the real magnitude of unemployment. Scates criticises Macarthy’s estimates for failing to take into account the level of underemployment and the varying extent of unemployment in different industries. Given these failings, it is likely that Macarthy’s findings, like official statistics, severely underestimate the extent of unemployment.

The depression did not distribute its burden equally. Its effect upon any individual was determined largely by that person’s class, gender, age and health. According to Davison, the first to be retrenched were often old men past retiring age and young women, who worked to supplement their husband’s wage. Those who were old or in poor health were amongst the worst affected, for they had little hope of competing for work with those who were young and fit. Those who possessed a skill often fared better than those who did not. Builders, engineers and mechanics were among the first victims of the depression, but they often had a few pounds saved or some assets that could be sold. Skilled tradesmen also had the option of searching for work outside their regular field of employment. To some extent, the decline of the artisan and his family thus tended to be more gradual and cushioned. Psychologically, unskilled labourers were perhaps better prepared than those with skills to cope with unemployment, for, even during the boom years, their work prospects had been

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15 Macarthy, 'Wages', p.66.


17 Davison, Marvellous Melbourne, p.211.
Nevertheless, the depression brought unprecedented misery for unskilled labourers and their dependents. With few resources to fall back upon, these men and women quickly descended into extreme poverty. In June 1892, The Age reported on the misery which existed in the working-class suburbs close to the centre of Melbourne. According to the paper, 'privation, want and semi-starvation' stalked the unemployed and their families. It claimed that hundreds of homes had been stripped bare, as men and women had gradually sold all of their possessions to buy food. Unable to pay rent, others were forced onto the streets. In desperation, the unemployed spent their days searching for work. Some took short-term relief work or turned to the charities for assistance - a venture which often met with little success. A large number of men, both married and unmarried, took to the road, leaving women and children behind to struggle as best they could.

One of the most interesting features of the vagrancy figures from the early depression years, is the prevalence of cases involving women. In central Melbourne, between 1890 and 1893, more women than men were arrested for vagrancy. Such a situation does not fit comfortably with the picture of life found in existing histories of the period. The women who lived during the 1890s and 1930s depressions have often

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19 The Age, 22 June 1892, p.5.

20 Scates, 'A Struggle for Survival', Historical Studies, pp.50-3.
been entirely forgotten, or else characterised as innocent and long suffering home-bodies. Descriptions of their struggle to balance the household budget and to maintain their family's morale have overshadowed, and often replaced, any consideration of their experiences outside of home and family. Men's experiences of the depression, on the other hand, have been directly related to the public sphere. It therefore follows, almost without qualification, that men, rather than women, have been portrayed as the primary victims of the law.

There are obvious reasons why women featured in so many of the vagrancy cases heard during this period. Melbourne's changing population is one factor which must be considered. The early 1890s was marked by a sudden decrease in the city's population. The number of inhabitants in central Melbourne fell by over 10,000 people between 1889 and 1894; a reduction of more than 14% of the total population. This initial decline was caused primarily by the departure of tourists and visitors who had come to Melbourne to share in the celebrations of 1888. It was not long, however, before their ranks were joined by those who knew no other home but Melbourne. As the gloom of the depression overtook the city, single and married men took to the road in search of work or, in some cases, simply survival. In February 1893, The


22 A notable example of this is provided by David Potts, 'A Positive Culture of Poverty Represented in Memories of the 1930s Depression', Journal of Australian Studies, no.26, May 1990, pp.3-14. For a useful comparative account of the varied effects of the 1930s depression upon women see Judy Mackinolty, 'Woman's Place....', in The Wasted Years: Australia's Great Depression, ed Judy Mackinolty, George Allen & Unwin, Sydney, 1981, pp.94-110.
Argus complained of a 'great exodus' from Victoria: 'mechanics, labourers and men in higher grades are fleeing in thousands...to seek elsewhere for what they fail to find here - a livelihood.' The departure of the unemployed from the city was also hastened by the deliberate policy of dispersal pursued by successive governments. Many unemployed urban workers were provided with railway passes to the country, where they were left to fend for themselves. Others were sent to the more regulated environment of a labour colony such as Leongatha, or to village settlements like the one at Kooweerup. The behaviour of the unemployed was also regulated by the 'move-on' legislation, which required an individual to leave a particular place if asked to do so by a member of the police force.

The departure of unemployed men from the city had serious consequences for the administration of the vagrancy law. Its most immediate effect was to decrease the number of men liable to be arrested as vagrants. Many of those who had neither work nor resources left the city, and thereby escaped the surveillance of the urban police. But the decrease in the proportion of vagrancy cases involving men, and the accompanying increase in the proportion of cases involving women, cannot simply be attributed to the relative constancy of the female population. The rise in the proportion of cases involving women reflected an overall increase in the actual number of cases brought against them, and must be linked to broader economic and social factors.

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23 The Argus, 4 February 1893, p.7.

24 B. Scates, 'A Struggle for Survival', Historical Studies, p.61.

25 This regulation was also used during the 1930s depression.
Employment for women which, even during the best times, had been poorly paid and often difficult to come by, declined with the onset of the depression. Though female dominated areas of employment, including the boot, clothing and food industries were less hard hit than male dominated areas, many women and girls were forced to accept cuts in their hours and pay. At T.B. Guest's cake and biscuit factory, which employed a predominantly female staff, wages for new recruits were cut; workers were fined, and sometimes sacked, for inefficiency; and the working week for most of the staff was reduced to four days. Some women, especially those who were unable to leave their homes, relied on outwork, but this was even more poorly paid. As the depression took hold, there were also fewer opportunities available in domestic service. Middle-class families gradually tightened their budgets, and as a consequence,

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26 It was assumed that women, whether they were working or not, were dependant on a man for their survival. As a consequence, women workers were paid substantially less than their male counterparts. In Melbourne in 1877, for example, journeywomen received 35s per week, while journeymen were paid between 40 and 60s. The establishment of wages boards in 1896 set minimum standards of pay for women in various industries, but these continued to be far below male rates. In the clothing trade, for instance, the minimum rates were set a 7s 6d per day for men and 3s 4d per day for women. The status of women as dependants deserving of lesser pay was further institutionalized by the 1907 Harvester Judgement. See Edna Ryan and Anne Conlon, Gentle Invaders: Australian Women at Work, 1788-1974, Nelson, Sydney, 1975, pp.32-41; Stuart Macintyre, Winners and Losers: The Pursuit of Social Justice in Australia, Allen & Unwin, Sydney, 1985, pp.40-56.


28 The Chairman of the Anti-Sweating League claimed in 1895, that an increase in the use of outworkers during the depression had resulted in a reduction in the number of factories in Victoria from 2,548 in 1891 to 2,243 in 2,243. Ryan and Conlon, Gentle Invaders, p.38.
laundresses, charwomen and servants were made redundant. 29

Many families nevertheless depended upon women's work for their survival. With unemployment rife and the departure of men from the city, women's wages, which had once only supplemented a man's earnings, often became a family's sole income. In some cases, children and adolescents provided for their mothers, fathers and siblings. In 1894, Constable Canty reported that most, if not all of the young girls who sold flowers around the city's theatres, coffee palaces and railway stations, were 'the principle support of their parents and families.' The girls were aged between 12 and 16 years, and according to Canty, their fathers were either in the country looking for work, had deserted their wives, or were crippled or dead. 30 Constable Wardley noted that some of the children who sold papers in the streets were also materially assisting their parents. 31 Families struggled to survive, even when both women and children were working. By the mid-1890s, 'female and juvenile wages had fallen to such low levels that three or four members of a family had to work to compensate for the loss of an unskilled man's income.' 32 Women with young children were often in an even worse position. In 1894, for example, Nora Loury and her three month old baby were

29 Scates, 'A Struggle for Survival', Historical Studies, p.46.
31 Report of Constable Wardley, 18 October 1894. ibid.
Among the Workless—Feeding the Hungry.

Illustration 6.1
(Illustrated Australasian News, 1 July 1892, p.1)
discovered 'absolutely destitute without food or shelter'. She had been deserted by her husband and because of ill-health had been unable to obtain work. Each fortnight she was given three shillings worth of groceries by the Melbourne Benevolent Society, but this was insufficient for herself and her baby. Her other two children had already been placed in the care of the Department of Neglected Children.\textsuperscript{33}

Some women tried to offset economic hardship by adopting new methods of acquiring food and money. In particular, women, children resorted to scavenging and begging, occupations which rendered them susceptible to arrest as vagrants. In October 1893, Sergeant Flanigan visited the home of Sir William Clarke. There he found forty women and children, each with a bag, wanting food.\textsuperscript{34} While Lady Clarke did not welcome the police presence, and decided to distribute food regularly in future, many others demanded the arrest or at least removal, of beggars. The proprietors of city businesses were especially hostile to their presence. In 1895, the manager of the Grand Coffee Palace demanded that the police deal with the beggars and newspaper boys who congregated around the door of his business premises. 'If the police cannot cope with this matter', he concluded, 'will you kindly let me know the best course to pursue for I am quite determined to shift them.'\textsuperscript{35} Ellen Adams came to the attention of the police via the COS which complained that she had been 'begging on the plea

\textsuperscript{33} Report of Constable McGlynn, 8 February 1894, VPRS 807: Unit 2.

\textsuperscript{34} Report of Sergeant Flanigan, 20 October 1893, VPRS 937: Unit 340.

\textsuperscript{35} Manager of the Grand Coffee Palace to the Chief Commissioner of Police, 13 February 1895, VPRS 807: Unit 16.
of want of work and consequently distress.' The Society accused Adams of being a drunkard and of causing 'a great deal of trouble by giving a long list of fictitious addresses and references.' A subsequent police report refuted entirely the Society's claims. Constable Fitzpatrick, who had known Mrs Adams for several years, described her as an inoffensive, honest and fairly industrious woman. Constable McGlynn noted that Mrs Adams had fallen on hard times as a consequence of her husband's unemployment, and had therefore been obliged to seek assistance. The proceeds that could be gained from begging and scavenging were meagre. Efforts to obtain charitable assistance was often no more profitable. Mrs Adams' experiences show that seeking charitable aid was considered tantamount to begging, even by those who administered Melbourne's benevolent agencies, and that appeals for help were doomed to failure, if there was any suspicion that the candidate was insincere or disreputable.

Prostitution was another option available to women. It offered them a greater degree of freedom and a potential for higher earnings than either scavanging or begging. Judith and Daniel Walkowitz have suggested that, in the English ports of Plymouth and Southampton, prostitution often bore no relation to what a woman had done in the past or what she hoped to do in the future. It was simply seen as one of 'the employment possibilities open to women.' It is possible that such an attitude

36 Secretary of the COS of Melbourne to the Chief Commissioner of Police, 9 June 1892, VPRS 937: Unit 336.


38 Walkowitz & Walkowitz, "We are not Beasts of the Field". 
prevailed in late nineteenth century Melbourne. In Melbourne, as in the English ports, the unavailability and irregularity of paid employment for women and its minimal financial return, plus the constant influx of immigrants in need of work, must have made prostitution appear a viable alternative. Some women who had paid employment, used the proceeds from prostitution to supplement their incomes. In 1878, John Singleton complained about the number of suburban women who solicited for prostitution, after work. With the downturn in the economy in the 1890s, an unknown number of women turned to prostitution in order to secure their own economic survival or that of their family. This suggestion is supported by official reports of the extent of prostitution in Melbourne. In 1892, Superintendent Sadleir estimated that there were 937 prostitutes in Melbourne. Five years earlier, there had only been 403 according to the Chief Commissioner. This increase in the number of women working as prostitutes in the early 1890s, no doubt, contributed to an increased number of women being arrested under the vagrancy provisions.

Jeffrey Adler has argued that vagrancy laws have traditionally been altered to deal with the specific concerns of particular communities. He contends, in relation to the St Louis vagrancy legislation, that simply by revising the code, adding clauses,


40 ibid, p.xiv; C.McConville, "From "Criminal Class" to "Underworld"", p.78.

41 Superintendent Sadleir to Chief Commissioner Chomley, 23 June 1892, VPRS 937: Unit 357.

42 Chief Commissioner Chomley to the Government Statist, VPRS 937: Unit 355.
sections and subsections, municipal lawmakers were able to mould the vagrant act to address local fears and concerns.\textsuperscript{43} In Victoria during the 1890s, the vagrancy provisions, and the Police Offences Act which contained them, were strengthened and extended to deal with the new concerns which emerged with the coming of the depression. As in New South Wales, social purity campaigns, which were inextricably connected with the women's movement, had a clear effect upon parliamentary proceedings.\textsuperscript{44} In a period of economic decline and increasing social turmoil, sobriety and moral purity were zealously advocated and legislatively enforced.

Amendments to the Police Offences Act reflected the concerns and fears of middle class reformers, and provided a battleground between those who favoured increasing the legal regulation of behaviour and those who opposed it. In 1891, a new measure which enabled the police to arrest common prostitutes found soliciting in public, was introduced.\textsuperscript{45} This provision provided the police with an alternative mechanism for the prosecution of prostitutes, but it certainly did not replace the vagrancy law for the latter continued to be used as a catch-all measure. Other amendments strengthened the vagrancy provisions relating to gambling in public places. When introducing the 1891 bill, Turner claimed that it was intended simply to rectify

\textsuperscript{43} Adler, 'Vagging the Demons and Scoundrels', p.4.

\textsuperscript{44} Mark Finnane provides a useful discussion of the influence of feminist organisations and middle-class Protestant reform movement upon the shaping of New South Wales police offences statutes, in 'The Politics of Police Powers: The Making of the Police Offences Acts', in Finnane, Policing, pp.98-103.

\textsuperscript{45} An Act to amend the Police Offences Act, 1891.
defects that had been found in the administration of the law under the Police Offences Act. However those who debated the bill, saw the matter differently. Sir Brian O'Loghlen vehemently opposed the gambling amendments, viewing them as part of an extraordinary but sinister teetotaller’s plot. He believed that they would make betting on horse races illegal. Charitable lotteries, and even the man who tossed for a drink, would be at risk! Mr Baker, an advocate of the bill, undoubtedly believed that such should be the case: ‘the sooner the Parliament set its face against every species of gambling the better.’ 46

Another amendment in the 1891 bill reflected popular fears about the inappropriate distribution of charitable aid and, more importantly, its fraudulent acquisition by unscrupulous characters. During the early years of the depression especially, the line between the deserving and undeserving poor, was stringently drawn. Charitable funds were jealously guarded against those considered unworthy of help. The image of the well-heeled impostor, who callously cheated the charities and their clients of funds, loomed large in the mind of some administrators. 47 Jacob Goldstein, the Secretary of the COS, was by far the most suspicious. He cited ‘investigation, registration’ and the ‘repression of fraud’ as being part of the organization’s ‘scientific

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47 This image was equally as powerful, if not more so, in Britain in the nineteenth-century. Cases such as those outlined by Ribton-Turner added weight to claims that such cheating was abundant. See Ribton-Turner, Vagrants and Vagrancy, pp.625-65.
treatment of benevolence. No doubt the 1891 amendment, which strengthened the protection offered to individuals and charitable institutions against the false impositions of undesirables, gave him some solace. It helped to ensure that only the respectable poor, those judged to be hardworking and thrifty, were to benefit from assistance.

Of all the amendments introduced in 1891, it was the one which dealt with the offence of having insufficient or no visible lawful means of support, which had the most serious ramifications. According to this amendment, proof that one owned money or resources was no longer sufficient to escape conviction; the accused was required to prove that the money or property had been lawfully acquired. For many innocent people, the provision of such proof was impossible. The amendment was enthusiastically advocated by Turner, who argued that it was designed to catch 'spielers' or professional thieves. Mr Leonard agreed that it would result in 'pickpockets and other scoundrels' being rightfully brought to justice. In his opinion, it was 'very improbable' that a person would be arrested under this charge unless he was 'well known' to the police. Anyone improperly arrested, he declared, 'would surely have no difficulty in proving that the money which he possessed had been obtained honestly'. O'Loghlen disagreed. He described the amendment as 'altogether too wide'. He questioned the likely use of the charge by police, and implied that it would be unfair to place the onus of proof upon those innocent people who might be arrested.  


Later developments proved O'Loghlen to be correct in his suspicions. The administration of the vagrancy law rested largely upon the goodwill and ability of the police, and it is evident that, during the depression years, these qualities were sorely tested. One immediate consequence of the depression was that it became more difficult for the police and members of the public to differentiate between the confirmed vagrant and the unemployed or destitute person. In the late 1890s, Reverend A.R. Edgar informed the Royal Commission investigating Old-Age Pensions of the depression's profound and long-lasting effect upon some individuals:

One result of the depression is that there is also another class of poor amongst us - those who have done their best, and in consequence of large families or other circumstances have been unable at any time to get away from a state of poverty. There are many men who, when the colony was in a state of prosperity, were engaged in shops or in warehouses. When prosperity ceased and trouble came those men were thrown out of employment. They were thrifty and had saved a little, but during the last six or eight years they have got through all their savings, and are quite unable to cope with their difficulties. They are unable to take advantage of the public works provided for the unemployed, because a man who has been using a pen for fifteen or twenty years cannot do pick and shovel work with a trained navvy. The result is that, as there is no work provided for that class, they come lower and lower, and they are amongst the most helpless and hopeless of the community to-day.\(^5^0\)

It was difficult for those who had lost their employment, health or youth, to escape such a downward spiral. As the economic crisis worsened, so too did the appearance and health of many of its victims. The recently unemployed joined the ranks of the city's homeless. They wandered the streets in search of work and food.

\(^5^0\) Evidence of Reverend A. R. Edgar, Report of the Royal Commission on Old-Age Pensions, p.xxxviii.
during the day, and at night were to be found sleeping in parks, abandoned buildings and various other makeshift shelters. In December 1892, Constable Corby reported that 'a good number of the unemployed class' rested at times in the Domain, a favourite haunt of vagrants. According to Corby, some people looked upon them as vagrants.\textsuperscript{51}

The police were unable to ignore the misery of the destitute, and on occasions, used the vagrancy law to arrest those in need of food, shelter and medical attention. The policemen who performed such arrests, understandably, viewed their actions as benevolent. In October 1894, John Anderson, a 45-year-old Swede, was arrested 'more for his own protection and benefit than because of any harm he was doing'. According to the police, Anderson had been 'leading a vagrant life on the wharf and eating anything he could pick up', until illness had overtaken him. When arrested he was in very poor physical health and the following day, he died of pneumonia.\textsuperscript{52} On other occasions, destitute individuals approached the police and pleaded to be arrested. If the individual could not be otherwise assisted, the police generally obliged. With charitable institutions unable, and in some cases unwilling, to aid such people, the police had little choice but to render assistance through arrest. This action involved criminalising the poor, but at least ensured in the short term, that they received food, shelter and medical attention if needed. It was an ad hoc and inadequate solution to

\textsuperscript{51} Constable Corby's report, 19 December 1892, VPRS 937: Unit 337.

\textsuperscript{52} The Age, 4 October 1894, p.3; Constable Kennedy's report, 4 October 1894, VPRS 807: Unit 28.
a complex problem, and one that was not always welcomed by those who were subject to it. For at least one man, death was preferable to arrest. In 1895, accused vagrant Herbert Stanley was found in the Williamstown lock-up with a piece of carpet binding twisted three or four times around his neck. The binding was so tight that it had to be cut away, but, despite such a determined attempt at self-destruction, Stanley survived.53

Feelings of benevolence influenced police administration of the vagrancy law during the depression, but other less altruistic forces were also at work. The existence of poor and homeless people was an affront to respectable society. The vagrancy law was thus used to remove unsightly individuals from the public domain. In the late 1880s and early 1890s, the vagrancy provisions were also used to counter the threat that the unemployed and poor were perceived as posing to the social, political and economic order. Gareth Stedman Jones has argued that, in London during the 1880s, a rise in the number of unemployed and poor people produced increasing alarm amongst the middle-class. According to Stedman Jones, members of the middle-class, having already entertained a long-standing fear of 'the mob', perceived those without property and position as a serious threat to social and political order. He suggests that this fear intensified as the poor and unemployed became more numerous and more militant, and as activists from the Social Democratic Federation attempted formally to organise them.54

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54 Stedman Jones, Outcast London, pp.281-96.
During the late 1880s and early 1890s, similar fears were entertained by Melbourne’s respectable citizenry. Scates identifies three waves of political agitation occurring in the city between Winter 1887 and 1892. The first wave was of an educational character and revolved around the activities of W.J. Fleming, one of the founders of Melbourne’s anarchist movement. In Winter 1887, Fleming and other anarchist orators began to organise public meetings at Queen’s Wharf, an important site of the casual labour market. These meetings attracted only modest attendance and were safely secluded from the city, yet were carefully monitored by the authorities, who were suspicious of any attempts to organise the unemployed. In July 1889, political agitation escalated with the formation of the Social Democratic League, which called for the reform of the electoral system and the extension of state powers. The League was more effective at mobilising Melbourne’s poor and unemployed than other radical groups. Rallies convened on the banks of the Yarra and on vacant blocks of land in the city centre, regularly attracted hundreds of participants and resulted in numerous petitions and deputations being presented to parliament.

