“A CRIMINAL IN ONE PLACE, A GENTLEMAN IN ANOTHER:”

REGULATING EARLY CANADIAN GAMBLING VENUES

by

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Abstract

This thesis examines the legal history of regulating early gambling venues in Canada. Two case studies illustrate the manner in which a 'spatially oriented' legal regime emerged: early Chinese gambling dens in Victoria and Vancouver, and racetracks in Ontario. The term 'spatially oriented' recognizes that gambling law, both past and present, regulates gambling places rather than the activity of gaming itself. Moreover, the application of the law was spatially inconsistent: early Chinese gambling dens received a discriminate amount of police scrutiny while an express exemption in the criminal law insulated racetrack betting from sanction. The theoretical perspectives of moral regulation and critical legal geography are used to show that discourses of law, liberalism, race and morality are inextricably linked to 'place.' In particular, the relationship between law and place is highlighted to show how moral and ideological geographies may be both reflected in law, and created by law. The implication for early Canadian gambling venues was the development of a reputation of respectability for particular forums, such as the racetrack, versus the association of criminal connotations with unlicensed social gambling clubs, such as the Chinese gambling den.
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Chapter One: Introduction, Theory, Methodology, Literature Review and Outline

I: Introduction

In April 2000, the director of a Vancouver social club escaped conviction on a charge of keeping a common gaming house because the prosecution could not prove he was the “keeper” of the operation.¹ The club was frequented mostly by older persons who passed their time playing poker. The lawyer for the club suggested to the media that the Crown was targeting the competition of government-licensed charity casinos. The director of the club warned that the demand for social gambling would likely create a black market if enforcement of the gaming house provisions continued:

These clubs are going to go underground. There will be no protection to the public - there will be a lot of criminal aspects to it. At least out in the open, they can police these things. If they start running things like they do in Chinatown, they are going to open up a can of worms.²

Gambling is not illegal in Canada, but operating an unlicensed betting house or gaming house that is not a genuine social club is an indictable offence with a maximum of two years imprisonment; race-courses are excepted from the betting house and pool-selling provisions of the Canadian Criminal Code (the “Code”).³ Thus Canada’s gambling legal regime is spatially selective: rather than regulating gambling itself, the law regulates gambling places. The nature of the venue and the type of gaming activity it features determines whether or not it operates within the law. Moreover, as this introductory case demonstrates, whether a gaming venue attracts legal surveillance is dependent upon the discretion of law enforcement personnel. The point of this thesis

¹ Salim Jawa, “Gambling going 'underground,'” The Province, April 6, 2000, A18.
² Ibid.
³ (1985), R.S.C., c. 46, sections 197(2) and 201(1).
however, is not to draw conclusions about the desirability of the current regulatory framework.

The significance of the introductory case is its theme of legal, moral, and racial distinctions in the places at which people gamble. The club director’s statement regarding social gambling distinguishes between public venues, and dubious semi-public venues – open to the public – or to those ‘in the know,’ yet operating contrary to the law, removed from the public view. Second, his mention of “Chinatown” is linked closely with “criminal aspects,” “underground” gaming, and difficulties in effective policing. A final point he raises is the inference that the public needs protection from such “underground” gaming clubs.

The importance of the club director’s comments for the purpose of this thesis is the timeless, and the placeless quality of his remarks concerning the respectability and the policing of particular gambling venues. He is speaking in the year 2000, but his remarks would not seem out of place a century earlier in Vancouver: “Gambling is an organized vice of extraordinary financial strength, and the Chinese especially are given up to its practice.”

Nor would they be out of place in Britain where the racecourse betting company, Tattersalls, was heralded by one Member of Parliament in 1902 as “respectable” and distinguished from other “ill conducted clubs.” Even in Sydney, Australia in 1891, a Royal Commission saw fit “to make a diligent and full inquiry ... in

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the matter of alleged illicit gambling and immoralities among the Chinese ... and the alleged bribery or misconduct of any members of the Police force in relation thereto."

This thesis explores the historical origins of Canada’s spatially selective gambling regime. Two case studies provide the narrative: the regulation of Chinatown gambling dens in Victoria and Vancouver between 1900 and 1920, and the legal challenge to racetrack betting in Toronto between 1906 and 1910. I have selected these venues for discussion because on the same day in 1909, two amendments to the criminal law were introduced in Parliament targeting each respective venue. The provision relating to Chinese gambling dens passed that session with no debate. The racetrack bill went to a Special Committee and garnered significant media attention before its subsequent defeat after a protracted debate which transcended party lines; instead, Parliament enacted a legal exemption for betting at the track. The lawmakers in favour of exempting the racetrack from criminal sanction relied upon the image of ‘British respectability,’ coupled with liberal notions of individual freedom in an effort to resist the moral reformers’ campaign to criminalize racetrack betting. However, during the same debate, nobody argued that the liberty of Chinatown gambling proprietors was encroached upon by the amendment to the criminal law that limited their personal property rights by increasing the power of police to enter and search.

The result was that the racetrack and the Chinese gambling den fell into different legal categories despite the fact that both held cultural significance for the patrons beyond mere entertainment. Thus the regulation of betting became contingent upon the place where it occurred. An individual could freely bet at the racetrack, but faced a fine or

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imprisonment for the same activity in a Chinese gambling den. This unequal legal
treatment of a similar activity conducted in different places, reveals how discourses of
morality, liberty and law not only structure social and spatial conflicts, but also reflect
existing relations of power and race embedded in popular conceptions of "place." 7

II: Theoretical Perspectives

The first perspective I use to explore the legal history of Canada’s gambling
regime is the Foucaultian concept of governance and its relation to law. 8 Within this
perspective I will discuss a distinct type of governance, moral regulation. Moral
regulation is a practice of governing that attempts to structure the possible field of action
of others through the process of self-government techniques that encourage ethical self-
formation. 9 Particularly important is the governmental technique of “dividing practices”
- the process of defining who, what, and where are objects of governance efforts. 10

Governing involves the interplay between power and resistance, which occurs
within a field of ‘knowledge’. 11 ‘Knowledge’ in this sense, refers to the existence of a
discourse that serves as the regime of ‘truth’ and provides the rationale for governmental

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8. The dynamic between power, racial discourse and place is explored in Kay Anderson, “The Idea of
Chinatown: The Power of Place and Institutional Practice in the Making of a Racial Categor,” (1987),
Inc., 1993), 301-333; Hunt and Gary Wickham, Foucault and Law: Towards A Sociology of Law as
Governance, (London: Pluto Press, 1994); Nikolas Rose and P. Miller, Governing the Soul: The Shaping of
the Private Self, (London: Routledge, 1990); Rose and Miller, “Political Power Beyond the State:
“Advanced” Liberal Democracies,” in Andrew Barry, Thomas Osborne, and Rose, (eds.), Foucault and
Social and Legal Studies 541-551; Rose, “Governing Liberty,” in Richard V. Ericson and Nico Stehr,
(eds.), Governing Modern Societies, (Toronto: University of Toronto Press, 1999); and Davina Cooper,
(1994), 19:2 Canadian Journal of Sociology, 145-167, at 155-156: Dean suggests that the process of the
political subjectification of individuals into specified categories involves techniques and discourses of self-
governance reducible to ethical self-formation.
11. Hunt and Wickham, Foucault and Law, supra, at 94-95.
targets and the nature of the techniques employed. For instance, gambling, like other vices such as prostitution and drunkenness, was often discussed by reformers in moralized terms. Its Protestant opponents argued that individuals who could not control their betting urges were harmful to themselves, their families, the church, and by extension, the rest of society. Hence the moral dimension surrounding gambling was the result of the “linkage posited between subject, object, knowledge, discourse, practices and their projected social consequences.” When non-coercive techniques such as sermons, editorials and public education pamphlets had little impact on the spread of commercialized gambling, moral reformers argued that a more coercive governmental strategy was justified: the use of formal law to suppress public betting. The themes of power, knowledge, surveillance and resistance are significant components in analyzing the discursive linkages that constructed the racetrack as a respectable and legal gambling venue, and the Chinese gambling den as an immoral forum worthy of suppression.

However, moral regulation is not a predictive theory. It channels empirical study, but requires collateral theoretical support. The usefulness of the governance perspective lies in the recognition that moral regulation involves the exercise of power within a field of knowledge constituted through discursive formation that involves the convergence, clash and marginalization of competing discourses. For the purpose of this thesis, the importance of the moral regulation perspective is the recognition that diverse discursive elements combined and competed to produce different legal outcomes

\[\text{Ibid., at 12-13, and 87-92.}\]
\[\text{Ibid., at 11.}\]
\[\text{Valverde, “Editor’s Introduction,” (1994), 19:2 Canadian Journal of Sociology (Special Issue on Moral Regulation), vi-xii, at viii.}\]
\[\text{Hunt and Wickham, Foucault and Law, supra, at 8-9.}\]
for the two gambling venues studied. Furthermore, I suggest that discourses of anti-
Asian sentiment, Protestant morality, Anglo-Saxon nationalism, law and liberalism, were
both shaped by, and contingent upon physical and human geographic context, and
similarly, spatial dimensions of power.

Therefore, the second perspective employed in conjunction with moral regulation
is geographic, recognizing that the concept of ‘place’ is more than just a “frozen scene”
for human activity.\textsuperscript{16} Pred writes:

\begin{quote}
It is the ever becoming of what is seen as place and what takes place under
historically specific circumstances where some institutional projects, and not
others are dominant. It is power (be)coming into play(ce). \ldots It is a process
whereby the reproduction of social and cultural forms, the formation of
biographies, and the transformation of nature ceaselessly become one another, at
the same time that time-space specific path-project intersections and power
relations continuously become one another.\textsuperscript{17}
\end{quote}

It is argued that law plays a particularly important role in this concept of place as a
process of social construction, as in Hunt and Wickham’s words, law is “one of the more
voluble discourses which claims not only to reveal the truth, but to authorize and
consecrate it.”\textsuperscript{18} This thesis shows that in matters of moral regulation, law has the power
to render particular places ‘immoral’ and other places ‘respectable’ through the erection
of legal boundaries.

As critical legal scholars observe, legal discourse itself, despite an appearance of
universal, rationality, abstraction and determinacy, is contingent upon preexisting
political representations, categorizations and ideologies.\textsuperscript{19} Valverde and others recognize
that particular spaces and locales acquire a moral reputation that is then imputed on those

\textsuperscript{16} Allan Pred, “Place as Historically Contingent Process: Structuration and the Time-Geography of
\textsuperscript{17} \textit{Ibid.}, at 292.
\textsuperscript{18} Hunt and Wickham, \textit{Foucault and Law}, supra, at 12.
who occupy such spaces.\footnote{Valverde, “Editor’s Introduction,” supra, at x. Also see Mary Louise Adams, “Almost anything can happen: A search for sexual discourse in the urban spaces of 1940s Toronto,” (1994), 19.2 Canadian Journal of Sociology, 217-232, at 218: “we also need to look at moral regulation as a consequence ... of discursive constructions of specific types of places as ‘bad’.” In addition, see Tina Loo and Carolyn Strange, Making Good: Law and Moral Regulation in Canada. 1867-1939, (Toronto: University of Toronto Press, 1997), at 149: “moral regulation was often expressed through the control of space.”} Thus, an investigation of the legal complex must extend beyond internal texts and statutes to recognize that “legal categories are used to construct and differentiate material spaces which, in turn, acquire a legal potency that has a direct bearing on those using and traversing such spaces.”\footnote{The notion of law as a complex of discourses, institutions, techniques and codes appears in Rose and Valverde, “Governed by Law,” supra, at 546. Also see Hunt and Wickham, Foucault and Law, supra, at 39. The quotation regarding legal categories and space appears in Nicholas K. Blomley, Law, Space, and the Geographies of Power, (New York: The Guilford Press, 1994), at 54.} By highlighting the different legal treatment of racetracks and Chinese gambling dens, this thesis provides an example of law’s contingency upon spatial representations, categorizations and ideologies.

III: Methodology

A: Legal History

From a methodological perspective, the legal history of regulating gambling in Canada cannot be told without some recognition of the relationship between law and the broader cultural, ideological, and geographic context in which it is created and applied. Academic study is increasingly eroding the traditional boundaries of disciplinary schools of thought. Thus, an examination of law in a historical context should encompass methodological tools beyond those in the narrow realms labeled as ‘Law’ and ‘History.’

Pue discusses the merits of employing selective interdisciplinary frameworks in advocating the appropriation of concepts, terminology, and methods that best fit with a
That said, I recognize that the failure to critically engage competing positions revealed by empirical research is a potential pitfall of interdisciplinary methodology. As scholarship developed under the rubric of "legal history," writers began to distinguish between doctrinal, or internal legal history and progressive or external legal history, in which law is related to external social phenomena. McLaren and Foster articulate the danger of treating these sub schools as mutually exclusive:

Legal history that neglects the wider context risks misunderstanding or ignoring altogether the forces that shaped both the legal rules and the events to which they were applied. But, equally, legal history that slights cases, statutes, regulations, and the legal progression begs a crucial philosophical question by assuming without proof that the law ... is mere superstructure.

McLaren and Foster's comments echo the "prospectus" for Canadian legal history put forth by Risk, who succinctly conceived of legal history as elaborated by three overlapping elements: influences that shape law; the effect of law; and the functions of legal institutions. Hence, in describing the legal history methodology I employ, I prefer the term 'sociolegal history' as articulated by Knafla and Binnie:

The trilogy of law, society, and the state relates to the double role of law: law as a mechanism of the nation-state harbouring its idealized perspectives, as well as an expression of the customs, rules, and regulations of its communities. The importance of the trilogy is to maintain two crucial perspectives: that the history of the law as ideology 'upstairs' is best informed by how it works in practice 'downstairs'; and that one cannot write the history of law in society without the

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archival records and the resulting knowledge of the legal and customary institutions and traditions.\textsuperscript{27}

As a sub school of the law and society movement, sociolegal history examines the law in relation to broader social, economic, political and cultural forces.\textsuperscript{28} At the same time, sociolegal history enables the dual perspectives of analyzing the law in action, but within a realm beyond narrow legal institutions. This approach is particularly appropriate for studying the regulation of gambling in Canada, as it was an area of law shaped by broader societal concerns regarding class, religion and race.

**B: Comparative Legal Culture**

Flaherty makes two arguments for writing Canadian legal history from a comparative perspective. His first point is that Canadian law and legal institutions were at various times, exposed to significant influence from Britain, the United States and France, and thus the need to evaluate external influences in addition to internal developments. Secondly, Flaherty notes that the adherence of the Canadian judiciary to the principle of *stare decisis* meant that any innovative decisions were nonetheless made within the narrow framework provided by existing British precedents.\textsuperscript{29} To the latter point, I add that where Canadian judges resisted innovation by rigidly applying British precedents, they (whether consciously or not) imported the British cultural or ideological basis for such decisions. However, caution must be exercised by coming to such conclusions on a case by case basis: I do not assume that British law, culture and ideology transplanted itself seamlessly in the colonies and was applied in Canada without


\textsuperscript{28} Jim Phillips, “Recent Publications in Canadian Legal History,” (1997), 78 *Canadian Historical Review,* 238 at 239.
question or influence by local customs. In this respect, DeCruz identifies an important point of error for comparative legal scholars: the desire to see a common legal pattern in different legal systems. DeCruz recognizes Watson’s concession that it is perfectly natural and conceivable that different peoples in different countries had the same response to a specific legal problem; the pitfall is constructing a theory of general legal development from such a finding.

This paper employs comparative methodology to the extent that it discusses British gambling legislation and jurisprudence and describes the transplantation of related legal doctrine and social discourse into Canada. In a narrow sense, I follow Alan Watson’s suggestion that comparative law is a useful tool to the legal historian in determining the source of indigenous criminal law. However, the comparative methodology I employ examines law beyond the level of comparing transplanted rules. In this regard, the approach developed by Van Hoecke and Warrington, which emphasizes a theoretical analysis of legal cultures and paradigms is a useful augmentation to Watson’s methodology.

Van Hoecke and Warrington argue that insights about a community’s culture and ideology are essential for comparative legal studies. In their view, a common legal culture includes shared understandings on the following points: the relationship of law to other social norms; a theory of the hierarchy of valid legal sources; a methodology of law

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30 Knafla and Binnie in “Beyond the State,” supra, attribute this observation to McLaren, at 11.
32 Ibid., at 220.
both in lawmaking and adjudication; a theory of legitimation of the law; a theory of argumentation strategies (encompassing social, economical, political, ideological, and religious elements); and a common basic ideology dictating which social problems are deemed legal in nature.\textsuperscript{36} Knafla and Binnie provide the following definition of legal culture:

Legal culture, then, is a broad historical term that comprises a community’s legal mind, and includes legal ideology as one aspect of legal relations: culture implies those assumptions, beliefs, and customs that lie behind and inform its normative law. It provides the theoretical framework and historical context from which the law of the community can be interpreted.\textsuperscript{37}

Since law is not created in a social vacuum, law and legal culture are an inextricable aspect of the general cultures of the society to which they belong.\textsuperscript{38} For the purposes of this study, it is sufficient to note that analyzing Canada’s gambling laws through a comparison with those in Britain necessitates an approach beyond comparing statutory and case law in order to gauge the underlying culture and ideology that shaped the law.

\textbf{C: Geography and Law}

The union of critical legal studies and geographic theories of social life is a powerful analytical device. Blomley observes that the critical geographies of law direct attention to the nexus between power and space in law.\textsuperscript{39} Bakan and Blomley link law and geography in the following manner:

Once geographers accept that space is not a backdrop to political and social action but is, instead, a product of such action, the role of law becomes central to the analysis of space. Legal discourse, as a form of social discourse, represents space in various ways and, in so doing, helps construct the social significance of space.

\textsuperscript{35} \textit{Ibid.}, at 521.
\textsuperscript{36} \textit{Ibid.}, at 514-515.
\textsuperscript{37} Knafla and Binnie, “Beyond the State,” \textit{supra}, at 12.
\textsuperscript{38} Van Hoecke and Warrington, “Legal Cultures,” \textit{supra}, at 498.
\textsuperscript{39} Blomley, \textit{Law, Space, and the Geographies of Power}, \textit{supra}, at 58.
... The social and political nature of space thus becomes a central concern for critical analysts of law.\textsuperscript{40}

The mutually constitutive relationship between law and space suggests that the legal complex is constrained by geographic context, yet may also in some instances alter that context.\textsuperscript{41} For instance, we see in chapter two the role that discriminatory law enforcement played in representing Chinatown as an immoral place; and as chapter three shows, the dominant image of the racetrack as a respectable venue ultimately impeded the universal application of the criminal law to all commercial betting places.

Critical Legal Geography affords a number of methodological tools that reveal how law plays a powerful role in legitimating some places and illegitimating others. For instance, Bakan and Blomley characterize their study of North American occupational health and safety laws as an exploration of "the ideological conjunction of discursive (in this case, legal) and spatial distinctions."\textsuperscript{42} Similarly, Delaney recognizes the ability of judges to shape sociospatial relations by manipulating the spatiality of a legal rule in order to ensure the relevant conditions for a particular judicial interpretation. In addition, Delaney submits that the spatiality of a rule itself justifies interpretations about places and by extension, the social consequences that flow from a particular interpretation.\textsuperscript{43} Finally, Pue observes that this "insurrectionist" approach to legal geography permits a


\textsuperscript{41} Benjamin Forest, “Placing the Law in Geography,” (2000), 28 Historical Geography 5-12, at 9.


circumvention of the acontextuality of legal reasoning, thus overcoming the operation of anti-geographic legal discourse as a “placeless power in powerless places.”

Thus, critical legal geography advocates the incorporation of non-legal knowledge into the legal forum to provide spatial context. Cooper presents a useful framework for examining questions of how “the spatial configurations through which relations of power are constituted,” became filled with ideology, under what conditions, to what end, and by whom. She focuses on the particular location in which a confrontation takes place. Second, she explores space’s functioning as a discursive technique in two manners: the extent to which it is reified or despatialized by institutions, and where it is used symbolically to construct a social group’s sense of belonging or lack thereof. Finally, she explores how space operates as a political technique in its material practices. In sum, the injection of ‘place’ into social and legal analysis reflects its importance as a contextual tool: social conflict has a spatial dynamic that may influence, and be influenced by, individual and institutional practice.

