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Résumé de l'article

Entre 1900 et 1904, la croissance rapide de la population et la hausse de la production industrielle ont transformé la ville de Calgary. Au même moment, les personnes arrêtées et accusées de vagabondage se voyaient traduites devant la cour municipale de police. Jusqu'ici, les études ont suggéré que les poursuites judiciaires pour vagabondage constituaient une forme de contrôle social. Véhiculant les valeurs de la classe moyenne dominante, les autorités municipales s'efforçaient ainsi de réprimer ou de réhabiliter toute personne qui rejetait ces valeurs, surtout celles concernant l'éthique du travail. Cette recherche démontre que le système de justice criminelle, à Calgary tout du moins, n'a eu ni l'intention ni la capacité de réhabiliter les vagabonds. Bien au contraire, il a puni ces derniers, donnant ainsi des exemples à la classe ouvrière locale de ce qu'il en coûte de rejeter l'éthique du travail.

# Loafers Are Not Going to Subsist Upon Public Credulence: Vagrancy and the Law in Calgary, 1900-1914

David Bright

SHORTLY AFTER MIDNIGHT on 31 January 1912, a combined force of private detectives and city police officers led a raid at the Canadian Pacific Railway stock yards in east Calgary. There, after a brief skirmish, they arrested nineteen vagrants who had made themselves at home in one of the empty cars — a home which included bunks, a stove, and some sirloin steaks recently 'acquired' from the nearby Pat Burns meat-packing plant. The six police officers escorted their prisoners down 7th Avenue towards City Hall, much to the amusement of those late-night onlookers who formed an impromptu audience on the sidewalk and whistled marching tunes to accompany the procession. Once at City Hall, the prisoners were crammed three to a cell in an already overcrowded basement jail, and after a night's discomfit were tried at the police court. City treasurer T.S. Burns, who had doubled as police magistrate since Crispin E. Smith's resignation the previous October, sentenced ten of the men to ten days' hard labour apiece. As for the other nine defendants, Burns either dismissed all charges or else awarded suspended sentences.<sup>1</sup>

The apparent leniency displayed by Burns contrasted with the clandestine efforts of the police officers to arrest the vagrants in the first place. This fact prompted one citizen to complain that the police were simply "hounding men who cannot obtain work." In quick response, Police Chief Thomas Mackie asserted that "[t]he men who are arraigned for vagrancy are in the most part worthless loafers who have been hanging around the city and drinking at the bars, spending their own money and then sponging on others, and this is the class of men who have

<sup>1</sup>*Albertan*, 1 February 1912, 5 February 1912; City of Calgary Archives [CCA], Board of Commissioners, series I, box 26, Commissioners' Correspondence A-B, January-May 1912, "Cases Tried in Police Court, February 1912."

David Bright, "Loafers Are Not Going to Subsist Upon Public Credulence: Vagrancy and the Law in Calgary, 1900-1914," *Labour/Le Travail*, 36 (Fall 1995), 37-58.

been committing the holdups in the city." Clearly frustrated by the criticism of his officers' actions, Mackie concluded that "the public should know the truth about this vagrancy question which is one of the most serious problems in the west."<sup>2</sup>

Few historians have explored "the truth about this vagrancy question" in Calgary during the years before World War I. Tom Thorner and Neil Watson provide valuable quantitative detail in their study of crime in Calgary, while Elizabeth Langdon discusses vagrancy in the context of female crime in the city.<sup>3</sup> John McLaren and Peter Sibernik each deal with the subject in passing in their respective studies of the anti-white slavery trade in the years 1900-20 and urban relief during the 1930s.<sup>4</sup> On the whole, however, vagrancy has yet to receive the sort of attention that historians have given to prostitution and the illicit alcohol trade in Calgary and the west.<sup>5</sup> There is certainly nothing that resembles James Pitsula's study of vagrancy in Toronto or that produced by Jim Phillips for Halifax.<sup>6</sup>

If one compares the number of convictions for vagrancy in Calgary with, say, that for prostitution, this relative neglect appears somewhat surprising. Between 1900 and 1913, the number of vagrancy convictions in Calgary (2,979) was considerably more than double the figure of those found guilty of prostitution-related offenses (1,096).<sup>7</sup> Moreover, the extent of vagrancy was significantly greater

<sup>2</sup>*Albertan*, 5 February 1912.

<sup>3</sup>T. Thorner and N. Watson, "Patterns of Prairie Crime: Calgary, 1875-1939," in Louis A. Knafla, ed., *Crime and Criminal Justice in Europe and Canada* (Waterloo 1981), 219-55; M. Elizabeth Langdon, "Female Crime in Calgary, 1914-1941," in Louis A. Knafla, ed., *Law & Justice in a New Land: Essays in Western Canadian Legal History* (Toronto 1986), 293-312.

<sup>4</sup>John McLaren, "The Canadian Magistracy and the Anti-White Slavery Campaign, 1900-1920," in W. Wesley Pue & Barry Wright, eds., *Canadian Perspectives on Law & Society: Issues in Legal History* (Ottawa, 1988), 329-53; Peter M. Sibernik, "Points of Departure: Urban Relief in Alberta, 1930-1937," in Knafla, *Law & Justice*, 313-32.

<sup>5</sup>For example, see Terry L. Chapman, "Sex Crimes in the West, 1890-1920," *Alberta History*, 35, 4 (Fall 1987), 6-11, and "'Til Death do us Part': Wife Beating in Alberta, 1905-1920," *Alberta History*, 36, 4 (Autumn 1988), 13-22; Judy Bedford, "Prostitution in Calgary, 1905-1914," *Alberta History*, 29, 2 (Spring 1981), 1-11; James Gray, *Red Lights on the Prairies* (Scarborough 1973), 149-82; S.W. Horrall, "The (Royal) North-West Mounted Police and Prostitution on the Canadian Prairies," *Prairie Forum*, 10, 1 (Spring 1985), 105-27; Thomas Thorner, "The Incidence of Crime in Southern Alberta," in D.J. Bercuson and L.A. Knafla, eds., *Law and Society in Canada in Historical Perspective* (Calgary 1979), 53-88. For the broader context of middle-class reform concern over prostitution and alcohol, see Paul Boyer, *Urban Masses and Moral Order in America, 1820-1920* (Cambridge 1978), 191-204.

<sup>6</sup>James M. Pitsula, "The Treatment of Tramps in Late Nineteenth-Century Toronto," *CHA Papers* (1980), 116-32; Jim Phillips, "Poverty, Unemployment and the Administration of the Criminal Law: Vagrancy Laws in Halifax, 1864-1890," in Philip Girard & Jim Phillips, eds., *Essays in the History of Canadian Law*, vol. III: *Nova Scotia*, 128-62.

<sup>7</sup>Thorner and Watson, "Patterns of Prairie Crime," 248-53.

than the almost 3,000 convictions suggest, as these represent only one-third of all those actually charged with the offence in this period. Another third was found guilty but received only cautions or suspended sentences, while the remainder had their cases dismissed or withdrawn.<sup>8</sup> Given these figures, it seems fair to say that the existence of vagrancy in Calgary merits closer attention than it has received to date.

This paper offers a preliminary and somewhat tentative examination of vagrancy in Calgary in the period 1900-14. A cautious approach is necessary, perhaps, due to the nature of the available data. In particular, it is prudent to address one limiting problem at the outset. As defined by the Criminal Code of 1892, and as discussed below, the crime of vagrancy covered a wide range of offenses. Included among these were a number of provisions that related to female prostitution.<sup>9</sup> For police officers and the courts, it was often easier to arrest and convict a suspected or known prostitute under these provisions than it was under the sections of the Criminal Code that referred exclusively to prostitution. For example, a constable could arrest for vagrancy any woman whom he suspected of being a streetwalker and who was unable to give 'a good account of herself.'<sup>10</sup> It is not surprising, therefore, that entries in Calgary police arrest books show that women who were charged with prostitution frequently had prior convictions for vagrancy, and vice versa.<sup>11</sup> As applied to female suspects, the two charges were almost interchangeable.