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56 Members of the police force regularly attended these meetings and filed lengthy reports on the activities of Melbourne’s radical organisations. In 1886, Senior Constable McHugh reported on the founding of the Melbourne Anarchist Club. McHugh believed that the ‘extravagant and senseless doctrines’ of the club could ‘never find a serious footing’ in Australia, yet he concluded by saying that ‘the police authorities and the government should be kept fully acquainted with what a club with such disorganizing purposes is doing.’ Report of Senior Constable McHugh, 5 November 1886, VPRS 937: Unit 319.

Scates, the third and most serious wave of agitation occurred in the Winter of 1890, when thousands regularly took to the streets to voice their disillusionment and outrage. These demonstrations attracted a more diverse range of people and included members of the artisan class who had previously shied away from such action. Parliament House, Government House, the Town Hall, Trades Hall, and even the sacred 'block' were targeted as sites for radical action. The use of traditional forms of protest, including the staging of mock trials and the burning and decapitation of effigies of Alfred Deakin, and the Commissioner of Public Works, James Patterson, signalled the demonstrator's fury.

In Parliament, conservative politicians relentlessly questioned the integrity of those who engaged in public protest. Patterson derided the socialists as the 'sediment of society' and claimed that those who led the unemployed in protest were 'undeserving men...men who would never work as long as they could avoid it.' Premier Gillies asserted that many of the unemployed were out of work 'through their own idleness and intemperance.' Some, he said, 'were lazy dissolute felowes, who would not work, but lived on the hard earnings of their wives and children.' Similar sentiments were echoed in the press. *The Australasian* denounced the protestors as the 'professional

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58 ibid, pp.545-546.
60 *VPD*, vol.63, p.713 & 775.
61 ibid, p.588.
the 'professional unemployed'. But by far the most vitriolic attack on the protesters was registered by Jacob Goldstein. In 1891, he addressed the Australasian Conference on Charity on the subject of 'the unemployed':

These hundreds of loafers, tramps, drunkards, criminals, broken down and 'masterless' men, and invertebrate creatures who formed not only so large a proportion of the 'unemployed' movements the last three years, but who are always present in these colonies... are a standing menace to our civilization... They are not welcome in our individualistic social arrangement.

Such allegations served to discredit the demonstrators publicly, but more rigorous action was required to curb their activities. The emphasis of the police gradually shifted from passive surveillance to active intervention in the activities of the unemployed. In March 1889, the police began to use the 'move-on' law to disrupt gatherings at Queens Wharf. Six months later, a charge of insulting behaviour was used to arrest anarchist J.A. Andrews, as he was selling copies of The Australian Radical in Bourke Street. As political agitation increased, so too did the number of politically-motivated arrests. In August 1890, four men who were described as the 'ring-leaders' of a 6,000 strong demonstration, were arrested on a charge of insulting behaviour. Other protesters were arrested for disturbing the peace, holding a

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62 The Australasian, 2 August 1890, p.214.
64 The Australian Radical, 16 March 1889, p.3 and 23 March 1889, p.3.
65 The Australian Radical, 28 September 1889, pp.1 & 4.
66 One of the men was discharged by the City Court. The others received fines ranging from £1 to £5, and in default, terms of imprisonment of between seven days and one month. The Argus, 4 August 1890, p.7; The Age, 4 August 1890, p.5 and 5 August 1890, p.6.
THE LABOUR-MARKET IN AUSTRALIA: THE UNEMPLOYED WHO ARE NOT ANXIOUS FOR EMPLOYMENT
A SKETCH IN THE TREASURY GARDENS, MELBOURNE

Illustration 6.2
(The Graphic [London], 18 June 1892, p.712)
procession without formal authority, and for vagrancy. In 1892, John White, one of Melbourne's best known unemployed activists, was arrested and gaoled as a vagrant. \(^{67}\)

Two years earlier, a penniless J.A. Andrews had left Melbourne because he feared that he would suffer such a fate. \(^{68}\)

It is no coincidence that vagrancy arrests were most frequent in Melbourne in 1889 and 1890, when political agitation also reached a highpoint. The vagrancy provisions were sometimes used to arrest known protestors, but even more importantly, they provided a mechanism for the apprehension of those perceived to be potentially dangerous. J.A. Andrews hoped that the misery of depression would result in a radical transformation of society:

> Here in Melbourne poverty is increasing to a terrible degree. Hundreds are out of work, or usually so, getting perhaps an odd job here and there once in a week or a fortnight, or perhaps getting nothing for months together. In the country the people will not spend money; they are afraid of a hard winter. All the roads are lined with people seeking work or trying to push some trifling means of support in the country districts. Tramps and beggars [are] multiplying. The distinctions of property between the poorer classes are being broken down, and many groups of persons who have never even heard seriously of the question of communism, sharing their means with each other in order that all may live and that the sense of mutual obligation may spur them on to escape the passivity of perishing despair...That the next period of eleven years, if not the immediate future, will see the people reduced to the necessity of making a new Society, the old having died by the natural exhaustion of its motive power, no thinking man can doubt. \(^{69}\)

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\(^{67}\) Scates, 'A Struggle for Survival', *Historical Studies*, p.60.

\(^{68}\) *The Tocsin*, 19 September 1901, p.7.

\(^{69}\) *Australian Radical*, 21 September 1889.
But for those who already possessed property and position, Andrew's dream was a nightmare. The 'haves' had no desire to share their privileges with the 'have-nots'; after all, was the world not properly ordered? Melbourne's respectable citizenry was secure in the belief that people got what they deserved. It was argued that, in a land of abundant opportunity, those who worked hard and behaved virtuously were assured of a decent life. By contrast, those who gave way to vice and squandered their opportunities, were considered to be deserving of few rewards and even less sympathy. Disorderly street demonstrations served to reinforce the bourgeois stereotype of the 'undeserving' poor. Whether active or passive, the unemployed were looked upon with suspicion. They were believed to pose a serious threat to social and political order, and were thus liable to be arrested and convicted as vagrants.

A heavy-handed approach to law and order could work in the short term, but not in the long. As economic conditions worsened, and blame for the crisis shifted from abstract economic factors to the dishonest dealings of wealthy politicians and businessmen, public disquiet grew. The collapse of banks and building societies, the numerous disclosures of improper business practices, and the demise of some of the city's most powerful and reputable men served to absolve the bulk of the population
from guilt. It was clear that indolence and thriftlessness amongst the lower-class could not be blamed for the colony's woes. Politicians initially denied the existence of widespread suffering, but their claims were swept aside as unemployment spiralled and poverty became an observable feature of everyday life. The sensational departure of Victorian Premier James Munro for London in February 1892, and the unsuccessful attempts to prosecute the directors of various financial institutions including the Premier Building Society and the Mercantile Bank, made it clear that the judiciary, along with the colony's most reputable people, were not beyond reproach.

By 1893, serious questions were starting to be asked about the ability of the police to administer the vagrancy law effectively and fairly. It was becoming increasingly clear to members of all classes that innocent people were, either accidentally or deliberately, being arrested as vagrants. The press played an important role in bringing dubious cases to the attention of the public. Throughout the 1880s, the major newspapers had occasionally noted the arrest and conviction of elderly, ill and destitute persons under the vagrancy provisions. During the 1890s, however, the

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70 The most graphic description of the entrepreneurs fall from grace is provided by Michael Cannon, *The Landboomers*, Melbourne University Press, Melbourne, 1967. A colourful personal account of the boom and bust is provided by George Meudell, *The Pleasant Career of a Spendthrift and his Later Reflections*, Wilke & Co, Melbourne, 1935. Meudell, who was a public accountant, was involved in the activities of several boom companies. Most notably, in 1888, he was appointed as assistant manager of the ill-fated Mercantile Finance Company. Meudell's memoir was first published in London in 1929, but the book was quickly withdrawn from sale as a consequence of the revelations it contained. The most damaging details were expurgated from the 1935 edition. See Cannon, *Landboomers*, pp.61-5, for further details regarding Meudell. The weekly paper, *Table Talk*, provided detailed accounts of the landboomers activities.
number of dubious vagrancy cases reported by the press snowballed. This was partly due to an overall increase in the use of the vagrancy provisions in the early years of the decade, and probably also, to a rise in the proportion of cases relating to disadvantaged individuals. The practice of arresting elderly, ill and destitute people as vagrants was certainly not new, but press interest in it was.

The existence of widespread poverty could not be denied. The daily newspapers began to provide graphic descriptions of the plight of the destitute through serialised articles, evocatively titled 'Among the Workless', 'The Misery of Marvelous Melbourne' and 'Poorer than the Poor'. Reports of vagrancy cases provided further proof of human suffering, and moreover, highlighted the inadequacy of official responses to it. In December 1892, The Argus reported that a woman named Annie Key, had been sentenced to twelve months' imprisonment for vagrancy by the South Melbourne court. Key, who had been blind from birth, had been turned out of her sister's home and had been unable to gain charitable assistance. Her two-year-old illegitimate child was committed to the care of the department of neglected children. Charles Coston's experiences were similar. In April 1893, a report in The Age, headed 'A Distressing Case', explained how Coston and his two sons, aged eight and ten, had been found huddled together in an outhouse at the rear of an unoccupied premises.
Coston told the City Court that he had come from the country but had been unable to find work or to gain assistance from his relatives. His two children were remanded to an Industrial School for seven days each, while he was sentenced to nine days' imprisonment. Three years later, *The Age* drew attention to the 'pitiable case' of William Kershaw, a bootmaker, who 'being unable to obtain work, and not caring to beg' had attempted to kill himself by cutting his throat. The report outlined the testimony of Sergeant Irwin, who had told the court that it was impossible to secure a place for Kershaw in a benevolent asylum, and, as he was too old to work, 'the only course to adopt was to send him to gaol on a charge of vagrancy.' Kershaw was sentenced to three month's imprisonment, but the report noted the remarks of the chairman of the bench, who concluded 'that it was a sad pity that men who had become too old to work should have to be sent to prison because they were poor.'

In parliament in October 1898, Dr Maloney thanked the press for educating people about the misuse of the vagrancy law. He cited numerous cases which had appeared in the press under such graphic headlines as 'A Story of Starvation', 'Sad end of an Old Colonist: The gaol for the Dying Man' and 'Starving in the Street'.

Concern over the gaoling of ill, destitute and elderly individuals was also voiced by successive Inspector-Generals of Gaols. In his annual report for 1886, William Brett

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73 *The Age*, 4 April 1893, p.7; Brunswick Court of Petty Sessions Register, 3 April 1893, VPRS 1746: Unit 2.

74 *The Age*, 10 April 1896, p.7.

75 *VPD*, vol. 89, 1898, pp.2499-2501.
noted that 774 men and women had been admitted to gaol 'on account of their destitute condition, and [had] gone on to swell the ranks of the prison population, instead of being provided for as objects of charity.'\(^7^6\) The situation worsened considerably the following year, with the number of needy individuals received into gaols almost doubling. In his annual report for 1888, Brett complained of the 'injustice' of imprisoning destitute, aged, and infirm people, who required medical attention and nursing, but were 'not guilty of any crime'. This practice, he argued, was 'not only a blot upon the social circumstances of the country, but incompatible with the objects of penal administration.'\(^7^7\) Ten years later, Brett's successor, Captain James Evans, was complaining of the same problem. He told the Royal Commission investigating old-age pensions that there was 'a proportion of persons' who were 'committed to gaol simply for want of some suitable place to send them to.' Between 1 January 1891 and 31 May 1897, 352 prisoners believed to be better suited to charitable assistance than imprisonment, had been brought to Evans' attention. Of these, 267 had been transferred to charitable institutions, 4 had been sent to lunatic asylums, 20 had been discharged before arrangements could be made for their transfer, one had been discharged on probation, and 21 had died. At the time he testified, ten cases still awaited review and another 28 individuals had been judged unsuitable for transfer.\(^7^8\) These individuals, however, represented only a fraction of the destitute, elderly and ill

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individuals who were gaol. Many individuals were no doubt judged unworthy and never had their case brought to the attention of Evans, while others were remanded rather than sentenced to a period of imprisonment.

The gaoling of the needy strained penal resources and thus created practical problems for the government. At a deeper, more serious level, this practice challenged the carefully cultivated image of Victorian society as egalitarian and progressive. By the mid-1890s, parliamentarians, prompted by public concern, had begun specifically to question the administration of the vagrancy law by the police and courts. In 1895,

Figure 6.3: Vagrants received into Victorian Gaols, solely for reasons of Shelter and Medical Care.\textsuperscript{79}

\textsuperscript{79} These statistics have been compiled from the annual reports of the Inspector-General of Penal Establishments and Gaols, 1886 to 1897. It was specified that these vagrancy cases related solely to the provision of medical assistance and shelter.
questions were asked about the arrest and imprisonment of seven young men at Maryborough. Mr Burton, who raised the issue, claimed that George Disney and six other men had been tried for vagrancy, rather than the less serious charge of petty larceny. He argued that the sentence of six months' imprisonment was too severe and that some of the men convicted were undoubtedly innocent. He was able to present a petition signed by 200 Maryborough residents calling for Parliament to consider the men's plight.80

In the same year, Police Magistrate Joseph Panton was accused of allowing his personal prejudices to influence his administration of the law. Particular attention was drawn to his handling of a vagrancy case involving a foreigner. The defendant in question had been recently released from gaol but had been re-arrested when he had been found carrying some old iron. According to Mr Murray, who attended the court and subsequently raised the matter in parliament, the prosecution brought forward several constables who had testified that the defendant was of 'terrible character' and was 'a terror' to the watchmen who guarded the ships along the wharfs. The defendant, though poorly versed in English, had attempted to defend himself, but the bench 'turned a deaf ear to his statements'. Murray later told the Parliament that

it astonished him, and somewhat shocked his sense of justice, when he heard a sentence of twelve months' imprisonment passed upon the prisoner, in the true old arrogant plantation style, upon a charge that had not been substantiated, and that was only supported by vague and wild

80 VPD, 1894, vol. 74, p.100.
accusations by the police.\textsuperscript{81}

Allegations and evidence of partiality, corruption and impropriety within the judiciary continued to surface. In 1895, Dr Bevan, a Congregationalist Minister, described Victoria's magistrates as 'the most shameless set of men he knew of.'\textsuperscript{82} Seven months later, the Lormer Inquiry provided clear evidence to support his claim. The Inquiry found bench packing, partiality and corruption to be rife throughout the lower courts, and exposed the unsavoury activities of three particular Justices of the Peace. Bear Rapipurt, who sometimes sat on the City Bench, was found to have received 'bribes, gifts and privileges...for the purpose...of influencing his judgments' and of placing himself in positions in order to 'buy and sell justices.' Rapipurt and fellow-Justice Alan Baxter, another recipient of unethical rewards and a visitor to houses of ill-fame, were found to have conspired together and 'combined with others to devise means whereby the administration of justice might be and was defeated.' George Baxter, of the Richmond Bench, was found to have 'adjudicated in the interests of women of bad fame and character with whom he had at the time immoral relations.'\textsuperscript{83}

\textsuperscript{81} \textit{VPD}, 1895-6, vol.77, p.1102 & vol.78, pp.2325-6. Winter incorrectly claimed that the defendant had been charged with stealing. In later discussion it was revealed that he had been charged with vagrancy.

\textsuperscript{82} \textit{The Age}, 29 August 1895, p.4. See also \textit{The Age}, 4 September 1895, p.4.

\textsuperscript{83} \textit{The Age}, 30 March 1896, p.4. For other accounts of the Lormer Inquiry and reactions to it see \textit{The Age}, 1 April 1896, p.4 and \textit{The Argus}, 30 March 1896, pp.4 & 5; 31 March 1896, pp.4 & 5; 1 April 1896, p.4. The newspapers frequently carried reports of judicial impropriety and inadequacies and criticisms of the magisterial system as a whole. For examples of this see \textit{The Age}, 2 March 1894, p.6; 1 May 1895, p.6; 29 August 1895, p.4; 4 September 1895, p.4; 7 December 1898, p.4; \textit{The Argus}, 3 July 1895, p.5; 4 July 1895, p.5; \textit{The Australasian}, 27 October 1890, p.1230;
The report of the Lormer inquiry was welcomed by the press. *The Argus*, in particular, hailed it as a 'clear and logical report founded upon the facts and giving emphatic expression to the public conscience'.

Just over three months later, Joseph Kirton focused public attention on the misuse of the vagrancy law, when he moved in Parliament that a state-aided pension or insurance scheme be introduced for the aged poor. He argued that the state should take care of the elderly poor, whether their destitution had been the product of their own improvident habits, or not. He charged that in Victoria there was evidence of 'all the extremes of want and misery' that disfigured older communities. As proof, he pointed to the two thousand or so individuals arrested and imprisoned each year, for having no visible lawful means of support: 'Their poverty ... regarded practically as a crime'. He was able to report that, in the newspaper that day, he had read of a man who had been committed to prison. 'He was an elderly, decent, sober, and industrious man, who had been a law-abiding citizen, but he was committed to prison simply because he was unable to provide for himself'. Such glaring inequalities, Kirton described as 'a positive shame'.

As has already been discussed, the police and the judiciary shared a somewhat problematic relationship. Though both were responsible for the administration of the law, their actions were shaped by different agendas. The police were primarily

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84 *The Argus*, 30 March 1896, p.4.
concerned with maintaining everyday order, and thus creating an appearance of efficiency for themselves. This objective was achieved by removing dangerous and undesirable individuals from the public domain and 'assisting' those in need. The judiciary, on the other hand, was more interested in preserving the sanctity of the law. To fulfil this aim, judges had to be seen to be dispensing justice in an equitable manner. By achieving their respective aims, the police and judiciary stood to reinforce their own standing and authority within the community.

The 1890s posed unique opportunities and dangers for the police and judiciary. On more than one occasion, the police were able to prove their worth by curtailing the disorderly activities of the unemployed. They could also be seen in action clearing the streets of undesirables. In 1892, Constable Appleby was able to report that Melbourne was 'especially free' of vagrants, for they feared being arrested if they came into the city.\(^{86}\) The Inspector stationed at Russell Street also attested to the efficiency of the police in this respect. 'Persons of this class', he wrote, 'are continually being arrested and sent to Gaol, just as a shelter.'\(^{87}\) Comments like this worked to soften the image of the police by suggesting that the arrest of homeless and destitute people was primarily a charitable act. Faced with widespread poverty and the failure of the charitable system, the police often had no choice but to arrest those in need; on occasions, they were merely complying with requests.

\(^{86}\) Report of Constable Appleby, 14 December 1892, VPRS 937: Unit 337.

\(^{87}\) Letter from Inspector, Russell Street, to Inspector Thomas, 15 December 1892, VPRS 937: Unit 337.
This course of action, however, threatened to undermine the sanctity of the law. The conviction and imprisonment of people who were innocent of any crime, contradicted the basic principles of justice which the judiciary were meant to be upholding. In 1897, Joseph Panton flatly denied that such a practice existed. He told the Royal Commissioners investigating the Old-Age Pension that he could not think of one case in which a person had been arrested and sent to gaol merely for poverty. There were, he said, about 2% of men who represented themselves as paupers and asked to be arrested in order to gain shelter. These were sent to the Immigrant’s Home, or placed on remand until a position in a benevolent asylum could be found. If a vacancy was not forthcoming, the individual might be detained on remand if in need of food, shelter or medical care. Panton claimed that, in his time, not one such person had ever been sentenced to a term of imprisonment.  

In the late 1880s and early 1890s, non-penal options were increasingly utilised by the city magistrates when sentencing convicted vagrants. There was a noticeable increase in the number of individuals committed to Yarra Bend Asylum, the Melbourne Benevolent Asylum, the Salvation Army and the Immigrant’s Home.  

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88 Evidence of Joseph Panton, Royal Commission on Old-Age Pensions, p.iii.