IV: Literature Review

At this point, I wish to raise a few points concerning the analysis of historical material. Alford discusses the placement of the comparative researcher in evaluating the law and legal history of societies where social, political, economic, philosophical, and

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45 Rose and Valverde, "Governed by Law," supra, at 548-549.
46 Delaney, "Geographies of Judgment," supra, at 49.
47 This seemingly common sense step is often absent from legal or regulatory decisions. Consider the differing perceptions of a person beating another with a stick in the street and the same incident occurring in the course of a hockey game.
religious underpinnings may be far removed from the writer’s own.\textsuperscript{50} The conclusion Alford reaches is applicable for the legal historian analyzing the past through a lens constructed by present day values:

Our very distance from other societies may yield helpful perspectives not readily available to insiders, but that vantage point also imposes upon us an obligation to be vigilant as to the ways in which the constructs that we have developed for ordering the world reflect assumptions and values that may not be shared by others.\textsuperscript{51}

Likewise, a thoughtful and careful discussion of choices that historical actors made, perhaps based on race, class, or gender, requires vigilance in abstaining from judgment by today’s norms. When interpreting their actions and written words, I am sensitive to the fact that historical actors operated within particular discourses and cultures. In so doing, I heed Marquis’ comments regarding the methodological obstacles in gauging the opinions of “common people” through sources such as newspapers, and the broader understanding of law, society, and the state beyond immediate sources, that such an approach reveals.\textsuperscript{52} One potential safeguard lies in researching sources themselves. For instance, Rutherford’s history of Canada’s nineteenth century press reveals the series of mythologies that justified “emerging patterns of dominance.”\textsuperscript{53}

The time period in which I am interested necessitates an evaluation of the extent to which Canada’s gambling law was influenced by that of England. There is a plethora of academic literature examining British gambling history, though a dearth of Canadian writing in this area. For example, in 1898, Ashton examined the early history of

\textsuperscript{51} Ibid., at 946-947.
\textsuperscript{52} Greg Marquis, “Doing Justice to “British Justice”: Law, Ideology and Canadian Historiography,” in Pue and Wright, Canadian Perspectives, supra, 43-69 at 60.
\textsuperscript{53} Paul Rutherford, A Victorian Authority: the daily press in late nineteenth-century Canada, (Toronto: University of Toronto Press, 1982), at 156.
gambling in England.\textsuperscript{54} Dixon’s book \textit{From Prohibition to Regulation, Bookmaking, Anti-Gambling, and the Law}\textsuperscript{55} comprehensively examines the social and legal origins of British gaming policy from 1840 onwards relying on a number of primary sources such as Parliamentary debates, royal commission reports and newspaper accounts. The first seven chapters deal extensively with the role that class and moral reform movements played in forming and policing the law during the seminal period in which Canadian law developed. Dixon’s earlier work is also of interest, particularly the article, “Class Law”: The Street Betting Act of 1906”.\textsuperscript{56}

The paucity of Canadian secondary literature relating to gambling necessitates a reliance on primary sources. The House of Commons Debates provide a measure of how lawmakers viewed gambling. Dominion Crime Statistics of the era reveal police patterns of enforcement. The evidence discussed in Royal Commission and Parliamentary reports show what moral reformers, police officers, racetrack owners, and politicians saw as the salient issues. Literature produced by moral reform groups is particularly helpful in ascertaining the discourses of the era, as are sermons such as Henry Francis Adams’ “Sermon on Lotteries” delivered in Yarmouth in the 1890s.\textsuperscript{57} In addition, useful micro-

\textsuperscript{57} Henry Francis Adams, \textit{A Sermon on Lotteries}, Yarmouth Nova Scotia: CHIM 08476, 189.
histories exist which discuss gambling from the perspective of the police,58 and the
Chinese.59

The most comprehensive piece of secondary literature on Canadian gambling,
Campbell's doctoral dissertation "Canadian Gaming Legislation: The Social Origins of
Legalization,"60 focuses primarily on the moral discourses surrounding horse racing from
1900 – 1925, documenting the factors that led ultimately to the legalization of gambling.
Campbell's study is an eminently useful historical examination of Protestant anti-
gambling discourse and its sources. However, Campbell commits an oversight by
suggesting that Canada's first gambling legislation was an amalgamation of existing
British statutes into a general Act in 1886, and then "simply incorporated wholesale into
the 1892 Criminal Code."61 In fact, Canada enacted An Act respecting Lotteries in 1856,
An Act for Suppressing Gaming Houses in 1875, and An Act for the Repression of Betting
and Pool-Selling and An Act for the Prevention of Gambling Practices in certain Public
Conveyances in 1877.62 Thus in 1886, the amalgamation Campbell mentions was in fact
a reprint of previously existing Canadian statutes in the official "Revised Statutes of
Canada" series for 1886.63 Moreover, these were not incorporated wholesale into the
1892 Code. Instead, in 1892 there was a fundamental amendment to the betting and
pool-selling provisions exempting racetrack betting from sanction, which fostered the

58 Marquis, "Vancouver Vice: The Police and the Negotiation of Morality, 1904-1935," in McLaren and
59 McLaren, "Race and the Criminal Justice System in British Columbia, 1892-1920: Constructing Chinese
61 Ibid., at 25.
62 (1856), S.C., c. 49; (1875), S.C., c. 41; (1877), S.C., c. 31; and (1877), S.C., c. 32.
63 (1886), R.S.C., c. 158.
growth of commercialized bookmaking and in turn invoked legal challenges from concerned moralists after the turn of the century.\textsuperscript{64}

It is my objective to contribute to the literature by providing a historical narrative that demonstrates the role law played in the development of Canada’s spatially selective gambling regime. In doing so, I aim to show that the contemporary distinctions between ‘respectable’ gambling venues and ‘underground’ clubs evolved from a historical process influenced by Canada’s position as a fledgling nation within the British empire. Beyond this descriptive objective, I strive to contribute to the critical legal geography literature by providing a further example of the manner in which the creation and application of law is anything but objective, and universal: it is contingent upon spatial context.

V: Outline

This thesis explores the history of Canada’s gambling law to reveal how interwoven discourses of liberty, morality and race played a central role in the process of establishing, defining and socializing places.\textsuperscript{65} The historical opposition to gambling in Canada is characterized as a programme of moral regulation which sought to use the criminal law to suppress betting because it was contrary to the values of a Protestant Anglo-Saxon nation. As the two case studies will reveal however, the law was not equally applied to all gambling places, thus resulting in a spatially selective legal regime. The history of these legal distinctions in where Canadians gamble is a story of how power and law socially construct place, with a simultaneous recognition that place is a

\textsuperscript{64} (1892), S.C., c. 29, s. 204(2). See chapter 3.
\textsuperscript{65} See Pred, “Place as Historically Contingent Process,” \textit{supra}.
"vital structuring agent of law." The case studies within explain how and why this process occurred.

The next chapter begins with a discussion of Chinese games and their cultural importance in the formative years of Chinatowns in Victoria and Vancouver. This is followed by a brief history of regulating gambling in Britain and Canada, to introduce the legal and social context in which the practice of policing gambling locales, as opposed to the activity itself originated. Next, the section on Chinese gambling and the law discusses the disproportionate level of police surveillance that the Chinese gambling dens incurred, and the subsequent amendments to the Code that facilitated further scrutiny.

The subsequent portion of the chapter is dedicated to describing the nationalist cultural elements that characterized Chinatown as a distinct moral category: the Protestant moral reform movement and anti-Asian sentiment. The importance of this chapter is its illustration of the mutually constitutive relationship between law and place.

Chinatown's image as a morally depraved community was the justification for uniquely powerful rights of police entry and search, which further reinforced its reputation as a depraved community, sending Chinese gambling further 'underground' physically, and conceptually in the view of the white majority.

The third chapter overlaps with the second through a further description of the origins of the Protestant condemnation of gambling. Intertwined with the history of regulating racetracks in Ontario are the similar moral campaign and legal struggles that occurred in Britain, because of their unquestionable influence on the Canadian reformers and judiciary. The description of the court cases concerning the meaning of 'place' in the betting legislation serves to illustrate a second manner in the becoming of place: the

66 Blomley, Law, Space and the Geographies of Power, supra, at 28.
manner in which the law, manifested through discursive strategies and judicial intervention, creates places and establishes boundaries. The importance of these decisions in Britain and Canada becomes apparent in the aftermath of political lobbying and debate over legislative reform, as reformers found their options constrained and directed within a particular geographical and cultural context.

In the final chapter, the theoretical perspectives of governing morals and the geography of law are revisited in order to tie together the two case studies. Foucault’s observation that space is fundamental in the exercise of power provides an appropriate recognition that social interaction occurs in complex, textured and unique places. The complex relationship between morality and classical liberal notions of the role of law in regulating morality is revealed to be contingent upon place. The contrast between Chinese gambling dens and Ontario racetracks shows how space “filled with ideologies” can lead to the creation of separate legal zones. If law both affects space and is materialized in space, then the governance of Chinese gaming dens and Ontario racetracks was a product of a web of discourses influenced by physical, ideological and legal geographies which both created and shaped the “moral geographies” of gambling. The importance of examining the history of Canada’s gambling laws from this geographic perspective is encapsulated in Bakan and Blomley’s observation that through

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67 Forest, “Placing the Law in Geography,” *supra*, at 5.
“situating legal knowledge not only in time, but in space, we can more tellingly reveal
both its power and its contingency.”\textsuperscript{72}

\textsuperscript{72} Bakan and Blomley, “Spatial categories,” \textit{supra}, at 641.
Chapter Two: Suppressing Chinese Gambling Dens

They form, on their arrival, a community within a community, separate and apart, a foreign substance within, but not of our body politic, with no love for our laws and institutions; a people that will not assimilate or become an integral part of our race and nation. With their habits of overcrowding, and an utter disregard of all sanitary laws, they are a continual menace to health. From a moral and social point of view, living as they do without home life, schools or churches, and so nearly approaching a servile class, their effect upon the rest of the community is bad. ... They are not and will not become citizens in any sense of the term as we understand it. They are so nearly allied to a servile class that they are obnoxious to a free community and dangerous to the state. 73


I: Introduction

This oft-quoted passage embodies a racial discourse that informed ‘white’ attitudes toward the Chinese and Chinatown at the turn of the century in British Columbia. The regulation of Chinese gambling dens constituted one aspect of a wider systematic programme of governing Chinese immigrants in Canada. The field of knowledge used to justify this strategy embodied discourses of nationalism and Protestant moral reform which culminated in an ideology of anti-Asian sentiment. The result was the social construction of ‘Chinatown’ as a white European ideal reflecting images of uncleanness, godlessness, vice and depravity – a racial, moral and spatial ‘other’. 74

By virtue of their location within Chinatown, gambling dens were similarly defined by dominant attitudes concerning the perceived immorality of the Chinese. The significance of “Chinatown” and Chinese gambling dens as perceived, was the “social force and material effect” in mutually being shaped by, and influencing, institutional

practices by Vancouver’s civil authorities. Anderson suggests the following consequence of this process, which is certainly applicable to Chinese gambling dens:

“Chinatown” accrued a certain field of meaning that became the justification for recurring rounds of government practice in the ongoing construction of both the place and the racial category. ... By sanctioning the arbitrary boundaries of insider and outsider and the idea of mainstream society as “white,” the levels of the state have both “enforced” and “propagated” a white European hegemony.

The implication for Chinese gambling dens in British Columbia was a disproportionate level of police enforcement practices in an ongoing effort to morally regulate Chinatown and its residents. Thus we see the mutually constitutive relationship between law and place: Chinatown and its immoral reputation attracted legal surveillance, and in turn, led to amendments to the criminal law, and an enduring popular image of Chinese gambling associated with ‘underground’ criminal operations.

II: Background

In 1848, the discovery of gold in California brought approximately twelve thousand Chinese to work the mines over the subsequent four years of the gold rush. Chinese immigrants arrived in British Columbia following the discovery of gold in the Fraser River basin in 1858. Some came directly from domestic poverty in Hong Kong or China, and approximately 2,000 migrated north as the news of gold in British Columbia reached California, where Chinese miners already faced local hostility. The Fraser Valley gold rush ended quickly, and the mining population dropped from 5,000 to 600 in 1859, mostly consisting of Chinese working abandoned claims to avoid the licensing

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75 Ibid., at 581.
76 Ibid., at 584-585.
A second rush in the Cariboo region in 1862 provided more mining work for Chinese as well as employment cutting roads and trails. By 1865, the gold rushes ended, and the economy teetered towards depression. But between 1881 and 1884, the immigration level surged, as 15,701 Chinese workers arrived in Victoria to assist in building the railway, fostering a paranoia that the Chinese would soon surpass the white population. In 1881, 4,350 Chinese had settled in British Columbia, comprising nine percent of the population. By 1884, the number had doubled.\(^{80}\)

A number of organized groups opposing the Chinese presence in British Columbia formed after 1873 to pressure politicians to address the immigration issue and pass restrictions on Chinese labour. Initially, no legal distinctions operated between the Chinese and European colonists. The Chinese were afforded the same rights, liberties and privileges under the law as any other resident of the province.\(^{81}\) However, the litany of discriminatory legislation that local and provincial governments eventually enacted or attempted to enact before being struck down by the courts or disallowed by the governor-general, is too voluminous to describe in detail here.\(^{82}\) It is sufficient to list the rights denied, and obligations imposed on Chinese residents between 1872 and the 1923

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\(^{79}\) Census statistics reproduced in Lai, \textit{ibid.}, at 41.


enactment of the *Chinese Immigration Act:*\(^\text{83}\) various forms of discriminatory taxation; bans on immigration; high tonnage charges on ships carrying immigrants; bans on working on public works and utilities; bans on working for transportation companies; holding a logger’s license or holding skilled jobs in the coal mines and positions in law and pharmacy; denial of the franchise - which precluded holding municipal and provincial office, serving as a school trustee, or jury duty; denial of the right to acquire Crown land, hold a liquor license or divert water from channels; and separate schooling for Chinese children. Of greater interest is the language used to introduce such legislation, because of its imagery of a morally ungovernable people:

Whereas the incoming of Chinese to British Columbia largely exceeds that of any other class of immigrant, and the population so introduced are fast becoming superior in number to our own race; are not disposed to be governed by our laws; are dissimilar in habits and occupation from our people; evade the payment of taxes justly due to the Government; are governed by pestilential habits; are useless in instances of emergency; habitually desecrate graveyards by the removal of bodies therefrom; and generally the laws governing the whites are found to be inapplicable to Chinese and such Chinese are inclined to habits subversive of the comfort and well being with the community.\(^\text{84}\)

In relation to the governments’ official anti-Asian discourse, the popular sentiment was even more hostile. During 1883, there were several incidents of violence between whites and Chinese workers, primarily due to labour strife.\(^\text{85}\) Riots in 1887 and 1907 vandalized Chinese property and made it clear that they were not welcome in the province. But the 1907 riot was not just about labour concerns, as at least two Protestant church figures lectured to the Asiatic Exclusion League with rhetoric about the immoral

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\(^{83}\) *Chinese Communities in Canada,* (Toronto: McClelland & Stewart, 1982), at 42-59; and Anderson, *Vancouver’s Chinatown,* supra, at 47-61.

\(^{84}\) (1923), S.C., c. 38.


\(^{86}\) Con et al, *From China to Canada,* supra, at 50-51.
Chinaman. With their foreign games conducted in the backrooms of shops, restaurants and laundries, these "inveterate gamblers" and their 'underground' dens became perceived as a threat to the morals and 'Britishness' of the non-Chinese population.

III: Chinese Games

Chinese labourers brought the games 'fan tan' and 'pak kop piu' to North America. The latter, also known as the Chinese Lottery, was taken up by western labourers who worked with the Chinese. Pak kop piu operated in America as a well organized syndicate: drawings took place nightly after businesses and 'runners,' sold groups of tickets. Each ticket depicted eighty Chinese characters from which the purchaser usually selected ten by dotting each character with a pen. For the drawing, eighty pieces of paper, each representing one of the characters, were divided into four bowls. One bowl was designated as holding the winning characters, the twenty pieces of paper were posted on a board in the office, and ticket holders won according to how many characters matched their ticket (less a percentage if the ticket was sold through an agent). Typical odds on a dollar bet might be as follows:

<table>
<thead>
<tr>
<th>For 5 matching characters</th>
<th>$...2.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>For 6 ...</td>
<td>...20.00</td>
</tr>
<tr>
<td>For 7 ...</td>
<td>...200.00</td>
</tr>
<tr>
<td>For 8 ...</td>
<td>..1,000.00</td>
</tr>
<tr>
<td>For 9 ...</td>
<td>..1,500.00</td>
</tr>
<tr>
<td>For 10 ...</td>
<td>..3,000.00</td>
</tr>
</tbody>
</table>

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87 The term "inveterate gamblers" appears in Canada, "Royal Commission on Chinese Immigration, 1885, Report and Minutes of Evidence," *Sessional Papers 1885*, No. 54a at lxxix.


The following account of Victoria’s English residents playing pak kop piu sometime between 1880 and 1914 appears in the British Columbia Provincial Archives’ sound heritage aural history program:

You’d go down to these certain stores, if you knew them, and they’d give you a sheet of paper, sort of tissue paper, with about, oh, 30 or 40 Chinese characters on it with about four or five different lines across it. You took a paint brush on the counter there and filled it in. They paid you cash down, but they would no sooner get to one lottery, bring the winning ticket in, then the Chinaman you were dealing with, he’d say: “All right, 10 minutes now Hong Kong - Hong Kong.” So you’d be tempted to fill in another ticket for the succeeding one. This went on all day. Each lottery was called Hong Kong or Shanghai or Canton, they were always coming in 10 or 15 minutes so they would hold you there. We very seldom won, but sometimes you could win, oh, maybe 75 or 80 cents. But I say that as far as I could see they were scrupulously honest.  

The structure of pak kop piu should be familiar to those who frequent contemporary public houses in British Columbia that feature the video lottery game ‘Keno,’ in which patrons select ten numbers from a ticket of eighty numbers for draws every quarter hour. In the early 1930s, the casinos in Reno, Nevada instituted pak kop piu but first changed its name to “Race Horse Keno,” replacing the Chinese characters with numbered ping pong balls and announcing each selection as a jockey riding a named horse.  

It is noteworthy that the Chinese game suppressed through the 1920s in Canada became palatable to white gambling licensors when placed in culturally recognizable and respectable forms such as horses and numerals.

In San Francisco’s Chinatown of the nineteenth century, fan tan dens stationed a Barker outside the doors encouraging Chinese passers by to “Buy fan tan and make

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91 Gambler’s Book Club, “Introduction” in Culin, The Gambling Games of the Chinese in America, supra, at i. The “race horse” portion was dropped in response to evade state legislation outlawing off-track betting in 1951.
money.”92 Fan tan, translated as “repeatedly spreading out,” involved covering a pool of Chinese coins with a cup and placing of a variety of bets on the remainder of coins after the pool was divided into piles of four by a tapered black rod; essentially, one was simply betting on whether a number from zero to three might arise.93 Typically, fan tan dens operated in the basement or back rooms of legitimate businesses and paid a share of profits to the store owner.94 Conducted between 1888-1891, Culin’s study of Chinese gambling in America suggested that Chinese gambling was a cultural pastime no less worthy than the games that others played:

The custom of gambling is often looked upon as one of the distinctive traits of the Chinese, and as such is almost invariably commented upon when any reference is made to them in casual speech. In the opinion of the writer, it may be regarded as a concomitant of their present state of culture, rather than as having any special ethnic significance. The gambling instinct is one that exists in a strong degree among many peoples, and even with us, although somewhat repressed in its grosser forms by legislation, constantly exhibits itself as one of the moving passions of our race and times. No doubt the games described in the foregoing account as current among the Chinese laborers in the United States will be displaced in time by speculations and amusements more in conformity to the laws and customs of their adopted country, with the result, it might be supposed, of somewhat abating vulgar prejudice against these interesting people, and establishing their claims to fairer treatment at the hands of their fellow mortals.95

Indeed, for impoverished and lonely labourers in Vancouver’s early Chinatown, gambling was a respectable socially unifying activity.96 McDonald quotes an elderly gentleman recalling, “there was no family, everyone was single. If you went to the

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92 Culin, *ibid.*, at 1.
93 *Ibid.*, at 1-5. Betting on a remainder of dividing a pool by four yielded more than four possible bets (remainders from zero to three) much as roulette affords a number of betting options by colour, row or range of numbers. For instance, players could bet on the remainder and receive four times their wager upon winning. Or, they could place a bet such that they doubled their money on a remainder, or received their bet back for a result on either side (a dollar bet on “two” would pay two dollars for a remainder of two, one dollar for a remainder of one or three and nothing for a remainder of zero).
96 Anderson, *Vancouver’s Chinatown*, *supra*, at 79; Lai, *Chinatowns, supra*, at 195; and Con et al, *From China to Canada*, *supra*, at 69.
gambling house, you could talk and laugh. Where else could we go?" In Victoria’s Chinatown, fan tan was the most popular form of indoor entertainment. 

Fan tan was not illegal in British Columbia, but the use of any house or room for carrying on the business of gambling contravened the law. In addition, playing in, or looking on while others played in a gaming house, constituted a summary conviction offence. 

One implication of regulating gambling venues rather than the activity itself, was that law enforcement officials possessed discretionary power in distinguishing between legal gaming that took place privately, and illegal gaming that took place in a house or room ‘used for the purposes of carrying on the business of gambling’. In British Columbia, Chinatown police officers did not belabour the distinction.

Before discussing Chinese gambling, the police, and the law, a brief history of Britain’s gaming regulatory regime should be introduced, because it acted as the model for subsequent Canadian law. Concomitant with regulating gambling places was the development of “moral geographies” based upon the physical nature of the venue and the individuals who frequented it. 

For example, lower class gambling clubs in East London – the British equivalent of Chinese dens - were known as “curses to the community,” while the racetrack attracted those of a “gentlemanly bearing.” Such attitudes became embodied in inconsistent policing patterns, illustrating the influence of class and power upon the British law, and the extent to which such relations contained a spatial contingency.