What this means, of course, is that the aggregate figures for vagrancy used in this paper may conceal many cases that more properly should be counted under the rubric of prostitution.<sup>12</sup> In the absence of a detailed breakdown of the statistics, however, it is impossible to identify what proportion of the total that such cases comprised. Fortunately, this paper is concerned more with the qualitative aspects of vagrancy in Calgary than with its quantitative measurement, per se. In its exploration of the social meaning or construction of vagrancy as a criminal offence, absolute numbers are of secondary importance to this study.

<sup>8</sup>Board of Commissioners, series I, boxes 16, 18, 26, 27, 28, 29, 42, 49, 50, Police Reports 1911-14.

<sup>9</sup>For a discussion of these, see McLaren, "The Canadian Magistracy," 330-1.

<sup>10</sup>See Canada, *The Criminal Code* (1892), chap. 29, 89-90. Discussions of the vagrancy provisions may be found in McLaren, "The Canadian Magistracy," 333, and Langdon, "Female Crime in Calgary," 298-9.

<sup>11</sup>CCA, Calgary Police Arrest Books.

<sup>12</sup>Figures used are those cited by Thorner and Watson, and derive from the returns of the Calgary Justices of the Peace located in the Provincial Archives of Saskatchewan, the Provincial Archives of Alberta, annual reports of the NWMP printed in the *Sessional Papers*, Calgary Police Department annual reports located in the Glenbow Museum Archives, and records within the Calgary Police Station archives. Thorner and Watson, "Patterns of Prairie Crime," 255.

A brief note should also be made of the period under study, namely 1900-14. These were years of rapid industrial and population growth in Calgary, a time in which the city proudly advertised itself as "the Chicago of Alberta."<sup>13</sup> It was an unwittingly apt label, for the level of crime increased substantially in this period, too. A persistently undermanned police force, together with a tolerance shown by successive police chiefs for certain crimes, contributed to this situation.<sup>14</sup> In this respect, the appointment of Gilbert E. Sanders as Police Magistrate in 1911 and Alfred Cuddy as Police Chief a year later marked a turning point in Calgary law enforcement. Unlike many of their predecessors, both men were prepared and determined to clamp down on crime in the city, and policing attitudes and techniques evolved rapidly in the years that followed.<sup>15</sup> This study limits its attention to the years before this transformation in local law enforcement.

## II

ANY STUDY OF VAGRANCY should take into account the longstanding academic debate regarding the social function of the law and legal institutions. Until the 1960s, the functionalist theory of crime held sway, drawing on the works of Emile Durkheim, Talcott Parsons and other sociologists. This theory rested on the premise that laws transcend the interests of individuals and groups, and instead reflect the broad moral consensus of society as a whole. According to this perspective, criminal acts were "the result of inadequate internalization of the norms and values of society" by those individual who performed them.<sup>16</sup>

Taking its cue largely from the writings of Marx, a conflict theory of crime emerged in the 1960s to dispute the existence of such a moral consensus. In contrast, this school of thought regarded laws and legal institutions as "primarily concerned with the preservation of the existing system," which in turn reflected the interests of the dominant class in society. Within this paradigm, criminals were defined by the challenge that they posed to these dominant interests and, consequently, were subject to suppression under a coercive legal system.<sup>17</sup>

The consensus and conflict theories of crime offered divergent explanations of the social origins of criminal activity, and were premised upon radically different perceptions of society. However, each theory related to the further question of social control. From the perspective of the functionalist or consensus approach, such control was manifest in that the criminal justice system assisted 'deviant'

<sup>13</sup>Leo Thwaite, *Porter's Progress of Nations: Alberta* (Chicago 1912), 163.

<sup>14</sup>McLaren, "The Canadian Magistracy," 336-40.

<sup>15</sup>See John H. Robertson, "One Hundred Years Policing Calgary," *Fort Calgary Quarterly*, 5, 3 (1985), 1-5; Bedford, "Prostitution in Calgary," 3-5; McLaren, "The Canadian Magistracy," 340-4.

<sup>16</sup>W.K. Greenaway and A.L. Brickey, eds., *Law and Social Control in Canada* (Scarborough 1978), 2-3.

<sup>17</sup>Greenaway and Brickey, *Law and Social Control*, 5-7.

individuals better to internalize society's accepted values.<sup>18</sup> On the other hand, the conflict theory of crime viewed such internalization as of secondary importance. Instead, the process of social control was more coercive in nature, as evident in those measures taken by police and courts to suppress those actions deemed contrary to the interests of the dominant class.<sup>19</sup>

On the whole, existing studies of vagrancy in North America have favoured the conflict variant of the social control theory. In his study of tramps in Buffalo in the 1890s, for example, Sidney Haring argues explicitly that "the police are not neutral in the class struggle, but rather are an instrument of ruling class domination." Haring identifies his tramps as "solidly working class, not a lumpen proletariat or criminal class," and accordingly interprets their suppression as part of larger inter-class struggle.<sup>20</sup> Canadian studies of vagrancy have focused more on the specific threat that vagrants posed to middle-class notions of order and respectability. James Pitsula, for example, writes in his study of Toronto that "the tramp symbolized rejection of the work ethic and middle class values." As such, "this rebellious figure had to be suppressed.... The tramp was the embodiment of all the character defects — laziness, improvidence, intemperance, instability, and so on which middle-class reformers discerned at the root of the crisis in the social order. Social control over the urban masses demanded suppression of the tramp and all he stood for."<sup>21</sup> Jim Phillips reaches much the same conclusion for nineteenth-century Halifax, where the "middle class perceived in the vagrant a growing threat to social discipline and turned in part to the criminal justice system to impose their notions of order and respectability on this segment of the urban poor." Accordingly, argues Phillips, "[t]he administration of vagrancy laws in this period is best interpreted as part of a broader process of social control, which involved inuring those members of the lower classes to bourgeois notions of industry, sobriety, and respectability."<sup>22</sup>

As both Pitsula and Phillips illustrate, Canada's nineteenth-century middle class viewed vagrants and tramps not so much as a physical threat to orderly urban existence, but as a challenge to the implicit beliefs that underpinned that existence. There can be little disputing this interpretation. However, the studies by Pitsula and Phillips do beg an important question: to what extent did the criminal justice system actually enable (and permit) the middle class to "impose" its own particular beliefs and values upon another class? To view the law as a coercive agent of social control is akin to the out-dated interpretation of industrialization that regarded pre-indus-

<sup>18</sup>On this process, see Robert Gray, "Bourgeois Hegemony in Victorian Britain," in Tony Bennett, *et al.*, eds., *Culture, Ideology and Social Process: A Reader* (London 1981), 235-50.

<sup>19</sup>Greenaway and Brickey, *Law and Social Control*, 3-8.

<sup>20</sup>Sidney L. Haring, "Class Conflict and the Suppression of Tramps in Buffalo, 1892-1894," *Law and Society Review*, 11 (1977), 873-1901, quotations from 874, 876.

<sup>21</sup>Pitsula, "Treatment of Tramps," 116, 119.

<sup>22</sup>Phillips, "Vagrancy Laws," 128-9.

trial workers as helplessly passive victims, unable to resist or counter the forces of technological change. The decisive break with this interpretation was, of course, E.P. Thompson's *Making of the English Working Class*, in which workers appeared as active agents who shaped their own historic evolution.<sup>23</sup> In the 1970s, Thompson, Douglas Hay and other scholars extended this approach towards class relations when they turned their attention to the operation of the criminal justice system in eighteenth-century England.<sup>24</sup> In so doing, they examined the process by which an emergent bourgeois hegemony was formed and, in consequence, refined the earlier conflict theory model of social control. Their approach to the law in operation may usefully be applied to the question of vagrancy in Calgary.