89 Stephen Garton has illustrated that in New South Wales between 1880 and 1920, rates of admissions to prisons and lunatic asylums were based on the willingness and capacity of state agencies like the police, the judiciary, and the psychiatric profession to detect and process phenomena described as “criminality” and “insanity.” He shows that the rates of admissions to prisons and asylums operated inversely, and that trends in admission rates were determined politically as different lobby groups gained dominance and influenced social policy. He points to the decreasing centrality of imprisonment as a form of incarceration, and the proliferation of alternative institutions.
7% of the individuals tried, were committed to protective care. The elderly, ill and poor featured amongst this number, as did a few youthful offenders who were believed worthy of a second chance. In 1891, the informal practice of sending females convicted of particular offences, to charitable institutions rather than to gaol, was formally recognised. An amendment to the Police Offences Act allowed women and girls found guilty, under the vagrancy provisions, of being habitual drunkards or common prostitutes behaving in a riotous or indecent way, to be discharged into the protective care of particular institutions. This practice continued to be used, though not formally regulated, for young women convicted of having no visible lawful means of support or insufficient lawful means of support.

As the depression took a strong hold, however, fewer individuals were forwarded by the city court to charitable institutions. The willingness and ability of such institutions to take defendants decreased, as the economic climate worsened and resources grew strained. In 1893, the St. Vincent de Paul Society announced that it would have to close its homes unless more resources were immediately made available. Shurlee Swain has shown that the Victorian charities network was ill-equipped for such a crisis and was incapable of providing assistance to all of those such as reformatories, clinics and mental hospitals, which met the demands of particular reformist groups. A similar trend is discernible in Victoria in the late nineteenth and early twentieth centuries, with the emergence of specialised reformist groups and the proliferation and use of different forms of incarceration. See Stephen Garton, 'Bad or Mad? Developments in Incarceration in New South Wales, 1880-1920', in Sydney Labour History Group, What Rough Beast, pp.89-110.

90 The Argus, 4 May 1893, p.6.
who needed it.\textsuperscript{91} The charities were very poorly circumstanced in 1898, when the Royal Commission into the Old-Age pension unhesitatingly recommended the further utilization of charitable institutions to deal with the elderly poor who were inappropriately brought before the courts. Premier Turner had previously authorised magistrates and Justices of the Peace to provide for destitute people for up to four weeks, until the person could be sent to a charitable institution, but this measure had done little to reduce the number of elderly and poor individuals sentenced to imprisonment.\textsuperscript{92} Critics of the system argued that the police and judiciary did not utilise this new mechanism, and that the charitable institutions were simply too full, or else unwilling, to accept admissions.\textsuperscript{93} Joseph Panton was one magistrate who was quick to express his doubts about the scheme. In a response to Turner's directive, Panton asserted that 'special inquiry was necessary in all cases of the sort in order to prevent imposition and malingering'. He claimed that in his whole experience on the bench, he had not known many people to be imprisoned simply as a consequence of poverty. Constable Wardley thought likewise. A survey of the colony's gaols, he reported, had revealed only ten deserving cases, while a two week search of the city had revealed none.\textsuperscript{94} A report which appeared directly below Panton's response provided the readers of \textit{The Argus} with food for thought. It told of the arrest of Angus McKeachie, who was described as unemployed and starving. He was stricken by Bright's disease, and

\textsuperscript{91} Swain, 'The Victorian Charity Network'.
\textsuperscript{92} \textit{VPD}, 1898, vol.89, p.2503.
\textsuperscript{93} \textit{ibid}, pp.2518, 2521,2523 & 2524.
\textsuperscript{94} \textit{The Argus}, 26 May 1898, p.7.
though he was only 36 years old, he was said to be 'as weak and emaciated as an old man.'

As the 1890s progressed, an increasing proportion of vagrancy trials heard by the Melbourne Court of Petty Sessions ended with the discharge of the accused. This decrease in the court's conviction rate probably reflected an increase in the number of dubious cases prosecuted by the police. It is also likely that, in light of growing public concern, the bench preferred to err on the side of caution when handing down its decisions. The abandonment of brief periods of imprisonment as a sentence for convicted vagrants also played a part in increasing the proportion of defendants who were discharged. By the mid-1890s, it was generally agreed that imprisonment was not always the best means of dealing with offenders. The colony's prisons were overcrowded and costly, and failed either to reform, or adequately to punish, inmates. Imprisonment was still regarded as appropriate for hardened criminals, but its value for habitual minor offenders such as vagrants, was questioned. The Argus expressed a common concern in 1894, when it alleged that habitual offenders 'saw no terror in imprisonment', and, once released, reverted to their 'evil practices' as a matter of course. The Inspector-General of Gaols was not unusual in arguing that short sentences of a few hours, days, or weeks, were especially useless. As a result of

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95 ibid.

96 The Argus, 12 February 1894, p.4.

such criticisms, the courts experimented with various non-penal alternatives, which were intended to match the offender's treatment with his or her particular circumstances. By the end of the century, individuals who would previously have been sentenced to a few hours imprisonment, tended to be sent to an alternative institution or discharged completely.

The judiciary's handling of vagrancy cases affected the willingness of the police to proceed with prosecutions. During the 1890s, the number of cases brought to court decreased. It also became increasingly common for the police to abandon proceedings against an individual once they had already commenced. The police were disinclined to bring cases to trial when convictions were difficult to obtain, and verdicts and sentences varied from court to court and from magistrate to magistrate. 98 Cases involving brothel-owners and prostitutes were particularly prone to abandonment. As Meg Arnot suggests, an extraordinarily high proportion of charges relating to the occupants of disorderly houses were withdrawn. 99 The withdrawing of charges by police reflected a lack of confidence in the court, and a questioning of the ability and willingness of magistrates to convict and punish suspected criminals. Most likely, the conscientious policeman considered himself betrayed by the judiciary.

The behaviour of the lower courts dampened the spirits of the police, but did not limit the force's ability to administer the vagrancy law. A more immediate obstacle

99 ibid. p.71.
was presented by the reduction in police numbers. Police manpower was at its
greatest between 1889 and 1891, when over 400 officers attended to the colony's
policing requirements. As previously noted, it was during these years that vagrancy
arrests were most frequent. Between 1890 and 1896, partly as a consequence of a
policy of retrenchment within the public service, the number of police fell from 446 to
301.\textsuperscript{100} This level was comparable to that of the early 1880s. Such a drastic reduction
in available officers, no doubt contributed to the decline in vagrancy arrests.

A series of rulings handed down by the Supreme Court even more directly
affected police use of the vagrancy law. These decisions, which were made in 1898,
1905 and 1906, dealt specifically with the charge of having insufficient or no visible
lawful means of support, and effectively whittled down the freedom which the police
had previously enjoyed, in relation to the use of this all-purpose charge.

The first of these decisions was handed down by Chief Justice Madden on 30
November 1898. The case, Whitney vs Wilson, related to an appeal by a man named
Whitney who, a month before, had been convicted of having insufficient lawful means
of support\textsuperscript{101}. During the original trial, a prosecution witness named Trevina, had
testified that he had seen Whitney picking a lady's pocket. He had stated, under cross-

\textsuperscript{100} Report of the Public Service Board, VPP, 1896, vol.2, p.3. John Rickard, Class
and Politics: New South Wales, Victoria and the Early Commonwealth, 1890-1910,

\textsuperscript{101} The Argus Law Reports, 1898, vol.4, pp.291-2.
Sexton, however, testified that 'he had known the accused for some years; that the accused was an associate of pickpockets and thieves; and that he had never known him to do an honest days work.' His evidence was supported by two other detectives. In his defence, Whitney claimed that, at the time of the alleged offence, he had been earning between 15s and 17s 6d a week selling cement. The police magistrate had nevertheless found Whitney guilty of the charge and sentenced him to six months imprisonment.

Whitney was the first person to challenge police prosecution procedures in vagrancy cases. The appeal case revolved around the admissibility of evidence about Whitney's background and character. The Crown argued that vagrancy was constituted by a series of acts of misconduct, and that, therefore, evidence of prior offences was admissible. Mr. Justice Madden, however, concurred with Whitney's claim that such evidence should not have been received, and quashed the conviction. He ruled that, in order to gain a conviction, the police had to prove that an individual had no visible lawful means of support or insufficient means of support; the question of a person's character or past were irrelevant. Madden thus ruled that evidence of a defendant's past convictions, and references to his or her criminal or suspicious character, were inadmissible. For the police, the establishment of such a precedent was devastating. It immediately undermined the tactics which they had successfully employed in

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102 In August 1901, this precedent was confirmed by a decision handed down by Mr Justice Hood in the appeal case, *Appleby v. Armstrong*. He found that the duty of the prosecution was to adduce evidence of the defendant having insufficient lawful means of support, and that evidence regarding the prisoner's past associations was inadmissible. 'The duties of the police in a prosecution of this kind', Hood concluded, 'seem to me very much lighter than they take upon themselves to perform.' *Argus Law Report*, Vol.vii, 1901, pp.175-6.
prosecuting vagrancy cases. Innuendo had routinely been used to smear defendants' characters and to secure convictions. This was particularly true of cases involving individuals with previous convictions. It was for this reason that Detective Sergeant David O'Donnell so forcefully condemned the decision:

The Vagrant Act has gone to pieces. Whitney v. Wilson was the first stepping-stone that gave the Vagrant Act a blow. Before that we used to give general evidence of the character of the men we brought before the magistrates, so that they might form an idea of the class of man we were bringing before them. We used to have those men pointed out as men convicted of burglary or house-breaking so many times. Then the magistrates knew we were not picking up some poor fellow, who was hard up and down on his luck...but the Whitney v. Wilson case stopped that. The Supreme Court held that all we could do was to show that those men had no visible support, and to leave the magistrate to decide then. The consequence is that the magistrates do not know the character of the men, and you cannot tell them.103

Madden's decision was intended to restore proper order to vagrancy trials. It required that the specific offence be proved, without reference to the defendant's past actions or personality. As a consequence, the usefulness of the vagrancy law to the police was restricted. The effect of this precedent was twofold. In the courts, convictions became more difficult to secure. There was a rise in the number of defendants who were discharged or had their case dismissed. The police, aware of the shakiness of many of their prosecutions, displayed an increasing willingness to withdraw charges. On the streets, in their day-to-day work, the police also grew more apprehensive. As it became obvious that convictions were more difficult to obtain, there was a growing reluctance to take cases to court. The number of cases brought before

the Melbourne Court of Petty Sessions, involving individuals charged with having insufficient or no visible lawful means of support, fell from 74.7 per 10,000 population in 1898/9 to 42 in 1899/1900. The total number of vagrancy arrests performed in Victoria fell from 15.7 per 10,000 in 1898 to 11.8 the following year.

In March 1905, the ability of the police to administer the vagrancy law as they wished, was further curtailed, when Mr Justice Hodges handed down his decision in the appeal case Wilson vs Benson.\textsuperscript{104} During Benson's original trial at Bendigo in 1904, it had been argued that Benson's arrest had been unlawful. His counsel argued that having no visible lawful means of support was, in itself, not an offence: according to the act, it only became such after a person failed to give a 'good account of his means of support' to the satisfaction of a justice. The magistrate discharged Benson on the ground that he had no power to require the accused to give an account of his means. The police appealed against this decision, but to no avail. Mr Justice Hodges ruled that the police could no longer arrest 'on sight' individuals suspected of having no visible lawful means of support. He deemed that they could only proceed after having obtained a warrant or summons from a magistrate. The response of police was far from favourable. 'It has simply crippled us', Sergeant David O'Donnell told the Royal Commission into Police in 1906. 'That has taken away our powers over vagrants, no doubt.'\textsuperscript{105} Robert Sharp was of a similar opinion. He complained that action could no

\textsuperscript{104} The Argus Law Reports, 1905, vol.11, pp.85-6.

longer be taken against the known or suspected criminal who was stealthy enough to
commit offences without being seen. 'You cannot deal with him', he said, 'unless you
actually catch him in the act'.

A final blow to police powers was struck by the full bench of the Supreme Court
Wilson v. Travers, found that, even before a warrant could be issued, an individual
suspected of having no visible lawful means of support had to be brought before a
justice of the peace. A warrant would be issued only if the individual failed to
appear or could not provide the justice with an adequate account of his or her means
of support.

During the prosperous 1880s, the vagrancy law had existed unchallenged. The
image of the vagrant as an immoral, lazy and deceitful wretch had been constantly
reinforced by the legal system, with the result that individuals accused of vagrancy were
discredited and disempowered. They were presented as not being worthy of public
sympathy; their crimes were attributed to moral weakness, immorality and viciousness.
The vagrancy law was able to survive unchallenged throughout the 1880's, because
only the poor and vulnerable were affected by it. Guilty verdicts stood uncontested, for
convicted vagrants generally lacked the finances, skill or assistance needed to mount


The 1890s depression, however, increased the range of people vulnerable to arrest. Unemployment and poverty affected a broad cross-section of the population and threatened to breakdown the ideological barrier which differentiated the deserving from the undeserving. Vagrancy arrests peaked near the start of the depression and then gradually declined, as public concern over the abuse of the vagrancy provisions grew. Widespread dissatisfaction with the administration of the vagrancy laws, plus general criticism of proceedings within the lower courts, resulted in the Supreme Court officially regulating the police and lower courts in relation to their administration of the vagrancy provisions. Discretion, which, in the eyes of the police, was vital for the effective administration of the law, was severely limited. Members of the force were no longer able to arrest individuals 'on sight', nor challenge their respectability in court. Given the severe limitations placed upon the police, the law could not even be used effectively to threaten or harass those who aroused the displeasure of the police. The rulings imposed order upon the lower courts, by curtailing the discretion available to police magistrates and justices of the peace when dealing with vagrancy cases. It reduced the likelihood of unfair convictions, and thus helped to bolster the law's flagging reputation.

The number of vagrancy arrests performed in Victoria per 10,000 head of population fell from a peak of 28.3 in 1889 to only 5.9 in 1907. The precedents established by the Supreme Court formally prevented the police from administering the
vagrancy provisions as they wished. Yet the abandonment of the law by the police may also reflect their unwillingness to utilize a law which allowed them little discretion. Mark Finnane has pointed out the important role that police played in the shaping of New South Wales summary offences legislation.\(^{108}\) He has suggested that in 1907, the New South Wales police were deliberately inactive in order to 'draw attention to legal changes they had been demanding since at least 1904.\(^{109}\) It is not implausible to suggest that similar action was taken by the Victorian Police in regard to the weakened vagrancy legislation. The decline in the use of the vagrancy law can also be linked to the development of new forms of social control, including the introduction of the old-age pension, the establishment of labour colonies and village settlements, and the medicalization of inebriety. These issues, together with the police campaign to secure a new vagrancy law, will be discussed in Chapter 7.


\(^{109}\) ibid, p.94.
While the reputation and usefulness of the vagrancy law was being undermined, the problem of the poor, the idle and the criminal persisted. By the mid-1890s, a legal system which treated society’s unfortunates as criminals, was no longer publicly acceptable. It was evident to the government that greater differentiation had to be made between the professional criminal, the habitual offender, the deliberately idle, the genuinely unemployed, the aged, the ill and the destitute. Other, more subtle and effective methods, for dealing with these groups had to be discovered.

Government policy in this area in the late nineteenth and early twentieth centuries was marked by diversification and experimentalism. Special strategies and mechanisms were developed to deal with the specific needs of particular groups. The elderly were catered for through the introduction of a non-contributory old-age pension scheme in 1900. The founding of the Leongatha Labour Colony and various village settlements during the 1890s, was intended to provide work and income for the genuinely unemployed, while also testing the sincerity of those who were idle. Habitual drunkards, who had previously been arrested under the vagrancy law, were redefined as ill and were made subject to special legislation and medical treatment. The lunacy
laws were extended and streamlined, and various criminal laws targeting specific groups, such as habitual offenders, prostitutes, and illegal gamblers, were also enacted. These provided greater classification within the legal system and enabled the police and courts to distinguish more clearly between types of offender.

The adoption of these various mechanisms strengthened, rather than weakened, the power of the state. The state no longer relied so heavily upon the formal mechanism of the criminal law to exercise its authority. The fledgling welfare system, village settlement and labour colonies, together with the medicalisation of some problems, provided new and more insidious methods of control. They also diverted criticism away from the legal system. The poor, the ill and the innocent appeared to have been removed from the realm of the vagrancy law. By 1907, the law makers and enforcers were able to argue successfully for the introduction of a new vagrancy law to be used specifically against professional criminals.

**Village Settlements and Labour Colonies**

During the 1890s, both utopian and anti-utopian measures were adopted to deal with the problem of the unemployed and idle. Village settlement schemes represented the more idealistic approach. They aimed to place poor men and their families upon the land. It was hoped that through hard work and perseverance, those who had suffered in the city, would establish themselves as the members of a prosperous
yeomanry. By contrast, labour colonies were established in the anti-utopian tradition of the workhouse labour-test.¹ They were intended to remove the troublesome from urban areas and to provide a means by which the deserving could be distinguished from the undeserving.

The misery caused by the depression resulted in a reinterpretation of the environment. With the myth of urban progress shattered, the city was increasingly presented as symbolising 'the concentrated sin and suffering of the colony'. The bush, by contrast, was deified as 'the original source of goodness and wealth... purer, simpler and more harmonious'.² This change in perception was accompanied by a resurgence of belief in the yeoman myth and the advantage of country life. At a practical level, the land was once again recognised as the colony's greatest asset.³ It was seen to offer


² Davison, Marvellous Melbourne, p.251. The writings of the 'Bulletin School' both reflected and stimulated this shift in perception. In the poems of Banjo Patterson, for example, the 'city and country were established as separate moral universes'. The romantic images of the bush provided by Patterson, Henry Lawson and Bernard O'Dowd were inspired by their disillusionment with city life and by a new-found nationalistic identification with the Australian landscape. Graeme Davison, 'Sydney and the Bush: An Urban Context for the Australian Legend', Historical Studies, vol.18, no.78, 1978, p.191-209; White, Inventing Australia, pp.85-109.

³ The village settlement schemes of the 1890s were similar to the land selection strategies of the 1860s. During the 1850s goldrushes, a broad-based reform movement had demanded that the government 'unlock the land', so that all people could share in its bounty. This agitation resulted in the passing of the Nicholson Act in 1860 and the Duffy Act in 1861. These acts enabled individuals to take up small allotments of land, but loopholes in the legislation, the power of the squatters, and the practical difficulties confronted by the selectors led eventually to the failure of the scheme. Tony Dingle, Setting, Fairfax, Syme and Weldon Associates, Sydney, 1984, pp.58-76; Stuart Macintyre, Winners and Losers: The Pursuit of Social Justice in Australia, Allen & Unwin, Sydney, 1985, pp.19-39.
renewed prosperity for those who were willing to invest their faith and labour in it.

In late 1891 and early 1892, evidence of increasing unemployment and economic decline, sparked widespread discussion of land settlement. Village settlement was promoted as a way of removing the poor and unemployed from the city. Such individuals were not only regarded as a blight upon the urban landscape, they were seen as a positive danger - the likely recruits of socialist agitators and anarchists. Village settlement schemes were to provide disillusioned members of the working class with an alternative path and ideology. They were intended to strengthen belief in the notion of social mobility by converting impoverished workers into politically conservative small land-holders.

Proposals incorporating a range of different approaches to land settlement were suggested, but it was Reverend Horace Finn Tucker's plan which immediately won public favour. Tucker, the eccentric priest of Christ Church, South Yarra, was a dedicated Christian Socialist. In a letter published in *The Argus* in February 1892, Tucker, the eccentric priest of Christ Church, South Yarra, was a dedicated Christian Socialist.

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4 Some proposals advocated schemes based upon the 'blocker system' as developed in South Australia, while others suggested land-share systems. For an account of these see John Adams, 'Village Settlements in Victoria in the 1890's with particular reference to Gippsland', PhD. Thesis, University of Melbourne 1971, pp.65-76.

5 In Britain, Europe and North America religious and secular groups had previously experimented with the establishment of small rural communities. Communities were set up by the Anabaptists, Moravians, and various other sects throughout Western Europe during the fifteenth, sixteenth and seventeenth centuries. Similar colonies were later established in North America. The Anabaptists founded the Ephrata Colony in Pennsylvania, while the Amana Society and the Mormons established communities in Iowa and Utah respectively. Colonies based upon socialist principles were established
Tucker proposed that a co-operative land settlement company be formed to purchase 500 or more acres of land. This would be divided into five acre allotments, and, together with limited material assistance, would be made available to the ‘enterprising and capable amongst the unemployed.’ No rent would be paid for the land; rather, the unemployed would pay for it through their labour and produce. At a public meeting held thirteen days later, a committee was appointed to oversee the establishment of a Village Settlement Association. On 28 March 1892, the Association was officially founded. Despite a lack of public subscriptions and the unwillingness of the government to sponsor its venture, the Association quickly set about purchasing land by Robert Owen in England, and at New Harmony, Indiana. Other colonies were founded to give practical expression to the ideas of Charles Fourier and Etienne Cabet. By the 1890s, Australia too had been the site of such experimentation. The Moravians established several settlements in Victoria in the mid-nineteenth century. In 1890, a Christian Socialist commune was founded near Drouin by George Brown. Utopian William Lane, who sailed for Paraguay in 1893 to found his New Australia, was perhaps the greatest advocate of communal settlement in the colonies. For details regarding these experiments see J. Adams, ‘Village Settlements’, pp.26-7 & 37-39; L.J. Blake, ‘Village Settlements’, Victorian Historical Magazine, vol.37, no.4, 1966, pp.189-191; V. Burgmann, In Our Time: Socialism and the Rise of Labor 1885-1905, George Allen & Unwin, Sydney, 1985, pp.19-34.