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99 (1892), S.C, c. 29, sections 196-197 and 199.
100 See Kneale, “A problem of supervision,” supra.
IV: A Brief History of Regulating Gambling Venues in Britain

The practice of gambling in England dates back to at least the twelfth century in which John of Salisbury condemned the “damnable art of dice-playing.”\(^{102}\) King Richard I issued an edict in 1190 forbidding anyone below the rank of Knight to play any game for money: Knights and clergymen’s wagers were capped at twenty shillings per day, and the King was exempt.\(^{103}\) Britain’s first gambling statute in 1388 instituted the enduring pattern of selectively regulating the people that gambled rather than prohibiting the activity itself, directing labourers and service men diverted by “importune games” to cease and practice their archery - a concern mentioned in the law through the mid-sixteenth century.\(^{104}\)

By 1541, archery continued to be the concern in the *Acte for Mayntenance of Artyllaire and debarring of unlawful Games*, pursuant to which keeping a gaming house for gain was first outlawed, as were games that involved the use of money.\(^{105}\) During the Interregnum, gambling was prohibited because the Puritans believed that dice and cards “stirred up passions” amongst the Catholic clergy and exacerbated other forms of sinful behaviour such as “drunkenness, whoredom and wrestling.”\(^{106}\) With the restoration in 1660, gambling flourished, especially among the aristocracy, with King Charles II taking the lead as a passionate better on horses.\(^{107}\)

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\(^{102}\) Ashton, *The History of Gambling*, supra, at 12-13. Munting in *An Economic and Social History of Gambling*, supra, says at 7-8 that by the twelfth century, ten different dice games existed, the most popular being “hazard”, a precursor to the modern game of craps.

\(^{103}\) Ashton, *ibid*.

\(^{104}\) (1388), 12 Rich. 2, c. 6, and (1541-2), 33 Hen. 8, c. 9.

\(^{105}\) (1541-2), 33 Hen. 8, c. 9.

\(^{106}\) Munting, *An Economic and Social History of Gambling*, supra, at 1.

\(^{107}\) Blakey, “Gaming Lotteries and Wagering”, *supra*, at 21.
Industrial revolution in the eighteenth century brought with it a surge in social gambling clubs and betting on a variety of sports and games. This increase was assisted in part by bribery and lax law enforcement, and also in part by a legal regime that sought to regulate only fraudulent games and cheating.\(^\text{108}\) The upper class and royalty frequented ornate social clubs, betting stakes upwards of ten thousand pounds, and even wagering entire estates at these “gold and silver hells.”\(^\text{109}\) One Whig member of Parliament died a pauper due to a heavy gambling addiction at the high-end London club, Almack’s.\(^\text{110}\) Meanwhile, London’s East End housed a number of “seamy dens” and pubs that catered to the city’s young workers’ betting interests.\(^\text{111}\) Political and social clubs for working men soon became overtaken by beer and betting in “copper hells.”\(^\text{112}\) By the mid-nineteenth century, the prominence of the expensive clubs lessened as gambling increasingly faced moral scrutiny and the aristocrats’ disposable income diminished after generations of profligate spending.\(^\text{113}\)

In 1852 George Cruikshank, a moral reformer, published a thirty-two page booklet ranting against the evils of betting, calling for stronger legislation and warning “geese” about the “sly foxes” that ran the betting offices.\(^\text{114}\) In *The Betting Book*, Cruikshank takes the reader through the streets of London, pointing out the various venues in which different classes of folk gambled. At the betting office, sporting

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\(^\text{108}\) See (1541-2), 33 Hen. 8., c. 9; (1710), 9 Anne, c. 6; (1728), 2 Geo. 2, c. 28; and (1802), 42 Geo: 3, c.

\(^\text{119}\)

\(^\text{109}\) Munting, *An Economic and Social History*, supra, at 21.

\(^\text{110}\) Blakey, “Gaming Lotteries and Wagering,” supra, at 221.

\(^\text{111}\) Ibid., at 220-221 and Munting, *An Economic and Social History*, supra, at 20.


\(^\text{113}\) Munting, *An Economic and Social History of Gambling*, supra, at 21.

\(^\text{114}\) Cruikshank, *The Betting Book*, supra. Other books issued by the same publisher included *Stop Thief: Hints to Housekeepers to Prevent Housebreaking* and arranged to popular airs, *The Book of Temperance Melody*. 
literature provided odds for off-track betting and to Cruikshank’s disgust, gin was sometimes served. At a sporting pub, “butchers, bakers, fishmongers, oilmen and the like” gambled and “drank their lives away.” At a social club, “men of high connexions” gambled at cards in a “magnificent” and “splendid” room. Behind a “coal and tater shed” down a “by-street,” individuals took bets. And at the horsetrack, Dukes, Lords and lawmakers bet on the races.\textsuperscript{115} Cruikshank described the patrons as follows:

This class have also a literature and a language of their own, their Racing Calendars and Sporting Magazines, as well as a costume of their own, always varying in some peculiarity from the “fashion of the day;” it is in most cases, certainly, a manly style, and it well becomes the bearing of some of its wearers, very unlike that poor little “snob” we saw sucking the bone end of his “whip stick” as we came along. Yes, yes, there is a manly and a gentlemanly bearing amongst these members of the sporting community ...\textsuperscript{116} [Italics in original]

The different social status and structure of gambling venues in Britain led to blatantly discriminatory law enforcement practices. Upper class venues managed to avoid significant scrutiny by operating ostensibly as “social clubs,” whereas the “seamy dens” of London’s East End could not make such pretensions. A similar pattern emerged in Canada, angering moral reformers in both countries and culminating in a campaign against the most public of gambling venues, the racetrack. From the British history of regulating gambling, it is clear that one aspect of the accompanying moral discourse was contingent upon the particular venue and the people it attracted. This would have dire consequences for the despised Chinese of early British Columbia.

V: Early Gambling Legislation in Canada

The Dominion of Canada’s first gambling legislation, the 1875 \textit{Act for the Suppression of Gaming Houses}, gave police the power to obtain authorization from the

\textsuperscript{115} Ibid., 12-16.
\textsuperscript{116} Ibid., at 12.
presiding Police Magistrate to break down doors, seize gaming instruments and arrest all persons found within a gaming house. The account of the government debate in Hansard mentions the existence of a similar law in England and continues:

This vice might not be so prevalent in our country as in some other countries, but it was assuming proportions in this country, especially in some of the frontier towns and villages, where it was customary for persons to come from the other side to carry on gambling with impunity within our borders, because the arm of the law was too weak to reach them here.

The reference to the “other side” of course refers to the United States of America, where there too, an organized moral reform movement began lobbying for anti-gambling legislation in many states as early as the 1850s.

As legislation in Britain, Canadian gambling provisions regulated places, and by extension, particular peoples as opposed to gambling itself. For example, the 1877 Act for the Prevention of Gambling Practices in certain Public Conveyances was enacted to “bring to justice and punish ‘three card monte’ players on railroads,” much to the chagrin of one western M.P. who suggested that card-playing was essential to the happiness of miners riding the rails. Sir John A. MacDonald suggested the law was too strict if it applied to respectable people playing cards for a small sum. Others thought the intention of cheating ought to be proven. Nonetheless the Act passed, providing for enforcement by the railway staff under the threat of a hundred dollar fine.

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117 (1875), S.C., c. 41. An act prohibiting lottery schemes was passed in 1856: (1856), S.C., c. 49.
118 Canada, Debates of the House of Commons, (Ottawa: Queen’s Printer, 1875), at 804-805.
120 (1877), S.C., c. 32.
121 Canada, Debates, 1877, at 338.
The railway gambling bill debate is an example of the moral uncertainty with which Parliament grappled in enacting legislation that preceded the height of the moral reform movement in Canada began to come into its own. The regulation of gambling in Canada became a contested process as it became apparent that the patrons of particular venues would mount effective political campaigns to resist moral reformers’ efforts to outlaw their favourite gambling venues. In Chapter Three, we will see how lawmakers used legislation to erect a boundary to protect the racetrack from sanction, officially preserving its reputation as a ‘respectable’ betting forum. In the section below, the process of discriminate law enforcement converged with dominant cultural attitudes regarding Chinatown to enduringly define Chinese gambling dens as immoral dens of iniquity.

VI: Chinese Gambling and the Law

The Chinese gambling den did not become a great concern for law enforcement agents until after the turn of the century. Victoria Police Court records reveal only ten Chinese men charged with unlawful gaming in 1879, and none between 1880-1884. In 1898, of the 42 convictions for gambling-related indictable offenses in British Columbia, only three were listed as “foreigners.” The archives of the British Columbia Attorney General discuss one case in each of 1895 and 1896, and again only one in 1901. In 1898, of the 42 convictions for gambling-related indictable offenses in British Columbia, only three were listed as “foreigners.”

Evidence presented at the 1885 Royal Commission on Chinese Immigration suggested that Chinese gambling could not be suppressed, particularly if, as one witness

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123 Con et al, From China to Canada, supra, at 69.
124 Canada, “Criminal Statistics 1898,” Sessional Papers 1899, No. 8c. The remainder were Canadian, American and Irish. However, the fact that racially categorized crime statistics were kept at all reveals a belief held by the government that racial crime was an important enough issue to merit annual surveillance.
suggested, the police "are in the pay of the man who runs the gambling-hell." The Commission concluded that if the police carried out the law properly, the evils of gambling (and prostitution) might be greatly lessened, as might the numbers of those attending - an attitude towards law enforcement that persisted through the early twentieth century, as did accusations of graft. Regulating vice in Vancouver was a "negotiated process," as police and moral reform interests clashed over the extent to which the law should be enforced.

After the turn of the century, due to a policy introduced in 1911 to raid the gambling halls a few times each month, "but not drop any other work for this purpose," police raids on Chinese gambling joints were episodic rather than consistent. Episodic or otherwise, if gambling raids occurred, it seemed to have been consistently conducted against 'foreigners,' invariably, the Chinese. Dominion Statistics for British Columbia gambling indictable offenses for which race was listed reveal the following:

<table>
<thead>
<tr>
<th>YEAR</th>
<th>TOTAL CONVICTIONS</th>
<th>FOREIGNERS CONVICTED</th>
</tr>
</thead>
<tbody>
<tr>
<td>1902</td>
<td>69</td>
<td>62</td>
</tr>
<tr>
<td>1903</td>
<td>incomplete reports</td>
<td>incomplete reports</td>
</tr>
<tr>
<td>1904</td>
<td>incomplete reports</td>
<td>incomplete reports</td>
</tr>
<tr>
<td>1905</td>
<td>211</td>
<td>166</td>
</tr>
<tr>
<td>1906</td>
<td>199</td>
<td>180</td>
</tr>
<tr>
<td>1907</td>
<td>83</td>
<td>62</td>
</tr>
<tr>
<td>1908</td>
<td>137</td>
<td>74</td>
</tr>
<tr>
<td>1909</td>
<td>172</td>
<td>81</td>
</tr>
<tr>
<td>1910</td>
<td>47</td>
<td>45</td>
</tr>
</tbody>
</table>

125 Canada, "Royal Commission on Chinese Immigration 1885," supra, at lxxix-lxxx.
127 Marquis, "Vancouver Vice," supra, at 267.
129 Canada, "Criminal Statistics," Sessional Papers. Note, that these statistics are solely for indictable convictions for which race was listed. The statistics reveal that in any given year, race was listed 85-100% of the time. No race breakdowns are available for summary conviction offenses.
<table>
<thead>
<tr>
<th>YEAR</th>
<th>TOTAL CONVICTIONS</th>
<th>FOREIGNERS CONVICTED</th>
</tr>
</thead>
<tbody>
<tr>
<td>1911</td>
<td>42</td>
<td>38</td>
</tr>
<tr>
<td>1912</td>
<td>109</td>
<td>100</td>
</tr>
<tr>
<td>1913</td>
<td>113</td>
<td>89</td>
</tr>
</tbody>
</table>

An important factor to consider when evaluating the disproportionate raids against foreigners is McLaren’s finding that police policy underwent a change with the 1912 appointment of Police Chief Mulherne. Mulherne was an avowed enemy of Chinese gambling. In 1913, he created a “moral reform squad” which included an anti gambling unit that produced a dramatic increase in arrests, prosecutions, and convictions from its constant raids of Chinatown.130

The effect of the moral reform squad’s creation is especially apparent in summary conviction statistics, though no breakdown for race is available. In the years preceding its creation, summary convictions for gambling offenses in British Columbia usually numbered less than one hundred. In 1912, the number was 925; in 1913, 1195; in 1914, 1573; and in 1915, 1978. The number consistently remained between five and seven hundred until the end of World War I when it surged again into the low thousands until 1930.131 If the breakdown by race for summary convictions is comparable to the indictable offenses, Chinese gamblers faced a significant level of police scrutiny. Given that there is evidence of promiscuous gambling activity on the part of all classes of the white population that was widely ignored by the police, it was also a disproportionate amount of scrutiny for the Chinese.132

130 McLaren, “Race and the Criminal Justice System,” supra, at 415; and Anderson, Vancouver’s Chinatown, supra, at 94.
The eradication of Chinese gambling dens was likely impossible given that, as one account by a Chinese merchant suggested, forty dens employing seven to eight hundred employees catered to a clientele of three thousand. Moreover, it is unlikely that police cared to fully eradicate Chinese gambling, as it caused little harm and especially throughout the 1920s, provided substantial revenue in fines. Chinese gamblers were a convenient target because the visibility of the raids kept moral reformers appeased, and, as these raids were almost always reported on by a sensationalist press, gave the police a public appearance of diligence in suppressing immorality.

Four noteworthy aspects of the policing of Chinese gambling dens are: the elaborate systems employed for evading police detection; the manner of entry by the police; the public aspect to the raid; and the occasional public recognition of the inherent discrimination in raiding Chinese gambling dens. Anderson uncovered the following 1911 W.R. Gordon poem from *British Columbia Magazine* which, in and apart from its racist imagery, encapsulates these themes:

**Trouble in Chinatown**

There's trouble down in Chinatown and the Chinks are spitting blue;  
The cops have yanked old Tai Kee's bank and all his layout, too.  
The fan-tan game and the py-gow frame and the chuck-luck mat all went  
In one fell swoop when Sergeant Troop and his "bulls" collected rent.

The games were going with a handsome showing and a noisy, smoky hum,  
While thoughts of raids and police parades were far from the yellow scum.  
The air was thick as burnt clay brick; the smoke you could cut in chunks,  
But the monks were gay in their saffron way as they bet their hard-earned plunks.

A swell young Chink in a jacket pink lounged by the outer door  
His eyes were closed and you'd swear he dozed, but he saw a whole lot more  
Than you or I, if we passed by, would take in at a look,  
For he was a scout for the whole layout and the street was his lesson book.

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133 Con *et al., From China to Canada, supra*, at 122.  
134 Marquis, "Vancouver Vice," *supra*, at 250.  
A cop walked by and the Chink's slant eye read trouble as he passed,
And before another could follow the other that outer door slammed fast.
He pulled a string, and funny thing, two more banged down the hall,
While in the room the noisy hum had changed to a heathenish bawl.

But the cops were wise; they had used their eyes to size up Tai Kee's joint.
They went at the wall in the dark back hall with an axe and a crowbar point.
In a minute or two they laid plain to view the murky gambling den;
They swarmed inside and the way they tied those Chinks was worth a ten.

Five at a time in a jabbering line, they knotted them queue to queue,
While the "muck-a-hai's" and "mo-bing-kai-tai's" turned the place an indigo blue.
There were forty odd, too heavy a load for the "Black Maria" van,
So some had to walk for many a block, pig-tailed like a human fan.

Now that is why the big ki-yi is heard in Chinatown.
The row they'll raise will be heard all ways round the streets that they hold down;
But it's all in the game, it's ever the same; they're raided from day to day.
When work is slack the cops fall back on the Chinks for a grandstand play.

The "alarm system" described in the fourth verse was a prominent feature of Chinese gambling dens. Members of the local media occasionally accompanied the police on raids and wrote of "ingenious Oriental systems of spring doors" and "getaway rat tunnels." Police often had to pass through several doors, usually locked or bolted, making it difficult to actually catch a game in progress. Therefore, raiding the dens involved not only significant manpower, but, as the poem indicates, axes and crowbars.

The moral reform contingent used their Parliamentary connections to amend the law in an attempt to facilitate police searches of Chinese gambling dens in two respects. The 1910 amendments to gambling sections of the Code made it an offense to use any device to obstruct or delay police entry to a gambling house. The amendment was introduced with the following comments by Mr. H.H. Miller of South Grey,

137 Ibid., at 103.
138 Lai, The Forbidden City, supra, at 45-46; McLaren, "Race and the Criminal Justice System," supra, at 416; and Marquis, "Vancouver Vice," supra, at 250. The law provided for police to break down doors when searching alleged gaming houses from its inception in 1875. See (1875), S.C, c. 41, section 1.
139 In Anderson, Vancouver's Chinatown, supra, at 103, she refers to press reports describing the Deputy Chief as an "axe man" never trapped by a door.
Parliamentary spokesperson for the Moral and Social Reform Council of Canada (the "MSRCC"):

The reason for that amendment is that it is complained by constables and police officers seeking to inspect or gain entry to Chinese gambling houses in many cases, they find that the occupants of the house have their inner rooms barricaded with very stout doors, thus preventing the police from gaining entry until the inmates have an opportunity to escape.\(^{140}\)

Secondly, in 1913, section 641 of the Code was amended to fast track the process for obtaining a search warrant for gambling premises by allowing any police officer, as opposed to just the chief constable, to write the magistrate to issue the warrant.\(^{141}\) In the next chapter, we see that some lawmakers objected to regulation of the racetrack on the basis that it was an affront to British notions of personal liberty. In the case of the Chinese, no such objections were raised to amendments that infringed upon one of the more sacrosanct tenets of liberalism, the right to hold and protect personal property.

While anti-Asian sentiment was widespread, the unfairness of the disproportionate level of police scrutiny was occasionally noticed due to the public nature of the raids, as the following comments made sometime between 1886 and 1920 illustrate:

We always thought it was a darn shame the way the police raided them at times. The patrol wagon would drive up, out would get half-a-dozen policemen and go in and raid the place—probably find 25 or 30 Chinamen. They would bring down half-a-dozen of them. Well, that was just pie for the policemen. All they would do was gather up these pigtailed like a man driving a four-in-hand. One policeman could hold about half-a-dozen by the pigtailed while they went back and got another half-dozen. We always thought that was rather a poor game as far as the Chinamen were concerned because the local clubs all played their own games—poker, as a rule—with big stakes.\(^{142}\)

\(^{140}\) Canada, Debates, 1909-1910, at 856.
\(^{141}\) (1913), S.C., c. 13. Canada, Debates, 1913, at 10070.
\(^{142}\) As per Monteith in Cauthers, ed., A Victorian Tapestry, supra, at 27.
Prior to the anti-Asian riots of 1907, Vancouver mayor Frederick Buscombe reprimanded the police for unduly harassing the Chinese, reminding them that they possessed the same rights as other citizens. Some were not deterred from asserting these rights, such as one merchant who successfully sued the police for a wrongful search. Similarly, in 1905, Mr. Justice W. Norman Bole of the Kamloops County Court quashed the conviction of the Defendant Ah Jim for “playing in a common gaming house.” Judge Bole wrote:

As to the matter of conduct I do not think it should weigh against the appellants as unfortunately the average Chinaman from experience has learned to look upon the police with all the aversion with which the unfortunate Irish peasantry of 1798 regarded the Hessian troops, and to fly on their approach.

The average Chinese gambler may have indeed attempted flight upon the approach of the police, but records indicate that such action was of little avail. In this era, the Chinese constituted less than five percent of the province’s population. In 1905, of the 211 convicted for indictable gambling-related offenses in British Columbia, 166, approximately 79 percent, were Chinese. McLaren’s review of Vancouver Police Record Books between 1905 and 1907 indicate that gambling offences were the most

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143 Roy, White Man’s Province, supra, at 17.
144 Anderson, Vancouver’s Chinatown, supra, at 103; and Marquis, “Vancouver Vice,” supra, at 249. An additional aspect that should be noted when viewing the regulation of Chinese gambling dens from the governance perspective, is the presence of resistance through dividing practices that occurred within the Chinese community. The Chinese Benevolent Association and other merchants’ organizations recognized that the perception of Chinatown as a vice-ridden community inhibited business and in 1917, 1918 and 1933 petitioned police and local government to tighten the law in order to further suppress gambling: see Lai, Chinatowns, at 212; Anderson, Vancouver’s Chinatown, at 103; and Marquis, “Vancouver Vice,” at 250. This action of distinguishing legitimate businesses from those at which gambling occurred had little impact in policing policy, but certainly played a role in pushing the games ‘underground’ within Chinatown.
146 Ibid., at 127.
147 The Canada Censuses 1881-1911 report that in 1901 the Chinese numbered 14,201 of the province’s 178,657 residents. In 1911, the Chinese numbered 19,568 of 392,080: Roy, White Man’s Province, supra, at 267.
numerous offence recorded, none of which involved Anglo-Saxon premises; a similar
trend is evident in the Victoria records.\footnote{Canada, "Criminal Statistics", \textit{Sessional Papers} 1906, No. 17. A breakdown by race for summary conviction offenses is not available.} Comments by a Chinese merchant, Won Alexander Cumyow, before the 1902 Royal Commission highlight the discriminatory nature of raiding the Chinese gambling dens:

Some do gamble for large amounts, but more commonly, the play is for amusement only and for small sums to pass the time as this is done in the common room of the boarding house. If a police raid is made and any are caught playing, all are arrested for gambling and looking on. If the same course were pursued in relation to white men, gamblers would be caught in barrooms and of course all who were at the bar would be arrested as onlookers.\footnote{McLaren, "Race and the Criminal Justice System," \textit{supra}, at 413-415. McLaren suggests that in the few instances that a raid turned up whites, they were cautioned rather than charged.}

But police had no interest in pursuing the same course with white men, as the police were part of the same sporting culture and working class as many white gamblers.\footnote{Anderson, \textit{Vancouver’s Chinatown}, \textit{supra}, at 101; and Canada, "Royal Commission on Chinese Immigration 1902," \textit{supra}, at 236.} Though the occasional judge or citizen noticed the unfairness of exclusively raiding Chinese dens, the policy of suppressing Chinese vice outweighed such concerns.