For Thompson and Hay, a key function of the law was its capacity to legitimize a ruling class's exercise of power, power that derived from the nature of economic and social relations. This was not the same as saying that the law was a blunt cudgel with which the labouring classes could be systematically beaten.<sup>25</sup> As Thompson writes, "If we suppose that the law is no more than a mystifying and pompous way in which class power is registered and executed, then we need not waste our labour in studying its history and forms. One Act would be much the same as another...."<sup>26</sup> Both he and Hay argue that for the law to work successfully, for it to be observed and respected by the ruled as well as the rulers, it must "display an independence from gross manipulation and shall seem to be just."<sup>27</sup> As Hay concludes in his study of the basis of British courts' authority, "The sanction of the state is force, but it is a force that is legitimized, however imperfectly, and therefore the state deals also in ideologies. Loyalties do not grow simply in complex societies; they are twisted, invoked, and often consciously created."<sup>28</sup> Judges and magistrates did not simply impose the letter of the law; rather, they employed discretion when passing sentences or dismissing cases. In so doing, they helped to legitimize the rule of law by imbuing it with a sense of majesty, justice and mercy.<sup>29</sup>

<sup>23</sup>E.P. Thompson, *The Making of The English Working Class* (1963; rpt. Harmondsworth 1986). For a recent appreciation of Thompson, see Bryan D. Palmer, *E.P. Thompson: Objections and Oppositions* (London 1994).

<sup>24</sup>Douglas Hay, et al., *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (New York 1975).

<sup>25</sup>Cf. Trygve Tholfsen, *Working Class Radicalism in Mid-Victorian England* (London 1976), 179-80.

<sup>26</sup>E.P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (London 1975), 267-8.

<sup>27</sup>Thompson, *Whigs and Hunters*, 263.

<sup>28</sup>Douglas Hay, "Property, Authority and the Criminal Law," in Hay, *Albion's Fatal Tree*, 62.

<sup>29</sup>This approach soon won supporters and detractors. On the positive side, see Cynthia B. Herrup, "Law and Morality in Seventeenth-Century England," *Past and Present*, 106 (February 1985), 102-23; J.A. Sharpe, *Crime in Early Modern England, 1550-1750* (London 1984); Clive Emsley, *Crime and Society in England, 1750-1900* (London 1987); Terry L. Chapman, "Crime in Eighteenth-Century England: E.P. Thompson and the Conflict Theory

This focus on the legitimization of class rule has influenced a number of recent Canadian studies. Paul Craven, for example, tests Hay's framework of analysis in the context of Toronto's police court, particularly as it was portrayed by the local press. One of the police court's social functions, Craven argues, "was to mark off the gulf between the respectable and the disreputable." Reporters magnified this conflict as a "substitute for the far more real and threatening conflicts that the evolving industrial society embodied."<sup>30</sup> Joan Sangster's study of 'tales' told by women in the Peterborough magistrate's court owes more to Natalie Zemon Davis than it does to Hay and Thompson. Like the latter, however, Sangster also views the law as a series of discourses in which gender (and by extension class) relations are challenged, re-affirmed and sometimes re-drawn, rather than as a one-sided weapon of class oppression.<sup>31</sup> In her deconstruction of middle-class moral reform at the turn of the century, Mariana Valverde extends the notion of the legitimization of power to explain how and why "social purity and philanthropy sought to establish a non-antagonistic class structure, not to erase class differences." Like Thompson and others, Valverde notes that the state's monopoly over the legitimate use of force placed it in "a privileged position to enforce rules about behaviour." However, she also concurs with Thompson that "the state can only make its citizens *internalize* certain values if it has the full and active co-operation of the family and of voluntary organizations."<sup>32</sup>

Similarly to Pitsula and Phillips, this paper argues that vagrants in this period represented a section of society that had failed or refused to internalize dominant middle-class values. It makes the further argument, however, that the treatment of vagrants by the criminal justice system in Calgary was part of the process of legitimizing and extending middle-class values concerning work and industry. In effect, the public trial and sentencing of vagrants served to remind other workers of the fate that befell those who questioned or rejected such values. In this way, vagrancy reinforced the essential belief that material success was linked to personal

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of Crime," *Criminal Justice History*, 1 (1980), 139-55. Chief among the negative responses to *Albion's Fatal Tree* was John H. Langbein, "Albion's Fatal Flaws," *Past and Present*, 98 (February 1983), 96-120. This elicited, in turn, a sharp and witty rejoinder from one of the book's authors, Peter Linebaugh, in "(Marxist) Social History and (Conservative) Legal History: A Reply to Professor Langbein," *New York University Law Review*, 60, 212 (May 1985), 212-43.

<sup>30</sup>Paul Craven, "Law and Ideology: The Toronto Police Court, 1850-80," in David H. Flaherty, ed., *Essays in the History of Canadian Law*, vol. II (Toronto 1983), 248-307, quotations on 296, 298.

<sup>31</sup>Joan Sangster, "'Pardon Tales' from Magistrate's Court: Women, Crime, and the Court in Peterborough County, 1920-50," *Canadian Historical Review*, 74, 2 (June 1993), 162-97. See also Natalie Zemon Davies, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford 1987).

<sup>32</sup>Mariana Valverde, *The Age of Light, Soap, and Water: Moral Reform in English Canada, 1885-1925* (Toronto 1991), 25, 29.



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performance, rather than to social circumstance. First, it is necessary to assess the significance of vagrancy with relation to other crimes in Calgary and to the city's rapid growth in population after 1900.

### III

FOR CALGARY, as for many cities across western Canada, the years 1900-14 were a period of demographic explosion.<sup>33</sup> In 1900, Calgary's population measured just over 4,000, a figure that represented little increase over the previous decade. By 1914, however, it had risen to more than 50,000. Natural growth accounted for less than 6,000 of this increase, and more than 85 per cent of Calgary's new citizens consisted of those ambitious men and women who had struck west in hope of a new life and a share of the wealth then being promised in the abundant promotional literature.<sup>34</sup>

This was also a period of rapid economic development. Calgary's physical appearance changed dramatically as the wooden shacks of the frontier-style settlement gave way to more recognizably urban structures and arrangements. Between 1904 and 1912, the value of building permits rose from \$880,193 to \$20,394,220, an increase of well over 2,000 per cent.<sup>35</sup> As an indication of Calgary's industrial development and diversification, the number of manufacturing firms more than quadrupled and their output jumped from \$600,000 to \$7,750,000. For instance, in 1901 each local factory employed, on average, a workforce of 30; by 1911, this figure had risen to 46.<sup>36</sup> As one writer later remarked, in this brief period Calgary was transformed from "Cow town to Hub of Industry."<sup>37</sup> Almost within a single decade, Calgary underwent the sort of changes that had spanned the better part of a century in England.<sup>38</sup>

<sup>33</sup>Paul Voisey, "The Urbanization of the Canadian Prairies, 1871-1916," *Histoire sociale-Social History*, 8, 15 (May 1975), 77-101; David Bright, "Bonds of Brotherhood?: The Experiences of Labour in Calgary, 1900-1913," MA thesis, University of Calgary, 1990, 10-7.

<sup>34</sup>Voisey, "Urbanization of the Canadian Prairies," 85; *Calgary Municipal Manual* (1914), 220; Alan F.J. Artibise, "Boosterism and the Development of Prairie Cities, 1871-1913," in Artibise, ed., *Town and City: Aspects of Western Canadian Urban Development* (Regina 1981), 209-35.