7 The committee included Professor Morris of the COS, Dr Charles Strong of the Australian Church, Reverend Herlitz, writer Alexander Sutherland and several politicians. Reverend Tucker was appointed as the Chairman of the Association and Dr Strong as its vice-chairman. The Argus, 23 February 1893, p.5; Blake, ‘Village Settlements’, pp.191-2; Adams, ‘Village Settlements’, pp.83-6.
and placing families upon it. The first settlement at Jindivik, near Drouin, boasted seventy settlers by late May, but it was doomed to failure. Tucker’s settlements at Wondwondah East, Wormbete, Birts Hill, Horsham and Kilfeera Swamp near Benalla, met with varying degrees of success. While a small number of settlers eventually managed to attain financial independence, many more fell victim to ignorance and mismanagement. Both the Association and the settlers lacked an awareness of the difficulties they would face and the type of work and co-operation needed to make the settlement scheme a success. The Association’s efforts were continually undermined by lack of funding, and public concern over the hardships and injustices endured by the settlers. By November 1894, the Association owed over £3,000 to its increasingly agitated creditors. Through government intervention, public appeals and the generosity of creditors, the Association was relieved of responsibility for its two surviving settlements, and Tucker and Strong were left with a debt of £500, which they paid off over several years.

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8 Two carpenters, a plumber, a ploughman, a farm hand, a gardener, a blacksmith and a bushman, were amongst those who came with their families to settle the land. In August 1892, the poor quality of land and scarcity of alternative work, led to the settlement being relocated to Red Hill. Adams, ‘Village Settlement’, pp.88-91.

9 The success of the Wondwondah East Settlement, about twelve miles from Horsham, was limited by the poor quality of the soil. Many of its 300 residents were eventually shifted to the Moora Moora Settlement nearer to the Grampian mountains, where a prosperous saw mill had been set up. The Kilfeera Swamp settlement was initially set up as a labour colony, the Association having secured a government contract to drain the swamp. ibid, pp.95-9.

10 ibid, pp.99-104.
The difficulties faced by the Village Settlement Association did not deter the Victorian Government from pressing ahead with its own plans for land settlement. In 1892, Allan McLean, the Lands Minister in the Shiels Government, introduced the Village Settlements Bill. By enabling individuals with limited savings to purchase small allotments of land, the bill was intended to stem the flow of people into the city, promote rural settlement, encourage and stimulate trade, and bring capital and labour into a more harmonious relationship. The scheme proved contentious both inside and outside parliament. The Age supported McLean's proposal, but The Argus condemned it as a threat to the ethos of hard work and individual responsibility, and warned that it opened the door to 'jobbery of all kinds'. A lack of agreement between the upper and lower house eventually resulted in the bill being withdrawn on 3 March 1893.

Newly-elected Premier James Patterson, bolstered by public support for such a scheme, soon revived the land settlement cause. In April 1893, a deputation of women representing the wives of unemployed men, urged the government to find work for those unable to obtain it. They argued that there was plenty of employment in the country if the land was made available. Patterson denied that it was the government's responsibility to provide men with work, yet he clearly shared the women's belief in the virtue of land settlement. He immediately wrote to the Lord Mayor and suggested that

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11 VPD, 1892-3, vol.69, p.568.

12 The Age, 21 July 1892, p.4; The Argus, 21 July 1892, p.4 & 7 July 1892, p.4.

13 For an account of the bill's stormy progress through parliament see Adams, 'Village Settlements', pp.123-36.
a public fund be initiated 'for the purpose of aiding men who are willing to go out and
till the soil in preference to congregating in the metropolis'. For Patterson, land
settlement provided one avenue through which law and order in the city could be
maintained.

On 18 July 1893, John McIntyre, the Minister for Lands, introduced the Land
Settlement Bill, the first part of which dealt with the establishment of village
communities. It proposed that areas of crown land be set aside for subdivision into
allotments of between one and twenty acres. A settler would be given a permit to
occupy an allotment for three years, after which time a lease would be granted if the
settler had met certain requirements relating to residence and improvements. The
price of the land was to be less than £1 per acre and this was to be repaid in full in
40 half-yearly instalments. Survey fees, monetary advances and the cost of
improvements also had to be repaid by installments. Once this was achieved, the
government could issue the settler with a crown grant. The second part of the Act
dealt with the distribution of land to Homestead Associations and Societies. These
were cooperatives of six or more people. They could apply for up to 2,000 acres, which
they were required to divide into allotments no larger than 50 acres each. Each settler
was given a permit similar to the one issued to the village settler, although different
financial and administrative measures were laid down.

14 The Age, 20 April 1893, p.6.

15 The resulting legislation was An Act to provide for the establishment of Village
Communities, Homestead Associations, and Labour Colonies, 1893, 57 Vict. No.1311.
According to McIntyre, the bill's objective was to 'enable all classes ... to obtain their heritage, that is, the lands which belong to them, in the freest manner possible, and on the easiest possible terms'. He argued that the people had an inherent right to occupy land as long as they used it properly. He implored the parliament to take into account the plight of the unemployed who, he said, had appealed to him time after time to be allowed to settle the land. But not all shared McIntyre's enthusiasm. Alan Trenwith found the scheme ill-conceived and untenable:

To take individuals off the streets of Melbourne, who are badly clothed and badly fed, and who have no money in their pockets, and to give them $10 with which to start on an acre of land, telling them to make a living on it, is actually insulting their intelligence. The thing is impossible... How can a man expand, how can his family grow, how can he acquire any wealth whatever on 20 acres of land?... to put a man upon 20 or 50 acres of land is only to bid him down to eternal poverty, and to drive the very spirit out of his breast.

In most cases, the critics were proved right. The legislation came into effect on 1 September 1893 and the government was immediately inundated with applications from would-be settlers. By the end of June 1894, 4080 applications had been lodged under the two sections of the act; 2122 of these had been approved and 88

17 VPD, 1893, vol.72, p.363. The Trades Hall Council supported the principle of village settlement and called upon the government to make the terms of assistance more generous. On 2 February 1894, the Council called on the government to find immediate work for the unemployed. It urged an extension of the Village Settlement Scheme and the introduction of more liberal assistance for settlers. Trades Hall Council Minutebook, 3 March 1893 - 19 March 1897, p.105. See also Trades Hall Council Minutebook, 30 October 1888 - 24 February 1893, pp.427-8.
18 VPD, 1893, vol.72, p.381. Similar sentiments were expressed by The Age, 19 July 1893, p.4.
settlements had been declared; 75 still existed in 1907. But like Tucker's settlers, those who took up land under the government scheme met with varying success. In March 1894, Reverend W.G. Marsh bitterly condemned the scheme, for as far as he could see:

not in any case was it possible for [the settlers] to obtain even sufficient food to sustain life. To see the wasted forms, the haggard faces, the sunken eyes of the settlers caused a feeling of horror in him which he had never before experienced. The placing of these poor people on the land to starve was simply removing the sickening sight from the metropolitan locality, the residents of the city being so tired of appeals for help that they transported these people to a land not flowing with milk and honey, but rather composed of such wretchedly poor soil that he would not accept 1,000 acres of it as a gift.

The largest and most successful settlement was at Kooweerup where the settlers were employed half-time draining the nearby swamps. Other settlements, such as those at Rosedale, Sale and Drouin, were immediately doomed as a consequence of poor climate and infertile land. The settlers were often as unsuitable as the acreage. Unemployed Melbourne men were eager to take advantage of the scheme, but most were unfamiliar with agricultural work and rarely did they possess the resources needed to succeed.

Calls for the establishment of labour colonies reflected a harsher approach to the problem of the unemployed. In November 1890, Reverend Hermann Herlitz, the

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20 The Argus, 14 March 1894, p.5.

Pastor of Trinity Lutheran Church, East Melbourne, presented a paper on the subject of labour colonies to the First Australasian Conference on Charity. Herlitz focused upon the problem of the unemployed whom he defined as those 'able bodied persons who either wish to work, but cannot, from various reasons find employment; or who could work but prefer a life of laziness, vagrancy and begging'.

Herlitz believed Australia to be a 'working-man's paradise' and was disgusted by what he believed to be the deliberate idleness of some individuals. He emphasized the need to differentiate between the deserving poor, and the 'so-called unemployed' who lived 'almost exclusively on the abuse of the public and private charity'. He suggested that this could be done by establishing 'working men's colonies', similar to those operating in Germany. According to Herlitz, such colonies enabled the genuinely unemployed to find work and thus made it easy to distinguish 'the simply unemployed from the habitually idle vagrants and mendicants.'

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23 ibid.

24 ibid, p.94. The German 'working men's colonies' were conducted along Christian guidelines and were intended to make the unemployed useful and honest citizens. Victorian advocates of Labour Colonies were also influenced by the writings of English social commentator Charles Booth who in his book *Life and Labour* which was published in 1889, advocated the establishment of labour colonies to relieve urban distress. The idea of labour colonies was keenly received by London’s Charity Organisation Society which undoubtedly relayed its enthusiasm to its colonial counterpart. For an account of the German and English models see The Earl of Meath, 'Labour Colonies in Germany', The Nineteenth Century, vol. 29, January 1891, pp.73-88; John Brown, 'Charles Booth and Labour Colonies, 1889-1905, Economic History Review, 2nd Series, vol.21, no. 2, August 1968, pp.349-60; Jones, Outcast London, pp.303-310.
The COS welcomed Herlitz's suggestion enthusiastically. For some time, Professor Morris and his colleagues had advocated the introduction of a labour test to determine the sincerity of those seeking charity. In early 1890, after returning from a tour of Britain and the United States, Morris had spoken of the need to 'invent some parallel for the work house', and praised the wood-yards and laundries established by American branches of the Society.\footnote{Morris, 'Charity Organisation Societies', p.6. This paper was read at a meeting of the Melbourne COS on 26 March 1890.} Labour colonies clearly fitted in with the Society's motto of 'work rather than alms'. In the Society's opinion:

The Labour Colony would discipline [the unemployed man] to habits of industry and sobriety, would teach him useful calling, would feed and clothe him well, and would send him into the world again with a sufficient capital of experience and accrued earnings to give him a fair start in life again...It would give a chance of \textit{making a MAN out of him}.\footnote{Quoted by Paul Hicks, 'The Leongatha Labour Colony. Its Relation to Middle Class Attitudes to Unemployment and Relief 1893-1919', Honors Thesis, History Department, University of Melbourne, 1983, p.19.}

Between March 1891 and May 1893, the Society lobbied successive governments to provide land for the establishment of a labour colony,\footnote{For an account of the negotiations between the government and the Charity Organisation see Kennedy, 'The Leongatha Labour Colony', pp.55-6. See also minutes of meetings held on 17 and 24 March, 24 November and 22 December 1891; 8 March, 5 April, 3 May, 7 June, 18 October and 6 December 1892; 14 and 21 February, and 25 April 1893, COS Minutebook, 12 December 1888 - 17 March 1893.} but Premier Patterson's own interest in the scheme, eventually robbed the COS of control over it.\footnote{Minutes of the meeting on 15 May 1893, COS Minutebook, 21 March 1893 - 29 November 1897.}
The establishment of a labour colony was another method by which Patterson hoped to place men on the land. At his request, a public meeting was convened on 27 April 1893, to discuss a resolution urging the establishment of a labour colony. Significantly the unemployed were prevented from entering the hall en masse, it being considered ‘that the objects of the meeting would not be best attained if the unemployed were present in a body, and the resolution would not be considered with the necessary calmness and consideration’. The Acting Governor, the Premier and Professor Morris spoke in favour of the resolution. They pointed to the benefits such a colony would have, both as a work test and as a means of settling the land and making useful citizens of the unemployed. The resolution was carried and a committee formed. A site at Leongatha was soon selected, and by the end of June, the first colonists had arrived.

Within two months of the colony being founded, the Land Settlement Bill was introduced to Parliament. Its third section enabled the government to set aside blocks of land not exceeding 1500 hundred acres, for the purpose of forming labour colonies. The colonies were to be administered by a board of trustees in conjunction with a committee of elected subscribers from the public, but the colonies were ultimately to be considered government institutions. Funding was to be gained through a mixture of public subscription and government grants. According to the bill, any male could be admitted to the labour colony as long as he was unemployed and of good character.

29 The Age, 28 April 1893, p.5.
30 The Age, 28 April 1893, pp.5-6.
John McIntyre argued that labour colonies would provide work for the unemployed and a safeguard against crime and distress:

Any one who goes to these labour colonies and does his work will get a living and a little money for his labour. Therefore, no one who is able and willing to work will need to starve. Besides, these labour colonies will tend to prevent crime. Many a man, feeling the pangs of starvation and seeing his wife and children starving, has committed crimes which he would never have committed had he only had a place like one of these labour colonies to go to. It is our duty to guard against the tendency to crime caused by poverty and distress, and in a country like ours I am certain that this is a step in the right direction. There will be no further need for thousands of people to go wandering about the streets with no work to do if these labour colonies are the success which I believe they will be.31

McIntyre believed that government involvement in the relief of unemployment was essential, but not everyone shared this view. His parliamentary opponents argued that little profit would be gained from the labour of the colonists, and that, more importantly, those forced to go to such an institution to gain work would be robbed of their spirit of independence.32 The unemployed expressed different objections to the scheme. They feared that colonists would be exploited as a source of cheap labour, and that conditions might be made so unpleasant as to make a man accept any sort of alternative employment. The unemployed were also understandably reluctant to be separated from their wives and children.33

31 VPD, 1893, vol.72, pp.360-1.
32 ibid, pp.368 & 379.
33 Minutes of the meeting on 9 May 1893, COS Minutebook, 21 March 1893 - 29 November 1897.
Objections to the scheme were overshadowed by the early progress of the Leongatha Labour Colony. Jacob Goldstein, who was appointed honorary superintendent of the colony, was pleased to report that in its first year of operation, '1,013 men [had] been removed from the streets of Melbourne and sent to work' there. By the end of 1893, 300 of these men had found positions using the labour bureau, another 200 had left to go prospecting or to join the village settlement scheme, while others had gone in search of alternative employment.\(^\text{34}\) The colonists had worked at clearing land, sowing grass for grazing, planting fruit trees and vegetables, tending animals and erecting buildings and fences. Those who had promoted the scheme boasted of its success. Professor Morris claimed that the men who had gone to the colony were well fed, 'happy and satisfied'.\(^\text{35}\) Goldstein asserted that the colony had done Victorians a great service by rehabilitating 'men of the shiftless sort', instilling in them a sense of self-dependence', and thereby preventing them from 'sinking into crime'.\(^\text{36}\)

By 1897, however, serious doubts were being raised about the viability and success of the colony. In Parliament, Charles Carty Salmon claimed that it was inefficient and costly. He argued that the colonists were often ill-suited to the work and


\(^{35}\) Quoted by Hicks, "The Leongatha Labour Colony", p.27.

that the colony had failed to lead them into regular employment. In August 1899, Salmon renewed his attack by claiming that at Leongatha experimental farming had taken the place of legitimate work and that the colony's general progress had been hindered by squabbling between Goldstein and the resident manager of the colony.

A Select Committee appointed in October 1899, to inquire into the 'working and results of the Leongatha Labour Colony', verified many of Salmon's complaints.

Despite these criticisms, the Leongatha Labour Colony survived until 1919. During its 26 years of existence, it catered for some 9,300 unemployed men. The colony did not successfully reintroduce unemployed men to the general workforce, nor did it reform the habitual idler. It did, however, remove unemployed men from the streets of Melbourne and decrease their likelihood of being arrested as vagrants. Both the labour colony and the village settlement schemes were promoted as providing unemployed men with an opportunity to work, yet the terms under which they laboured were deliberately harsh, for they were intended to differentiate the willing from the unwilling. Those who were considered capable of work but who failed to take advantage of the opportunities offered to them were, more than ever, at risk of being

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37 VPD, vol.86, 1897, pp.2076-82.


39 Paul Hicks, 'The Leongatha Labour Colony. Its Relation to Middle Class Attitudes to Unemployment and Relief 1893-1919', Honours Thesis, History Department, University of Melbourne, 1983, Appendix II.
condemned as loafers and vagrants.

The Old-Age Pension

The aged poor posed a particularly thorny problem for Victoria's administrators. The depression of the 1890s exposed the vulnerability of the elderly to poverty and raised questions about the suitability of existing poor relief measures. In a society that prided itself upon its civilization and the achievements of its founders, poverty amongst the aged stood out as a glaring anomaly. It was also an issue to which many people could relate. Victoria's population, like that of the other Australian colonies, was rapidly aging and thus the spectre of destitution in old-age loomed over an increasing number of people. 40 Debates in England about poor relief also paved the way for colonial discussion of the aged poor. In England, several proposals for relieving the distress of the elderly had been discussed throughout the 1880s. These advocated varying degrees of individual and state responsibility. Some of the suggested schemes were contributory in nature and required workers, and sometimes employers, to make regular contributions to an insurance fund. A non-contributory scheme which involved the state making payments to a designated category of people was also suggested. 41 Amongst

40 Brian Dickey notes that the proportion of people in the colonies over the age of sixty-five steadily rose towards the end of the nineteenth century. Between 1891 and 1901, there was a 60% increase in the number of people aged over 65 years living in the Australian colonies. Brian Dickey, No Charity There, p.111.

41 ibid, p.110.
those who favoured the introduction of an old-age pension to remedy some of the undeserved poverty was influential social investigator Charles Booth.  

The campaign for an old-age pension in Victoria gathered momentum in the mid-1890's. Reports of elderly people being arrested and imprisoned under the vagrancy provisions appeared regularly in the press and provided proponents of the cause with indisputable evidence of misery and injustice. In 1896, parliamentarian Joseph Kirton, moved that a state-aided pension or insurance scheme be introduced for the aged poor, and that a Royal Commission or select committee be appointed to inquire into the subject. For Kirton, a state scheme to aid the elderly represented far more than a relief measure. He regarded it as a practical acknowledgement of the reciprocal relationship existing between the state and its citizens:

Statesmen and reformers of all classes and of every school now admit that no matter whether a man has fallen out of the industrious ranks, no matter whether he has pauperized himself as the result of improvident habits, he must be regarded as a member of the community, and as one who is entitled to consideration. The social organism, which is made up of many parts and a variety of individuals, involves rights as well as duties. While citizenship brings responsibility it brings corresponding privileges and rights.  

Other parliamentarians, together with the representatives of conservative charities, objected to state intervention to aid the elderly poor. Some, like Gavan Duffy, 

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42 Kennedy, Charity Warfare, p.69.