\textbf{VII: Analysis}

The regulation of Chinese gambling dens, reaching its zenith following the 1907 Vancouver riots was a component of a larger programme governing the Chinese population, central to which was a strategy of moral regulation. If one considers a hierarchy of Chinese vices based on the panic it instilled among the wider population, gambling certainly ranked below prostitution and opium use. Nevertheless, it was a significant campaign as measured by arrest statistics and public coverage. McLaren sums up as follows:

\footnote{Marquis, "Vancouver Vice," \textit{supra}, at 246.}
The conclusion is irresistible that gambling was constructed as a Chinese crime in both [Victoria and Vancouver]. Chinese represented the vast majority of those arrested, charged, and convicted. White illegal gambling, which was widespread, was largely ignored. The police, who shared most of the negative stereotypes of the Chinese held by the European population at large, were interested in establishing control over this alien and ‘inferior’ community, largely to placate the white population, by showing periodically that the police had the measure of ‘Oriental vice.’

That said, the point in recounting the legal history of Chinese gambling is not to evaluate the success or failure of efforts in policing it. Rather, its significance lies in the fact that it was an activity targeted by moral reformers, and second, amendments to the criminal law were enacted as a means of facilitating regulation. In addition, manifestations of the legal complex such as police surveillance and the concomitant discursive labeling of the Chinese as moral ‘others’ occupying an ‘other’ place played an important role in constructing Chinese gambling venues as disreputable forums where a disreputable type of gaming occurred.

Anderson demonstrates that “Chinatown” was an imaginative geography constructed by a “white” European tradition. She explores the “relationship between place, power, racial discourse, and institutional practice.” Thus far, I have only concentrated on institutional practice: the role of law and its human agents in facilitating a regime of discriminatory policing. Understanding the treatment of Chinese gambling dens by law’s human agents is not possible without discussion of the underlying cultural context within which it occurred, because social life and spatiality are mutually constitutive. Anderson writes, “racial ideology [is] materially embedded in space ...
and it is through "place' that it has been given a local referent, became a social fact, and
aided in its own reproduction." Therefore, the next section is devoted to the two
overlapping movements from which a discourse emerged that constructed both the
Chinese and Chinatown as morally reprehensible. In outlining the cultures of moral
reform and anti-Asian sentiment, I do not mean to suggest that these movements were
unique to Canada. As Allen notes, the social gospel arose from currents of thought and
action that originated outside of Canada.157

VIII: Cultural Context

Generally, the regulation of gambling in Canada began in an era of moral reform
which coincided with Canada's critical era of state formation from Confederation into the
twentieth century. In British Columbia, an additional strain of discriminatory sentiment
beyond moral rhetoric defined, marginalized, and disempowered Chinese residents,
Chinatown, and its culture. The overlap between the ideologies of building a moral
dominion based on Protestant Anglo-Saxon ideals and anti-Asian racism facilitated the
construction of Chinatown as a racial and moral 'other,' and the related regulation of
Chinatown's gambling dens.

The first section below discusses prevalent themes within the culture of moral
reform that emerged in Canada in approximately 1880 and existed until approximately

Canadian Historical Review, 381-399. The purpose of this discussion is not to trace the origins of these
cultures and ideologies, similar movements of moral reform occurred in America and Britain. Rather, my
aim is to highlight the pre-existing social relations and cultural milieu in Canada that influenced the manner
in which gambling in different locations was regulated in respectively different manners. Also see Hunt,
Governing Morals, supra, at 109. He outlines movements in both America and Britain that critiqued
urbanism linked with politics of anti-immigration and racial degeneration.
the Great Depression. Fraser suggests that reformers sought to “reform the conscience of the nation” in order to establish a “unified moral sentiment” that would create the “foundation upon which to build a legislative programme.”

Much, but not all of the analysis discusses Ontario, as the influence of the strongest proponents of the social gospel, the Methodist and Presbyterian churches, had less influence in British Columbia than Anglicans, who were somewhat more moderate on social reform issues. It is nevertheless important to recount the foundation of the moral reform movement as its attitudes toward immigration dominated federal politics and resonated deeply in British Columbia after the turn of the century.

The second section examines the moralization of Chinatowns in British Columbia. With the rise of the social gospel after 1880, a moral characterization of the Chinese as ‘inassimilable debased heathens’ supplemented the earlier labour-related concerns and culminated in violent uprisings and significant use of law enforcement personnel to suppress a number of crimes regarded as inherently Chinese. It was within this context that the regulation of Chinese gambling dens took place.

A: Moral Reform in Canada: 1880-1920

Moral reform was a component of a Protestant evangelical movement that became known as the “social gospel.” Adherents to the social gospel viewed Christianity as a

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158 Nancy Christie and Michael Gauvreau, *A Full-Orbed Christianity: The Protestant Churches and Social Welfare in Canada, 1900-1940*, (Montreal & Kingston: McGill-Queen’s University Press, 1996). At 217, the authors state that the Depression caused the collapse of social service work due to a lack of funding.


161 See McLaren, “Race and the Criminal Justice System,” *supra*.

social religion that called for individuals to incorporate religious standards into the fabric of society. Cook argues that two factors precipitated a late nineteenth century transformation of Christianity into a primarily social religion: Darwinian science and criticism of the Bible. He writes:

The orthodox Christian preoccupation with man’s salvation was gradually replaced by a concern with social salvation; the traditional Christian emphasis on man’s relationship with God shifted to a focus on man’s relationship with man. This union of the sacred and the secular was followed, ... by the substitution of theology, the science of religion, with sociology, the science of society.

Semple also supports the view that Darwinism and the accompanying social sciences supported the shift from personal introspection to outward action, but adds that the social demands of industrialization necessitated a collectivist attitude beyond religious circles. Likewise, Fraser suggests a shift at approximately the turn of the century from individualistic evangelism to a desire to shape the “collective expression of the moral will of the nation.” Regardless of the cause, the result was an essentially environmentalist approach to moral reform, advocating the general belief that reforming society was the first step to saving individuals.

Before proceeding with a discussion of the concerns faced by moral reformers, the diversity of opinion within the movement should be mentioned. Generalizations about views on race must be tempered with the recognition that moral reform consisted of a wide array of church groups and organizations made up of individuals who came from different places and backgrounds. Allen identifies three categories of reformers that he

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163 Ibid., at 4.
165 Ibid.
167 Fraser, The Social Uplifters, supra, at 107.
labels conservative, progressive and radical. The first category consisted of those closest to traditional evangelicalism which focused on individual sinful acts as a product of environment, and unwaveringly endorsed legislative reform as a platform for regulating the individual. The final category believed that personal salvation was not possible without social salvation and was more likely to adopt the rhetoric of a nation in peril. The middle category operated in between the conservatives and radicals.

* * *

Moral reform was not only a national movement, but a nationalist movement. Semple argues that the shift to an outward social religious doctrine inspired Methodists to “create a moral nation as a basis for God’s kingdom on earth.” An important aspect which facilitated the rise of a national moral reform movement in Canada was the institutional consolidation and coalition that gave Protestant churches a national presence and enabled lobbying of the federal government for legislative reform. Denominational churches began forming national committees in the late nineteenth century, including the Anglicans’ General Synod in 1891 and the Methodists in 1885. At meetings of national bodies, social and economic concerns were raised, mostly issues of sabbath observance, intoxication and prostitution. Soon, the churches created sub-committees to examine social issues, such as the Anglican Temperance Committee on Alcohol in 1896.

168 Semple, The Lord’s Dominion, supra, at 351.
170 Ibid. For example, the MSRCC and the Lord’s Day Alliance fall into the conservative category. Anglicans could be considered ‘progressive.’ Racial exclusionists such as Reverend Fraser (see text accompanying note 204) were radical.
172 Semple, The Lord’s Dominion, supra, at 348.
173 Pulker, We Stand on Their Shoulders, supra, at 25 and Valverde, Age of Light Soap and Water, supra, at 53.
the Methodist Board of Temperance, Prohibition and Moral Reform in 1902 led by the prolific Reverend Samuel Dwight Chown, the Baptist Committee on Temperance and Moral Reform in 1906, and the Presbyterian Committee on Temperance and other Moral and Social Reforms in 1907 headed by the Reverend John G. Shearer.¹⁷⁴

In 1907, the alliance of church and labour groups instrumental in the passage of the Lord’s Day Act formed the MSRCC led by Shearer and the Methodist minister T.A. Moore.¹⁷⁵ Shearer had been a key organizer in forming the Lord’s Day Alliance in 1900 and held a vision of a national organization for promoting the legislation of social and moral reform.¹⁷⁶ Moore was also active in many issues of personal morality: temperance, sabbath observance, gambling, and prostitution. Allen writes:

As sons of fathers who, following Confederation, sought a Christian nation from sea to sea, they demanded that these institutions which were ruining men and women by the thousand be stopped.¹⁷⁷

Buoyed by the unifying spirit fostered by the success of the Lord’s Day Alliance and temperance efforts in a number of provinces, the MSRCC launched reform campaigns across a vast range of social issues. Its actions embodied the view of law as an instrument for improving the social and moral welfare of society.¹⁷⁸ Strange and Loo suggest that the MSRCC leaders had a remarkable influence on Canadian law, as Shearer

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¹⁷⁴ Ibid.
¹⁷⁵ Allen, The Social Passion, supra, at 13. The confusion in the literature over the MSRCC’s founding date stems from the fact that its first meeting was held in December 1907, but its constitution was not ratified until October of the following year: Christie and Gauvreau, A Full-Orbed Christianity, supra, at 208. The MSRCC was renamed the Social Service Council of Canada in 1913.
¹⁷⁶ Christie and Gauvreau, A Full-Orbed Christianity, supra, at 210.
¹⁷⁸ Christie and Gauvreau, A Full-Orbed Christianity, supra, at 208; and Pulker, We Stand on Their Shoulders, supra, at 15-16.
"could literally march into cabinet ministers’ offices and tell them how they ought to legislate."

They write:

This coalition of largely Protestant reform groups ... presented a vision of moral uplift for the entire country. Leaders set out to transform the state from an impassive laissez-faire institution to an interventionist moral watchdog. Challenging existing laws, devising new ones, and embarrassing law enforcers into stricter moral policing were their favoured tactics.

The theme of nation-building was closely linked with Protestant attitudes toward immigration. Booming economically after the depression of the 1890s and growing in population, Canada seemed poised to fulfill Prime Minister Wilfrid Laurier’s claim that it “shall fill the twentieth century.” In this optimistic climate at the turn of the century, the Protestant church and its followers had their own vision of the moral dominion to which the country should aspire. That vision was Christian, white Anglo-Saxon, and based on notions of Britain’s colonial “civilizing tradition,” as emphasized in the following passage from a 1915 issue of Canada’s White Ribbon Bulletin:

There is one race that is fast dominating the world - the Anglo-Saxon race, represented by Great Britain and the USA, born rulers, exceeding all others in the capacity for governing. The only Empire of the present day which answers to this is the British Empire, a Christian Empire, which includes strong young nations ... Do you belong to the British Empire? Then you belong to the blessed race, the blessed Empire - God’s chosen rulers of the world.

Barber suggests that the churches’ care for immigrants was in part a Christian concern for their welfare, but also partly an aspect of the churches’ self-appointed role as

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50 Strange and Loo, Making Good, supra, at 69. Also see Valverde, Age of Light Soap and Water, infra

51 Strange and Loo, Making Good, supra, at 60.

52 Michael Bliss, Right Honourable Men: The Descent of Canadian Politics from Macdonald to Mulroney, (Toronto: Harper Collins Ltd., 1994), at 47.

53 Valverde raises the theme of turn of the century state formation and nation-building in Age of Light Soap and Water, supra, at 27.

guards of Canada's place as a fundamentally British nation. Hence their aim was to "evangelize" foreigners by teaching them the proper moral attitudes for a Canadian citizen loyal to Great Britain.\(^{184}\) Barber cites the following statement from the Methodist periodical, *The Missionary Outlook*: "... we have to teach all these babbling tongues of the earth the language of the Anglo-Saxon race, and bring them into line with the march of our Christian civilization."\(^{185}\) In addition, the Baptist church saw it necessary to "christianize" immigrants, for "a people who know not the Gospel are a menace to civilization."\(^{186}\)

The nationalist element of the moral reform movement facilitated an unfortunate strain of nativism.\(^{187}\) Though there was general apprehension regarding the non-Christian denomination of immigrants, the attitudes of moral reformers towards new Canadians varied. Christie and Gauvreau identify three threads of thought with respect to race. The first was a strict exclusionary policy, the second espoused a theory of a hierarchy of cultures in which Anglo-Saxons occupied the pinnacle, exemplified by J.S. Woodsworth's 1909 *Strangers Within Our Gates*, and the third advocated cultural diversity that promoted "Canadian" life among foreigners.\(^{188}\) Valverde also


\(^{185}\) Ibid., at 190, citing *The Missionary Outlook*, September 1903.

\(^{186}\) Ibid., at 203, citing at note 25, *The Northwest Baptist*, March 1, 1898.


\(^{188}\) Christie and Gauvreau, *A Full-Orbed Christianity*, supra, at 188. Christie and Gauvreau argue that the MSRCC defended immigration more than it fought to suppress it and take issue with Valverde's analysis that Canadian immigration policy was profoundly racist at 188-189. While this certainly held true for attitudes held by some church figures toward the non Anglo-Saxon Europeans that Christie and Gauvreau mention in support, Asian immigrants did not receive the same acceptance, falling into the least desirable category of immigrant in Woodsworth's work. At 212 Christie and Gauvreau recognize this somewhat by mention of the MSRCC 1921 resolution calling for the permanent exclusion of all Orientals. They suggest that this was a fleeting moment of influence by the Trade and Labour Congress that diminished after the
acknowledges the diversity of views among moral reformers. She observes that some
held the opinion that foreigners were “inherently degenerate” physically and spiritually,
while others saw them as requiring only language training and perhaps some lessons in
self-control. In listing the races that were prospects for assimilation, Asians were often
excluded or dismissed as undesirable. One extremist account by Protestant
missionaries that attempted with little success to convert Chinese living abroad,
concluded that they were agents of Satan.

The social gospel and immigration were a complicated mix. Both the Methodist
and the Presbyterian church engaged in efforts to convert Chinese immigrants and
educate them in Christian ideals, but the church was also influenced by the prevailing
stereotypes and views on Asian immigration. Between 1876 and 1892, Chinese
branches of each church held services in Victoria, and operated mission schools. In
1885, the Methodist church and the Women’s Missionary Society set up a refuge home
for prostitutes, child servants, and battered women. The Chinese Girls’ Rescue Home
added a school in 1908, housing and teaching Chinese and Japanese women until its
demise in 1942. Ward’s study of the relationship between Chinese immigrants and the
Protestant clergy reveals that urban missionary work, while based on Christian
evangelical and humanitarian compassion, was nevertheless strongly rooted in cultural

Salvation Army, the Dominion Grange and others joined the group after 1921. But the authors are in error
on this point, as these two groups were active within the MSRCC as early as 1909.
Valverde, Age of Light Soap and Water, supra, at 87 and 116-117.
Ibid., at 110.
Lai, Chinatowns, supra, at 208-209.
See in particular Karen Van Dieren, “The Response of the WMS to the Immigration of Asian Women
1888-1942,” in Barbara K. Latham and Roberta J. Pazdro, eds., Not Just Pin Money: Selected Essays On
the History of Women’s Work in British Columbia, (Victoria: Camosun College, 1984), 79-97. Also see
Lai, Chinatowns, supra, at 207-208; Li, The Chinese in Canada, supra, at 85-86; and Roy, A White Man’s
Province, supra, at 27-29.
uniformity - hence the two prevailing messages from the church: assimilation or exclusion.\textsuperscript{195} Within white British Columbia, some objected to the missionary and educational efforts by the churches, as there was a belief that assimilation, even if possible, was undesirable.\textsuperscript{196}

The more exclusionary attitudes toward immigrants, particularly non-European peoples, were influenced by an urban sexual discourse that encompassed two strains of thought: racial purity,\textsuperscript{197} which was closely linked with national health and the eugenics movement, and the white slavery panic, which involved the belief that darker skinned individuals enslaved white women for the purposes of prostitution.\textsuperscript{198} Reverend Shearer headed the MSRCC National Committee for the Suppression of the White Slave Traffic in 1915, having been active in campaigning against the ‘social evil’ of prostitution since 1909. He linked the sex trade directly with race, claiming that “most of the dens of vice are owned by Chinese and Japanese. No doubt many of the girl inmates are owned by them also.”\textsuperscript{199} Linked to the problem of urbanization, the fear of white slavery encouraged a belief that cities, and particular venues within them, were unsafe for young women to frequent and hence facilitated regulation of the streets, theaters, dance halls and even Chinese restaurants.\textsuperscript{200}

Beyond the issue of prostitution, Shearer wrote that immigrants, “... present all the problems of poverty, over-crowding, ill-health, social vice, drunkenness, violence,

\textsuperscript{195} Ward, “The Oriental Immigrant,” supra, at 54-55.
\textsuperscript{196} Lai, Chinatowns, supra, at 208 relying on comments made at a town hall meeting in 1876.
\textsuperscript{197} Valverde uses the term “racial purity” in Age of Light, Soap and Water, supra, at 32.
\textsuperscript{199} As quoted by Valverde in Age of Light, Soap and Water, supra, at 57 and 93.
\textsuperscript{200} Ibid., at 98 quoting a list of causes of white slavery published by a Methodist organization in 1915.
Sabbath desecration, lowering all standards of civilized life.” A more extreme element addressed the MSRCC in 1914, when Helen MacMurchy promoted eugenics and an anti-immigration policy as a means of protecting the “superior” Anglo-Saxon race from inferior foreigners and their addition to “our national burden of pauperism, vice, crime and insanity.” The moralization of immigrants and their neighbourhoods played an important role in creating “imaginative geographies” and conceptualizations of these peoples and their places in opposition to the Christian ideal.

As the next section shows, anti-Asian sentiment cannot be solely attributed to attitudes held by moral reformers regarding immigration. But as this section demonstrates, a linkage clearly existed, and it played an important role in defining the Chinese as an immoral “other.” The moral reform and labour-related anti-Asian movements overlapped as illustrated by Reverend Fraser’s comments at a meeting of the Asiatic Exclusion League in 1907: “is there harm in the Chinaman? In this city, that would be answered with one word, ‘Chinatown,’ with its wickedness unmentionable.”

The importance in the moralization of Chinatown for this thesis is that it shows how dominant cultural conceptions regarding a socially constructed place manifest themselves in official institutional practices. Specifically, it is an example of how the legal complex of discourses and practices encompasses non-legal knowledges that have a specific spatial context.

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201 Ibid., at 219, citing at note 56, The Presbyterian Record, July, 1912.
202 As reproduced in Angus McLaren, Our Own Master Race: Eugenics in Canada, 1885-1945, (Toronto: McClelland & Stewart, 1990), at 46.
B: Anti-Asian Sentiment and Moralizing Chinatown

In 1884, Victoria contained British Columbia's largest Chinatown, followed by the settlements in Nanaimo and New Westminster, where the growing salmon cannery industry employed a number of Chinese workers seasonally. Chinese began settling in Vancouver in 1884, with rapid growth after 1886 following the completion of the CPR to its western-most stop. Lai suggests that Chinatowns emerged due to the combination of voluntary segregation for cultural reasons, involuntary segregation as protection from white hostility, and economic factors that reduced Chinese labourers to the cheapest district of town. The idea of 'Chinatown' for settlers in Victoria and Vancouver was something other than the physical location where Chinese residents lived. Anderson argues that Vancouver's Chinatown was a 'white European' "social construction with a cultural history and a tradition of imagery and institutional practice" that gave it a "cognitive and material reality."

Perhaps the most effective means of categorizing the Chinese as a community apart from white colonists was by way of emphasizing moral differences. Anderson suggests that Europeans had longstanding perceptions of the Chinese as moral "others." She recounts memoirs from European diplomatic missions dating back to the 1780s that characterized China as a civilization in decline due to addiction to drugs, devotion to gambling, depravity, technological and scientific backwardness, the vertical direction of their writing, and their peculiar theater. A similar imagery emerged in Canada during

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204 Ibid., at 589.
205 Rose and Valverde, "Governed by Law," supra, 548-549.
206 Lai, Chinatowns, supra, at 49.
207 Con et al, From China to Canada, supra, at 62.
208 Lai, Chinatowns, supra, at 35.
210 Anderson, Vancouver's Chinatown, supra, at 96.
the seminal era of moral reform, as Protestant philanthropists that ventured into
Chinatown reported of “the helpless shackled” and “brazen women plying their trade.”\(^{211}\)

Newspaper reports about Chinese immorality surfaced as early as the mid-1870s, suggesting that "long continued association [with the Chinese will] have the most harmful effect on our morals; for familiarity with vice has a most dangerous tendency to beget indifference which all have not the strength to contend."\(^{212}\) In 1879, a provincial government select committee described the Chinese as a race morally and socially “degraded in the extreme.”\(^{213}\) The cultural and religious differences of the Chinese were seized upon in the 1902 Royal Commission on Chinese and Japanese Immigration and exploited as a threat to white Christian morality. The Chinese lived in distinct neighborhoods that were regarded as unsanitary. Their habit of exhuming graves to send bones back to China for burial in accordance with cultural traditions was also seized upon as a basis for exclusion.\(^{214}\) Another particularly loathed characteristic of the Chinese that garnered political attention was their habit of indulging in opium.