<sup>35</sup>*Calgary Municipal Manual* (1913), 225.

<sup>36</sup>Max Foran, *Calgary: An Illustrated History* (Toronto 1978), 174.

<sup>37</sup>*Calgary Herald*, 11 June 1924.

<sup>38</sup>For three different accounts of the English working class's experience of the industrial revolution, see Thompson, *The Making of The English Working Class*; John Foster, *Class Struggle and the Industrial Revolution: Early Industrial Capitalism in Three English Towns* (1974; rpt. London 1979); John Rule, *The Labouring Classes in Early Industrial England, 1750-1850* (London 1986).

Vagrancy had been a relatively minor problem before 1900. Magistrate Thomas Ede convicted just 39 offenders between 1883 and 1892. This figure rose to 106 for the years 1893-99, a period of economic depression and limited population expansion.<sup>39</sup> By this time, there were already signs that the level of vagrancy was greater than the conviction figures alone indicate. In the single year 1895, for example, vagrancy charges accounted for 80 per cent of the 200 cases that appeared in the police court.<sup>40</sup> It was in the years after 1900, however, during Calgary's decade or so of industrial transformation, that vagrancy emerged as a serious criminal and social challenge. The 2,797 convictions for vagrancy between 1900 and 1913 placed second only to alcohol-related offenses, as Table 1 illustrates.

TABLE 1: SELECTED CRIME CATEGORIES, 1900-13<sup>41</sup>

	<u>Number</u>	<u>Percentage of Total</u>
Vagrancy	2,797	13.2
Theft	2,042	9.6
Alcohol-related	13,629	64.3
Prostitution-related	1,096	5.2
Others	1,625	7.7

These figures need to be placed within the context of a rapidly expanding city, of course. As Police Chief Tom Mackie noted in his report for 1912, "Suffice it to say that the volume of business during the year is far in excess of that of previous years. This is not due so much to the increase in crime as to the rapid growth of our city, and to the enlargement of the Police Force."<sup>42</sup> It is possible that the increase in the number of vagrancy cases was simply the result of a larger population, of better detection methods, or of some combination of the two. To demonstrate that the rise of vagrancy was not simply a reflection of Calgary's mushrooming population, Graph 1 plots the number of convictions for vagrancy per 1,000 population for the years 1900-13. For comparison purposes, convictions for prostitution offenses are similarly charted.

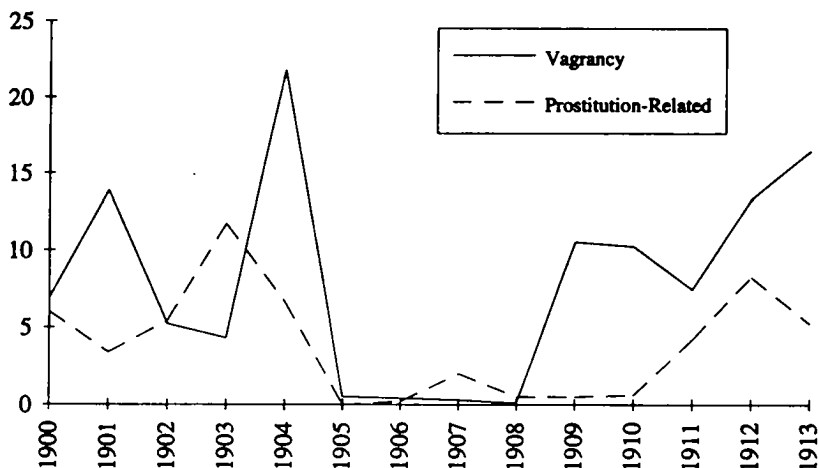
<sup>39</sup>Thorner and Watson, "Patterns of Prairie Crime," 251.

<sup>40</sup>*Calgary Herald*, 15 January 1896.

<sup>41</sup>Based on figures in Thorner and Watson, "Patterns of Prairie Crime," 248-53.

<sup>42</sup>City of Calgary, *Annual Report* (1912).

Graph 1: Arrests for Vagrancy and Prostitution-Related Offenses per 1,000 population, 1900-13<sup>43</sup>



As can be seen, the pattern for both crimes is roughly the same. Relative to population, vagrancy and prostitution offenses rose substantially in the years 1900-05, before dropping sharply during the mid-decade economic depression. Although offenses in both categories rose again after 1908, the increase in vagrancy convictions began sooner, rose at a faster rate, and lasted longer than was the case with prostitution.

As mentioned above, these statistics do need to be treated with caution. Nevertheless, it would appear that not only did vagrancy outpace Calgary's population growth, but that it increased most rapidly during years of economic prosperity, notably after 1908 when the city entered its 'boom' period. A comparison with the incidence of vagrancy in other years supports this observation. Between 1909 and 1913, the average number of convictions for vagrancy was 11.6 per 1,000 population per year. The corresponding figure was just 4.2 during the depressed conditions of 1893-99, 8.3 for the duration of the war, and 7.3 in the 1920s. In addition to suggesting that Mackie was wrong to explain the rise in crime as a result of population growth, the evidence for Calgary also confounds the view that interprets vagrancy as a function of a depressed economy.<sup>44</sup>

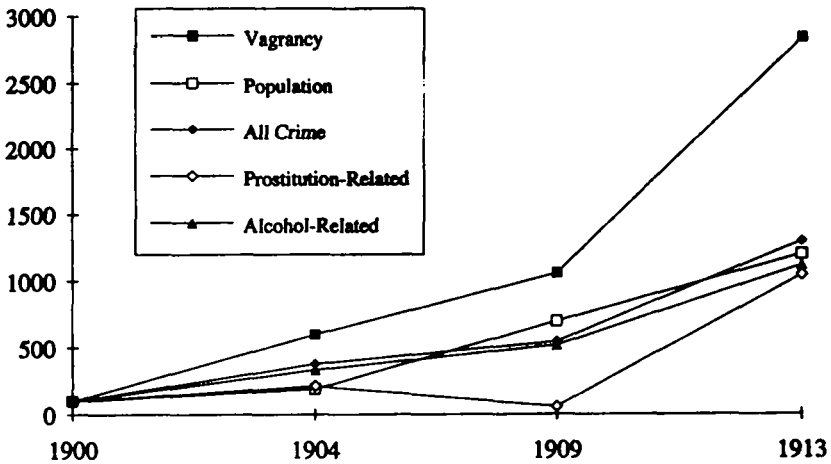
Vagrancy was clearly a growing problem in pre-war Calgary. It might be argued, however, that in comparison with crimes relating to the abuse of alcohol vagrancy was a social concern of secondary importance. After all, drunkenness and associated offenses did account for two-thirds of all convictions in Calgary between

<sup>43</sup>Based on figures in Thorner and Watson, "Patterns of Prairie Crime," 248-53.

<sup>44</sup>Phillips, "Poverty, Unemployment," 152.

1900 and 1913. However, if attention turns from the absolute numbers involved with each offence to the relative patterns of growth, a different picture emerges. Graph 2 demonstrates this. Taking 1900 as the base year in each instance, it plots the relative increases in convictions for vagrancy, alcohol-related offenses and prostitution-related offenses. It similarly shows the relative rises in total convictions and in population.

Graph 2: Proportional Increases in Population and Crime, 1900-13 (1900 = 100)<sup>45</sup>



From Graph 2, it may be seen that the rate of alcohol-related convictions grew more slowly than the rate of crime overall in these years. After 1906 it was also advancing more slowly than the rate of population growth. The rate of increase in convictions for vagrancy, on the other hand, consistently stayed ahead of that for all other categories. By 1909, it was the sole offence that was expanding faster than the rate of crime in general. While it never reached the absolute proportions of alcohol-related convictions, vagrancy was nevertheless the fastest growing area of criminal activity during Calgary’s years of economic prosperity. The growing numbers of vagrants were not merely a concern for local law enforcers. They also represented a challenge to the hegemony of the work ethic in Calgary. As such, vagrancy was a social issue that could not be ignored.