44 ibid, p.460.
maintained a ‘head-in-the-sand’ approach. They claimed that the aged poor were seldom, if ever, sent to gaol.45 A far more common view derided the proposed schemes as being incompatible with the existing aims of charitable distribution. ‘Charity, particularly indiscriminate charity’ warned Mr Hamilton, ‘breeds more idleness’.46 The state schemes were not envisaged as a form of charitable assistance, and any attempt to label them as such, was misleading. Yet these types of criticism had tradition on their side and were used to great effect by the advocates of strictly discriminatory charity. Kirton eventually withdrew his motion, but not before securing a promise from Duffy that the government would appoint a body to investigate the suggestion in full.47

In 20 March 1897, a Royal Commission, chaired by Joseph Kirton, was appointed to investigate the desirability of an old-age pension or some similar form of relief, and the best means by which to secure it.48 The Commission heard evidence from the representatives of charities, churches, trade unions, friendly societies, employers, the legal profession and government departments and institutions. Views differed as to the desirability of various schemes, but it was soon clear to the commission that the need for some measures to assist the elderly poor were

45 ibid, p.470.
46 ibid, p.468.
47 ibid, p.470.
48 The appointment of the Royal Commission was warmly welcomed by various individuals and bodies, including the Trades Hall Council. On 17 July 1896, the Council passed a motion expressing its gratification at the government’s action. Trades Hall Council Minutebook, 3 March 1893 - 19 March 1897, p.326.
desperately needed. The Commission's progress report, which was handed down within four months of its appointment, spoke of the need to provide accommodation for aged and destitute people who, although not guilty of any crime, were occasionally arrested for vagrancy and imprisoned. It was a matter which, according to the commissioners, had been brought 'prominently under notice' during their investigations, and one which warranted immediate action. They recommended that magistrates be allowed to pursue private investigations in cases in which no criminal default had been alleged, and that magistrates be authorised to make provisions for the immediate sustenance of those in need. It was recommended that the Police Offences Act, which encapsulated the vagrancy provisions, be amended accordingly. 49

The Commission's second and final report was handed down in 1898. In both content and tone, it echoed the first. Once again was a clear expression of concern and responsibility for those who could no longer care for themselves and recognition of the economic and social causes of problem. The commission described the plight of the aged poor as 'the symptom of a disease' which had 'its roots deep down in social, industrial, and political conditions'. Intermittent employment, insufficient pay and sweating were criticized for the detrimental effect which they had upon the community. While industrialisation raced ahead, it left behind a collection of 'involuntarily manufactured idlers':

The potent agency of steam and the fecundity of the inventor have not only displaced labour, but 'one generation of masters wears out three generations of men'; but worst of all, 'the race is to the swift, and the

battle to the strong. In other words, preference is given to the younger and more vigorous competitor, and the inevitable result is that the physically weak - and not only the aged, but even the elderly - are unable to obtain a sufficiency of employment. Maturity of mind and ripened physical powers are being sacrificed to the twin demons of competition and cheapness. It is the law of the strongest - the strong vanquish the weak; the smart the wise. Age and experience are dethroned and penalized and their possessors wear not the badge of honour, but the marks of degradation.

The commission's enlightened attitude ended there. While it was willing to recognise the structural causes of poverty, it was not willing to disregard entirely the principle of individual responsibility. In formulating its recommendations, the Commission clearly took into account the claims of conservative charity workers who warned that a state pension, especially one granted indiscriminately, would 'make people more careless, and cause more pauperism'. The Commission advocated a hybrid scheme which, as Richard Kennedy suggests, incorporated the Charity Report of the Royal Commission on Old-Age Pensions, p.vi. The Commission's findings supported what many already knew. In 1889, for example, The Age published a letter entitled 'Pity the Old Men'. The writer bemoaned the fact that he could not gain employment: 'My calling is in the literary profession, where you would suppose age and experience should be considered valuable recommendations. I am, and always have been, in good health, am only 60 now, with yet, I hope, several years of good working life in me. But no, it is a melancholy fact that men, when they arrive at the age of 60 or thereabouts, never mind what capabilities they possess, cannot obtain employment in Melbourne, and are ruthlessly told to stand aside and see young and often inexperienced ones fill their places.' The Age, 24 January 1889, p.9.

Alfred Laver, the Superintendent of the Melbourne Benevolent Asylum, argued against a state pension on these grounds. David Fraser of the COS opposed providing a pension to all, as he believed that the elderly people who were sent to gaol were generally 'drunken and indolent'. Evidence of Alfred Laver and David Fraser, Report of the Royal Commission on Old-Age Pensions, p.1.
Organisation’s principles into mainstream Victorian liberalism. It was recommended that assistance be given to those who reached the age of sixty years, and in some special cases, to younger individuals whose employment had resulted in their premature decay. Recipients, however, were to be classified as deserving and less deserving and an authority was to be established to investigate and determine the validity of all applications.

The recommendations were not received, or even made, without criticism. In a minority report, Commissioners Wrixon, Embling, Sternberg and McCleod, questioned both the suggestions and the principles embodied within the main report. They argued that it was unjust to the taxpayer and demoralising to the community to treat all alike - 'to reward equally the industrious and the provident with the idle and the reckless'. They preached hard-work and thrift, not the destruction of self-reliance. In the Parliamentary debate that followed the submission of the report, such opinions were again voiced, but were strongly outweighed by those who advocated immediate assistance for aged individuals who were no longer able to care for themselves and risked imprisonment. The irony of the situation was not lost on Mr Hancock. 'Under our present system' he noted, 'a man whose only fault is that he is poor is to be allowed to starve outside, but by committing any offence he is assured of comfort, of

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52 Kennedy, Charity Warfare, p.235.

a roof over his head, and of regularity of food.\textsuperscript{54}

Brian Dickey has said, about the old-age pension, that Victoria, when compared to the other colonies, conceded the least with the greatest ill-grace.\textsuperscript{55} Certainly the battle to introduce the pension was prolonged and hard-fought. It was not until 1900 that the Turner government finally introduced a meager allowance of ten shillings per week for those who were 65 years and over, and could satisfy a means test and a character test.\textsuperscript{56} But even this degree of generosity was not to last long. The following year, the Peacock government succeeded in reducing the pension to eight shillings and allowed for a lesser pension to be paid to those who were 'physically capable of earning or partly earning' a living.\textsuperscript{57} The means test was also significantly strengthened. Candidates had to prove that they had been destitute for six months,

\textsuperscript{54} VPD, vol.89, 1898, p.2510.

\textsuperscript{55} Dickey, No Charity There, p.115.

\textsuperscript{56} According to Dickey, this legislation was rushed through Parliament by the Turner Government which wanted to claim some prestige as the inaugurator of the first aged pension in Australia. Turner's bill proposed that the pension be set at only seven shillings but this was amended in the House to an allowance of ten shillings. Dickey, No Charity There, pp.115-6.

\textsuperscript{57} The Peacock Government proposed that the pension be reduced to seven shillings. An allowance of eight shillings was agreed to after the bill met strong opposition in the Legislative Assembly. Concern over the reduction of the pension was also expressed outside parliament. On 18 October 1901, for example, the Trades Hall Council suspended standing orders to pass the following motion: 'That this Council emphatically protest against the iniquitous reduction of the maximum of the Old Age Pension from 10/- to 7/- per week or any reduction of the said pension where the earnings of a pensioner does not exceed 10/- a week'. The motion was unanimously carried and forwarded to the Secretary of the Parliamentary Labour Party. Trades Hall Council Minutebook, 21 June 1901-12 June 1903, p.92.
and requests were rejected, if it was shown that the candidate's family was capable of providing support. Under the 1901 Act, a pensioner's property could be compulsorily transferred to the Crown for realisation at the time of the pensioner's death. In 1903, the Irvine government introduced even more stringent rules concerning family support and lack of means. Able-bodied men over the age of 65 were excluded from receiving a pension.

These actions severely limited the egalitarianism of the pension scheme. A strong emphasis upon self-reliance and thrift was integral to it, yet the introduction of a state pension did reflect a change in public attitude. There was a growing realisation that not all members of the community were able to care adequately for themselves. The Royal Commission, in particular, highlighted the injustice of treating the poor as criminals. The revelation that the elderly poor were being gaol, contributed to a more selective use of the vagrancy law, while the introduction of the pension saved some people who might otherwise have been arrested as vagrants. The pension was meagre, but those who were able to acquire it were provided with a regular, and indisputably lawful income, with which to buy a few necessities. Their life was certainly not luxurious, but at least there was an opportunity for them to gain a meal and shelter outside of gaol. The same could not be said for those who did not seek, or manage to secure, a pension. In the best traditions of discriminatory charity, they remained categorised as the undeserving.


56 ibid, 117.
The Medicalisation of Inebriety

During the late nineteenth century, reformers and politicians identified inebriety as one of Victoria's most serious social problems. Drunkenness was linked to crime, insanity, death, disease and vagrancy. Over-consumption of alcohol was regarded as the cause, and in some cases the consequence, of idleness and immorality. Moreover, it was believed to contribute to family breakdown and poverty. The cost of drunkenness was most often measured in economic terms. It was argued, with some validity, that drunkenness, especially amongst men, led to financial hardship within families and thus placed unwanted strain upon charitable institutions who were asked to provide material assistance to them. Habitual drunkards represented lost labour; worse still, they were a drain upon government coffers. Drunkenness was blamed for the demise of many of the people residing at the public's expense in gaols, lunatic asylums and hospitals. Henry Booth, of the Salvation Army, argued in 1899 that 'for economical reasons the Government ought to act'. No doubt recognising the persuasiveness of economic reasoning, he quoted a British authority who suggested that a 'workless man [was] a dead loss to the community of £100 per year'.

In 1898, Joseph Panton spoke about the extent of drunkenness in the inner city area. He claimed that, as police magistrate, he dealt with an average of 120 drunkards per week. One quarter of these, he said, belonged to the criminal class. The remainder

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60 Evidence of Herbert Henry Booth, Commandant of Salvation Army, Report of the Board appointed to Inquire into the Question of the Treatment of Habitual Drunkards with Appendices and Synopsis of Evidence, VPP, 1899-1900, vol.iv, p.29.
were simply drunkards, mostly
labourers, sailor-men, a few broken down educated men, and loafers. Amongst the women...the old importations, principally poor creatures who have probably been sent out for the good of their country (not as convicts), prostitutes, and an occasional dipsomaniac of a better class.\textsuperscript{61}

Individuals who became occasionally drunk were charged with being drunk and disorderly, but those who were persistently found intoxicated were liable to more serious punishment under the vagrancy law. The vagrancy provisions, defined an 'habitual drunkard' as any person who had been convicted of being drunk and disorderly three times in the preceding twelve months. According to the legislation, any habitual drunkard found behaving in a riotous or indecent manner in any street, public highway or resort could be charged with being an idle and disorderly person, and if found guilty, sentenced to a maximum of twelve month's imprisonment. Drunkards also featured amongst those arrested for having insufficient or no visible lawful means of support.

Drunkenness was traditionally understood as a sin or a vice, and was attributed to moral weakness. It began as a failure to overcome a desire for drink but ended with an incurable deterioration of mind and body. Rather than being a disease in itself, this interpretation posited drunkenness as the cause of a disease.\textsuperscript{62} From as early as the


\textsuperscript{62} Stephen Garton, "Once a Drunkard always a Drunkard": Social Reform and the Problem of "Habitual Drunkenness" in Australia, 1880-1914', \textit{Labour History}, no. 53, November 1987, pp.39-46. A similar reinterpretation of inebriety was also occurring in America. For an account of this see Edward M. Brown, "What Shall we do with the
1860s reformers, in the colonies and in Britain, stressed the need to provide special treatment for inebriates. They argued that habitual drunkards should be confined in special institutions so as to remove them from temptation. In 1871, Melbourne physician Charles McCarthy called for the introduction of separate institutions designed 'to stop habitual drunkards from becoming incurable dipsomaniacs'. This approach was translated into public policy in 1872 when the Victorian legislature passed the Inebriates Act. The following year, Australia's first inebriate asylum was established at Northcote under the proprietorship of McCarthy.

During the final quarter of the nineteenth century a new interpretation of drunkenness gained impetus. It emphasised the role of heredity, and adapted germ theory to argue that alcohol was a toxin which triggered mental deterioration in people already predisposed to such illness. Drunkenness itself was thus redefined as a

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63 Quoted by Garton, "Once a Drunkard always a Drunkard", p.41.

64 An Act to provide for the Treatment and Cure of Inebriates, 1872, 36 Vict. No.449. Entry on Charles McCarthy, ADB, vol.5, pp.129-30. This act provided for the establishment of inebriate retreats and set down a procedure for admissions. According to the act, inebriates upon their own request or that of a friend or relative, could by court order be committed to an institution for a period not exceeding twelve months. In 1888, the Victorian Inebriate Asylums Act was introduced. This legislation enabled the courts to commit to inebriate asylums individuals who were arrested by the police and found to be dangerous. In 1890, a third inebriates Act consolidated existing legislation. It repealed the 1888 act, detailed an admission procedure similar to the one outlined by the 1872 Act, but set the maximum period of committal at three months rather than twelve months. An Act to provide for the establishment of Asylums for Inebriates, 1888, 52 Vict. No.1009; An Act to consolidate the Law relating to the Care and Cure of Inebriates, 1890, 54 Vict. 1101.
disease. Under this new interpretation, medical experts were afforded greater power, for it was suggested that inebriates could be cured if their disease was diagnosed and treated at an early stage. As a consequence, there was a rapid proliferation of organisations, institutions and individuals devoted to the cure of inebriates. But the best means of treatment was not agreed upon. Some experts advocated the use of anti-toxins to counteract the effects of alcohol and to rid individuals of their craving for drink. Most of these cures were based upon the bi-chloride of gold formulae developed at the Hagey and Keeley Institutes in America, and involved injecting solutions into the bloodstream of patients. Dr Wolfenden, an American Baptist Minister, purchased the sole right to use the Hagey cure in Australia and was responsible for establishing a series of inebriate clinics in Victoria. Other advocates of the disease theory preferred a psychic approach. John Creed, an influential New South Wales physician and editor of the Australasian Medical Gazette between 1882 and 1893, claimed that the administration of drugs was ‘practically impotent in the treatment of chronic inebriety’. Instead he advocated the use of hypnosis and

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66 These formulae consisted of various substances. Besides chloride of gold, strychna, nitro glycerine, digitalis and sodium were often used in varying amounts. These substances were usually combined together to form a tablet which was then dissolved and injected into the patient's bloodstream. While being treated, patients were supplied with ample quantities of alcohol. If all went to plan, the formula reacted with the alcohol, to produce feelings of nausea. It was claimed that this reaction permanently destroyed the craving for drink.

67 Wolfenden’s final venture in Australia, The Bichloride of Gold Institute of Victoria, was eventually purchased by the Methodist Central Mission. The administrators of the mission described the bichloride of gold treatment ‘as the best yet discovered’ but stressed the need to also take into account the patient’s moral surroundings. Letter from A.R. Edgar and A.J. Derrick to A.E. Scott, 16 January 1902, VPRS 2585: Unit 1.
suggestion. By the late 1890s, habitual drunkards were at the centre of a power struggle. Members of the medical elite fought moralists and unqualified self-appointed specialists, for control over their treatment. The doctors were able to highlight the harmful social and economic effects of inebriety and to question the propriety and success of arresting and legally sanctioning habitual drunkards. In June 1895, The Australasian Medical Gazette claimed to speak for most doctors when it condemned existing arrangements:

The law allows drunkards who are brought before a magistrate to repeat their debauches again and again on payment of a small fine, or a short term of imprisonment. That such measures will reform the victim of the alcoholic habit is, indeed, an improbability. The rich man pays the fine and returns to drink; the poor one spends a few days in gaol, and makes up for lost time on being liberated. It is now the almost unanimous opinion of the members of our profession that drunkenness is a disease rather than a habit, and must be treated accordingly.

While most doctors acknowledged the detrimental effects of over-indulgence, few advocated total abstinence. Prohibition tended to be advocated by those who equated drunkenness with sin and vice. The doctors preferred a less rigid approach which

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68 Letter from Dr Creed to Dr Bevan, 10 January 1902, VPRS 2598: Unit 1. Entry on John Mildred Creed, ADB, vol.3, pp.492-3.


70 The Women's Christian Temperance Union, for example, was one of many groups which called for the introduction of prohibition. The Union's stance was firmly based upon the tenets of evangelical Christianity. It argued that drinking was sinful and that much of the world's misery was due to over-indulgence in alcohol. The Union drew particular attention to the hardships suffered by women and children as a result of men's drinking. For an account of the W.C.T.U. see Anthea Hyslop, "Temperance,
would strengthen rather than weaken their professional position. In 1891, Dr Byrne used his presidential address to the members of the Australian Branch of the British Medical Association, to call for the establishment of inebriate asylums and the introduction of adequate legislation. It was medical control over the problem of inebriety that Byrne and his colleagues desired.

The government took its first steps towards recognising the doctor’s demands in 1896, when it appointed a board to inquire into the question of the treatment of habitual drunkards. The board heard evidence from twenty-five witnesses including gaolers, doctors, magistrates, social reformers, charity workers, policemen and churchmen. In its report, the board focused upon alcoholism and its connection with pauperism, crime and insanity. It described existing laws as ‘altogether inadequate for the purpose of checking drunkenness’ and urged that immediate action be taken to deal with the problem of habitual inebriates. According to the board, the vagrancy provision which related specifically to habitual drunkards was too narrowly defined to be of much use. The board also questioned the value of imprisoning habitual drunkards for short periods of time. The inebriates Act of 1890 provided for committal of habitual drunkards to inebriate asylums, but the board found that this legislation could not be used because the colony lacked such an institution.

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71 Australasian Medical Gazette, vol.10, April 1891, pp.204-6.

72 McCarthy’s Asylum for Inebriates at Northcote had closed in the late 1880’s amid allegations of mismanagement and impropriety.
recommendations were ultimately shaped by its acceptance of habitual drunkenness as a disease. It advocated that habitual drunkards be separated from regular prisoners and indeed removed from gaols altogether. It recommended that a retreat for inebriates be established on French Island. Ideally the retreat was to be similar to a labour colony, with hard work and open air serving as the basis of reform.\textsuperscript{73}

The board's recommendations were not implemented, but in 1901, the government signalled its continued interest in the subject by appointing a committee to investigate alleged cures for inebriety. The committee was immediately cast as arbiter in the debate over the cause and treatment of habitual drunkenness. Physicians, hypnotists, self-appointed experts and reformed drunkards amongst others, eagerly offered their own cures for consideration by the committee. Most adopted the view that alcoholism was a disease, but the treatments they advocated clearly reflected their own self-interest. Charles Graham asked the commission to test his cure. If proven successful, he wanted £1,000 for the formula and a salaried position in the Inebriate Hospital or Retreat which was to be set up.\textsuperscript{74} J.P.T. Caufield, a reformed drunkard and self-appointed specialist, also sought such an appointment for twelve months, but at the even more exorbitant sum of £1,500. To support his case, Caufield pointed to the overwhelming good that a cure for inebriety would do:

The value to the family and the State of a remedy for drunkenness is almost incalculable. In the balance against human suffering, family

\textsuperscript{73} Report of the Board appointed to inquire into the question of the Treatment of Habitual Drunkards, pp.12-13.

\textsuperscript{74} Letter from Charles H. Graham to the Chief Secretary, 17 December 1901, VPRS 2598: Unit 1.
poverty and wretchedness, there is certainly no estimate of its value. It is beyond calculation. A drunkard costs the state money, and persons and property are both in peril through him. He lives on another's wages. He causes family degradation and sorrow. He is a menace and an expense, and would be better dead. A dead man is no expense. A drunkard is an idler.\(^\text{75}\)

But it was not simply the suppliers of cures who took an interest in the committee’s proceedings. Inebriates, desperate for a cure, offered themselves as subjects for experimentation. W.R. Rogers, a father of two children, wrote as follows:

\[\text{I am not like the majority of men have a glass and then leave it alone. When I start I don’t know when to stop and of course lose my senses altogether. It is not an everyday occurrence, Thank God. I can guarantee to keep away for a month or more for that matter, but I wish to get rid of the craving for ever. I would take any kind of medicine to do so.}^{\text{76}}\]

Other letters came from the relatives and friends of drunkards. Mrs Harriet Shepherd wished her husband to be considered for cure. He had been a drunkard for fourteen years and had been arrested five times.\(^\text{77}\) A more matter-of-fact approach came from Mr Herning, who offered his wife’s services:

\[\text{Dear Sir, I see by The Age of the 3rd that you want some Inebriate to experiment on. My wife is an Inebriate. She would be a good one to try. She will take anything to try and get better. I have tried a few cures but they have proved failures.}^{\text{78}}\]

The Committee did conduct at least one series of experiments, but it is impossible to

\(^{75}\) Letter from J.P.T. Caulfield to the Chief Secretary, 16 January 1900, ibid.

\(^{76}\) Letter from W.R. Rogers, 5 December 1901, ibid.

\(^{77}\) Letter from Harriet Shepherd, 1 March 1902, ibid.