Early Chinese labourers indulged in the recreational use of opium, creating a demand for its manufacture and sale along the west coast of North America. The influence of Chinese opium use upon the white residents of British Columbia was commented upon unfavorably as early as 1884.\(^{215}\) The issue began to receive national attention following Deputy Minister of Labour, Mackenzie King’s visit to Vancouver to assess Asian property damage claims following the 1907 anti-Asiatic riots. King was shocked to discover a flourishing opium industry that in addition to its Chinese customers

\(^{211}\) Ibid., at 97-98.
\(^{212}\) Cited in Roy, White Man’s Province, supra, at 17.
\(^{213}\) Anderson, Vancouver’s Chinatown, supra, at 49.
\(^{214}\) Con et al, From China to Canada, supra, at 66-67.
also serviced many whites. He interviewed two claimants for compensation who were proprietors of opium dens. In the thirty-one years they had operated between them, they realized annual profits in the area of $20,000.00 each.216

King’s reports were littered with references to the “evil” of opium, its “baneful and destructive effects,” and its role as a “source of human degradation.”217 In calling for the government to take action, King wrote, “to be indifferent to the growth of such an evil in Canada would be inconsistent with those principles of morality which ought to govern the conduct of a Christian nation.”218 King’s writings tapped into a wider-held fear on the part of moral reformers and some members of the media: that young white women were the target of the international ‘white slavery’ conspiracy. This scenario of foreigners using drugs to sexually debase young women began a crescendo of anti-Asian sentiment between 1908 and 1922, culminating in a series of articles written by Edmonton police magistrate Emily Murphy, later published as Canada’s first comprehensive treatise on illegal narcotics, *The Black Candle*.219

The campaign against white slavery made headway in popular media and literature, especially in the early decades of the twentieth century in North America. In terms of public debate, McLaren suggests that white slavery ranked behind only temperance and Sunday observance as the “social and moral cause of the era.”220 The term was first applied to prostitution well before 1900 with respect to the discovery of

218 Ibid, at 12.
British girls working in French and Belgian brothels in the late 1870s.\textsuperscript{221} During the related white slavery and opium panics, many of the prominent individuals in the moral reform movement began to vilify the Chinese. For instance, Toronto morality Staff Inspector Archibald said, “the lure of the Chinaman is developing among this class of girls, to their utter demoralization in many instances.”\textsuperscript{222}

As moral reformers became a more organized voice in the public realm, they were able to bring pressure on governments at all levels to increase their efforts in suppressing vice. For example, an important factor that changed the nature of policing Chinese gambling was the election of a slate of zero tolerance “purity crusaders” to the Vancouver city council in 1903, who pressured police to increase their meager efforts in policing Chinatown.\textsuperscript{223} But beyond Protestant moral reform concerns, there was a general attitude that supported the vigorous policing of Chinatown’s vices, such as opium, prostitution, and gambling, simply because these were activities seen as peculiar to a despised race.

The construction of the immoral Chinaman was not accepted without resistance. As early as 1884, a small wealthy group of merchants in Victoria’s Chinatown formed the Chinese Consolidated Benevolent Association, with later outposts emerging in New Westminster in 1892, and Vancouver in 1906.\textsuperscript{224} Their activities included funding court cases against discriminatory laws, operating hospitals, schools and cemeteries, and arbitrating disputes within Chinatown. The Association also separated itself from the organized gangs that ran the opium, gambling and prostitution rings.\textsuperscript{225} They vigorously

\textsuperscript{221} Ibid, at 57-58. See also McLaren, “Recalculating the Wages of Sin,” supra, at 22-23; and Hunt, Governing Morals, supra, at 104. 
\textsuperscript{222} Valverde, Age of Light Soap and Water, supra, at 111 
\textsuperscript{223} Marquis, “Vancouver Vice,” supra, at 204-205. 
\textsuperscript{224} Li, The Chinese in Canada, supra, at 80-83. 
\textsuperscript{225} Ibid. 
resisted the categorization of their businesses as dirty degraded opium dens, even petitioning Ottawa in 1908 to strengthen the narcotics laws.\footnote{Anderson, \textit{Vancouver's Chinatown}, supra, at 99.}


\textbf{IX: Summary}

In the early years of the twentieth century the Chinese gambler became a moralised category like the opium fiend or the white slaver, a symbol of worrisome Asian "cunning" and vice. The head of the Methodist Oriental mission, Reverend Hartwell, wrote in 1913 that within Chinatown are:

\begin{quote}
... the parasites of the Chinese race. They are easily recognized by the hard lines and the avaricious glint of the professional gamblers, the hopeless expression of the opium eaters, and the unclean features of the men of impurity. Their name is legion. They hide away largely from the public eye, but their haunts are found in nearly every building.\footnote{Reproduced in Ward, "The Oriental Immigrant," \textit{supra}, at 47.}
\end{quote}

Likewise, the Vancouver Trades and Labour Congress - also one of the organizations within the MSRCC umbrella - cited Chinese gambling dens of "squalid infamy" as a justification for limiting immigration.\footnote{Roy, \textit{White Man's Province}, \textit{supra}, at 17.} Sometimes, the stereotypes were all linked together in suspect fashion, as in a Vancouver Alderman's assertion that gambling and
opium required police vigilance because they were linked with white slavery and tuberculosis.\textsuperscript{230}

Thus, the concern in British Columbia was for some, not Chinese gambling per se, but rather the exposure of white persons to immoral Chinese activities in Chinatown.

In support of this notion, Roy cites the following 1898 Nelson newspaper report:

As long as the exclusive people gamble among themselves in their own way, the community at large do not suffer, but the Chinese gambling den is soon found out by the white man to whom the alluring fan-tan games and the lottery are sufficiently attractive to induce him to part with his money. This is where the great evil comes in. Next the opium pipe is introduced ... \textsuperscript{231}

Games such as fan tan and pak kop piu were an aspect of Chinese culture dating back centuries. For Chinese labourers far from home, playing familiar games was an important element of maintaining a cultural identity - and attempts at suppression by the Anglo-Saxon majority were a concomitant attempt at denying a cultural identity despised as the antithesis of a hegemonic Protestant moral ideal.

The necessary implication of this characterization of the Chinese as moral “others” was a disproportionately high level of police surveillance in Chinatown after 1911 for drug offences, prostitution, and gambling. McLaren’s historical study of race and the criminal justice system in British Columbia describes the significant increase in convictions and arrests for vices which became viewed as peculiar to the Chinese.\textsuperscript{232}

McLaren concludes that “law was viewed by whites ... as an important instrument in constructing a distinctive Chinese identity and in regulating their conduct ... and played an important role in the transmission and reproduction of racist stereotypes.”\textsuperscript{233}

\textsuperscript{230} Anderson, \textit{Vancouver’s Chinatown, supra}, at 101.
\textsuperscript{231} Roy, \textit{White Man’s Province, supra}, at 16, citing the Nelson \textit{Economist} 19 January 1898.
\textsuperscript{233} McLaren, “Race and the Criminal Justice System”, \textit{supra}, at 427.
Within this social and cultural context, the attempted suppression of Chinese gambling through a coercive law enforcement strategy constructed the Chinese gambling den as a disreputable gaming venue. The subsequent amendment to the criminal law pushed Chinese gambling further into the backrooms and basements of Chinatown businesses. The result is an enduring linkage of Chinese gambling with ‘underground’ and criminal connotations. Here we see one example of the law in its discursive and institutional manifestations playing a central role in the creation of an ‘immoral’ space. In the next chapter, we see how a different legal and moral category was created for racetrack betting.
Chapter Three: Challenging the Racetrack

The result cannot be very satisfactory to anyone; and to those who are not learned in the law - and indeed, to some who are, or are supposed to be - it may seem even somewhat absurd that Saunders, in the lawful occupation of betting in the more orderly and less offensive - to those to whom betting in any mode is offensive - manner, should be adjudged guilty of keeping a "disorderly house" and punished accordingly, whilst these defendants, who carried on the same business, upon the same racecourse, in a less orderly and inoffensive manner, should be adjudged not guilty of the same offense and be discharged.

The Honourable Mr. Justice Meredith, Ontario Court of Appeal, November 15, 1907.\(^{234}\)

This proposition to do away with horse-racing, to prevent people from going to the races and betting occasionally upon a race involves the placing of a stigma on British character and on things that are the foundation of it. ... Englishmen are at all times trying to live together and to give each other the greatest freedom and they do give one another the greatest freedom from the King down. Any one in England can go on a race-track and be doing nothing immoral; he need expect no interference from anyone else. But we are setting up a doctrine in Canada that in some way it is our duty to interfere with the personal liberty of one another ... If there be any grievance, regulate it, but preserve personal liberty, because personal liberty is the foundation of the British character and the secret of the strength of British institutions. ... I do not know that public opinion is ready to stigmatize the attendance at a race-track as criminal practice. That is not the case in England.

The Honourable Mr. W.F. MacLean, Conservative M.P., April 7, 1910.\(^{235}\)

It is quite too late in the day to point to England as the model for Canada in matters of dealing either with the vice of drunkenness or with the vice of gambling. It would be to Canada's discredit if with a new start in a new country, free from the incubus of age long social custom we were not able to lead the way into a cleaner democracy. Gambling and drunkenness are two of the root curses of English life and are the more hateful because they are approved by the average man. Canada should show the more excellent way.

James Macdonald, Editor, Toronto Globe, April 7, 1910.\(^{236}\)

I: Introduction

The first quotation above appears in the unanimous decision of the Ontario Court of Appeal in *Rex v. Moylett et al*\(^{237}\), in which the Court quashed the conviction of two bookmakers charged with keeping a common betting house at the Toronto Woodbine Racetrack. Judge Meredith's mention of "Saunders" is in reference to an earlier case heard by the Court in which it upheld a bookmaker's conviction under the same

\(^{234}\) *Rex v. Moylett et al*, (1907), 15 O.L.R. 348 (Ont. C.A.), at 356.

\(^{235}\) Canada, Debates, 1909-1910, at 6512-6513.

provisions. The distinction between the cases is that Saunders took wagers from a moveable booth situated in an enclosure set aside for betting at the racetrack, whereas Moylett roamed the same enclosure and hence, in the view of the judges, did not occupy a "house, office, room or other place" within the meaning of the Code. The cases embodied an interesting legal geography puzzle: 'when is a place not a place?' As we see below, the answer in Moylett changed the universal application of Canadian gambling law to all places by exempting the racetrack from the betting house provisions of the Code.

The decision in Moylett also represented a pivotal setback for the coalition of churches and trade organizations that comprised the MSRCC, which had sought the suppression of racetrack gambling. As a result, the MSRCC turned its efforts to lobbying Parliament for legislative reform to remedy what they viewed as a "strange state of affairs" that allowed bookmakers to circumvent the law on a technicality. The strange state of affairs following the Moylett decision was more apparent than real. In fact, the boundary protecting racetracks from the reach of the criminal law was conceived fourteen years earlier by Parliament, and conclusively erected in 1910 in the aftermath of political lobbying following the Saunders and Moylett cases in 1910. Legislation created moral geographies by insulating a particular place from criminal sanction.

The second and third quotations epitomize the passionate debate that erupted in Parliament and the press in 1909 and 1910 over the MSRCC-sponsored amendments to the Code. Following the report of a Parliamentary Select Committee appointed to

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237 Canadian Criminal Code, (1906), R.S.C., c. 146, sections 227 and 228.
240 See (1892), S.C., c. 146 and (1910), S.C., c. 10.
examine the proposed legislation, a watered-down amendment to the Code exempted racetrack betting from the gaming house and pool-selling provisions, giving the track a de facto monopoly on commercial betting. Four years earlier, organized moral reformers in Britain had employed a similar strategy of legal challenge to the racetrack with the same result: an initial court victory, then a subsequent defeat, followed by a legislative amendment prohibiting the business of gambling everywhere except the racetrack.

The three quotations selected to introduce this chapter embody two themes instrumental to the construction of the racetrack as a reputable gambling venue. In the first passage, Mr. Justice Meredith demonstrates how the adoption of different spatial contexts in the course of judicial reasoning can produce conceptually problematic decisions. In the second and third passages, the speakers reveal a perceived conflict between British notions of liberalism and building a nation through the use of law to regulate personal morality. The deployment of the discourses of law and liberty to defend the cultural importance of racetrack betting in the same era that Chinese gambling dens were suppressed through police surveillance is illuminating in that it reveals the contingency of law and notions of personal liberty upon geographic and cultural context.241

II: English Background

Historically, horse racing in Canada was recognized as an inherently ‘British’ tradition. It is useful to recount briefly the history of racing in Britain, the origins of its opposition and the legal implications, because of the unquestionable influence in Canada. In Britain, betting took place at horse races put on by the Jockey Club, an organization of

aristocrats founded in 1751 that attempted to loosely regulate commercial bookmaking during race meetings.\textsuperscript{242} King Charles II provided two silver bowls as a prize at a Newmarket running, beginning the tradition of royal patronage of the horse races. Thus the offering of King’s and Queen’s Plates as an incentive to breeding vintage stock was established in the late eighteenth and early nineteenth centuries, a tradition that continues to the present.\textsuperscript{243}

By the 1840s, a concern arose with the spread of bookmaking on horse racing amongst the lower classes at off-track betting houses. During a parliamentary committee held in 1844, Jockey Club stewards (entirely aristocrats and military gentry) sought to combat the “demoralisation of the Turf” by distinguishing “legitimate gambling” from less reputable mass betting with ready-money bookmakers who frequented the off-track shops.\textsuperscript{244} An 1845 enactment attempted to remove the enforcement of gambling debts from the purview of the courts; this enactment did nothing to stem the increase in wagering at the races.\textsuperscript{245}

Subsequently, an 1853 Act made it an offense to resort to any place for the purposes of betting.\textsuperscript{246} The Attorney General acknowledged the implicit class scope of the legislation by stating in Parliament that “the difficulty in legislating upon this subject [is not] interfering with that description of betting which had so long existed at

\textsuperscript{242} Clapson, \textit{A Bit of A Flutter}, supra, at 18.
\textsuperscript{243} Munting, \textit{An Economic and Social History of Gambling}, supra, at 13.
\textsuperscript{244} Clapson, \textit{A Bit of A Flutter}, supra, at 18-19 and 22-23.
\textsuperscript{245} See (1845), 8 & 9 Vict., c. 109. Disputes over non-payment of gambling rarely ended up in the courts to begin with. On one side, the loss of respect associated with not honouring a bet shamed debtors into paying, as did threats of violence. On the other side, the cost and publicity associated with pursuing a gambling debt discouraged creditors from using the courts to collect; more effective and less costly means were available.
\textsuperscript{246} See (1853), 16 & 17 Vict., c. 119.
The 1853 Act was perceived as class-discriminatory in intention and effect. It proved to be an abject failure in reducing betting, as only the most flagrant of betting offices were closed in the following few years.

By the 1880s, a firmly established gambling industry existed, consisting of bookmakers, racetrack owners and a sporting press that reported on odds, events and tips to a readership of approximately 180,000. Clapson suggests that the momentum of an increasingly commercialized betting and sporting culture was too great to be contained. In opposition, an organized social movement took hold with the creation of the National Anti-Gambling League (the “NAGL”) in 1890, which consisted of a coalition of Protestant churches headed by F.A. Atkins.

III: Canadian Background

At common law, betting on horse racing -- like any wager -- was not illegal unless a statute existed to the contrary. Canadian cases up until 1892 applied British jurisprudence interpreting the 1739 Gaming Act, which made it clear that unless an individual owned the horse being raced, a bet on the outcome amounted to an illegal wager and was unrecoverable. Therefore, although it was not a statutory criminal
offence to bet on a horse race, betters were without a legal remedy if they found themselves unable to collect from the bookmaker. As in Britain, this did little to discourage wagering at the races.

Organized horse racing took hold in Ontario in approximately 1840, but did not have wider social appeal until the advent of the Queen’s Plate Stakes in Toronto in 1860. The solicitation of the monarchy’s patronage was an effort by the Toronto Turf Club to rejuvenate interest in public racing. The attendance at the inaugural event was estimated at between three and four thousand spectators and betting was minimal; one account notes that wealthy gentlemen from Montreal had difficulty finding parties willing to wager. However, in subsequent running, the Plate gradually attracted more betting activity. An 1881 account mentioned that “ladies had their little 50 cent pools, while the bookmakers had their hands pretty full.”

The passage in 1892 of an exemption for wagers on horse races from the criminal law led to a marked increase in commercialized wagering at the track. For the running of the 1892 Queen’s Plate, the Ontario Jockey Club enlarged its betting enclosure and built a stand for twenty-two bookmakers; they also began looking into the purchase of a pari-mutuel machine for expediting the betting process. A British account of the 1900 running described the clientele as follows:

The bookmakers were early to work and did a splendid business. These gentlemen had the prosperous air of their colleagues on the English turf, but, strange to say, their clients seemed equally well-fed. ... Even the meanest had creased his trousers to a knife edge with a flat iron.

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256 Ibid., at 16-17.
257 Ibid., at 59.
258 See section 204(2) of the 1892 Code.
259 Ibid., at 85.
260 Ibid., at 101, quoting a piece that appeared in The Evening News.
Indeed, Ontario's social and political elite patronized the annual King's or Queen's Plate. The founding members of the Toronto Turf Association and Ontario Jockey Club included the Denisons, John Beverley Robinson, Joseph E. Seagram and Colonel C.S. Gzowski.\textsuperscript{261} Years after its formation, a member of Parliament described the founders' intentions:

\ldots to see British institutions and traditions maintained in this country through racing with which they had been identified. They recognize that the public had to have racing and they were willing to take charge of racing in Toronto and to give the public good clean sport of that kind.\textsuperscript{262}

But to moral reformers, the replication of Britain was not sufficient. The creation of a commercialized sport-betting industry in Canada was not a welcome prospect for a nation moral reformers wanted governed by Protestant ideals.

\textbf{IV: Anti-Gambling Discourse and Protestant Morality}

The movement to regulate racetrack betting in Ontario between 1892 and 1910 consisted largely, but not exclusively, of the individuals affiliated with Protestant churches, working in particular through the MSRCC. Other groups made similar demands of government with respect to regulating gambling. For example, in 1906 the Ministerial Association of Toronto sent a delegation to the Ontario government and the directors of the Toronto Exhibition in opposition to horse-racing at county fairs.\textsuperscript{263} Also involved in the anti-gambling movement were the press, the Toronto morality squad Chief Inspector David Archibald, and some lawyers and members of Parliament. The following comments for example, appeared in 1898 in the \textit{Canada Law Journal}:

It is a matter for consideration as to whether it would not be desirable to follow the English legislation on this subject, and thus restrict, as far as possible, an evil

\textsuperscript{261} \textit{Ibid.}
\textsuperscript{262} \textit{Canada, Debates}, 1910-1911, at 6513.
\textsuperscript{263} \textit{Toronto Daily Star}, "They Will Oppose Racing At Fairs," March 5, 1906.
of serious dimensions in Ontario at the present day, an evil which pulpit and press combine to deprecate and deplore with apparently very little result.\textsuperscript{264}

The basis for regulating racetrack betting flowed from interwoven beliefs regarding observance of the Sabbath, the preeminence of a traditional family unit, and the suppression of activities that disrespected either. Deviant behaviour was not only a personal sin, but also a sin against the nation. Hence the view that the state played a role in protecting these foundations of a moral society through legislation.\textsuperscript{265}

With respect to the media, Protestant and Catholic editors propagated a belief that the nation was shaped by the unifying force of Christianity.\textsuperscript{266} Indeed, newspapers were seen by James A. Macdonald, editor of the Toronto Globe and previously The Presbyterian, as a powerful medium for spreading the Protestant message to the family home and influencing opinion.\textsuperscript{267} Fraser suggests that Macdonald’s papers served as his pulpit in promoting the moral values of Anglo-Saxon Protestantism.\textsuperscript{268} Macdonald’s influence in federal politics led to charges of partisan interference. Shearer’s Board responded, “a moral question does not cease to be a moral question when it gets into party politics.”\textsuperscript{269}

In Canada, the primary components in building a virtuous nation and the basis of social progress was the belief in strong families and Sabbath observation. Semple describes the importance of the Sabbath to Methodists as follows:

Methodists objected to using the day for travel, picnics, social visits, or other secular pursuits. More than a day of rest, it was crucial for active personal and social religion; ... Methodists held it as an article of faith that the sabbath also renewed the vigour, enlivened the spirits, promoted healthy family life, and

\textsuperscript{264} N.W. Hoyles, “Wagering Contracts,” \textit{supra}, at 223.
\textsuperscript{265} Semple, \textit{The Lord’s Dominion}, \textit{supra}, at 355.
\textsuperscript{266} Rutherford, \textit{A Victorian Authority}, \textit{supra}, at 171-172.
\textsuperscript{267} Fraser, \textit{The Social Uplifters}, \textit{supra}, at 110-114.
\textsuperscript{268} \textit{Ibid.}, at 114.
\textsuperscript{269} \textit{Ibid.}, at 141.
protected the peace and good order of society. If the sabbath was destroyed, it would “shake the moral foundations of our national power and prosperity.”

Industrialization encroached upon the traditional day of rest as the running of streetcars, servicing of trains and ships, and the operation of restaurants and businesses provoked action on the part of the churches. Sabbatarianism encouraged an alliance between religious groups and labour interests that sought to protect the worker’s right to a day of rest, which culminated in the enactment of the Lord’s Day Act in 1907.