<sup>45</sup>Figures based on Thorner and Watson, “Patterns of Prairie Crime,” 248-53.

## IV

VAGRANCY was defined as a crime by both the 1892 Criminal Code and a local Calgary by-law. According to the Criminal Code, anyone who committed any of twelve wide-ranging offenses could be identified as a "loose, idle or disorderly person or vagrant." These offenses included "not having a visible means of maintaining himself," and "being able to work and thereby or by other means to maintain himself and family wilfully refuses or neglects to do so." The charge of vagrancy could also be applied to those who were suspected of offenses related to prostitution and were unable to prove otherwise.<sup>46</sup> The city by-law instructed the police to prevent "common begging, or persons in the streets from importuning others for help or aid in money, or deformed or malformed or diseased persons from exposing themselves, or being exposed in the public streets to excite sympathy or induce help or assistance from the general or public charity."<sup>47</sup>

Such were the legal formulations that classified those who could be arrested as vagrants. Vagrancy, as defined by the law, consisted of a series of particular actions. When it came to implementation of the law, however, and certainly as far as public opinion was concerned, such specific actions were of secondary importance. As A.L. Beier remarks in his study of early-modern England, vagrants were "a group whose crimes usually originated in their status rather than their actions."<sup>48</sup> What they did was less important than what they were; or, rather, what others believed them to be. In this respect, Mariana Valverde's comment, that "to be a prostitute is not merely to hold a particular job but to have a whole identity," applies equally to vagrants and vagrancy.<sup>49</sup>

This was true in Calgary, where the popular perception of vagrancy interpreted it as a crime of status rather than a crime of action. It was possible to identify — and hence charge — vagrants according to their appearance and lifestyle, rather than by any specific illegal activity. Elizabeth Langdon cites an instance of this kind of thinking in her study of female crime in Calgary. In 1913, Effie Brady was convicted of being a prostitute or 'nightwalker' after she had failed to give 'a satisfactory account of herself' as required under the vagrancy provisions of the 1892 Criminal Code. In passing sentence, Justice Walsh explained that:

Without attempting a definition of the word nightwalker, I do not hesitate to say that the evidence given on this charge ... brands the applicant as one. She was wandering around the streets of the city after dark in the company of a woman who had been convicted of being an inmate of a house of ill-fame and both she and her companion accosted and spoke to nine

<sup>46</sup>Canada, *The Criminal Code* (1892), 89.

<sup>47</sup>*From the Ordinances and Statutes Comprising the Charter of the City of Calgary* (1912), 52.

<sup>48</sup>Beier, *Masterless Men*, 127.

<sup>49</sup>Valverde, *The Age of Soap, Light, and Water*, 78. See also McLaren, "The Canadian Magistracy," 330-3.

or ten different men in a period of twenty minutes. ... Whatever else may be involved in this expression I am satisfied that it is broad enough to cover a woman who thus conducts herself.<sup>50</sup>

This 'guilt by association' approach encouraged the popular notion that vagrants comprised a discrete group or class within society, one which possessed particular and observable characteristics. In turn, this perception made possible the belief that vagrants, collectively, could and should be classed with other 'socially-deviant' groups, such as thieves, alcoholics and socialist radicals. As a consequence of this blanket categorization, there was little need or attempt by the public to address the specific problems or issues that each sub-class represented. For the vagrants themselves, this process helped to marginalize them from the interests and aspirations of the so-called 'respectable' working class and so denied them a potential source of support.<sup>51</sup> Magistrate Gilbert Sanders, for example, made a clear distinction between the 'steady industrious labourer' and the 'shiftless, drunkard and degenerate' vagrant.<sup>52</sup> Ultimately, this characterization and isolation of vagrants precluded any likelihood that either the public or the criminal justice system would seek out the root causes of the problem that their presence represented.

Nowhere was the free association between vagrants and other law-breakers more evident than in the pages of the local press. Following a day's attendance at Calgary's police court in 1907, a reporter for the *Calgary Herald* listed the various categories of offenders present. These included, "lazy vags, followers of Bacchus who have imbibed beyond the capacity of their stomachs and legs, street walkers who have made themselves too prominent ..., gamblers and suspicious characters who cannot give a satisfactory account of the reason for their presence in the city, [and] petty thieves. ..." <sup>53</sup> In this manner, the reporter confirmed the prejudice of public opinion which saw little difference between vagrants and criminals whose arrest followed specific actions. Such association was common in Calgary. In 1905, police arrested seven men for vagrancy and linked them to recent thefts from a rancher's wagon. The officers produced evidence in support of this accusation and no formal charge was ever made.<sup>54</sup> Calgary's annual fair each summer attracted its share of con-men and pickpockets, and police would routinely arrest as vagrants those men they deemed to be suspicious, whether or not they had committed any specific offence.<sup>55</sup> In such ways, both newspaper coverage and police statements reinforced the association between vagrancy and crime in general, which in turn

<sup>50</sup>Quoted in Langdon, "Female Crime in Calgary," 297.

<sup>51</sup>Phillips, "Poverty, Unemployment," 144.

<sup>52</sup>CCA, City Clerk papers, files 394, 417; Thomas Thorner and Neil B. Watson, "Keeper of the King's Peace: Colonel G.E. Sanders and the Calgary Police Magistrate's Court, 1911-1932," *Urban History Review*, 12, 3 (February 1984), 48-53.

<sup>53</sup>*Calgary Herald*, 3 August 1907.

<sup>54</sup>*Calgary Herald*, 14 February 1905.

<sup>55</sup>*Calgary Herald*, 26 June 1912.

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hardened public opinion against those actually charged with vagrancy. As Magistrate Sanders declared in July 1912, "Midsummer vagrancy is not going to be tolerated in Calgary. With employers of every kind of labor crying out for more men, loafers are not going to subsist upon public credulence."<sup>56</sup>

For its own part, public opinion in Calgary was fully prepared to endorse punitive treatment of vagrants. In 1903, for example, the *Herald* called on local authorities to compel those convicted of vagrancy to break stones, chop wood or level roads in order to defray the cost of their upkeep while imprisoned at the nearby NWMP barracks.<sup>57</sup> In 1912, concerned citizen L.B. McMurdo wrote to the same paper suggesting that "putting the vags to work on the street, would no doubt lessen their desire of spending the winter months at the barracks."<sup>58</sup> It was little surprise that Magistrate Sanders agreed with such suggestions, and even proposed forming a chain gang of vagrants to help ease the problem of overcrowding in the local jail.<sup>59</sup> The city council took action in this respect in 1914, when it instructed the city commissioners to "inaugurate a scheme whereby transients and other persons who are able to work and are found begging and asking charity may be put to work" breaking rocks and chopping wood.<sup>60</sup> There was even talk of setting up a prison farm for vagrants and drunkards. Proponents of such an enterprise hoped that it would show a profit which could be used to provide for the families of prisoners, and so save the city the expense of making additional relief payments.<sup>61</sup>

Authorities in Calgary frequently made explicit this association between vagrants and habitual alcoholics.<sup>62</sup> In December 1893, E.W. Jarvis, the NWMP superintendent then in charge of 'E' Division in Calgary, made note that several vagrants had "spent some time in the guard-room, at great expense to the country without any corresponding benefit being derived." He suggested that some form of penitentiary system might provide inmates with work in exchange for a small sum of money, which each man would receive upon his release. "Of course, this system — particularly among the tramp element — is liable to abuse," Jarvis admitted, "as in many cases the money would be at once spent in drink; but on the

<sup>56</sup> *Calgary Herald*, 12 July 1912.