\(^{78}\) Letter from W. Herning to Mr Trenwith, 4 December 1901, ibid.
establish whether the subjects of these tests were as willing as the correspondents. In 1902, a remedy advocated by a man named O'Shanessy, was administered to eight prisoners in Melbourne Gaol. Each of the men had a long history of drunkenness, and according to a later report, their intemperate habits withstood O'Shanessy's cure.\footnote{O'Shanessy forwarded his formula to the Committee free of charge. He emphasised that its success depended upon the individual's inclinations, personality and mental stability. The formula consisted of chloride of gold and sodium, inurate of ammonia, nitrate of strichnia, antropia, fluid extracts of anchorbia and cocoa, glycerine and distilled water. According to a report on the experiments, O'Shanessy mixed the formula which was then administered orally by a nurse. Treatment lasted between two and nine days; the testing on one prisoner was halted temporarily as a consequence of his 'health'. A short time after the treatment had been administered, it was found that of the eight prisoners involved, one would still 'take drink readily when offered', three had relapsed, two were 'fairly steady' but not abstainers, and two could not be traced. It was the committee's conclusion that the drugs were 'well known cardiac and nerve tonics', and that the results of the experiments, 'suggested nothing more. J.P. O'Shanessy to the Chief Secretary, 21 November 1901, ibid; Notes relating to the experiments are written on the back of the minutes of a meeting held on 6 May 1902, ibid.}

Despite this failure, the Committee concluded that inebriety was a disease and urged the introduction of a more scientific means of treatment. In its unpublished report, it called upon the government to take legislative action to ensure the treatment and restoration of inebriates. It recommended that private retreats be registered, that the government establish its own retreat for the isolation, classification and employment of inebriates, and provide a special place of confinement for criminal inebriates.\footnote{Report of the Committee of Inquiry as to Certain Alleged Cures for Inebriety, ibid.}

A new Inebriate Act, introduced in 1904, encapsulated the Board's
recommendations.\textsuperscript{81} It laid down guidelines for the committal of inebriates to retreats and provided for the registration and regulation of such institutions. The legislation incorporated the elements of previous Inebriate Acts. Under its provisions, requests for committal could be lodged by an inebriate, an inebriate’s relative or business partner, or by a member of the police force. But the legislation also included provisions for dealing with individuals who would previously have been arrested as vagrants. Individuals who had been convicted of drunkenness three times within the previous twelve months, could now by court order, be committed to the care of an inebriate retreat. While habitual drunkards could still be arrested under the vagrancy provisions for behaving in a riotous manner or for having insufficient means of support, this new legislation provided the police with an alternative course of action which dealt specifically with the problem of inebriety.

The 1907 Amendments to the Vagrancy Law

Between 1889 and 1907, the ratio of vagrancy apprehensions performed in Victoria per 10,000 head of population fell from 28.3 to a mere 5.9. One of the major causes of this decline was the limiting of police powers in cases involving individuals suspected of having insufficient or no visible lawful means of support. Successive verdicts by the Supreme Court had resulted in the police being unable to use this

\textsuperscript{81} An Act to provide for the care, control, and treatment of Inebriates, 1904, 4 Edw.VII. No.1940.
charge to arrest suspects on sight. Under the court's rulings, the police were required to obtain a summons or warrant prior to arrest and were also prevented from admitting evidence about the defendant's past associations and convictions during the subsequent trial.

The police were certainly not pleased at their inability to utilise unhindered a law they had once regarded as the most useful in the colony. Several policemen used their appearance before the Royal Commission into the Victorian Police Force in 1905, to point to the current inadequacies of the Vagrancy Act and the detrimental effect of the Supreme Court rulings upon law enforcement. Inspector of Police, Lawrence Gleeson, complained that the gambling provisions were insufficient because they did not identify two-up and fan tan as unlawful games.82 Detective Sergeant David O'Donnell and Chief Commissioner Thomas O'Callaghan spoke of the difficulty of proving that a person was frequenting a public place with intent to commit a felony. According to O'Donnell, the police were required to prove that the suspect was habitually there. The two men viewed this necessity as ridiculous and unfair. As O'Callaghan put it, 'why should not a man going into any place to commit a felony be chargeable with that offence just as well for one visit as a dozen.'83 Charles Mackinnon pointed to the need for a broader definition of 'public place' in relation to acts of indecent exposure, and suggested that individuals living off the proceeds of prostitutes, as well as fortune-tellers and palmists,

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83 Evidence of Chief Commissioner Thomas O'Callaghan and Sergeant David O'Donnell, ibid, pp.45 & 486.
should be made liable to prosecution under the vagrancy provisions.\footnote{Evidence of Inspector Charles Mackinnon, \textit{idem}, p.201.}

The strongest criticism, however, was reserved for the Supreme Court rulings which limited police use of the charge of insufficient or no visible lawful means of support. Inspector Lawrence Gleeson believed that the decisions were tantamount to 'knocking the police out of court'.\footnote{Evidence of Inspector Lawrence Gleeson, \textit{idem}, p.159.} Likewise, Detective Sergeant David O'Donnell identified the demise of police powers in this area as the greatest stumbling-block in dealing with professional criminals. 'It has simply crippled us', he lamented.\footnote{Evidence of Detective Sergeant David O'Donnell, \textit{idem}, p.485.} O'Donnell clearly saw things from a police point of view. He believed that an effective vagrancy law was essential if police were to succeed in their struggle against crime. Moreover, he argued that it was the responsibility of police, not magistrates, to decide who should be arrested for vagrancy. Newly-appointed Commissioner of Police, Thomas O'Callaghan, similarly believed that the police should be free to exercise their own authority when dealing with vagrancy. 'I see no reason' he testified, 'why, if a man is a vagrant, he should not be arrested on sight, and brought before the Court and dealt with.' O'Callaghan argued that the act should be applied to 'anyone not getting his livelihood in an honest way - the man who has no visible means of getting a living'. Beggars and criminals were included in this category, but not individuals who were unable to obtain employment. Despite obvious past abuses of the act by the police, O'Callaghan claimed that 'no man would call a man a vagrant because he could not
get work."  

In its report, the 1906 Royal Commission found charges of corruption and misconduct against members of the police force to be unfounded. The force as a whole, it said, consisted of 'a reputable body of men'. Yet the Commission went on to report that the force was undermanned and ill-equipped to stem the upsurge in crime. The Commissioners painted a gloomy picture of law-enforcement in the city. They stated that 'the law in relation to crime and its prevention' was 'ineffective' and that the police were unable to deal effectively with known criminals: 'It is a lamentable fact...that crime is rampant in our midst and that the city of Melbourne contains a large number of notorious criminals who haunt the busiest thoroughfares'. The Commission reported that robberies were increasingly daring and well-organised, and that the proliferation of receivers made the recovery of stolen property almost impossible. Garotters and bomb-throwers were identified as new dangers. Most importantly, the Commission gave credence to the evidence of police by suggesting that the upsurge in crime was largely due to the ineffectiveness of the vagrancy law and the consequent inability of law-enforcers to control known offenders. The report concluded that:

So long as our vagrancy laws are ineffectual, the lives and properties of residents of the city and suburbs will be continually menaced by the

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87 Evidence of Chief Commissioner Thomas O'Callaghan, ibid, p.46.


89 ibid, p.xiii.

90 Chris McConville has pointed to the increasing organisation of criminal activity in Melbourne in the late nineteenth and early twentieth centuries. McConville, 'From "Criminal Class" to "Underworld"', pp.69-90.
ruffians who are roaming at large.\textsuperscript{91}

The Commission's views were no doubt strengthened by recent events at Bendigo. In April 1906, about three months before the commission's report was presented to parliament, police powers suffered another serious blow when eight men charged with having no visible lawful means of support, were discharged by the Bendigo Court. Sergeant Wilson, who was stationed in the township, later explained to his superiors that the case had been planned during consultations between himself, detectives Hawkins and Ashton and Mr Webb, J.P.. Wilson claimed that, whenever anything of importance happened in Bendigo, there was an 'influx of criminals from the metropolis'. With the Easter fair approaching, he and his counterparts decided that it was best to place some 'check' on proceedings. Mr Webb thus issued warrants for the arrest of the men who, according to Wilson, 'were specially picked out as they had all been convicted and apparently had no visible means of support'.\textsuperscript{92}

The success of the entire venture depended upon the absence of Mr Moore, Bendigo's police magistrate, who was considered by the police to be too lenient in his dealings with suspected vagrants. However, the police magistrate 'came specially on the bench that morning'.\textsuperscript{93} The result was a farce. Charles Travers was the first defendant to be called on. Inspector Molyneaux, prosecuting for the police, explained

\begin{itemize}
\item \textsuperscript{91} ibid, p.xiii.
\item \textsuperscript{92} Report of Sergeant Wilson, 21 April 1906, VPRS 3992: Unit 1397: File Y2204.
\item \textsuperscript{93} Report of Sergeant Wilson, 21 April 1906, ibid.
\end{itemize}
the circumstances of the defendant's arrest and requested that the bench ask the accused to show his means of support. Moore refused and instead turned upon the police. He described the act of bringing the men to trial as an 'outrageous thing' and held that their detention was illegal. He accused the police of flouting the decision of the Supreme Court in Wilson v Benson, which had found that the act of having no visible lawful means of support was only an offence after the suspect had been unable to satisfy a justice as to his means of support. Moore therefore found that the defendant had not yet committed an offence and should not have been arrested on warrant and subsequently remanded. 'If the police want further assistance', he concluded, 'then the aid of Parliament should be secured'. Travers and the other seven defendants were then discharged.94

Moore's decision drew immediate attention. The day after the trial, The Age and The Argus carried lengthy reports of the case and The Herald voiced its concern over improper police practices and the possible inadequacy of the existing vagrancy law. It was The Herald's opinion that:

If the law is not strong enough to meet the cases with which the police find themselves faced, then the Chief Commissioner should ask for an amendment of the law, and the Government should give the matter immediate attention.95

The police, of course, were already considering this possibility. Moore's action had

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94 Reports of the case from The Age, The Argus, The Herald and The Bendigo Independent can be found amongst the Chief Secretary's Correspondence, VPRS 3992: Unit 1391: No. Y2204.

95 The Herald, 18 April 1906, p.2.
provided them with further proof of the inoperability of the existing legislation. Two
days after the trial. Superintendent Sainsbury wrote to inspector Mahoney suggesting
possible amendments to the act. He recommended that the clause dealing with
insufficient or no visible lawful means of support, be amended to allow for the arrest or
summonsing of individuals, with or without a warrant. He also suggested that clause six
be amended so as to make the unjustifiable carrying of an offensive weapon during the
day an offence. (The carrying of a gun, sword or other offensive weapon was already
an offence if committed at night.) Finally, Sainsbury suggested that the act should be
amended to allow for the prosecution of individuals found loitering with felonious intent
in designated areas. Under the existing law, the police were only able to act against
those who frequented a particular place.\footnote{Memo from Sainsbury to Mahoney, 20 April 1906, VPRS 3992: Unit 1397: Y2204.} After a suggestion from Mahoney, Sainsbury
proposed a further amendment which was intended to loosen restrictions on police
testimony. He recommended that evidence pertaining to an individual's previous
associations, convictions and aliases be accepted.\footnote{Memo from Inspecting Superintendent Mahoney to Superintendent Sainsbury, 25 April 1906, \textit{ibid.}} On 27 April, only ten days after
the Bendigo trial, Mahoney discussed the matter with the Chief Secretary.\footnote{Memo from Mahoney to the Chief Commissioner of Police, 27 April 1906, \textit{ibid.}}

Meanwhile the Bendigo ruling was having an effect upon proceedings at the City
Court. Police Magistrate Panton did not agree with the opinion of his rural counterpart,
and continued to ask individuals who were arrested on warrant as vagrants to show
their means of support. This did not prevent defendants from alleging that the proceedings were illegal. On the 24 April, for example, Robert Aspinall appeared before the city court charged with having no visible lawful means of support. The defendant's counsel cited the verdict in Wilson v Benson, and alleged that the accused was unlawfully detained. Panton nevertheless insisted that Aspinall provide an account of his means of support. The defendant did so and was subsequently discharged.99

The situation was far from satisfactory, even if some magistrates like Panton continued to demand explanations from individuals accused of vagrancy. The police believed that, either the law had to be amended or the decision of the Supreme Court overturned. With this latter option in mind, the details of the Bendigo decision were forwarded to the Crown Solicitor for review. In a cautiously optimistic response, he recommended that the case be referred to the Full Court "for the purpose of having the decision tested."100 The police acted upon this recommendation, but to no avail. On 23 August 1906, in the appeal case Wilson v Travers, Acting-Chief Justice, A'Beckett, together with Justices Chornley and Cussen, upheld Moore's interpretation of the law. They found that, under the provisions, only an individual who had failed to provide a justice with an adequate account of his or her means could be arrested. The court did, however, recognise this process as cumbersome and awkward. A'Beckett concluded that, if the law was to be 'kept in force as an effective working enactment',


some 'statutory modification of the procedure was desirable'.  

The decision sounded the death-knell for the existing vagrancy law. Any hopes that the police may have held for its revival were immediately relinquished. Detective Dalton wrote to Superintendent Sainsbury the day after the appeal, to inform him that the police had no choice but to ask for the discharge of three men who had been remanded on vagrancy charges by the City Court. Dalton reported that the men were notorious thieves with long records in Victoria and other states. He alleged that they had not worked for six months and described them as 'real vagrants'. The detective pointed out that such men had previously been arrested on warrant and dealt with summarily, but that the decision of the full court now made this impossible. In Dalton's opinion, to proceed against such individuals via a summons would 'not only make the Act inoperative, but turn it into a farce'. Sainsbury agreed. He added a note to Dalton's report suggesting that an amendment 'could be easily and shortly drafted' and forwarded it to the Chief Commissioner of Police. This report eventually found its way to the Chief Secretary's desk, along with a file relating to the vagrancy law. Contained within the file was a letter from Sainsbury dated 25 August 1906, which stated that, until the relevant clause was amended, no justice could be asked to issue a warrant for the arrest of vagrants, runaway children and other such persons. He reported that Mr Carlyle of the Law Office agreed with his proposal for alterations to the act. Sainsbury

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stressed the urgency of the situation. 'The sooner the law is made effective' he wrote, 'the better.'

Dalton and Sainsbury were highlighting not only what they considered to be the inadequacies of the law, but also the unwillingness of police to bow to the restrictions placed upon them.

Throughout 1906, concern over the demise of the vagrancy law was confined almost entirely to legal and bureaucratic circles. While the press had reported the outcome of Wilson v Travers, it was not until early 1907 that its interest extended to editorialising upon the subject. On 16 March 1907, The Age claimed that the weakening of the vagrancy law had led to an upsurge in crime:

Recent judicial decisions and magisterial findings having made it plain that Victoria possesses no workable vagrancy laws, the consequence is that our main thoroughfares are blocked in all directions by criminal pushes, comprising specialists in every class of misconduct known in police records. Sneak thieves, garotters, assault and robbery men and such like ruffians especially abound. These parasites on the industrious and respectable portion of the community stand along the kerbs and at the inter-sections of busy thoroughfares scrutinising the crowds for victims...  

According to The Age, the tightening of laws by the other states, had led to an influx of criminals into Victoria. The toleration of 'the many brutal outrages perpetrated by these civilised savages' was, in the opinion of the paper, 'a standing disgrace to the Government that hesitates to pass legislation to wipe them and their misdeeds out.'

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103 Note from Sainsbury to the Chief Commissioner, 25 August 1906, VPRS 3992: Unit 1397: No. Y2204.

104 The Age, 16 March 1906, p.6.

105 ibid.
In internal correspondence, Superintendent Sainsbury denied that crime was rife in the city. Chief Commissioner Thomas O'Callaghan dismissed the article as 'a recurrence of the annual "scare" indulged in by the newspaper.' Still, reports of increased criminal activity must have been welcomed by police, so long as the blame for the situation was placed on the Government and the deficiencies of the vagrancy law. The police may, in fact, have been responsible for the promotion of such views. Sergeant O'Donnell initially believed that a member of the force was responsible for supplying information to The Age. Superintendent Sainsbury denied this claim, saying that the author of the story had assured him that he had not interviewed, or acquired information, from any member of the force. Less than three months later, however, Sainsbury was involved in a similar incident. On 15th June, The Argus

106 It is impossible to gauge whether or not there was a real increase in crime during this period. Available statistics indicate that the number of arrests performed in Victoria fell from 26,104 in 1900 to 22,679 in 1907, while summary conviction for the same period decreased from 17,177 to 14,757. Historians who have noted a similar decline in late nineteenth and early twentieth century Britain have suggested that a real decrease in the incidence of crime did occur. In contrast, McConville suggests that the decline in arrests and convictions in Melbourne reflected the increasing organisation of criminals and the failure of the police to arrest and successfully prosecute them. See Statistical Register of the State of Victoria for the Year 1907 - Law, Crime etc, VPP, 1908, vol.2, p.15; V.A.C. Gatrell, 'The Decline of Theft and Violence in Victorian and Edwardian England', in Crime and the Law: The Social History of Crime in Western Europe since 1500 ed V.A.C. Gatrell, B. Lenman and G. Parker, Europa, London, 1980, pp.238-338; V.A.C. Gatrell and T.B. Hadden, 'Criminal Statistics and their Interpretation', in Nineteenth-Century Society: Essays in the Use of Quantitative Methods for the Study of Social Data ed E.A. Wrigley, Cambridge University Press, 1972, pp.336-96; McConville, 'Criminal Class' to "Underworld", pp.86-9.


published details of a conversation between a reporter and Sainsbury, who had recently taken up duties in Bendigo. Sainsbury was reported as saying that he had moved to the country because he had realised that lawlessness in Melbourne would increase as a result of the inadequacies of the vagrancy law. The report cited the Superintendent as saying that the police were powerless to deal with the prisoners who were discharged from Pentridge and that the latter were therefore left to pursue their lives of crime. The report ended by paraphrasing Sainsbury’s comments:

He added that for years the attention of the Government had been directed to the necessity for introducing an amending Vagrancy Act. If the police had a proper act to back them up, there should not be a spieler, a magsman, or a convicted thief to be seen about Melbourne. Such men would be forced to clear out. So frequent had been the complaints regarding the ineffective legislation, however, that it was hardly safe for a Government official to 'harp' on the subject, as the facts implied unwarranted indifference on the part of the Government.  

Upon being questioned about the article, Sainsbury admitted that he had spoken to a reporter, but rejected many of the comments that had been attributed to him. He claimed that a third party had written the report. Whether this was true or not, the article prompted further criticism of the law in the press and placed added pressure upon the government to act. On 17 June, The Argus called for the introduction of an Habitual Criminals Act such as the one enacted in New South Wales, to deal with 'well-known, frequently convicted, hardened and dangerous criminals'. On 19 June, The

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110 The Argus, 15 June 1907, p.19.

111 Memos from Sainsbury to the Chief Commissioner, 18 & 19 June 1907, VPRS 3992: Unit 1410: No. B5765.

112 The Argus, 17 June 1907, p.6.
Age claimed that Melbourne was in the grips of a vicious crime wave and called upon the Government to reform police administration and to raise the 'character and morale' of the detective force. In a lengthy article published the next day, The Age pointed to the inadequacy of the vagrancy law and called for its amendment. The report specifically referred to the quashing of convictions against two men who had been found guilty in the City Court of frequenting Queen's Wharf with intent to commit a felony. The following day, The Herald, too, made note of the law's inadequacy and urged that a bill to amend the vagrancy provisions should be the first issue dealt with at the next session of Parliament. The paper reported that discussions pertaining to the proposed bill were already underway between Inspector Gleeson, the officer in charge of the Criminal Investigations Branch, and the Under-Secretary.

Heightened public concern over the incidence of crime provided the government with a perfect opportunity to strengthen and expand the criminal code. The police, of course, eagerly advocated the introduction of new legislative measures, as did the press. Habitual and professional criminals were identified as the targets of the proposals. They were portrayed as vicious and irreformable, a threat to the individual and the society at large. In July 1907, The Age called for the introduction of an Indeterminate Sentencing Bill to deal with habitual and professional criminals. The

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113 The Age, 19 June 1907, p.6.
114 The Age, 20 June 1907, p.4.
115 The Herald, 20 June 1907, p.2 & 21 June 1907, p.3. A copy of this can also be found in the Chief Secretary's Correspondence, VPRS 3992: Unit 1478: No. B9363.
paper's attitude towards such individuals was certainly not unique:

They are thieves, drunkards, rioters, obscene creatures, foul in life and detestable in language. Their daily life out of gaol is a moral cancer in the heart of society. They are propagators of all that is detestable, and dangerous...These are the people - these worthless scum of criminality - who cost so much in the maintenance of peace. They are unfit to be ever at large. For themselves and for the protection of others, they should be permanently confined and put to reproductive employment. Then might the citizens go to bed with a sense of security. The Indeterminate Sentences Bill should come in no halting or hesitating form. The criminal's proper place is gaol as long as he is a criminal.116

Confirmed criminals were similarly identified as the target of amendments to the vagrancy law. The police were eager to have the amendments enacted in time for the Spring Racing Carnival, when they expected an influx of criminals into Melbourne. Yet the passing of the amendments, which were contained in the Police Offences Bill, proved to be slow. The Bill was initially introduced into the Legislative Council and was then passed to the Legislative Assembly where it was read for a first time on 13 August 1907. To the annoyance of the police, the bill lay dormant throughout September. Late that month, Sergeants O'Donnell and McManamay wrote to Lawrence Gleeson of the Criminal Investigations Branch, informing him that during the previous three or four weeks, there had been 'a steady increase in the number of undesirable characters in the city'. They predicted that the number of criminals would continue to rise as Cup time approached, and reminded Gleeson that 'in the absence of a good and sufficient Vagrant Act, we have little or no means at our command by which to keep the class referred to in check.'117 The report was forwarded to the Chief Secretary,

116 The Age, 29 July 1907, p.6.
117 Report from Sergeants Gleeson and McManamy, 2 September 1907, VPRS
presumably in the hope that it would prompt the government into action.