The ideal of a good family man did not embody drunkenness or gambling and certainly not prostitution. The press promoted what Rutherford labels the “romance of the family”:

The true unit of society is not the individual but the family. No individual in fact is fit to take his place or discharge his duties to society unless his better nature has been developed by family life ... The family has thus a most important preparatory work to do, and if that work is not done, or if circumstances render it abortive, society has thrown into it elements that it cannot properly assimilate, and whose presence in the body politic must be a source of irritation and injury. Upon the right ordering, therefore, of family life in all social well being depends; and just in so far as home influence breaks down or loses its efficacy, will society be filled with adventurers, whose one object and law will be the gratification of their own appetites.

Semple writes that Methodists considered the family “to be the core of social organization, the cornerstone of civilization, and the foundation of national life.”

Similarly, A.G. Sinclair of the Presbyterian Board of Moral and Social Reform wrote:

The condition of home-life is the test of all civilization and all progress. You can estimate the danger to the nation of any one of the great social evils of our day by its destructive effect on the home.

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270 Semple, *The Lord’s Dominion*, supra, at 357.
271 Ibid., at 358.
274 As quoted by Fraser in *The Social Uplifters*, supra, at 100.
In addition, the family was the ideal economic unit that supported the Protestant ethic of work; idleness bred sinful behaviour, whereas labouring to support one's family was an essential Christian duty.\textsuperscript{275}

More broadly, Protestant anti-gambling moral discourse based itself on three general tenets:

(i) Gambling upset the divine order of the individual's material place in society;
(ii) Gambling was covetous and selfish in that it involved gain at the expense of one's neighbour; and
(iii) Gambling was an illegitimate method of redistributing property.

The last point was used to argue that gambling undermined the stability of a society based on obtaining property through paid labour and, as such, was an affront to the Protestant work ethic to family stability, and hence, a threat to the wider community.\textsuperscript{276}

This position was buttressed by arguments that working class drinking and gambling contributed to idleness and economic depression.\textsuperscript{277} Often, symbols of national ruin surfaced in the anti-gambling rhetoric:

A grave national evil surrounds us, for gambling produces godlessness and irreligion, induces dishonesty, deadens the moral sense, unfits men for the sterner duties of life, creates feverish excitement in the place of steady work and industry, lowers self-respect, degrades manhood, develops low cunning and selfishness, destroys domestic happiness and home life, unsettles the labour market and the working-classes, and encourages crime and general recklessness. A moral disease with such disastrous consequences is surely one that every right-minded Englishman should strive to stamp out, or it will soon destroy all the noblest, purest and brightest characteristics of our nation.\textsuperscript{278}

\textsuperscript{275} Semple, \textit{The Lord's Dominion}, \textit{supra}, at 340-342.
\textsuperscript{276} Dixon, \textit{From Prohibition to Regulation}, \textit{supra}, at 48-50. Also see Adams, \textit{A Sermon on Lotteries}, \textit{supra}.
\textsuperscript{277} Dixon, \textit{ibid.}, at 53. Especially drunkenness, as temperance movements initially overshadowed anti-gambling sentiment during this era.
In conjunction with its harmful effects on family life, gambling was condemned for its potential to upset the principles embodied by a liberal capitalist economy. During the debates over the racetrack betting bill in 1910, Archdeacon H.J. Cody raised the following points against gambling in an address to the Ministerial Association of Toronto:

1. it did not recognize the responsibility of money;
2. it tended to destroy the proper conception of the rights of property;
3. it tended to degrade or kill manly sports; and
4. it threatened the well-being of society through individuals profiting by another's loss or suffering, through promoting selfishness and discouraging industry and thrift, through causing crime and various forms of dishonesty.²⁷⁹

In the last chapter, we saw that the discursive field of knowledge within which the regulation of Chinese gambling dens occurred involved elements of nationalism and racism as it related to Protestant notions of morality. But Chinese gambling itself was a secondary worry behind the predominant fear that unsavoury elements in Chinatown might morally debase the white-European population – particularly its women. Hence there was little resistance couched in classic liberal terms to the use of law to regulate Chinese gambling dens. Chinatown provided villains and victims in a graphic manner that resonated deeply with the public – the racetrack did not have the same lurid mystique. Thus, the impetus for regulating the racetrack did not have a moral discourse attached to a particular place, as Chinatown had. Rather, the perceived social consequences of the activity of betting served as the dominant justification for the deployment of criminal law to regulate public betting forums. The spatial element in the racetrack betting debate emerged first as a discursive tactic of resistance, as pro-racing

interests distinguished their ‘gentlemanly British’ sport from other less respectable gaming venues.

According to Foucault, the construction of a discourse involves a process of collision, marginalization and synthesis of competing discourses, ultimately giving rise to a “regime of truth.” Thus Protestant anti-gambling discourse represents, at the risk of oversimplification, one side of the equation. The competing characterization of horse-racing as a British cultural tradition, the ‘Sport of Kings,’ a ‘gentleman’s sport,’ was a dividing practice employed by racing interests in resistance to the legal campaign launched by the moral reform contingent in Britain and Canada. Its embodiment in legislation illustrates the convergence of law and power to entrench the racetrack as a respectable forum for betting.

**V: Challenging the Racetrack in England**

In Britain, the NAGL initially chose to target racetrack betting as the most visible and public form of gambling. From the outset, the NAGL had a stated strategy of *not* targeting working class gambling. Their bulletins used the analogy of the social body poisoned from the head on down, and hence the source of the infection – upper class gambling -- had to be cured. The NAGL believed that only through the reformation of the upper class could the habits of the working class be improved. Their tactics included petitions, pamphlets, and public meetings. But the central strategy, initiated by John Hawke, was the objective of enforcing the moribund 1853 Act against the racecourse bookmakers.

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The preamble of the 1853 Act mentioned that a "kind of gaming has of late sprung up," involving the opening of "places called betting houses or offices" that tended to the "injury and demoralization of improvident persons" who placed bets on "horse-races and the like contingencies." Section one forbade the opening keeping or using of any:

... house, office, room, or other place, ... for the purpose of the owner, occupier, or keeper thereof, or any person using the same, or of any person having the care or management or in any manner conducting the business of thereof betting with persons resorting thereto ... on any event or contingency of or relating to any horse-race, or other race, fight, game, sport, or exercise ...

Any place within the scope of section one was deemed a common nuisance contrary to law. Accordingly, John Hawke of the NAGL laid an information charging a bookmaker, Richard Dunn, with unlawfully using the Tattersalls' ring at the Hurst Park Racecourse for the purpose of betting.

A: Hawke v. Dunn

Tattersalls' Ring was a roofed enclosure with three tiers of seating rows, located within the main racecourse. The racetrack owners charged one pound's admission (ten times the price of the normal seats) to about one thousand individuals daily, including fourteen bookmakers and their clerks. The bookmakers roamed the area shouting odds, taking deposits, exchanging bet vouchers, and paying off winnings. The magistrates dismissed the initial charge on the basis that Tattersalls was not a fixed place for the purposes of betting, because to find so would make everybody within the enclosure liable.

On appeal, Hawkins J. of the Queen's Bench found the logic in the magistrates' decision to be "unintelligible." Judge Hawkins rejected the submission that the words
“or other place” in the Act must be interpreted ejusdem generis with the accompanying
“house, office, or room.”284 Instead, he adopted a purposive approach, ruling that it could
not be within the intention of the Legislature to mention horserace betting in the preamble
and then “afford it a sort of sanctuary in a betting-ring, or in any other place not ejusdem
generis with a house or office.”285 He concluded:

... I have arrived at the conclusion that any area of enclosed ground (expressing no
opinion as to unenclosed areas), covered or uncovered, which is known by a
name, or is capable of reasonably accurate description, to which persons from
time to time or upon any particular occasions or occasion resort, and who may
very properly be described as resorting thereto, used by a professional betting-
man for the purpose of exercising his calling, and betting with such person, or for
the purpose of carrying on a ready-money betting business, may be a place with
the meaning of the statute. Metes and bounds are not essential, and it matters not
in my opinion whether for his own convenience the bookmaker chooses to remain
during his hours of attendance upon one particular spot within that area, or
whether he prefers to move about within that area from one spot to another as he
is minded. The Act speaks of an other “place” - not a “spot” in a place. If to
make it a place the bookmaker must fix himself on and use only one spot, he
would always have it in his power to evade the Act by wandering over the whole
area.286

Stating that the Legislature forbade the use by those that “make a trade and business of
betting of any place for the purpose of betting with persons resorting thereto,”287 Judge
Hawkins dismissed the charge.

Racetrack interests briefly considered lobbying Parliament for a legislative
exemption for track betting, but believed the political climate would not facilitate such an
action.288 Because it was still the court of last resort on criminal matters, no appeal was

283 Ibid., at 584.
284 The ejusdem generis principle of statutory interpretation states that a particular word takes its meaning
from the words which surround it.
285 Hawke, at 587.
286 Ibid., at 598.
287 Ibid., at 599.
288 Dixon, “Class Law,” supra, at 105-106. He cites two articles from two sporting publications on this
point.
available from the Queen's Bench decision. Instead, the racetrack owners chose to challenge the new precedent with a civil test case.

B: *Powell v. Kempton Park Racecourse Company* 289

Seeking to circumvent *Hawke*, a shareholder of the Kempton Park Racecourse Company (the "Company") agreed with the racecourse owners to bring an application seeking an injunction to restrain the Company from operating its Tattersalls ring. He submitted that it was contrary to the Act, and therefore ultra vires the Company's memorandum of association. The trial judge granted the injunction based on *Hawke*.

The Court of Appeal set aside the lower court ruling in a 4-2 decision and entered judgment for the Company. The Court of Appeal rejected the notion that the Legislature intended to regulate bookmaking at racetrack enclosures:

... it is inconceivable if the object of the Legislature was to bring the accustomed business of professional bookmakers at race-meetings within the meshes of the Act, which business for upwards of half a century had been notoriously carried on thereat throughout the kingdom, that the preamble should have been confined (and I think studiously confined) the declared object of the Act to a kind of gaming which had then of late sprung up by the opening of places called betting houses or offices ... 290

The Court also rejected the interpretation of 'house, office, room or other place' adopted in *Hawke* and employed the ejusdem generis principle:

... the Court was not justified in extending the meaning of the Act as it has done, which it did by in reality striking out the dominant words "house," "office," "room," and relying upon the words "other place," as if they were the dominant words of the section. If this construction of the Act be correct, the dominant words of the Act are mere surplusage, which is a construction I cannot adopt ... 291

The House of Lords affirmed the Court of Appeal's judgment in a 6-3

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290 *ibid.*, at 272 as per A.L. Smith L.J. On appeal, four separate judgments were written by the majority. I quote A.L. Smith L.J. because the majority of the House of Lords adopted similar reasoning.
291 *ibid.*, at 281.
The majority rejected Judge Hawkins' interpretation of the Legislature's intention to target the "professional betting men" who "make a trade and business of betting". Instead, the Court ruled that Parliament intended to suppress betting houses or offices and their owners, occupiers and agents. Accordingly, the appeal was dismissed.

VI: Challenging the Racetrack in Canada

In Canada, 1906 was a pivotal year in the movement against racetrack betting. The press accounts of betting at the Plate that year describe what many viewed as a worrisome scene:

The old ramshackle shed that does duty as a betting ring fairly groaned under the strain. The "talent" were wedged in like sardines, and men literally fought with each other to place their money in the capacious maws of the perspiring bookmakers, the thirty-six books doing a roaring trade.

For moral reformers, the Queen's Plate at Woodbine represented the epitome of the demoralizing nature of racetrack betting. Commonly referred to as the "University of Gambling," Inspector Archibald revealed why moral reformers viewed the Plate with such distaste:

For the simple reason that it is patronized, as you say, by the best class of men in the community, and a class of people who are very desirous to be found associated with the high-toned class in the social standing will go to the Woodbine ... It has a far more demoralizing effect upon the better class of people than the outside places.

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293 See text accompanying notes 292-293, *supra*.

294 *Kempton* (H.L.), *supra*, at 164-165.

295 *Cauz, The Plate, supra*, at 113.

296 Canada, "Evidence Taken by the Special Committee to whom was referred Bill No. 6 Relating to Race Track Gambling," 1911, *Sessional Papers*, Appendix No. 6, (Ottawa: King's Printer, 1912), at 225. The University of Woodbine comment is at 232.
Following the running of the 1906 Plate, Archibald’s men arrested two bookmakers and charged them under the common gaming house provisions of the Code. Moral reformers hoped that a conviction could be obtained on the basis of the ruling in *Hawke*, thus setting a legal precedent that would terminate the business of betting at the Woodbine. However, the resulting *Saunders* decision was merely the first of two cases that would influence the legal and political debate.

**A: The King v. Saunders**

Jake Saunders and his co-defendant rented a betting booth from the Ontario Jockey Club, the incorporated race association that owned the Woodbine racetrack in Toronto. The wooden booths were approximately six feet long, five feet wide and four and a half feet high. They were equipped with wheels in order to transport them to sheltered areas within the betting enclosure during inclement weather. Within the betting enclosure, thirty-six booths were available for rent by bookmakers for $100 per day. After renting a booth during the running of the King’s Plate between May 19th and May 28th, 1906, the defendants were charged with keeping a common-betting house under sections 197 and 198 of the Code.

The relevant sections of the Code mirrored British gaming legislation except for one important provision. Section 197 defined a common betting-house as a house, office, room or other place opened, kept or used for the purpose of betting on any event, or contingency relating to any horse-race, or other sport. Section 198 made it an indictable offence to keep or have care, government or management of any common gaming house. Section 204(1) deemed it an offence for anyone who allowed a premises under his or her control to be used for the purpose of recording any wager or selling a pool relating to any
election, race, or contest of skill. However, in contradistinction to the British statute, section 204(2) provided:

The provisions of this section shall not extend to ... the owner of any horse engaged in any lawful race, or to bets between individuals or made on the race course of an incorporated association during the actual progress of a race meeting.

On its face, section 204(1) seemed targeted at places that did not operate for the purpose of betting, as in section 197, but nonetheless recorded bets or sold pools ancillary to its regular business. Hence, the police magistrate entered a conviction but submitted a stated case to the Court of Appeal on two issues:

(a) Am I right in holding that a betting booth as aforesaid falls within the terms of sec. 197 of the Criminal Code as a house, office, or other place?

(b) Am I right in holding that the provisions of sub-sec (2) of sec. 204 of the Criminal Code do not apply to the offence of which the defendants are found guilty?  

On the first issue, the Honourable Chief Justice Moss ruled that whether the booth fell within the meaning of section 197 was a question of fact decided by the nature of its structure, the manner of its occupation, and the uses to which it was put. Relying on a series of British cases, he held that the booth constituted a common betting-house:

The defendants were in charge of a definite localized place and occupying and using the structure for the purpose of carrying on the business of betting with all persons who might resort thereto for the purpose of betting with them. It was so situated and marked out that any one wishing to bet could readily find the defendants there. The booth, though open to the air, had some of the characteristics of a room and many of those of an office. It was enclosed by walls of a considerable height, and it contained the usual fittings or accessories of an office, such as desks, table, and chairs. Business was transacted there in connection with bets made and the money received and paid in respect of such bets.

298 Ibid., at 36.
299 Ibid., at 37.
300 Ibid., at 40-41.
On the second issue, the Chief Justice said that if Parliament intended to apply the saving provision in section 204(2) to the common betting-house sections, it could have introduced such a clause. By not doing so, the Chief Justice held that Parliament “expressly confined the operation” of the subsection to the betting and pool-selling offences in section 204(1), and thus affirmed the conviction.\textsuperscript{301}

The Honourable Mr. Justice Osier wrote a short separate concurring judgment citing Shaw v. Morley,\textsuperscript{302} in which a similar structure was held to be a “place.” In his view, nothing said in the “celebrated Kempton Park case” was in conflict with such a finding. On the second issue, he cited Rex v. Hanrahan\textsuperscript{303} for the authority that section 204(2) did not qualify section 197. MacLaren J.A. concurred with the majority judgments.\textsuperscript{304}

Two judges wrote dissenting judgments. The Honourable Mr. Justice Garrow held that the whole statute must be read together; thus section 204(2) operated to qualify the offences delineated by sections 197 and 198. His comments revealed where his personal inclinations lay, but reflected a measure of judicial deference to Parliament:

If it is desired to put a stop to betting such as that disclosed in the case before us, it is an easy matter for the Legislature to say so. I for one would not be sorry. But, as the matter stands, the legislative movement is rather the other way, for the exception to which I have referred is not in force, as I have said, in England at all, and was only introduced into our statute law in the year 1892.\textsuperscript{305}

On the issue of whether the betting booths constituted a place, Judge Meredith, writing in dissent, criticized the manner in which the jurisprudence had developed. He

\textsuperscript{301}Ibid., at 40. At 41, the Chief Justice also cited R v. Giles (1895), 26 O.R. 586 (Ont. Div. Ct.) for the proposition that sections 197, 198 and 204(1) did not relate to the same matters.
\textsuperscript{302}L.R. 3 Ex. 137.
\textsuperscript{303}3 O.L.R. 659. Hanrahan was a case in which bets were taken at a racecourse on races held at another location.
\textsuperscript{304}Saunders (Ont. C.A.), supra, at 43-44.
\textsuperscript{305}Ibid., at 48.
observed that section 198 stated the penalty for keeping a common betting-house, a common gaming house and a common bawdy house. The latter, he wrote, was a “very disreputable and grave offence in the eyes of every one.” But, in his view, there was an “obvious gap” between leasing a licensed booth from an incorporated association and operating a “bucket shop” which “might well be considered a menace to morals.”

Judge Meredith considered himself bound by English precedent on this issue, but questioned the wisdom of it:

... to hold that one is guilty of a crime if he ply his business under an umbrella, and not guilty of any offence but carrying it on quite lawfully, if he fold the umbrella and ply it under the greater canopy of the sky, can hardly be a satisfactory result to anyone.

On the second issue, Judge Meredith cited *Stratford Turf Association v. Fitch* for the proposition that section 204(2) made betting legal on the racecourse of an incorporated association during a race meeting. He took the view that the Code must be interpreted as a whole, and hence the saving provision qualified sections 197 and 198.

He was remarkably frank in his criticism of the alternative view:

Are we then to attribute to Parliament the absurdity of enacting, in one line, that bets might be recorded, but, in another, that they should not be made; of doing that which no man in his sober senses would do? I decline to do so; and am firmly of opinion that many of the inconsistencies, which appear to render an enactment defective, exist rather in defective range of vision than in errors of Parliament.

Accordingly, he voted to quash the conviction.

Three months later, the Supreme Court of Canada heard arguments in *Saunders*.

The Honourable Chief Justice Fitzpatrick writing for the majority, ruled that the betting

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307 *Ibid.*, at 48-49. A bucket shop is a place “kept and resorted to for the sole purpose of gambling”.
309 (1897), 28 O.R. 579.
booth constituted a “place” within the ambit of the Code based on the British precedent
*Kempton Park*, and took the view that section 204(2) created a distinct and separate
statutory offence. The Court issued a 4-2 decision affirming the Court of Appeal’s
decision and upheld the conviction.

Thus, the Court of Appeal decision laid down the applicable law. The
Honourable Mr. Justice Meredith’s scathing dissent remains noteworthy for two reasons.
First, it reflects a personal view that racetrack gambling was not a disreputable activity
worthy of the penalties imposed by the Code, nor that it was a widespread social problem
that merited legal sanction – logic derived from spatial context rather than abstract legal
principles. Second, Judge Meredith’s comments reflect an element of geographic
specificity with a desire to develop the common law in accordance with local
particularities rather than rigidly applying British precedent:

We are not blindly to follow any decision, without regard to differences in the
enactments, or different conditions that may obtain in the different countries. This is a
not a great horse-racing country; incorporated racing associations are
comparatively very few; and many of the “evils,” as well as of the benefits, of
horse racing, so common there, are little, if not at all, known here. The evils
really aimed at there might be very different from those actually aimed at here;
and that, as it seems to me, is made very plain by some of the provisions of the
Criminal Code not at all to be found in the Imperial enactment; differences not
wholly insignificant.

Contemporary legal geographers should be pleased with his recognition that the use of
precedent is dependent upon “the interpretation of decisions that may have been made in
vastly different geographic and historical milieus.”

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310 *Saunders* (Ont. C.A.), at 51.
312 *Saunders*, (Ont. C.A.), at 50.
313 Forest, “Placing the Law in Geography,” *supra*, at 5.
Commentary following the report in the Canadian Criminal Cases of the Supreme Court of Canada decision in *Saunders* noted that it remained to be decided whether bookmakers could legally carry on their activities by dispensing with the booth, moving through the crowd displaying the odds on a card, and recording bets in a memorandum book, as their British counterparts had following *Hawke*.\(^{314}\) Perhaps it remained to be decided judicially, but the individuals who managed the Woodbine determined that the *Kempton* model would be implemented for the 1907 Plate. The most outspoken proponent in favour of racetrack betting among the press, the Toronto *World*, reported:

> The new betting system will be inaugurated this afternoon. The only difference is, the law demands that the layers keep moving. The bookie will hold a little hand card containing the quotations and a cash bag hung over his shoulder. The ticket and sheet-writer will follow the leader around, while the cashier will be over in the little old stand, where no bets are taken and only money is paid out to the winners. This method will satisfy the legal end, it is said. Queer thing the law!\(^{315}\)

\textbf{B: *Rex v. Moylett et al*}\(^{316}\)

In the aftermath of the *Saunders* decision, the bookmakers at the 1907 running of the King’s Plate took Mr. Justice Meredith’s comments to heart, “folded up their umbrellas” and roamed the betting enclosure soliciting wagers directly from patrons. No longer was there a place in the betting enclosure at Woodbine specially reserved for taking wagers. Bookmakers paid an entrance fee with the rest of the general public and did not occupy a fixed position, or use any desks, umbrellas or structure of any kind to mark a place for taking bets. Instead, each of the fifty bookmakers in the enclosure

\(^{314}\) *Saunders*, (S.C.C.), supra, at 186.