<sup>57</sup> *Calgary Herald*, 31 July 1903.

<sup>58</sup> *Calgary Herald*, 3 February 1912.

<sup>59</sup> *Calgary Herald*, 17 July 1912.

<sup>60</sup> City Clerk papers, box 50, City Clerk J.M. Miller to Mayor/Commissioners, 11 November 1914.

<sup>61</sup> City Clerk papers, box 53, file 429, Alf Cuddy to Chairman of the Legislative Committee, 26 April 1913.

<sup>62</sup> On this connection more generally, see Paul T. Ringenbach, *Tramps and Reformers: The Discovery of Unemployment in New York* (Westport 1973), 60-2, 72; Lionel Rose, 'Rogues and Vagabonds': *Vagrant Underworld in Britain, 1815-1985* (London 1988), 98-9; Peter Philmore, "Dossers and Jake-Drinkers: The View from One End of Skid Row," in Timothy Cook, ed., *Vagrancy: Some New Perspectives* (Institute for the Study and Treatment of Delinquency [Great Britain], 1979), 29-48.

other hand, in *some* instances it would help an honest and deserving recipient to a fresh start."<sup>63</sup> This connection between vagrancy and alcoholism continued into later years, and gave rise to sweeping generalizations that further helped to marginalize vagrants within society. In 1914, Magistrate Sanders went so far as to assert that "Fifty per cent of the unskilled laborers work only long enough to get money to get drunk on and then they depend on their charities for food, clothing and shelter."<sup>64</sup>

Police officers also employed the vagrancy provisions of the Criminal Code in order to prosecute labour radicals in Calgary. In July 1912, constables charged Alberta MLA Charles O'Brien and fellow socialist Wallace McCluskey with vagrancy. The two men had been leading a street demonstration in defence of free speech. The police justified their action by claiming that the pair were causing a disturbance by blocking the sidewalk.<sup>65</sup> In January 1914, police once more arrested McCluskey, this time along with William McConnell and Frank Molan, as they attempted to organize unemployed Calgarians within the Industrial Workers of the World. As before, the arresting officers invoked the vagrancy provisions that prohibited the "impeding or incommoding [of] peaceable passengers."<sup>66</sup> The *Herald* applauded the arrest of this "horde of vagrants and so-called 'unemployed'," and renewed its demand for a jail farm. "Providing these men with a warm cell, a comfortable bunk and food in idleness while the taxpayers foot the bill ... does not appeal to the average hard-working citizens. These men should be given a taste of the work that they so blatantly demand on the banners they carried in the processions, and the best method of doing it is by means of a large prison farm."<sup>67</sup>

In neither of these instances was there any evidence to suggest that vagrants themselves were supporters of the IWW or any other radical labour organization in Calgary.<sup>68</sup> Nevertheless, the local press once again picked up on the implied association and soon found new ways to depict vagrants as social misfits within an

<sup>63</sup>Canada, *Sessional Papers*, no. 15 (1894), 102 (emphasis added).

<sup>64</sup>*Calgary Herald*, 16 July 1914.

<sup>65</sup>*Calgary Herald*, 17 July 1912.

<sup>66</sup>*Criminal Code* (1892), part 15, section 207 (f), 89; *Calgary Herald*, 5 January 1914, 6 January 1914.

<sup>67</sup>*Calgary Herald*, 5 January 1914.

<sup>68</sup>The literature on the western radical labour movement is extensive. Among others, see Gerald Friesen, "'Yours in Revolt': Regionalism, Socialism and the Western Canadian Labour Movement," *Labour/Le Travailleur*, 1 (1976), 139-57; Mark Leier, *Where the Fraser River Flows: The Industrial Workers of the World in British Columbia* (Vancouver 1990); A. Ross McCormack, *Reformers, Rebels, and Revolutionaries: The Western Canadian Radical Movement, 1899-1919* (Toronto 1977), and "Wobblies and Blanketstiffs; The Constituency of the IWW in Western Canada," in W.J.C. Cherwinski and Gregory S. Kealey, eds., *Lectures in Canadian Labour and Working-Class History* (Toronto 1985), 101-14; and Ringenbach, *Tramps and Reformers*, 68-9.



orderly capitalist society. In particular, reporters devised new epithets when covering vagrancy cases that came before the police court. Thus vagrants became known as "Weary Willies" and the "I Won't Works."<sup>69</sup>

In various ways and to varying degrees, then, public opinion in Calgary came to associate vagrants with criminals, prisoners, drunks, and labour radicals. Tarr'd in this manner, vagrants could expect to receive little sympathy from either the police, the courts, or even those members of the working class who shared society's prevailing values regarding work. As Greg Marquis notes, "there is little evidence that the bulk of urban workers and rural dwellers had much sympathy for the brawlers, drunks, vagrants and wifebeaters who filled the low criminal courts."<sup>70</sup> Yet unlike wifebeaters, brawlers or drunks, vagrants inflicted no suffering or hardship on others. They victimized none but themselves. Vagrancy truly was, then, "an offence against morals and public convenience," as the Criminal Code labelled it. It offended a morality that rested on the work ethic in general and the principle of wage labour in particular. Vagrancy's treatment within the Calgary's criminal justice system reflected its alleged moral transgression.

## V

AS THE NUMBER of convictions for vagrancy continued to soar — from roughly 300 in 1909 to more than 800 in 1913 — so successive magistrates sought to impose sentences that would both punish and deter offenders. This was no simple matter. Ordering a convicted vagrant out of town might have been a realistic option in the small town of the 1890s, but was hardly so after the turn of the century.<sup>71</sup> Fining men who rarely had more than a few cents to their name was also impractical.<sup>72</sup> So was full-time incarceration, given the overcrowded conditions at the city jail. In any case, as seen above, public opinion was ill-disposed to the idea of 'rewarding' wilful idleness with a spell of enforced idleness at the taxpayers' expense.

Given the lack of options, hard labour presented itself as a possible solution to the question of how best to punish and deter vagrancy. Magistrates Smith and Sanders each favoured the idea, believing compulsory manual labour to combine an element of useful punishment with an effective deterrent against repeat offenses. Moreover, they hoped that the experience of hard labour might even reform the habitual idler.<sup>73</sup> Their thinking resembled that described by Patricia O'Brien in her study of prisons in nineteenth-century France. "More than education and religion," she writes, "work was consistently acknowledged as the moralizing agent capable

<sup>69</sup> *Calgary Herald*, 7 November 1913.

<sup>70</sup> Greg Marquis, "Doing Justice to 'British Justice': Law, Ideology and Canadian Historiography," in Pue & Wright, *Canadian Perspectives*, 50.

<sup>71</sup> *Calgary Herald*, 3 June 1904.

<sup>72</sup> *Calgary Herald*, 19 July 1894.