Less than two weeks later, on 1 October, the bill was read in the Legislative Assembly for the second time. Mr Mackey, who moved the reading, echoed police sentiment. He spoke of the paralysing effect which the Supreme Court rulings had upon the effectiveness of the vagrancy law, and stressed the importance of having adequate provisions during festivals such as the Melbourne Cup when the city became a 'happy hunting ground' for criminals. Mackey attempted to underplay the significance of the bill by suggesting that it simply restored the law to what it had been prior to the Supreme Court's rulings. The proposed amendments, however, were more far-reaching and more stringent than any vagrancy provisions previously in place.

The most important of the amendments dealt with clause 1 of Section 40 of the Police Offences Act. It enabled the police to arrest, with or without warrant, individuals who were suspected of having insufficient or no visible lawful means of support. The suspect was then required to prove before a Court of Petty Sessions that he or she did have adequate and lawful means. The possession of money or property was not taken into account unless the defendant could show that these had been lawfully obtained. According to the amendment, trials relating to these offences could also be conducted by two or more justices out of session if the defendant consented in writing. Similarly, a single justice could preside over a trial if both parties to the proceedings agreed.

3992: Unit 1466.

Section 41 of the Police Offences Act, which dealt with rogues and vagabonds, was also subject to amendment. According to the bill, only 'unlawful' rather than 'felonious' intent was required to be proven against individuals who were found with their faces blackened and their bodies disguised. This was also to be made a punishable offence during the day as well as the night. Similarly, individuals were to be liable to prosecution if they were found during the day without lawful excuse in dwelling-houses, warehouses, enclosed yards or aboard ships. In the past, this had been exclusively a night-time offence. The sub-section that was proposed to replace the one dealing with suspected persons and reputed thieves found frequenting public places and other designated locations with intent to commit a felony, extended police powers even more dramatically. In line with earlier police demands, the amendment allowed action to be taken against those found 'loitering' in, as opposed to 'frequenting', a particular place. Intent to commit a misdemeanour was included alongside felonious intent. Even more importantly, intent did not have to be proven through the commission of a particular act. Under the legislation, evidence relating to an individual's character, past associations and crimes was made formally admissible and acceptable as proof of an individual's criminal intent. A further amendment allowed the police to seize offensive weapons that had been in the possession of convicted vagrants at the time of their arrest, and to destroy them or sell them.\textsuperscript{119}

\textsuperscript{119} The act contained other amendments relating to prostitution, brothel keeping, the receiving of stolen goods, the display of indecent materials and palmistry. These amendments did not affect the vagrancy provisions. \textit{An Act to Amend the Police Offences Acts}, 1907, 7 Edw.VII No.2093.
The bill provoked heated debate within the Assembly. On the one side were conservative politicians who believed that the amendments were necessary to secure the community against villains and parasites, and who were willing to grant the police greater powers. On the other side were Labor parliamentarians who believed that the amendments were too harsh and inflexible, and doubted the ability of the police to administer them fairly. George Prendergast, the leader of the Labor Party, was the bill's most vocal opponent. He criticized the 'extraordinary power' that the bill placed in the hands of any one policeman, and focused upon the abuse of the law that could result. He expressed particular concern over the amendment that allowed individuals suspected of having insufficient or no visible lawful means of support, to be arrested on sight. Prendergast likened the bill to the notorious Railway Strike Bill which had previously been defeated, and to the Coercion Acts in Ireland. He argued that the measure could be used to suppress strikers and the poor, and that, in general, it offered too little protection to those who were arrested. He claimed that the evidence that could be produced against a defendant as a consequence of the amendment, would be practically impossible to disprove, and that the defendant would not be protected adequately from police harassment. He believed that the survival of such a law relied largely upon the poverty, and not the guilt, of its victims. As he put it:

The victims of this class of law, outside of those who are criminals, may be people who are desperately poor. They are unable to pay a lawyer as they have no money and they cannot appeal...These people get very

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120 The Strike Suppression Bill was introduced to Parliament in 1903, in an attempt to quash the engine drivers strike. The Bill provided for a £100 fine or 12 month's gaol for anyone who joined a railway strike. It prohibited the printing of strike notices, and the raising of strike funds, and virtually forbade meetings of strikers. Rickard, Class and Politics, p.193.
little mercy and less justice.  

Prendergast believed the bill to be a blatant example of class legislation. According to him, it 'made poverty a crime':

People whose sole aim seems to be to get other people's property without giving anything in return are suffering from a weakness which is called theft among the poor and kleptomania among the rich. While the rich man can send an epileptic relative into the Talbot home for treatment, or contribute towards the maintenance of a relative in a lunatic asylum, poor people are forced to remain in the streets where they may be arrested under the vagrancy and other laws.  

Prendergast also expressed his concern that the bill would have a detrimental effect upon individuals who had previously been convicted of offences. He feared that the new provisions could be used to persecute and harass past offenders. Such people, he argued, were to be condemned to a life of crime because they would perpetually be the victims of suspicion and stigmatisation. Prendergast demanded to know:

Where, however, are these suspected persons to go? The moment a man becomes a suspected person the eyes of the police will be always upon him. As a result of our social system a certain proportion of criminals are created. Take persons who have had one conviction. Are you going to hunt them from place to place, creating the evils depicted in Dicken's novels? By chevying such people round you are creating criminality. Once a man is convicted you say to him, 'Get off the earth; there is no room for you,' instead of dealing with him in a way which would give him an opportunity to reform. He is chased from pillar to post, and is continually kept moving on.  

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121 VPD, 1907, vol.117, p.1308.
122 Ibid, p.1313.
123 Ibid.
Prendergast's plea for more humane treatment of offenders fell upon deaf ears. The majority of legislators believed unequivocally that the amendments were needed to suppress dangerous and deliberately idle members of the community. Most regarded the dangers presented by the extension of police powers as of secondary importance. Mr Thomson, for example, believed that the police should have the power to question men loitering in the street, and that those without adequate reason should be driven to work.\textsuperscript{124} Likewise Mr Watt described the bill as 'necessary in order to deal with the reputed thief and vagrant, and the people who live upon the worst of our social vices.'\textsuperscript{125} He believed that the Parliament, in framing such legislation, had to be guided primarily by the police. To Watt, the possible misuse of the legislation was not even an issue. He believed that the legislature was being presented with an unique opportunity to:

\begin{quote}
pass an Act empowering the police to lock up vagrants and thieves without danger to innocent people, and so clear the city of a predatory class which has been a danger for a long period, especially at night time, to respectable law abiding citizens.\textsuperscript{126}
\end{quote}

The gap between the respectable and the unrespectable, which had been partly bridged as a consequence of the depression, had re-emerged, wider than ever. By 1907, alternative measures provided some relief to individuals who previously would have been arrested as vagrants. The old age pension and the medicalisation of

\begin{flushright}
\textsuperscript{124} \textit{ibid}, p.1322.
\textsuperscript{125} \textit{ibid}, p.1316.
\textsuperscript{126} \textit{ibid}, p.1317.
\end{flushright}
inebriety provided limited assistance to those unable to care for themselves, while village settlement schemes and labour colonies theoretically provided the unemployed with an opportunity to work. In the wake of such efforts, it could argued that those who remained idle were unabashed loafers and vicious predators. As Prendergast pointed out, this view was not always correct. Nevertheless after lengthy debate, the Police Offences Bill was passed. The amendments to the vagrancy law restored, and in some respects strengthened, the existing legislation; in function and meaning, they exactly mirrored the Vagrancy provisions first introduced in Victoria more than half a century earlier.
CONCLUSION

It is a central task to remember that which our society seeks constantly to forget.¹

The vagrant is a forgotten figure in Australian historiography. He - for the vagrant has almost always been conceived of as a 'he' - has usually been ignored, as if non-existent. On the rare occasions when he has appeared, he has been presented as some peculiar aberration; as the possessor of a particular set of distinctive behavioural characteristics, who has existed with little, if any, connection to the broader society. This thesis has sought to challenge this static, astructural and gender-biased conception of the vagrant. It has sought to place the men and women who have been defined as vagrants firmly within the boundaries of Australian society and its history, by examining the ideological and structural forces which in late nineteenth century Melbourne worked to transform individuals into such targets of condemnation.

In the introduction to The Outcasts of Melbourne, Graeme Davison warns of the danger of replacing environmental determinism with a new bureaucratic determinism. He argues that, in emphasizing the primacy of law-makers and law enforcers, there is

a danger of treating the poor and outcast as the ‘passive victims of officialdom’. Davison’s concerns are well-founded. It is clearly necessary to recognise that even the most disadvantaged and impoverished have resisted, evaded, manipulated and sometimes, managed to alter, the very forces which constrain them. The refusal of the homeless to seek shelter in charitable institutions; their evasion of the police; the requests of some elderly and poor people to be arrested; the demands of the unemployed for land and work; the often imaginative tactics used by accused vagrants in the courtroom, and the unwillingness of some who were convicted to bow to penal discipline, remind us that individuals ‘are always in the position of simultaneously undergoing and exercising...power.’

This recognition of human agency should not, however, lead us to underestimate the significance of the ideological and structural forces which constrain individuals. Power is certainly not the best distributed thing in the world. The distinct social identity ascribed to Melbourne’s vagrants, together with the power they exercised, was defined and shaped according to the dominant, inter-related hierarchies of class and gender. The stereotype of the vagrant, which was most powerfully propagated through the activities of the press, the legal system and mainstream charities, was essentially a mechanism of social control. It ensured that individuals who failed to conform to the demands of patriarchal capitalist society, and the middle-class ideals of respectability inherent in it, were condemned as lazy, deceitful and immoral. The

2 Davison et al, Outcasts, p.23.

3 Foucault, ‘Two Lectures’, p.98.
vagrancy law, in both its construction and administration, was clearly class-biased, for it criminalised the poor and unemployed. Men and boys who failed to participate in the labour market were liable to be perceived and treated as vagrants. So too, were women and girls who transgressed the boundaries of acceptable female conduct. This emphasis on the capacity of men to be efficient workers and breadwinners, and upon women to be dutiful wives and mothers, was related to gender prescriptions which were inextricably tied to the demands of capitalism. Whether or not individuals accepted or identified with the vagrant identity ascribed to them is largely irrelevant, for the imposition of this identity, carried with it, serious practical consequences. Once socially perceived and categorised as vagrant, men and women were condemned as undeserving. They were treated as unworthy of charity; as undeserving of either trust or respect; as fit only for prison, punishment, and, in some cases, reform.

The construction and application of the vagrant identity were influenced by changes in the social, political and economic context. Throughout the 1880s, the buoyancy of Victoria's economy, the relative prosperity of the majority of the colony's citizens, together with their conservative belief in the ideals of self-help and material progress, created a climate in which distinctions between the deserving and undeserving could be readily drawn and sustained. Those who were comfortably well-off argued that a decent living, if not some prospect of upward social mobility, was available to all; those who failed to avail themselves of the opportunities offered, had only themselves to blame. The depression of the 1890s, however, revealed the falsity of these assertions. Unemployment and poverty were exposed as ills from which the
The criminal law is the state's most potent means of maintaining social, economic and political order, but as E.P. Thomson argues, its effectiveness ultimately depends upon the people's acceptance of it. They must believe that the legal code represents and enforces their shared values, and binds and protects all individuals equally. In Melbourne, during the 1890s, the vagrancy law was perceived as being misused, and, as a consequence, its effectiveness was undermined. Increasing public cynicism led to a real reduction in the use of the vagrancy provisions by the police, but this decline did not represent a relinquishing of power by the state. It instead indicated the ability of the state, as a multi-faceted structure, to adjust to changes in the social, economic and political context. Through judicial regulation of police activities, and the establishment of non-penal strategies such as village settlement schemes, labour colonies and the old age pension, the basis of social control was shifted from a repressive reliance on the law to the use of more extensive and subtle mechanisms, which aimed at fostering hegemony.

This transformation in the means of social control paved the way for the re-implementation of the vagrancy law early in the twentieth century. The elderly and unemployed, who had been identified as the major victims of the vagrancy law during

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4 Thompson, Whigs and Hunters, pp.260-4.
the 1890s, no longer appeared to be in danger of persecution. Victoria's return to modest economic prosperity also contributed to the creation of an environment in which a distinction between the deserving and undeserving could once again be drawn. This distinction was reinforced through the distribution of state assistance. As Richard Kennedy argues, even today, the concepts of the 'labour (or work) test', 'less eligibility', and 'deserving-undeserving', remain crucial in the provision of welfare. The strengthening and extension of the vagrancy provisions in 1907, similarly reinforced this distinction, and indicated the state's renewed willingness to use the criminal law to punish those who failed to meet society's demands. The spirit of Victoria's nineteenth century vagrancy laws survive today, via the Vagrancy Act of 1966. In Victoria in 1990, men and women who have insufficient or no visible lawful means of support can still be arrested, convicted and gaol as vagrants. Perhaps it is Foucault who best signals the continuing power of the state to construct and condemn individuals, when he writes

Do not ask me who I am and do not ask me to remain the same; leave it to our bureaucrats and our police to see that our papers are in order.

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6 *An Act to re-enact with Amendments the Law relating to Vagrancy and Kindred Offences and for Purposes connected therewith*, 1966. 24 Eliz.II.No.7393.

APPENDIX ONE

STATISTICAL METHOD
Vagrancy is not a subject easily suited to statistical analysis. This is partly due to the lifestyle of vagrants. Like most other predominantly non-literate peoples and subcultures, the existence of vagrants has only been noted when they have come into formal contact with institutions, organisations and bureaucratic procedures. As a consequence, an unknown number of vagrants have escaped historical record. Others appear solely in the records produced by courts, gaols, hospitals, lunatic asylums and charitable institutions. The information encapsulated within these records are shaped and limited by bureaucratic practices and by the preconceptions and idiosyncracies of the recorders. Often the documents reveal more about the recorder than the recorded. Even information elicited from a vagrant and accurately transcribed might prove incorrect. Proper names and correct ages were often known or forgotten, while in other cases, misleading information was deliberately given. Many of those considered to be vagrants, realised that in order to gain assistance, the expectations of others had to be met.

The unclear and varying definitions of vagrancy used by the creators of these records provides another practical impediment to the historical and statistical study of vagrants. The term 'vagrant' could be applied either narrowly or broadly, usually without explanation. Moreover, in some records, vagrants were not placed within a single readily identifiable category. They might be listed more specifically as alcoholics, prostitutes, beggars, casual workers or by any one of a number of other descriptions.

This problem of definition is best overcome by focusing upon the legal definition
of vagrancy and pursuing the corresponding legal records. It is only in the complex legal definition of vagrancy and the application of the laws relating to it, that the function of the term and the attitudes underpinning it at any particular time are revealed. In Melbourne during the late nineteenth century, it was law enforcers and legal institutions which had greatest contact with vagrants. The police, courts and gaols produced records which were often highly detailed and which, because of their official nature, were often more accurate than the records created by other institutions. As a result, legal records can be used to identify most clearly those defined as vagrants and to acquire fuller details about their lives and circumstances. These records provide the central source for a statistical analysis of the relationship between vagrants and the law, and furthermore provide information by which vagrants can be placed in a broader social context.

The use of legal records is not, however, unproblematic. The statistics found in or derived from these records cannot be accepted as an accurate estimate of the number of people classified as vagrants. Nor can these statistics be accepted as an accurate representation of the number of people involved in the acts which legally were held to constitute vagrancy. Many of these acts went undetected or unrecorded; whether or not they were recorded and officially acted upon depended on the determination of the vagrant, the existence of witnesses or evidence, the nature of the offence and the effectiveness and priorities of the police force. The situation is further complicated by the fact that vagrants, then as now, tended to be habitual offenders. Occurrence rates in more general statistics therefore tend to give an exaggerated
impression of the number of people involved in committing crimes of vagrancy; these figures contain many individuals who are counted more than once in any given year. It is obvious then, that criminal statistics and legal records should be treated with a degree of caution. Rash generalisation can lead to grave misunderstanding. Yet if the records are treated sensitively, they can provide invaluable information about the relationship between vagrancy and the law. They reveal trends in the use of the vagrancy law and also provide clues necessary for a detailed contextual analysis of vagrancy and the vagrancy laws.

The statistics used in this thesis are derived from two main sources. The first is the 'Statistical Register of Victoria' which was published annually and contains a section on law and order within the colony. The registers contain returns from the police, courts and gaols, which provide general statistics relating to apprehensions, trials, and sentencing. These statistics have been used to determine basic trends in the application of the vagrancy law in Victoria between 1880 and 1907. They reveal, for example, that the Melbourne Court of Petty Sessions dealt with the vast majority of vagrancy cases throughout this period, and that in the 1890's, there was a gradual decline in the number of arrests for vagrancy. It should be noted that, in 1893, the categories used to denote vagrancy offences in the registers were altered. As a result, it is difficult to establish exact comparisons between the statistics returned before and after this date. In some cases, it is not clear which offences were included in particular categories.
The general information provided by the statistical registers does, however, set
the scene for a detailed study of vagrancy in inner Melbourne. The proceedings of the
Melbourne Court of Petty Sessions provide the starting point for this examination. A
new system of record keeping, in the form of a modified court register, was first used
in this court on 1 May 1888. The new register listed the details of every case heard;
each entry included the offender’s name, the charge, method of appearance, verdict,
sentence, and occasionally, additional remarks. This register, and those subsequently
compiled, provide a consistent and highly specific record of the vagrancy cases heard
by the Melbourne Court of Petty Sessions from May 1888 onwards. In this thesis, these
registers have been used to identify particular offenders and cases, and as a basis for
statistical analysis.

A 'one-in-ten sample' of vagrancy cases heard by the Melbourne Court of Petty
Sessions between 1 May 1888 and 30 April 1901 has been drawn from these registers.
The cases were taken in the order in which they appeared in the registers, and every
tenth case was chosen for the sample. This sample provides information about the
frequency of vagrancy cases, the specific offences they involved, the verdicts and
sentences handed down by the court and the gender of the accused for the thirteen
year period 1888-1901. It provides a solid basis for an examination of the relationship
between vagrancy and socio-economic circumstances, for the period surveyed covers
the heights of Melbourne’s boom, the depths of the depression and the years of
tentative recovery.
Throughout the thesis, the sample is referred to as the '1 in 10 sample'. Because the registers commence on the 1 May 1888, and it was necessary to make maximum use of them, all 'years' in the sample, run from 1 May to 30 April of the following year. Specific years within this sample are referred to as '1888/89' and so on.
APPENDIX TWO

STATISTICS RELATING TO THE ARREST AND IMPRISONMENT OF VAGRANTS IN VICTORIA, 1880-1907
Appendix 2.1: Number of Vagrancy Arrests in Victoria, 1880-1907
(Source: Statistical registers of Victoria for the Years 1880-1907 - Law, Crime etc.)

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* No longer solely a vagrancy charge. Included women charged with being common prostitutes found importing.
Appendix 2.2: Number of Vagrancy Arrests involving Females in Victoria, 1880-1907
(Source: Statistical registers of Victoria for the Years 1880-1907 - Law, Crime etc.)

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* No longer solely a vagrancy charge.
* Included women charged with being common prostitutes found importuning.
### Appendix 2.3: Number of Vagrancy Arrests involving Males in Victoria, 1880-1907

(Source: Statistical registers of Victoria for the Years 1880-1907 - Law, Crime etc.)

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* No longer solely a vagrancy charge. Included women charged with being common prostitutes found importuning.
Appendix 2.4: Most Common Types of Arrest in Victoria, 1880-1907
(Source: Statistical registers of Victoria for the Years 1880-1907 - Law, Crime etc.)