\(^{315}\) "No ‘Sure Thing’ Is Called to Win Plate," *Toronto World*, May 18, 1907.

\(^{316}\) *Rex v. Moylett et al*, (1907), 15 O.L.R. 348 (Ont. C.A.).
(about one-sixth of an acre in size) moved within a small radius of about five to ten feet. The *Hamilton Spectator* described the scene:

Instead of using booths, the bookmakers, satchels in hand, occupied places on the lawns and exhibited odds on small slates. They were supposed to keep moving, just like peanut vendors with their push carts, but, like the latter, the majority of them remained in the same place practically all afternoon. Consensus was that the new system was a farce and the public was going to suffer by the change. About the only thing accomplished by the change was putting the public to a lot of unnecessary inconvenience. ... The bettors had to fight their way through a struggling mass of humanity in order to get close enough to see what the quotations were or to place their wagers. That did not deter them any, and if there were any Moral Reformers present they must have realized that little had been accomplished by the change.\(^{318}\)

Following the last day of races, police arrested two bookmakers and charged them with running a common betting house. The police magistrate convicted the two defendants on the basis of *Saunders* and submitted a stated case to the Court of Appeal asking if his decision was correct in law. The Court unanimously ruled to quash the conviction in three separate judgments.

The Court avoided the interpretive divide over the application of section 204(2)\(^ {319}\) by deciding the case on the basis of the English *Kempton Park* precedent. The lawyer for the Crown argued that it was a fair inference that the bookmakers kept a "place" by moving within such a small radius, so as to effectively localize their business in a fixed and ascertained spot.\(^ {320}\) The Chief Justice rejected this argument and stated:

... in every case that can now be regarded as a binding authority, there was something more than the mere presence of the persons on the ground to indicate that measure of localization, fixity and exclusive right of user which is necessary in order to constitute "a place."\(^ {321}\)

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\(^{317}\) *Ibid.*, at 349.

\(^{318}\) Reproduced in Cauz, *The Plate*, *supra*, at 115.

\(^{319}\) Then changed to section 235(2) by the 1906 statute revision process: see (1906), R.S.C., c. 146.

\(^{320}\) *Moylett*, *supra*, at 351.

Mr. Justice Osier also ruled to quash the conviction. He followed the reasoning in *Kempton Park*, interpreting “other place” *ejusdem generis* with the words “house, office, or room” as something equally structurally defined and capable of being used in similar fashion. He also constructed the Code using principles, analogous to the *Saunders* case, but curiously absent from that decision in which he upheld the conviction:

To the ordinary mind, indeed, there seems to be something of the absurd in speaking of such a “place” as ... a “disorderly house,” or betting house, opened, kept or used by the defendants for the purpose of betting with others who, like themselves, happen to be, or have the right, by permission of the owners, to be, on any part or portion of such place. Betting or the business of a bookmaker, whether carried on upon a racecourse or elsewhere, is not prohibited by the Act. If the Legislature intends to prohibit it, it is easy for it to say so.\(^\text{322}\)

Mr. Justice Featherton Osier certainly had insight into Parliament’s intention with respect to racetrack betting: his brother Edmund Boyd Osier was the vice-president of the Ontario Jockey Club and the Conservative Party Member of Parliament for the riding of West Toronto.\(^\text{323}\)

In a terse concurring judgment, Mr. Justice Meredith also voted to quash the conviction. As in *Saunders*, Judge Meredith was troubled with the application of English precedent in a state making the transition from colony to a nation with its own developing law and jurisprudence:

This case is in principle quite the same as that of *Kempton Park* which settled the law as to the proper interpretation of the enactment there in question, in England, irrevocably, so far as the Courts of Justice are concerned; the two cases are quite indistinguishable from one another; and, notwithstanding some material differences between the Imperial and Canadian enactments upon the subject, as well as material differences in the circumstances which existed when the Canadian enactment was passed, and still exist, in England from those in Canada,

\(^{322}\) *Ibid.*, at 354.

\(^{323}\) Canada, *Debates*, (1909-1910), at 888. A third Osier brother, Britton Bath, was also a Toronto lawyer: see Michael Bliss, *William Osier: A Life In Medicine*, (Toronto: University of Toronto Press, 1999), at 29.
the law here has been declared to be governed by that case in a Court the
judgment of which is binding upon all the Courts of this Province.\footnote{324} Judge Meredith distinguished \textit{Saunders} stating that in this case, no such place was kept, and suggested that the state of the law rendered the situation potentially absurd. He then acknowledged the binding principle of \textit{stare decisis} and voted to quash the conviction.\footnote{325}

\textbf{C: Comment}

A more conceptually consistent result would have emerged had the Court of Appeal’s dissenting interpretation of section 204(2) been adopted in \textit{Saunders}, recognizing that the trend in regulating betting during this time was, as Mr. Justice Garrow noted, a policy leaning towards the legalization of racetrack betting in Canada.\footnote{326} That this was the intent of Parliament in enacting section 204(2) is revealed by the following exchange in the Parliamentary Debates:

On section 204,

\begin{quote}
Sir JOHN THOMPSON. I suppose it is my duty to call the attention of the committee to the addition of sub-section 2, which proposes a relaxation in regard to betting on the race-course of an incorporated association while a race is going on.
\end{quote}

\begin{quote}
Mr. DAVIES. It is just as well that the committee should understand that we are legalizing betting on a race-course. I do not know that the committee is prepared to do that.
\end{quote}

\begin{quote}
Mr. CURRAN. The law has always allowed betting on horse races.
\end{quote}

\begin{quote}
Mr. DAVIES. I do not think you can recover a bet on a horse race.
\end{quote}

\footnote{324} \textit{Moylett, supra}, at 355-356.
\footnote{325} \textit{Ibid.}
\footnote{326} In addition to Parliamentary intention, the \textit{Stratford Turf} case, mentioned by Mr. Justice Meredith in \textit{Saunders}, held that an agreement between the incorporated association owning the racecourse and a bookmaker for betting privileges at the racecourse was a legal contract.\footnote{326} Had section 204(2) rendered such arrangements illegal, the contract would be void as contrary to public policy. The only explanation from a policy perspective for the majority’s decision not to adopt a similar construction was a desire to not extend the protection of section 204(2) to off-track betting houses that fell within the scope of section 197.
Mr. CHAPLEAU. This does not make the bet a legal debt, but it prevents it being a criminal act.

Mr. DAVIES. Well, it is the most extraordinary kind of legislation I ever knew. In the one case you make it criminal for a man to play a game of whist, a game of skill, for ten cents, in a railroad car, and in the other case you relieve him from a criminal action if he bets a thousand dollars on a horse race.327

[Emphasis added]

Given that it never was a criminal act for an individual to place a wager on a horse race, and given the stated desire to maintain the unenforcability of horse racing bets under contract law, it appears that Parliament intended this amendment to insulate racetrack bookmakers from criminal sanction. The comments of the members of Parliament show no indication that Parliament intended bookmakers who operated a booth in a racetrack betting enclosure to face conviction under the common betting-house provisions; in fact, the above-emphasized portions of the debate indicate a contrary intention. But the Canadian judges were bound by the *stare decisis* principle to follow the British interpretation of the similar statute and apply *Kempton Park* accordingly

* * *

The hallmark of this series of Canadian and British decisions is that divergent conceptions of the geographic context dictated the abstract legal principles upon which the judges reached their respective decisions. The rule of law rests upon the belief that legal discourse is composed of objective rational principles applied to specific circumstances. Law “seeks to provide the impression that it is merely a conduit through which the facts speak.”328 But as Pue notes, when this juridical “common sense” piles

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327 House of Commons, (1892), *Debates* at 2976-2977. In his final comments, Mr. Davies is referring to section 203, pursuant to which it was an offence to gamble on public conveyances.

abstraction upon abstraction, the result is a form of anti-geography due to the absence of spatial context.\textsuperscript{129}

However, the opposite process occurs in these cases, a type of legal meta-geography in which the physical and temporal nature of the place in question led to a reliance upon divergent judicial techniques rendering inconsistent interpretations of the legal concept of ‘place.’ On one side is Judge Hawkins’ decision, which rested on the interpretation of the Legislature’s purpose in enacting the 1853 Act. He defined that purpose as the suppression of all \textit{professional or commercial} gambling. With this express purpose in mind, his interpretation of the term “other place” afforded a literal reading that resulted in the widest possible spatial scope of the Act. Therefore, the only limits upon the Act’s scope of enforcement under this approach was the nature of the persons resorting to the place -- professional betting men -- and the requirement of a basic descriptive element for the locale.

In contrast, the majority in the Court of Appeal and House of Lords in \textit{Kempton Park} rejected the purposive interpretation, and suggested that the Act was intended to target places akin to a house, thus supporting an \textit{ejusdem generis} reading of “other place” and resulting in the most spatially restrictive interpretation. The House of Lords characterized the existence of enclosed betting rings for half a century prior to the passage of the 1853 Act as a “material fact.”\textsuperscript{330} Thus, because the betting ring was already a ‘place’ that preexisted the 1853 Act, it could not have been an “other place” for the purposes of an Act targeting a kind of gaming that “has of late sprung up.”

\textsuperscript{129} Pue, “Wrestling with Law,” \textit{supra}, at 568.
\textsuperscript{330} \textit{Kempton}, (H.L.), at 151.
Delaney recognizes this ability of judges to shape sociospatial relations by manipulating the spatiality of a legal rule in order to ensure the relevant conditions for a particular interpretation. Either approach taken by the respective judges is acceptable legal reasoning. What these two cases illustrate, is the manner in which the bench’s array of interpretive techniques facilitated different approaches to divining parliamentary intention and produced distinct spatial and social consequences. In this regard, we see the ironic power of law to create space by denying the existence of a ‘place.’ As we see in the next section, the result of this judicial construction of a barrier around racetracks was the same in Canada as in Britain: moral reformers, as we shall see below, conceded the racetrack in exchange for the prohibition of public betting everywhere else.

* * *

Racetrack interests hoped that the *Moylett* decision would end the debate. The *Toronto World* commented:

The court of appeal has decided that betting as conducted at the Woodbine is entirely within the limits of the law and has quashed the conviction of Patrick Moylett by Magistrate Denison of the police court. The decision of the judges in this case will meet with the approval of the general public, who feel that it is a man’s own business if he chooses to lay a wager on his fancy when attending the races and that the meddlers have no right to interfere. It is to be hoped that there will be no more interference by the authorities and that the affairs of the Jockey Club can go on unmolested by the sect who are built on the narrow gauge principle.

Faced with an unlikely chance of success on appeal, the reformers instead turned their efforts to lobbying Parliament for a legislative amendment. Immediately following the *Moylett* decision, one observer identified only as “Henderson” commented on the prospects of a law reform campaign: “I don’t think they will succeed if they do. The

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332 “Note and Comment,” *Toronto World*, November 16, 1907.
Jockey Club have as much influence as the Justice you know." His comments proved to be prescient.

VII: Canadian Aftermath

*Moylett* was decided in November 1907. In the subsequent two years, the MSRCC hired lawyers to draft amendments to the Code that would end betting at the horse races. There is evidence that Reverend Shearer wrote the Prime Minister and Minister of Justice on a number of occasions requesting amendments. Shearer also wrote James Macdonald, the editor of the *Globe*, imploring him to put additional pressure on the government. Macdonald complied, with a series of strongly worded editorials goading Parliament to act:

> Is it true that the thousands of decent citizens who detest gambling, but who have made the Woodbine a great social event, are now to regard themselves as merely a useful veneer for the gamblers and their associates who give a yellow streak to Toronto life during the race meets? And is there one argument presented by the advocates of racetrack gambling at Ottawa this week that was not used in defence of Spanish bull-fighting or of cock-fighting? ... What about the lowering of the moral standard, the ruin of reputations, and the home tragedies that accompany and flow from the gambling habit? Of course they should be strong enough to resist the temptation. But laws are not made for the strong, but for the weak.

The MSRCC sought to rally public support by sending a draft sermon on the evils of racetrack betting to every Methodist church in the country. In addition, the MSRCC circulated a number of anti-racetrack betting petitions which they mailed to Parliament.

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333 *Star*, "Legislation Must Now Be Sought", *supra* note 6. The commentator is identified as an associate of T.C. Robinette, co-counsel for the defendant bookmakers.

334 As per comments made by Member of Parliament H.H. Miller, *House of Commons, Debates*, 1909-1910, at 859.

335 As per Minutes of the executive of the MSRCC, April 17, 1908, as reproduced in "Evidence of the Special Committee," *supra*, at 583-584.


337 As per the evidence of Reverend Shearer, "Evidence of the Special Committee," *supra*, with draft sermon at 509-514.
between 1907 and 1909 and presented at the 1910 Parliamentary Select Committee considering the proposed amendments.\textsuperscript{338} In the meantime, betting at the 1909 King’s Plate flourished, as the \textit{Toronto Telegram} reported that over thirteen days, the fifty to eighty bookmakers working the event took in 2.6 million dollars in wagers.\textsuperscript{339}

In December 1909, the Honourable H.H. Miller, the Liberal member for West Grey, presented the bill proposing amendments to the Code for second reading.\textsuperscript{340} He announced that he was representing the MSRCC and hence introduced the proposed legislation as a private members bill. This was likely due to pressure from his party because of an approaching election and uncertain public opinion concerning the merits of the proposed legislation. The Bill proposed amending section 227, the former section 197 provision regarding betting houses, to read “any place” rather than “any house, room, office or other place” and to expunge the saving provision section 235(2), the former section 204(2).\textsuperscript{341} In support, Miller read a letter from Chief Inspector Archibald stating that section 204(2) was responsible for the “present undesirable conditions.”\textsuperscript{342}

The “Miller Bill” induced a split in Parliament that transcended party lines. That year’s \textit{Canadian Annual Review of Public Affairs} called it the second “most widely discussed legislation of the Session.”\textsuperscript{343} The Liberal Minister of Justice Sir Allen Aylesworth made the front page of the Toronto \textit{Mail and Empire} for his dismissal of the legislation as a “Yankee Bill:”

\begin{quote}
\ldots the measure presented by Mr. Miller I will christen the ‘Yankee bill’. The British bill strikes at the person, the Yankee bill strikes at the place. One is a
\end{quote}

\begin{flushright}
\textsuperscript{338} \textit{Ibid.}, at 584.
\textsuperscript{339} As per H.H. Miller, House of Commons, \textit{ Debates}, 1909-1910, at 866-867 and 915.
\textsuperscript{340} \textit{Ibid.}, at 856. No debate accompanied the first reading one month earlier.
\textsuperscript{341} \textit{Ibid.}, 863 and 867.
\textsuperscript{342} \textit{Ibid.}, at 866.
\textsuperscript{343} \textit{Canadian Annual Review of Public Affairs, supra}, at 239. The most widely discussed legislation was a proposal to increase the Navy’s budget.
\end{flushright}
model statute, well designed to cure the evils which have grown up on the race course; the other is either incoherent or it goes so far as to prohibit the smallest wager between individuals. It would not only affect the racecourse, but it would also make it a crime to play bridge or even checkers if a cigar was a stake.\footnote{344}

In the United States of America between 1887 and 1910, moral reformers had achieved the prohibition of horseracing in all but six states, resulting in the closure of ninety-five tracks.\footnote{345} The ‘British Bill,’ introduced in 1906 in the aftermath of Kempton Park, stopped well short of outright prohibition, but certainly struck at the ‘place.’

VIII: British Aftermath

In Britain, the Kempton Park decision forced a fundamental shift in the NAGL’s strategy. Following the case, a situation arose in which bookmakers operating from pubs continued to be convicted despite working seemingly outside the scope of “owners, occupiers and managers” as laid out by Kempton Park.\footnote{346} Accordingly, the House of Lords appointed a Select Committee in 1901 to investigate legislative options. John Hawke attempted to stick to the League’s principles and demand an end to upper class betting, but was swiftly rebuked. The Committee chair said:

I do not suppose that you wish to insinuate that these clubs, such as Tattersalls, the Albert, the Victoria and the Beaufort, are ill conducted clubs; they are respectable clubs.\footnote{347}

The Committee recommended a ‘Street Betting Act’ which would make betting illegal in any public place, enclosed or otherwise, but permit racecourse bookmaking to continue within enclosures at the track.\footnote{348}

\footnote{344} "View of the Minister of Justice," *Toronto Mail and Empire*, April 8, 1910.
\footnote{345} John Rosecrance, *Gambling Without Guilt: The Legitimation of an American Pastime*, (Belmont: Wadsworth Inc., 1988), at 34-39. Racetrack interests eventually convinced state governments that significant profits could fill public coffers through a licensing system, leading to a full revival in horseracing by the 1920s.
Thus, the NAGL was faced with little choice but to campaign for the passage of the proposed *Street Betting Act*, a result achieved in 1906.\(^{349}\) The Act baldly exempted upper class gambling not only by expressly excluding racetracks from its reach, but by limiting its application to premises in which the public had a right of access: certainly not the elite members-only social clubs.\(^{350}\) The passage of the Act concluded an effort by the racetrack aristocracy to disassociate itself from “disrespectable” betting places by encouraging the view that working class gambling, and the places it occurred were the real ‘evils’ that required new legislation for suppression.\(^{351}\) The effect of the Act was not a reduction in betting; instead, bookmakers and working class gamblers were forced to circumvent the law through participation in elaborate underground operations and protection rackets, while racetrack bookmakers operated as a commercial gambling monopoly, unhindered by law, and unwilling to extend credit to those with a suspect means of repayment.\(^{352}\) Canadian legislators and moral reformers in favour of suppressing racetrack betting would find themselves similarly constrained.

**IX: The Canadian Bill**

In Ottawa, H.H. Miller made it clear that his proposed Bill did not seek to interfere with the racing of horses, which was seen by farmers as necessary to improve breeding stock. In addition, he emphasized that the Bill did not seek to prevent bets on horse races between private individuals. Rather, what the MSRCC sought was the suppression of the business of betting: “its object is to utterly, entirely, completely

\(^{348}\) *Ibid.*, at 105. It should be noted that until 1895, the Lord Chief Justice was a member of the Jockey Club, and many Lords frequented the track and aforementioned social clubs.

\(^{349}\) (1906), 6 Edw. 7, c. 43.

\(^{350}\) See section 1(4) for the definition of “public place” and section 2 for the racecourse exemption.

\(^{351}\) Dixon, “Class Law,” *supra*, at 121.

\(^{352}\) *Ibid.*, at 103.
suppress and prevent ... gambling with or upon racetracks in any place in Canada.\footnote{Canada, Debates, 1909-1910, at 856-857.} Miller also felt the need to attempt to respond to the critiques of Parliament raised by the Court of Appeal:

Neither it is the endeavour by this legislation to correct any past bungling on the part of the Parliament. I say that because many people have had the idea that the present state of the law, which appears to them absurd, is the result of error or lack of skill on the part of legislators of the past. ... Parliament has never up to this time, endeavoured to prohibit the business of gambling upon racetracks.\footnote{Ibid., at 857.}

Members of Parliament with a vested interest in horse racing fought back vigorously. E.B. Osier, himself a devout Anglican and the son of a preacher, believed that legislation could not prevent "evils incident to human nature."\footnote{Ibid., at 889.} He mentioned "wild gambling in mining stocks" and wagering on football, baseball, and games of bridge that in and of themselves daily surpassed the weekly Woodbine totals:

The Woodbine races have become a social affair in Canada, they naturally attract a good deal of attention, and it is a very easy and pleasant matter for the reformers to train their guns on that one particular event and make very strong and serious statements in connection with it.\footnote{Ibid., at 856.}

Opponents of the Bill suggested that it was open to charges of hypocrisy on the ground that it made it illegal to bet with bookmakers but not private individuals. Miller argued that private betting was impossible to police and attempted to justify the necessity of suppressing racetrack betting by claiming that children needed protection from its evils. The Honourable Mr. Barker, also a member of the Hamilton Jockey Club, argued that racetrack betting was unfairly singled out for condemnation. He suggested that Miller had no connection with racetracks, their procedures, or the betting that took place. He charged that stories of youth frequenting horse races and losing -- or even worse,
winning money on wagers -- were untrue because of strict restrictions passed by clubs forbidding youth entrance to racetracks:

I have no doubt that the Montreal, Toronto and Hamilton clubs are as anxious to protect the youth of this country against danger of that sort as is [Mr. Miller]. Does he arrogate to himself a greater anxiety for the morality of the youth of Canada than I have, or than [Mr. Osier] has? Does he suppose that because I happen to be a member of a jockey club, I am less anxious than he to guard our youth?\textsuperscript{357}

Another typical exchange included the following:

OSLER: I have never known in, all my experience, of the case of one young man who has gone wrong from betting on the races.\textsuperscript{358}

MILLER: A man having the wealth of the honourable member for West Toronto moves in a circle and upon a plane where he naturally does not come in contact, as other people with less means and different associations do, with the evil results of race track gambling.\textsuperscript{359}

An additional point raised in opposition was the claim that legal public betting actually caused less harm by reducing odds, and hence losses, due to the greater demand to bet at racetracks than between private individuals.\textsuperscript{360}

As had occurred in Britain, the House voted to refer the matter to a Select Committee for consideration. Police chiefs, horse breeders, recovering gambling addicts, racetrack lawyers, and Reverend Shearer gave evidence before the committee. Its final recommendations in April 1910 significantly narrowed the proposed amendments by permitting racetrack gambling to continue, and modestly limiting the number of race meetings that a jockey club could hold annually. The debate prior to the third reading of

\textsuperscript{356} Ibid., at 890-891. 
\textsuperscript{357} Ibid., at 894. 
\textsuperscript{358} Ibid., at 889. 
\textsuperscript{359} Ibid., at 918. 
\textsuperscript{360} Ibid., at 877.
the Miller Bill centred around whether to adopt the committee’s recommendations or pass the Miller Bill in its original form.