<sup>73</sup> For an example of Smith's approach, see *Calgary Herald*, 3 June 1904. On Sanders, see Thorne and Watson, "Keeper of the King's Peace," 46-9.

of transforming even hardened criminals into useful citizens."<sup>74</sup> Compelling prisoners to perform work not only produced goods and services which helped offset the cost of their incarceration, but also — it was hoped — instilled within them a sense of work-discipline which they could take with them upon their return to society.<sup>75</sup>

Despite the attractions it had for law enforcers, there were several problems with hard labour as a viable response to vagrancy. First, if it were to act as a deterrent, the experience of hard labour had to be sufficiently onerous as to discourage future 'voluntary idleness.' James Pitsula recounts the case of an English magistrate in Toronto who wished to test for himself how hard tramps had to work on the local stonepile. After "a considerable time ... his hands were so blistered, the arms of his muscles so strained, that he vowed that this was too severe a test for, at any rate, unprofessional tramps...." He recommended that alternative tasks be found.<sup>76</sup> In Calgary, although hard labour might sometimes entail strenuous physical work, such as digging ditches or levelling roads, this was not always the case. In 1895, for example, the *Herald* received a letter from 'A Sufferer' who complained of the "Brutle and inhumane treatment those porr [sic] unfortunate prisoners are receiving at the hands of the Mounted Police." Upon investigation, however, the paper discovered that hard labour at the barracks consisted mostly of cutting grass, washing rigs and shovelling gravel, which, it noted sarcastically, "compared with Oscar Wilde's six hours a day on the treadmill, is mere child's play."<sup>77</sup>

A second drawback to hard labour was the blanket opposition that it received from the local labour movement.<sup>78</sup> At a time when many unions believed that government and employers had conspired to flood western Canada with cheap immigrant labour, labour organizations did not exactly welcome the idea of additional competition from low-paid prisoners. In September 1914, for example, A.E. Sterling of Local 283 of the Painters, Decorators and Paperhangers Union wrote to the city commissioners protesting the employment of prisoners to paint

<sup>74</sup>Patricia O'Brien, *The Promise of Punishment* (Princeton 1982), 150.

<sup>75</sup>See E.P. Thompson, "Time, Work-Discipline and Industrial Capitalism," (1967), rpt. in his *Customs in Common* (London 1991), 352-403; Richard Whipp, "'A Time to Every Purpose': An Essay on Time and Work," in Parick Joyce, ed., *The Historical Meanings of Work* (Cambridge 1987), 210-36.

<sup>76</sup>Pitsula, "Treatment of Tramps," 124-5.

<sup>77</sup>*Calgary Herald*, 10 July 1895.

<sup>78</sup>Prison labour was, of course, cheap in that wages did not have to reach even subsistent levels. On the opposition from workers to this practice in Canada see Bryan Palmer, "The Kingston Mechanics and the Rise of the Penitentiary, 1833-1836," *Histoire sociale-Social History*, 13, 25 (May 1980), 7-32.

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the new police station at a time when "scores of idle painters" were in need of work.<sup>79</sup>

A final and more fundamental problem with hard labour was that there simply was not sufficient cell-space in Calgary to house any great number of inmates. Calgary's original jail, built in 1884 when the town's population numbered four hundred, was still in use two decades later when the city was more than ten times that size. In 1908, a reporter from the *Herald* complained that "The present jail is a disgrace to the city," pointing to the fact that the eight cells shared a single toilet and that there was no separate accommodation for female prisoners.<sup>80</sup> "A description of it in detail when filled with an miscellaneous assortment of male and female prisoners, drunk, depraved, immoral, and, alas, some only unfortunate, would read more like a chapter of Zola than an account of a Calgary civic institution in 1908," concluded the writer.<sup>81</sup> New facilities were constructed in 1911 and again in 1914, but overcrowding remained a constant problem.<sup>82</sup> In May 1913, Chief Cuddy admitted to locking 60 prisoners in cell space designed for just 15, but even this figure represented a small fraction of the 200 or so individuals who had appeared in court on vagrancy charges during the previous three months.<sup>83</sup> Incarceration, with or without hard labour, was a limited option at the disposal of Calgary's police magistrate.

The orthodox dispensation of justice involves the determination of guilt or innocence and the passing of an appropriate sentence. The level and nature of vagrancy in Calgary rendered sentencing problematic, in that there was a shortage of prison space and the lack of an adequate deterrent. Magistrates were well aware of the limited options they had, as may be seen in the frequency with which they exercised discretion in the cases of vagrancy that came before them. Between May 1911 and March 1914, for example, one-third of those charged with vagrancy received only a caution or suspended sentence. This figure was greater than the combined total of vagrants who received fines or imprisonment.<sup>84</sup>

In attempting to deal with the growing number of vagrancy cases that appeared before them, Calgary magistrates were not helped by the fact that local police officers exhibited uncommon zeal in their prosecution of vagrants. As long as patrolmen were able make arrests on the basis of their own suspicions, it was inevitable that entirely innocent individuals would end up in court. This served only

<sup>79</sup>Board of Commissioners, series I, box 51, A.E. Sterling to Commissioners, 18 September 1914.

<sup>80</sup>*Calgary Herald*, 8 April 1904.

<sup>81</sup>*Calgary Herald*, 10 April 1908. See also *Calgary Herald*, 30 April 1908, 17 September 1909; Gray, *Red Lights on the Prairies*, 176.

<sup>82</sup>See comments by Bob Edwards in the *Eye Opener*, 27 June 1914. See also GMA, M2894, Georgeen Barrass, "Calgary Jails and Police Forces" (unpublished paper, 1956).

<sup>83</sup>*Calgary Herald*, 31 May 1913.

<sup>84</sup>Board of Commissioners, series I, boxes 16, 18, 26, 27, 38, 29, 42, 43, 49, 50.

to hamper an already overloaded criminal justice process.<sup>85</sup> The case of Nathan Henry Robinson stands out as an example.

In June 1912, Robinson, an American citizen, was visiting Calgary on a business trip from Oregon. Just before midnight on Saturday 3 June, he left his room at the Empire Hotel to share a cup of coffee with his friend Arthur Page. On his return, Robinson was stopped by two police constables. After questioning him why he was out at such a late hour, they demanded that he provide proof of identification and details of his business in the city. Robinson complied but evidently failed to satisfy his two inquisitors, for they then arrested him and placed him within a cell at the police station. Robinson stayed there for the next twenty-four hours, during which time he was denied both a telephone call to his lawyer and his request for bail. He spent a second night in jail before being taken to police court the following Monday. In this instance, the magistrate wasted no time in dismissing the charge of vagrancy and censured the arresting officers for their actions. Evidently this reprimand failed to appease Robinson, who subsequently commissioned his lawyer to petition the Secretary of State in Ottawa for compensation and the formal punishment of the officers involved.<sup>86</sup>

Robinson was at least fortunate in that the magistrate took seriously his protestations of innocence. The determination of guilt or innocence — the second aspect of the dispensation of justice — was not always a primary concern when it came to dealing with vagrancy cases. In part, this reflected the difficulties in the field of sentencing already discussed. The criminal justice system in Calgary was simply ill-equipped to deal with a large number of convicted vagrants at any one time. Verdicts were also subject to the whims and biases of presiding magistrates, as when Sanders sent an 18-year old vagrant to jail in 1913 simply "because I think you deserve it."<sup>87</sup> Discretion was also a factor in the sentencing of the nineteen vagrants arrested at the CPR yards in 1912, as described in the opening. Acting-magistrate Burns dismissed charges in half of the cases, despite the fact that the evidence against all nineteen men appears to have been the same.

Discretionary justice was a crucial element in local efforts to punish vagrancy. It enabled magistrates to make public examples of particular offenders and so made unnecessary the punishing of all.<sup>88</sup> This exercise of discretion was not, however, a one-sided affair, with the magistrate unilaterally deciding who would be punished. Paul Craven's characterization of the Toronto police court as theatre is a useful metaphor, and the accused were every bit as much actors in the play as was the

<sup>85</sup>See Thorne and Watson, "Keeper of the King's Peace," 15-53.

<sup>86</sup>Board of Commissioners, box 17, file 20, Petition of Nathan Henry Robinson, 14 June 1911; Acting City Solicitor to F. Clarry, 10 August 1911.

<sup>87</sup>*Calgary Herald*, 17 April 1913.