<table>
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<th>LARCENY</th>
<th>OBLSCENE LANGUAGE</th>
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Appendix 2.5: Vagrancy Arrests as a percentage of Total Arrests in Victoria. 1880-1907
(Source: Statistical registers of Victoria for the Years 1880-1907 - Law, Crime etc. and Population)

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<th>Vagrancy Arrests as % of Total Arrests</th>
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### Appendix 2.6: Number of Vagrants imprisoned in Victoria, June 1888 - June 1893

(Source: Gaol Returns June 1888 - June 1895. Chief Commissioner of Police Inward Registered Correspondence, VPRS 937: Units 356 & 357)

<table>
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<th>YEAR</th>
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<th>Vagrants as % of Total No. Imprisoned</th>
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</table>
APPENDIX THREE

STATISTICS RELATING TO VAGRANCY CASES HEARD BY THE MELBOURNE
COURT OF PETTY SESSIONS, 1 MAY 1888 - 30 APRIL 1901
Appendix 3.1: '1 in 10' Sample - Vagrancy Cases heard by the MCPS, 1 May 1888 - 30 April 1901
(Source: Melbourne Court of Petty Sessions Registers, Arrest Cases, VPRS 1665: Units 1-74)

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Appendix 3.2: '1 in 10' Sample - Vagrancy Cases involving Female Defendants heard by the MCPS, 1 May 1888 - 30 April 1901
(Source: Melbourne Court of Petty Sessions Registers, Arrest Cases, VPRS 1665: Units 1-74)

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Appendix 3.3: '1 in 10' Sample - Vagrancy Cases involving Male Defendants heard by the MCPS, 1 May 1888 - 30 April 1901
(Source: Melbourne Court of Petty Sessions Registers, Arrest Cases, VPRS 1665: Units 1-74)

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### Appendix 3.4: ‘1 in 10’ Sample - Outcome of Vagrancy Cases heard by the MCPS, 1 May 1888 - 30 April 1901

(Source: Melbourne Court of Petty Sessions Registers, Arrest Cases, VPRS 1665: Units 1-74)

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Appendix 3.5: ‘1 in 10’ Sample - Outcome of Vagrancy Cases involving Female Defendants heard by the MCPS, 1 May 1888 - 30 April 1901
(Source: Melbourne Court of Petty Sessions Registers, Arrest Cases, VPRS 1665: Units 1-74)

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*Note: The table above provides a summary of the outcomes of vagrancy cases involving female defendants heard by the Melbourne Court of Petty Sessions (MCPS) between 1 May 1888 and 30 April 1901. The data is sourced from the Melbourne Court of Petty Sessions Registers, Arrest Cases, VPRS 1665: Units 1-74.*
Appendix 3.6: '1 in 10' Sample - Outcome of Vagrancy Cases involving Male Defendants heard by the MCPS, 1 May 1888 - 30 April 1901
(Source: Melbourne Court of Petty Sessions Registers, Arrest Cases, VPRS 1665: Units 1-74)

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Appendix 3.7: '1 in 10' Sample - Outcome of NVLMS/ILMS Cases heard by the MCPS,
1 May 1888 - 30 April 1901
(Source: Melbourne Court of Petty Sessions Registers, Arrest Cases, VPRS 1665: Units 1-74)

|      | 1888/89 | 1889/90 | 1890/91 | 1891/92 | 1892/93 | 1893/94 | 1894/95 | 1895/96 | 1896/97 | 1897/98 | 1898/99 | 1899/00 | 1900/01 |
|------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
|      | NO %    | NO %    | NO %    | NO %    | NO %    | NO %    | NO %    | NO %    | NO %    | NO %    | NO %    | NO %    | NO %    | NO %    |
| 00   | 1 Y/1   | 1.3     | 1.1     | 6.7     | 7.8     | 8.4     | 9.11    | 8.85    | 5.85    | 1.21    | 1.22    | 1.19    | 1.33    | 2.57    |
| 01   | 1 Y     | 4.52    | 4.43    | 1.12    | 5.60    | 5.62    | 1.14    | 4.68    | 4.83    | 3.87    | 2.38    | 4.74    | 1.33    | 2.57    |
| 02   | 2W     | 1.3     | 3.33    | 11.13   | 1.4     | 4.12    | 5.40    | 5.85    | 3.50    | 1.21    | 1.22    | 1.19    | 1.33    | 2.57    |
| 04   | 12W     | 3.95    | 6.53    | 7.85    | 3.36    | 4.90    | 6.85    | 3.50    | 1.21    | 1.22    | 1.19    | 1.33    | 2.57    |
| 05   | 12M     | 1.3     | 3.33    | 1.12    | 3.33    | 1.12    | 2.25    | 1.14    |        |        |        |        |        |        |
| 06   | 1M     | 7.91    | 9.97    | 4.49    | 3.36    | 3.38    | 2.28    | 2.34    | 3.67    | 1.51    |        |        |        |
| 07   | 14M    | 1.1     | 1.1     | 1.2     | 1.1     | 1.7     | 2.2     |        |        |        |        |        |        |
| 08   | 1D     | 1.1     | 1.1     | 1.2     | 2.5     |        |        |        |        |        |        |        |        |
| 09   | 1-6D    |        |        |        |        |        |        |        |        |        |        |        |        |
| 10   | 1.60   |        |        |        |        |        |        |        |        |        |        |        |        |
| 11   | 1.23H  | 12.155  | 9.97    | 1.12    |        |        |        |        |        |        |        |        |        |
|      | LEAVE TOWN|         |        |        |        |        |        |        |        |        |        |        |        |
|      | FINE|         |        |        |        |        |        |        |        |        |        |        |        |
|      | FOUND INSANE | 2.26 | 2.23 | 2.25 | 2.63 | 3.62 | 1.14 | 2.34 | 2.42 | 1.22 | 3.58 | 1.33 | 2.57 |
|      | REFORMATORY | 1.1 | 1.1 | 1.2 |        |        |        |        |        |        |        |        |        |
|      | DEPT. FOR NEGL. CHILDREN | 1.1 | 1.1 | 1.2 |        |        |        |        |        |        |        |        |        |
|      | PROTECTIVE CARE | 3.9 | 1.1 | 6.73 | 2.24 | 2.25 | 2.25 |        |        |        |        |        |        |
|      | DISMISSED/CHARGED | 1.1 | 1.1 | 1.12 | 1.13 | 2.34 | 2.43 | 2.22 | 2.58 | 2.86 | 17.0 | 13.18 | 17.0 | 17.0 |
|      | CHARGE WITHDRAWN |        |        |        |        |        |        |        |        |        |        |        |        |
|      | 1 DIED IN GAOL | 1.2 |        |        |        |        |        |        |        |        |        |        |        |
|      | REMANDED ELSEWHERE | 6.78 | 4.43 | 1.12 | 2.28 | 2.34 | 1.21 |        |        |        |        |        |        |
|      | RECORDS INCOMPLETE | 1.1 | 1.1 | 2.25 |        |        |        |        |        |        |        |        |        |
|      | TOTAL | 77 | 100 | 82 | 100 | 83 | 100 | 80 | 100 | 71 | 100 | 59 | 100 | 48 | 100 | 45 | 100 | 52 | 100 | 54 | 100 | 30 | 100 | 35 | 100
Appendix 3.8: ‘1 in 10’ Sample - Outcome of NVLMS/ILMS involving Female Defendants heard by the MCPS, 1 May 1889 - 30 April 1901
(Source: Melbourne Court of Petty Sessions Registers, Arrest Cases, VPRS 1665: Units 1-74)

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### Appendix 3.9: ‘1 in 10’ Sample - Outcome of NVLMS/ILMS Cases involving Male Defendants heard by the MCPS, 1 May 1888 - 30 April 1901
(Source: Melbourne Court of Petty Sessions Registers, Arrest Cases, VPRS 1665: Units 1-74)

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**Columns:**
- **3YRIL:** 3 years in prison
- **2YRIL:** 2 years in prison
- **1YRIL:** 1 year in prison
- **6M:** 6 months
- **3M:** 3 months
- **2M:** 2 months
- **1M:** 1 month
- **13D:** 13 days
- **7D:** 7 days
- **14D:** 14 days
- **125H:** 125 hours
- **FINE:** Fine
- **FOUND INSANE:** Found insane
- **REFORATORY:** Reformatory
- **DEPT. FOR NEGL. CHILDREN:** Department for neglected children
- **PROTECTIVE CARE:** Protective care
- **DISCHARGE/REDISCHARGED:** Discharged/redischarged
- **CHARGE WITHDRAWN:** Charge withdrawn
- **DIED IN GAOL:** Died in gaol
- **REMANDED ELSEWHERE:** Remanded elsewhere
- **RECORDS INCOMPLETE:** Records incomplete
- **TOTAL:** Total

**Note:** The table provides a breakdown of outcomes for NVLMS/ILMS cases involving male defendants, with column titles indicating the duration of sentence or other outcomes (e.g., found insane, fine).
PRIMARY SOURCES

A: Archival Records
   i) Charity Records:  
      Charity Organization Society Records  
      Victorian Discharged Prisoner's Aid Society Records  
   ii) Court Records  
   iii) Lunatic Asylum Records  
   iv) Police Records  
   v) Prison Records  
   vi) Trades Hall Council Records  
   vii) Other

B: Published Government Records
   i) Acts of Parliament:  
      - England  
      - New South Wales  
      - Victoria  
   ii) Cases  
   iii) Parliamentary Debates  
   iv) Parliamentary Papers

C: Newspapers

D: Periodicals

E: Books

F: Articles, Pamphlets and Reports

G: Unpublished Manuscripts
SECONDARY SOURCES

A: Books

B: Articles

C: Unpublished Papers & Thesis
PRIMARY SOURCES

A: Archival Records

i) Charity Records:

Charity Organization Society Records
(University of Melbourne Archives)

COS Minutebooks: 12 December 1888 - 17 March 1893
21 March 1893 - 29 November 1897

Victorian Discharged Prisoner’s Aid Society Records
(Manuscripts Department of the State Library of Victoria)


VDPAS Letterbooks: 30 July 1872 - 22 June 1874.
8 July 1884 - 2 October 1893
3 October 1893 - 9 December 1905

VDPAS Minutebook: 7 February 1887 - 9 July 1894

ii) Court Records
(Victorian Public Records Office, Laverton)

Brunswick Court of Petty Sessions Police/Arrest Registers, VPRS 1746: Unit 2.

Melbourne Court of Petty Sessions - City Court Registers (Arrest Cases), VPRS 1665: Units 1-74.

iii) Lunatic Asylum Records
(When viewed, these records were situated at the Charles Brothers Museum, Parkville. They have since been transferred to the Victorian Public Records Office, Laverton.)

Ararat Asylum: Female Casebook, 1889-92.
Beechworth Asylum: Male Casebook, 1901-6.

Yarra Bend Asylum: Admission Warrants, 1895
   Admission Warrants, 1900, vol.2.
   Admission Warrants, 1901, vol.1.
   Female Casebook, 1887-90.
   Female Casebook, 1890-94.
   Female Casebook, 1894-7.
   Male Casebook, 1886-91.
   Male Casebook, 1893-6.
   Male Casebook, 1898-1900.
   Male Casebook, 1896-8.
   Male Casebook, 1901-3.

iv) Police Records
   (Victorian Public Records Office, Laverton)

   Chief Commissioner's Inward Correspondence, VPRS 807: Units 1-5, 11-12, 14A, 15-18, 25, 28-29, 91-92, 2663, 2669, 2704.

   Chief Commissioner's Inward Registered Correspondence, VPRS 937: Units 319, 321, 324-29, 330, 335-37, 340, 356-57.


v) Prison Records
   (Victorian Public Records Office, Laverton)

   Central Register of Female Prisoners VPRS 516: Units 8, 10.

   Central Register of Male Prisoners VPRS 515: Unit 40.

vi) Trades Hall Council Records
   (University of Melbourne Archives)

   Trades Hall Council Minutebooks:
      30 October 1888 - 24 February 1893
      3 March 1893 - 19 March 1897
vii) Other
(With the exception of the Scott Collection which is privately owned, this material is available at the Victorian Public Records Office, Laverton.)

Chief Secretary’s Inward Registered Correspondence Part III, VPRS 3992: Units 1397, 1410, 1437, 1466, 1478,
City of Melbourne, Town Clerk’s Files, Series 1, VPRS 3181: Unit 400
Inquest Deposition Files, VPRS 24: Units 375, 377, 379, 395, 397, 504-05.
Royal Commission into the Treatment of Habitual Inebriates, 1902, VPRS 2598: Unit 1
Scott Collection: Scrapbooks containing newspaper articles written by Reverend H.F. Scott, relating to Melbourne Gaol.

B: Published Government Records

i) Acts of Parliament
(The following statutes have been listed chronologically within jurisdictions.)

England

A Statute of Labourers 1349, 23 Edw.III.

An Act directing how aged, poor, and impotent Persons, compelled to live by Alms, shall be ordered, and how Vagabonds and Beggars shall be punished 1530, 22 Hen.VII. c.12.

1535, 27 Hen.VIII. c.25.

An act to amend and make more effectual the Laws relating to Rogues, Vagabonds and other Idle and disorderly Persons, and to Houses of Correction 1744, 17 Geo.II. c.5.

An Act for the better preventing Thefts and Robberies, and for regulating Places of Publick Entertainment, and punishing Persons keeping Disorderly Houses 1752, 25 Geo.II. c.36.

An Act for the better Preservation of Timber Trees and of Woods and Underwoods; and for the further Preservation of Roots, Shrubs, and Plants 1766, 6 Geo.III. c.48.
An Act to extend the Provisions of an Act intitled, An Act to Amend and make more effectual the Laws relating to Rogues, Vagabonds, and other idle and disorderly Persons, and to Houses of Correction, to certain Cases not therein mentioned 1783, 23 Geo.III.c.88.

An Act for the more effectual Administration of the Office of a Justice of the Peace in such Parts of the Counties of Middlesex and Surrey as lie in and near the Metropolis, and for the more effectual Prevention of Felonies 32 Geo.III.c.53.

An Act for the more effectual Prevention of Depredations on the River Thames, and in its Vicinity; and to amend an Act, made in the second Year of the Reign of his present Majesty, to prevent the committing of Thefts and Frauds by Persons navigating Bum Boats, and other Boats upon the River Thames 1800, 39 & 40, Geo.III.c.87.

An Act to extend the Provisions of an Act made in the Seventeenth Year of the Reign of King George the Second, intituled, An Act to amend and make more effectual the Laws relating to Rogues, Vagabonds, and other idle and disorderly Persons, and to Houses of Correction 1800, 39 & 40, Geo.III.c.50.

An Act for the Punishment of idle and disorderly Persons, and Rogues and Vagabonds, in that Part of Great Britain called England 1824, 5 Geo.IV.c.53.

New South Wales

An Act for the prevention of Vagrancy and for the punishment of idle and disorderly Persons Rogues and vagabonds and incorrigible Rogues in the Colony of New South Wales 1835, 6 William.IV.c.6.

An Act for the more effectual prevention of Vagrancy and for the Punishment of idle and disorderly persons Rogues and Vagabonds and incorrigible Rogues in the colony of New South Wales 1849, 13 Vict.c.46.

Victoria

An Act for the better prevention of Vagrancy and other Offences 1852, 16 Vict. No.22.

An Act to Regulate the Civil Service 1862, 25 Victoria No.160.

An Act for the amendment of the Law relating to Neglected and Criminal Children 1864, 27 Vict. No.216

Neglected and Criminal Children's Act 1864, 27 Vict. No.216.

An Act to consolidate the Law relating to the Management of Towns and other Populous Places and for the Suppression of various offences 1864, 27 Vict. No.225.
An Act to consolidate the Law relating to the Management of Towns and other Populous Places and for the Suppression of various offences 1865, 26 Vict. No.265.

An Act to Consolidate and Amend the Law relating to Lunatics 1867, 31 Vict. No.309.

An Act to provide for the Treatment and Cure of Inebriates 1872, 36 Vict. No.449


An Act to provide for the Treatment and Cure of Inebriates 1872, 36 Vict. No.449.

An Act to Amend the Law relating to Justices of the Peace and for other purposes 1876, 40 Vict. No.565.

Police Offences Statute Amendment Act 1876, 339 Vict. No.532.


An Act to make better provision for the Public Service in Victoria 1883, 47 Victoria No.773

An Act to amend the Law relating to Neglected Children 1887, 51 Vict. No.941.

An Act to amend the Law relating to Juvenile Offenders and for other purposes 1887, 51 Vict. No.951.

An Act to provide for the establishment of Asylums for Inebriates 1888, 52 Vict. No.1009.

An Act to provide for the acquisition of certain lands situate in the City of Melbourne by the mayor aldermen councillors and citizens thereof and for the erection of a new Police Court therein and for other purposes 1889, 53 Victoria No.1020.

An Act to consolidate the Law relating to the Care and Cure of Inebriates 1890, 54 Vict. No.1101.


An Act to consolidate the Law relating to Neglected Children 1890, 54 Vict. No.1121.

An Act to consolidate the Law relating to the Management of Towns and other Populous Places and for the Suppression of various offences 1890, 54 Victoria No.1128.

An Act to Amend the Police Offences Act 1890 1891, 55 Vict. No. 1241.

An Act to provide for the establishment of Village Communities, Homestead Associations, and Labour Colonies 1903, 57 Vict. No. 1311.
An Act to provide for the care, control, and the treatment of Inebriates 1904, 4 Edw. VII. No.1940.

Lotteries Gaming and Betting Act 1906, 6 Edw. VII. No.2055.

An Act to Amend the Police Offences Acts 1907, 7 Edw. VII No.2093.

An Act to re-enact with Amendments the Law relating to Vagrancy and Kindred Offences and for Purposes connected therewith 1906, 24 Eliz. II. No.7393.

ii) Cases


iii) Parliamentary Debates

Victorian Hansard, 1864-5.

Victorian Parliamentary Debates, 1878, 1886, 1888, 1890-1900, 1907.

iv) Parliamentary Papers

Reports

Statistical Registers of the Colony / State of Victoria, relating to Law and Crime, and Population, for the Years 1880-1907.

Reports of the Inspector of Asylums on the Hospitals for the Insane for the Years 1870, 1887 and 1888.


Reports of the Inspector-General of Penal Establishments and Gaols for the Years 1881, 1886-97, 1900-2, 1905.

Reports of the Secretary of the Department for Neglected Children and Reformatory Schools for the Years 1887, 1888.


**Reports of Royal Commissions, Selects Committees and Boards**


Report from the Select Committee upon the Leongatha Labour Colony; together with the Proceedings of the Committee, Minutes of Evidence, and Appendices, *Victorian Parliamentary Papers*, 1899-1900, vol.2.

Report of the Royal Commission on (1) the efficiency of the Police Force in Connexion with the Repression of Crime; (2) the Present State and Organization and Administration of the Said Force; with Appendix and minutes of Evidence, *Victorian Parliamentary Papers*, 1906, vol.3.

v) Other

*Victorian Police Gazette*, 1888.

C: Newspapers


*Daily Telegraph*, 1888.

*Fitzroy City Press*, 1896.
The Hawk, 1894.


The Sydney Herald, 1835.

The Sydney Morning Herald, 1888.

D: Periodicals

The Australasian, 1883, 1890.

The Australasian Sketcher, 1888.

The Australian Radical, 1889.

The Graphic (London), 1892.

The Illustrated Australian News, 1868, 1880, 1885, 1892-3.


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Table Talk, 1890, 1893, 1901.

The Tocsin, 1897, 1901

E: Books


Cleland, W.L. *A Comparative Study of the Chronic Insane, the Habitual Offender and the Endemic Unemployed with a View to Treatment*. Webb & Son Printers, Adelaide, 1897.


Crowe, Cornelius. *Australian Slang Dictionary containing the words and phrases of the thieving fraternity, together with the unauthorised though Popular Expressions now in vogue with all classes in Australia*. Robert Barr, Fitzroy, 1895.


Leavitt, T.J.H. *Australian Representative Men*. Wells & Leavitt, Melbourne, 1887.


Official Record of the Centennial Exhibition. Melbourne, 1890.


Trollope, Anthony. Australia and New Zealand. George Robertson, Melbourne, 1876.


Vardy, William Lyndhurst. The Lower Tribunals: A Treatise upon the present system of Administration of Justice in Magisterial Courts in Australia. Lee & Ross, Sydney, 1876.

Varley, Henry. The Impeachment of Gambling. Melbourne, 1890.


F: Articles Pamphlets and Reports

Beattie-Smith, W. 'Insanity in its relations to the Practitioner, the Patient, and the State', The Australasian Medical Gazette, vol.xxii, 1903, 20 February 1903, pp.47-56.

Bundey, W.H. 'The Punishment of Criminals', Australasian Association for the Advancement of Science Report, no.5, 1893, pp.539-556.

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