Those in favour of eschewing prohibition for regulation argued from two positions. The first was that, like the alcohol industry, racetrack betting was well-suited for a licensing regime and could be rid of ‘evils’ through regulatory surveillance. The second position drew a distinction between the racetrack and its patrons, and other off-track gambling venues that facilitated betting on races continent-wide. Mr. J.B. McColl’s comments regarding the committee’s recommendations reveal a classic example of a discursive dividing practice:

They may win or they may lose. But, whether they lose or not, they have enjoyed their sport, they have had their outing. That is the form of recreation they take. They are not injured by it in any way, and to call these men gamblers would be absolutely wrong. With regard to the betting that takes place there, whether it is right or wrong, it is something that has grown up among the British people and has been going on for centuries. … They bet as an incident of the sport, not with the gambling instinct all. … To take the other side for a moment, I may be asked, do you pretend to argue that there are no evils resulting from racetrack gambling? Certainly, very many evils have grown up from race-track gambling. What are they? What takes place in the pool rooms and on the streets? What takes place by the operation of handbooks, in barber shops, in third-rate hotels, in butcher shops, and so on? … That is what can be termed strictly race-track gambling. What I have described as taking place at a well conducted race-meet is not race-track gambling, but an act which is an incident and an incentive to horseracing.

In addition, there was little patience in Parliament for the moral reformers acting like Puritans by classifying a centuries-old British cultural tradition as a criminal practice:

\[362\] *Ibid.*, at 6434-6435. Though used interchangeably with betting and wagering throughout this thesis, the term “gambler” in the eighteenth century was pejorative slang for an individual who cheated or bet exorbitant amounts. “Gaming” was defined as “to play wantonly and extravagantly for money.” On the other hand, the terms “betting” and “wagering” were reserved for a more respectable “pledge upon a casualty or performance.” As Clapson observes, the term gambling “was associated with the lower-class, with cheating and with indulgence.” See *A Bit of A Flutter*, supra, at 1. For these definitions, Clapson cites Dr. Samuel Johnson, *A Dictionary of English Language*, (1983, first published in 1755).
We have had in times past men of very extreme views. Oliver Cromwell attempted to absolutely prohibit horse-racing in England; he also issued an order forbidding the eating of mince pie. Well, Oliver Cromwell is gone, but horse-racing still exists in England.

As does mince pie. Unlike white slavery or opium, racetrack betting did not provide a convenient foreign villain or moral imperative that justified its criminalization. In fact, its ‘Britishness’ seemed to render it legitimate. The racetrack was patronized by no less than royalty, let alone Toronto’s social elite. These people were not ‘criminals,’ they were just being ‘British.’

The desire of the ordinary British citizen to go to race meetings, to see contests between horses and to bet on horse-races is a part of the British character, and I do not see why we should interfere with that desire in the way that is proposed in this legislation. The Britisher values above all things his liberty of personal conduct and he resents the attempt of somebody else to interfere with it.

As a result, the debate turned to the issue of legislating morality versus British liberal conceptions of the individual’s relationship with the state and law:

It is the right of the British people to settle moral questions for themselves, and for 150 years they have never admitted the right of any secular body to settle moral questions for them, or to regulate their conduct. It is the right of the individual, the liberty of the individual, and the only way he can develop character is by exercising the right to decide moral questions for himself … that support which all good citizens give to the law would not be given to the law passed under these circumstances.

The emphasis on British liberalism was not accidental in light of the argument that Miller’s Bill was a ‘Yankee Bill:

But there is this difference between the American character, and the British character. In the British character there is a love of liberty, and British institutions are a success. There is a failure in personal liberty in the United States, and the result is that American institutions are called into question. …In the United States … they are trying to improve character by putting restrictions on it, while at the

363 Ibid., at 6445.
364 Ibid., at 6512.
365 Ibid., at 6489-6490.
same time the great public rights and liberties that should be maintained are disappearing.\footnote{Ibid., at 6514-6516.}

For three days, the House debated late into the evening before accepting the committee’s recommendations and rejecting the Miller Bill. The resulting amendments to the Code changed the framework for regulating racetrack betting in two respects. First, the definition of a common betting-house was amended to include the following subsection:

2. The word ‘place,’ as used in this section and in the preceding section, includes any place, whether enclosed or not, and whether it is used permanently or temporarily, and whether there is or is not exclusive right of use.\footnote{An Act to Amend the Criminal Code, section 1, (1910), S.C., c. 10.}

This provision was designed to eliminate the handbook keepers operating outside of racetracks and in the ubiquitous third-rate hotels and barber shops.

Second, the saving provision found in the former section 204(2) was extended to the former sections 197 and 198 so as to remove any doubt that bookmakers who took bets at the racetrack, and the race associations themselves, did not operate a common betting-house.\footnote{Ibid., section 3.} Nonetheless, 1910 spelled the end of the bookmaker at the Queen’s Plate, as pari-mutuel betting machines provided a more orderly and efficient means of placing bets through the instant calculation of odds based upon the total amount wagered by all betters.\footnote{Cauz, The Plate, supra, at 121. Churchill Downs had used pari-mutuel machines for the Kentucky Derby since 1908.}

Reaction to the amendment was decidedly mixed. In the \textit{Globe}, Macdonald praised the government for taking some measure against betting, but declared that the war was not over.\footnote{“The Racetrack Gambling Bill,” \textit{Globe}, April 16, 1910.} The \textit{World} reflected the views of racetrack interests in expressing relief...
at the defeat of the Miller bill and optimism about a regulatory regime that ended the legal uncertainty surrounding on-track betting. Radical labour press such as Cotton’s Weekly was more concerned with promoting socialism and fighting child labour, but the oldest labour paper in Canada, the Industrial Banner, felt that the government shirked its duty to ‘make good.’

We have no kick coming against horse racing as a sport, but we believe the government showed want of moral backbone when it tampered with the question. The moral sentiment of the Canadian people we believe is not satisfied that the government has sought to compromise by making the evil a little less pronounced. If the evil does exist, and nobody denies that fact, teen [sic] our legislators at Ottawa, both Grit and Tory, should have faced the music. We don’t believe the course taken meets with the approval of the Canadian people.

Miller also pledged that the battle would continue, but Shearer and the MSRCC implicitly acknowledged defeat, turning their energies to other campaigns. By 1914, the MSRCC’s annual meeting’s agenda examined issues under the following headings: weekly rest day; the Canadian Indian; the church and industrial life; the labour problem, child welfare; the challenge to the church; the problem of the city; the problem of the country; social service as a life work; commercialized vice and the white slave traffic; immigration; political purity, temperance; prison reform; and humanising religion.

X: Summary

The Moral and Social Reform Council of Canada and the individuals and groups that preceded its formation viewed themselves as engaged in a continuous project of lobbying politicians to uplift the nation’s moral character. In this case, legislation and English precedents structured the legal conflict in a manner that permitted only the

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372 “We Will Make the Evil a Little Less Pronounced,” The Industrial Banner, (London: Labour Educational Association of Ontario, May 1910). Discussing the debate in terms of morality was not surprising given the involvement of the Trades and Labour Congress of Canada in the MSRCC.
narrowest interpretation of the legal term ‘place,’ thus preserving bookmakers’ business at the racetrack. The *Saunders* decision gave reformers a false hope that racetrack gambling could be suppressed, later dashed by the *Moylett* case and definitively ended with the 1910 amendments to the Criminal Code. More importantly, perhaps, unlike the Chinese gambler, the horseracing meritocracy had the means and voice to resist the formal legal regulation of their beloved British tradition.

In seeking to suppress racetrack betting, the MSRCC targeted the social and political elite of Ontario society. Their power and influence in the Courts and Parliament cannot be underestimated as a factor that led to the failure of the anti-betting campaign. A more preferable analytical perspective recognizes the relationship between space, law and power: the problematic judicial categorization of the racetrack as a place where legal betting occurred, but only under the particular circumstances in *Moylett*, constrained the possible action of the legislators. The resulting legislation officially separated the racetrack from criminal betting houses such as Chinese gambling dens, and solidified the perception of the racetrack as a respectable, gentlemanly sporting venue.

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Chapter Four: Conclusion

An interesting and enduring feature of Canada’s gambling laws is that they provide for legal gaming to occur only in particular places. Following Britain’s legislative framework, Canada’s first gambling laws sought to regulate venues run for the purpose of carrying on a betting business. In addition, during the construction of the national railway, Parliament saw fit to ban the playing of cards on public conveyances. Meanwhile, private bets between individuals were not regulated, and they were difficult to enforce in the courts. In Canada, as in Britain, moral reformers recognized that the most public display of betting occurred at the racetrack. The use of litigation and political lobbying to suppress racetrack betting resulted in stricter legislation that prohibited all betting in public, save for racetracks. This was in no small part due to the influence that racing interests had in the courts and in Parliament. In the meantime, fifteen years of police surveillance pushed Chinese gambling dens further and further into the back rooms, as these socially marginalized and disempowered people did not have the means of mounting a similar campaign of resistance.

This thesis examined the historical process that resulted in a spatially selective legal regime governing Canada’s gambling industry, and shaped the manner in which particular gaming venues are popularly regarded. I contend that reference to the relationship between law, space and moral regulation best describes the complex process of constructing moral and immoral places. One might suggest that the development of a legal exemption for racetrack betting was due more to class dynamics than geography. The historical evidence leads me to another conclusion. Class analysis presumes homogeneity on what was a complex political issue encompassing morality, liberalism
and the role of law. The unequivocal reality is that the gambling debate blurred class boundaries in Canada and the United States of America.\textsuperscript{374} The record of the public debate on racetrack betting in Ontario shows the social and political elite of the country divided on the issue.\textsuperscript{375} Certainly, racetrack owners had political allies. However, to generalize class as the sole determining factor in the creation of a separate legal category for racetrack betting is fallacious.

It is also an oversimplification to suggest that race was the sole determining factor in the creation of a spatially selective regulatory regime. Anderson’s work on the ‘idea of Chinatown’ shows the inextricable link between race and place. I have sought to show that a combination of discursive elements relating to nationalism, religion, race, morality, law and liberalism converged to construct place. Indeed, racial discourse was a central component in the social construction of Chinatown and its gambling dens, as was the ‘Britishness’ of the racetrack in the debate over outlawing betting. But this is only part of the story. The role of law in the process of creating legal distinctions between the two venues was more subtle than, for example, an express legislative provision forbidding the games of fan tan and pak kop piu – a remedy pursued in New South Wales, Australia.\textsuperscript{376} Instead, Canadian law facilitated the regulation of the place as opposed to prohibiting the activity itself. It was this convergence of racial discourse with institutional practice, namely police surveillance, that created the idea of the ‘underground’ Chinese gambling den, not express racial distinctions in the legislation.

\textsuperscript{375} Discerning what subordinate classes thought is difficult. Some working class betters appeared before the Special Committee to avow that racetrack betting had ruined their professional and family lives. The labour press did not devote much space to reporting on the issue.
\textsuperscript{376} An Act to declare fan-tan and pak-a-piu to be unlawful games, S.N.S.W. 1905, No. 35.
Hunt and Wickham describe power as the summary term for the vast array of techniques that coalesce as governance. Three points are important with respect to power: it is constituted within a field of knowledge; its exercise invokes resistance; and it permeates individual relations beyond traditional relationships of class, state or subject.

The regulation of Chinese gambling dens and Ontario racetracks involved a particular type of governmental technique or power dynamic: the formal deployment of law. Working within the perspective of moral regulation, the theoretical aspect of this thesis was first and foremost concerned with law’s role in influencing the power-space nexus and in particular, the manner in which legal practices converged with fields of non-legal knowledge to create ‘governable spaces.’

In order to understand the mutually constitutive relationship between knowledge and power, it is necessary to construct the discursive lineage that creates a body of knowledge. Discourse in this sense is more than language; it refers to more than beyond the words used to convey meaning:

What the concept captures is that people live and experience within discourse in the sense that discourses impose frameworks which structure what can be experienced or the meaning that experience can encompass, and thereby influence what can be said, thought and done. Each discourse allows certain things to be said, thought and done and impedes or prevents other things from being said, thought and done.

Thus, discourse also describes the sets of social and institutional practices or symbols that convey the substance of how a particular object is perceived. The convergence of the moral regulation perspective with geographic theory recognizes that

377 Hunt and Wickham, Foucault and Law, supra, at 81.
378 Ibid., at 12-17.
380 Hunt and Wickham, Foucault and Law, supra, at 6-7.
381 Ibid., at 8.
discourse and its institutional manifestations operate in specific spatial contexts. The importance of this connection is reflected in the following passage from Lefebvre:

Space is not a scientific object removed from ideology or politics; it has always been political and strategic. If space has an air of neutrality and indifference with regard to its contents and thus seems to be purely formal, the epitome of rational abstraction, it is precisely because it has already been occupied and used, and has already been the focus of past processes. Space has been shaped and moulded from the historical and natural elements, but this has been a political process. Space is political and ideological. It is a product literally filled with ideologies. 383

As Foucault observed, “space is fundamental in any exercise of power.” 384 Different fields of knowledge accompany different spaces: consider the different legal and moral consequences of a man hitting another man with a stick in the street, as opposed to in a hockey arena. Hence, the significance of recognizing ‘place’ within the moral regulation perspective is the discursive context provided by spatial specificity: how certain activities are discussed and debated depends upon where they occur.

The mutually constitutive nature of ideological geographies, physical geographies, legal geographies (and sub-geographies relating to race class and gender), in the ‘becoming of place’ is apparent in the study of governing Chinese gambling dens and Ontario racetracks. The Canadian culture of moral reform “involved a re-working of the way in which space was conceptualized by British imperialists in Canada.” 385 Urbanization and development presented a host of governable spaces for moral reformers. Hunt writes:

There was widespread spatial regulation of economic activity through the positive designation of market locations or, negatively, the prohibition of specific

382 Ibid., at 9; and Valverde, Age of Light, Soap, and Water, supra, at 10.
384 Foucault, “Space, Knowledge and Power,” supra, at 252.
economic activities from designated locations; prostitutes and beggars were key targets of such regulation.\textsuperscript{386}

Indeed, one of the hallmarks of the moral reform era was the way that moral discourses defined legal categories of space and, in turn, dictated strategies of, in the case of the Ontario racetrack, positive regulation, or for Chinese gambling dens, coercive suppression.

Hunt’s concept of law as governance facilitates a broader analysis of how the combination of circumstances and discourse in disparate and unconnected social fields converge in such a way as to give rise to an ultimate legislative outcome.\textsuperscript{387} As Hunt notes, morality operates in “complex connections with other elements,” - in the case studies within this thesis, discourses of law, liberalism, nationalism, race, religious belief and British tradition.\textsuperscript{388} This thesis has sought to show that these discourses operated differently in different settings, and therefore spatial context influenced the creation of separate legal categories for places where the same type of behaviour occurred - betting. As such, the legal history of gambling in Canada is one example of how the prevailing notion of a liberal legal discourse that is universal across space and race, is revealed to be contingent upon place. Core liberal principles were cited to resist the infringement of law at the racetracks, but not mentioned in the same series of debates that saw the diminishment of personal search and seizure protections in order to facilitate greater surveillance of Chinese gambling dens.\textsuperscript{389}

\textsuperscript{387} Hunt and Wickham, \textit{Foucault and Law}, supra, at 6.
\textsuperscript{388} Hunt, \textit{Governing Morals}, supra, at 8.
\textsuperscript{389} Both amendments were introduced December 2, 1909: Canada, \textit{Debates}, 1909-1910, at 856.
Foucaultian scholars identify the rise of disciplinary society as an outgrowth of the problem of governing while preserving the principle of individual freedom. Rose writes:

For those who fail to distinguish negative from positive liberty ... all kinds of despotism – from compulsory education, public health, and moral policing – turn out to be identical with freedom. But the link between liberty and discipline was not the outcome of philosophical confusion. Both then and now, philosophical reflections on freedom were linked to the invention of certain ways of trying to govern persons in accordance with freedom.\textsuperscript{390}

Canadian moral reformers did not view their position on racetrack betting as incompatible with liberal political rule. They believed that a coercive strategy of governing by law served a utilitarian purpose because it created in Macdonald’s words, a “cleaner democracy”.\textsuperscript{391} Opponents of moral reform such as E.B. Osler believed in ethical self-formation through non-coercive techniques:

I say they are making much of little and that they are trying to have suppressed by Act of Parliament that which can only be suppressed by the moral teaching of the ministers of this country and the mothers and fathers of the children.\textsuperscript{392}

Thus the philosophical divide between opponents of the Miller Bill and moral reformers was over techniques of governing morals.

Classic liberal thought struggled with this conundrum concerning the authority of society over the individual in regulating morality, and as such made spatial distinctions. John Stuart Mill wrote:

... a new element of complication is ... the existence of classes of persons with an interest opposed to what is considered as the public weal, and whose mode of living is grounded on the counteraction of it. Ought this to be interfered with, or not? Fornication, for example, must be tolerated, and so must gambling; but should a person be free to be a pimp, or to keep a gambling house? The case is

\textsuperscript{390} Rose, “Governing Liberty,” \textit{supra}, at 155.
\textsuperscript{391} Recall third quotation preceding chapter three, \textit{supra}.
\textsuperscript{392} Canada, \textit{ Debates}, 1909-1910, at 891-892.
one of those which lie on the exact boundary line between two principles, and it is not at once apparent to which of the two it properly belongs.

Thus (it may be said), though the statutes respecting unlawful games are utterly indefensible – though all persons should be free to gamble in their own or each other’s houses, or in any place of meeting established by their own subscriptions and open only to the members and their visitors – yet public gaming houses should not be permitted. It is true that the prohibition is never effectual, and that, whatever amount of tyrannical power may be given to the police, gambling houses can always be maintained under other pretenses; but they may be compelled to conduct their operations with a certain degree of secrecy and mystery, so that nobody knows anything about them but those who seek them; and more than this society ought not to aim at. ... I will not venture to decide whether [these arguments] are sufficient to justify the moral anomaly of punishing the accessory when the principal is (and must be) allowed to go free; of fining or imprisoning the procurer, but not the fornicator – the gambling-house keeper, but not the gambler.  

Thus, Mill identified three potential moral geographies with distinct regulatory regimes: the private realm, in which individuals are free from regulation; the purely public realm, which should be governed by law; and the semi-public realm created by prohibition in the public arena.

The location of Chinese gambling dens in Chinatown constituted a physical geographic separation from mainstream British-Canadian society. The related ideological geography of a community physically, spiritually and morally apart from the rest of society spurred scurrilous imagery of the activities within. The fear that Chinatown might morally contaminate ‘whites’ through exposure to gambling, opium use, or even sexual slavery justified a coercive governmental programme of police surveillance and relentless attempts at suppression of activities constructed as ‘Chinese crimes.’ This legal geography influenced the physical geography of Chinese gambling dens, as they relocated from public storefronts to backrooms outfitted with elaborate

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escape means within catacombs of hallways. In short, Chinese gambling dens came to occupy the semi-public realm. Hence the enduring perception of the Chinese gambling venue as an underground operation with an accompanying stigma of criminality.

The physical geography of the racetrack gave rise to two features of the debate: as an open public space, moral reformers viewed it as a prime corrupting influence on the morals of society. The ideological geography of the racetrack as a venue steeped in British tradition and patronized by society’s elite influenced the legal geography, as judges refused to characterize racetrack betting as analogous to off-track betting houses, and Parliamentarians resisted calls for prohibition. In addition, the physical geography of the racetrack facilitated the imposition of a regulatory licensing regime: betters in an enclosed ring were easily supervised. As a result, racetracks fell on the other side of Mill’s boundary as public places in which commercialized betting could occur with legal sanction.

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These case studies illustrate the important role that law can play in the power dynamics of moral spatialization. Chinese games held a cultural importance for the players no less worthy than the importance of the racetrack to white Canadians. However, in the view of lawmakers, the racetrack was frequented by the “ordinary British citizen” while the Chinese gambling den housed “inveterate gamblers.” The interwoven discourses of morality and race produced legal distinctions resulting in a social geography of gambling that endures in contemporary times.

I conclude with the observation that in some instances, law’s geographic application is inconsistent. It reflects pre-existing power relations, it may reflect racial
biases, and in doing so, it makes moral distinctions that impact how we regard different places. Recognizing the spatial contingency aspect of law is an important factor in understanding its powerful constitutive role in defining places and the people that frequent them. These points are well put in Reverend Shearer’s prediction that the 1910 amendment to Canada’s gambling legislation would have the following effect:

It would result in a man being held to be a criminal for instance in one place and a decent citizen, a good citizen, a gentleman if you like, in another place; or in his being a criminal at one time and a decent citizen or a gentleman at another time; he is a criminal outside the enclosure, he is a gentleman inside the enclosure while doing exactly the same thing and comporting himself in exactly the same way.\textsuperscript{394}

Shearer’s comments encapsulate the effect of law on the power-space nexus: prevailing conceptions of place historically shaped the law and its enforcement, with the ultimate consequence of creating distinct legal and moral geographies that fostered enduring social attitudes about the places where people gamble.

\textsuperscript{394} Canada, “Evidence before the Special Committee,” \textit{supra}, at 488.
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