<sup>88</sup>Cf. Hay, "Property, Authority and the Criminal Law," 40-9; Craven, "Law and Ideology," 282-6.

presiding judge.<sup>89</sup> But as in any morality play, the ability of actors to improvise was restricted by the pre-determined nature of their given roles. For those accused of vagrancy, the verdict they received depended largely on the veracity of their performance. Above all, what the court required was a public display of contrition. Vagrants had to confess the error of their ways, articulate a sincerely-felt penitence for their crime, and promise to reform themselves should they be released. By voluntarily embracing those values and beliefs which their previous lifestyle had eschewed, vagrants could perform a valuable public service. They stood as examples of what fate befell those who shunned or questioned the dominant capitalistic work ethic, and their symbolic rehabilitation through a full acceptance of this ethic confirmed capitalism's ascendancy over rival ideologies.

How did this work in practice? For a start, vagrancy's identity as a crime of status rather than a crime of action meant that specific allegations did not have to be debated in court. Indeed, to the extent that public opinion commonly interpreted vagrancy as wilful idleness, it was a crime in which inactivity itself was a sign of likely guilt. "I know enough to get out of the sun. That's the kind of vagrant I am," grumbled one man who was arrested for vagrancy in the summer of 1912 as he sat behind a billboard reading a newspaper.<sup>90</sup> What the magistrate was interested in was not so much the specific circumstances of the arrest or any particular infractions by the accused, but the individual's moral state of mind *at the time of trial* and his or her propensity to reform. In effect, the court invited the accused to tell a tale and, as in the case of Sheherezade, their fate depended on the skill with which they performed the task.<sup>91</sup> One example from 1912 demonstrates this process.

On the morning of 27 June 1912, twenty-two alleged vagrants appeared at the police court and related a series of "sad stories" in which they explained how they had come to Calgary seeking work.<sup>92</sup> As proof of his sincere desire to work, one man claimed that he had been "bartendin' fer nine years," a fact he believed "should preclude every possibility of his becoming a vagrant." Another alleged vagrant also "told a good story and got off" without punishment. In contrast was the case of Thomas McBride, one of two men whom the police had discovered drinking cheap beer on a vacant lot. Unable or unwilling to offer a plausible account of himself in court, McBride failed to convince the magistrate of his will to reform and was given ten days' hard labour to help him discover for himself the benefit of work. Five other men who also failed to provide a plausible tale of remorse received similar punishment. The stories offered by the remaining fourteen accused obviously carried greater conviction, for the magistrate set them free on their promise that they would secure work.<sup>93</sup>

<sup>89</sup>Craven, "Law and Ideology," 286-92.

<sup>90</sup>*Calgary Herald*, 27 June 1912.

<sup>91</sup>Cf. Sangster, "Pardon Tales," 185-95.

<sup>92</sup>*Calgary Herald*, 27 June 1912.

<sup>93</sup>*Calgary Herald*, 27 June 1912.

There was an art to the telling of tales in court. This was especially the case with repeat offenders. On the one hand, the accused had to take into account that the magistrate would likely be aware of his or her previous convictions and so could not structure a story around a claim of total innocence. On the other hand, the accused had to offer the judge a plausible picture of the future in which he or she appeared as a reformed person. Exaggeration of innocence was always a risk, as in the case of labourer Thomas Boyle in 1914. Boyle pleaded against a charge of vagrancy, arguing that it had been the first time in months that he had been drunk and that there was "a good job coming to him if the magistrate let him off." After listening to Boyle for many minutes, Magistrate Sanders concluded that his story was, in fact, "too much story" and gave the man fifteen days in jail with hard labour.<sup>94</sup>

On other occasions, however, a good account could win release even when the evidence suggested that a conviction of some sort was warranted. In 1912, Eva Williams and Irene Sims confessed to hitting Detective David Milne across the nose with an umbrella after he had approached them on the street. But the two women so succeeded in convincing Magistrate Sanders that they were not vagrants that he dismissed all charges.<sup>95</sup> A year later, Detective Turner arrested James L. Gordon for vagrancy upon finding him slumped in a chair, asleep, in the lobby of the Oxford Hotel. Gordon, Turner alleged, was in the habit of sponging off others at the hotel and drinking himself into a stupor. Gordon denied this indignantly, produced a receipt to show that he was a guest at the hotel, and claimed that he had only been "taking a little nap" at the time of his arrest. Undeterred by this, Turner retorted that "Gordon's naps were so frequent that he did not have time to do any work," but in this case an amused Sanders sided with the defendant and released him on the promise that he would seek employment.<sup>96</sup>

Along with begging, tramping and even unemployment itself, vagrancy was an indictment of the individual offender, not of society itself.<sup>97</sup> It was the consequence of an individual's deliberate abandonment of the work ethic. Accordingly, it was a function — indeed a duty — of the court to assist each offender to recognise this and to offer them a chance of public redemption. For the onlookers in court or who read trial accounts in the local newspapers, this public ritual fulfilled a dual purpose. First, it reminded the 'respectable' working class of the cost of straying from the path of performing an honest day's work. Second, the public spectacle of vagrants promising to reform their ways by re-embracing the virtues of the work ethic suggested that capitalism itself was intrinsically sound and in need of no substantial alteration. To the extent that the prescribed remedy for vagrancy

<sup>94</sup> *Calgary Herald*, 16 June 1914. On this aspect, see Zemon Davies, *Fiction in the Archives*, 112-3.

<sup>95</sup> *Calgary Herald*, 12 July 1912.

<sup>96</sup> *Calgary Herald*, 7 November 1913.

<sup>97</sup> Phillips, "Poverty, Unemployment," 144.

focused on the individual and his or her relationship to the work ethic, there was no need to look any further for solutions.

## VIII

AS LONG AS THE CALGARY criminal justice system continued to interpret vagrancy as wilful idleness on the part of the individual, there was little prospect that it would disappear as a social problem. With the onset of an economic depression in 1913, the incidence of vagrancy increased and, despite a small recovery during the later years of the war, it remained an enduring phenomenon in the 1920s and 1930s.<sup>98</sup> A "heartsick and discouraged" A.D. MacDonald, secretary of the Children's Aid Society, set the new tone of civic pessimism in 1920 when he reported record levels of "grave neglect and immorality ... deplorable cases involving desertion, debauchery, vagrancy and general depravity."<sup>99</sup>

Phillips concludes his study of vagrancy in Halifax with the observation that society never ceased to focus "on the inadequacy of the individual vagrant and his or her lack of moral fibre and commitment to the work ethic."<sup>100</sup> Similarly for Toronto, Pitsula states that the labour test there was "an insidious way of denying the reality of unemployment because the authors of the labour test assumed that the character defects of the poor, not the unavailability of work, was the central issue."<sup>101</sup> Both writers agree that the criminal justice system served as a means of social control, by "inculcating appropriate industrial attitudes and in restricting the definition of the worthy poor."<sup>102</sup>

The evidence for vagrancy in Calgary supports these conclusions. However, it also suggests that a slightly more complex version of social control was at work. In Calgary, the years 1900-14 were a period in which capitalism was not yet secure in its position as the dominant and legitimated social ideology. Rival conceptions of social organization, notably socialism, remained latent threats to capitalist hegemony. The criminal justice system's treatment of vagrants and vagrancy was one part, albeit a small one, of the process of winning wider endorsement of the values and ethos that underpinned capitalism. In particular, the identification, public trial and, if need be, prosecution of vagrants for deviating from values associated with the work ethic provided a cautionary warning to members of the 'respectable' working class. In this way, vagrants played an important role in the successful evolution of an orderly, capitalist vision of society in Calgary. By shunning the work ethic, they ensured that others would embrace it.

<sup>98</sup> See Sibernik, "Points of Departure."

<sup>99</sup> *Calgary Herald*, 13 February 1920.

<sup>100</sup> Phillips, "Poverty, Unemployment," 152.

<sup>101</sup> Pitsula, "Treatment of Tramps," 132.

<sup>102</sup> Phillips, "Poverty, Unemployment," 152.