

**THE *ST. CLAIR* CASE AND THE REGULATION OF THE
OBSCENE IN PRE-WORLD WAR ONE ONTARIO**

by

Lyndsay Mills Campbell

B.A., The University of British Columbia, 1990

M.A., The University of Toronto, 1991

LL.B., The University of British Columbia, 1995

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Faculty
Department of Law

The University of British Columbia
Vancouver, Canada

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Abstract

In 1912 in Toronto the Congregationalist lay minister, Robert B. St. Clair was arrested and convicted of circulating obscene literature, after he published and distributed an explicit description of a performance called *The Darlings of Paris* that played at a local burlesque house called the Star Theatre. St. Clair's experiences and its aftermath provide a lens through which to view the problem that the regulation of obscenity posed for moral reformers in Toronto during this period. Adopting a broad understanding of the concept of regulation and paying close attention to the discourses evident in a variety of primary sources, this thesis examines the *St. Clair* case against its religious, literary, social and legal backdrop. It discusses the origins of Canadian obscenity law and contrasts the regulation of the obscene in Canada during this period with the situation in England and the United States. This thesis shows that the ability of moral reformers in Toronto to regulate obscenity, and the Toronto stage in particular, was on the decline by 1913. Doubt was creeping into legal and extra-legal discourses that the words obscene, indecent and immoral had absolutely certain meanings, but there was still substantial certainty that art was morally uplifting. The sense that art could have immoral, indecent or pornographic aspects, and could therefore be difficult to distinguish from obscenity, had not yet entered Canada's, and particularly Ontario's, legal sensibility, but it was on its way.

Table of Contents

Abstract	ii
Table of Contents	iii
Acknowledgments	iv
Chapter One: Introduction and Approach	1
Chapter Two: Protestantism in Toronto in the Early Twentieth Century	9
The Churches and Canadian Philosophy in the Nineteenth Century	9
Anglicans	10
Methodists	16
Presbyterians	20
The Congregational Church of Canada and the Congregational United Brethren	27
Minor Protestant Groups	28
The Decline of the Major Protestant Churches in the Early Twentieth Century	29
Conclusion	37
Chapter Three: The Texture of a Culture	39
Education	39
Literature, the Stage and Criticism	41
The Clergy, the Women's Groups and Censorship	52
The Police and the Courts	60
The Working Classes and the Performers on the Burlesque Stage	64
Conclusion	67
Chapter Four: Obscenity and Law	70
The Wider Context: Theorizing about Obscenity	71
Canadian Obscenity Law by the 1910s	85
Conclusion	106
Chapter Five: St. Clair	108
The events leading up to St. Clair's arrest	108
Summer 1912	116
St. Clair's Trial	119
The Aftermath of St. Clair's Trial	123
The Normal School Incident	128
Law Reform Movements	132
The Stair Trial	135
After the Stair Trial	138
St. Clair's Appeal	140
The Aftermath	146
Conclusion	148
Chapter Six: Conclusion	151
Appendix I: St. Clair's Bulletin	158

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Chapter One: Introduction and Approach

This thesis examines the development of obscenity law in Canada, and in particular Ontario, up to 1914. The law that regulates the field of obscenity works upon a complex human phenomenon: representations, verbal or non-verbal, written or spoken, with a wide range of purposes and concerns, that lie on a spectrum of artistic merit that is itself very often hotly contested, and that elicit intense, often completely irreconcilable opinions among large numbers of both reasonable and unreasonable people. This thesis examines how obscenity was understood in Toronto just before World War I, and it looks at what obscenity, thus conceived, and its regulation meant to Toronto society at that time.

Today representations that tend to attract the label obscene generate several types of discourses: legal, moral, ethical, religious, literary, artistic. Lawyers may argue about the test for determining whether or not a particular representation is obscene. Literary and artistic scholars may study the aesthetic conventions of obscenity and pornography. Gays and lesbians may argue that the label obscene is often wrongly attached to homosexual erotica as a result of unethical heterosexist biases and that gay and lesbian erotica can be an important medium for self-expression and self-fulfillment. Part of the complexity of dealing legally with obscenity is negotiating the different significations that a representation can have within different discourses. In Toronto in 1912, matters deemed obscene were addressed within legal, moral, ethical and religious discourses, but there was very little discussion of them in terms of literature or art. It was taken for granted that obscenity and art had nothing much in common. This thesis examines the nature of the discussions of obscenity at this time, why they were the way they were, and what they meant for law and for culture more generally.

When I use the term obscenity, I am referring to those words or pictures or practices that attract, or attracted, the label obscene in the courtroom, in the police station or in the drawing-room. I do not often speak of pornography in this thesis, but when I do, I mean sexually graphic verbal or visual material. The other words that frequently appear are "indecent" and "immoral." The full meaning of these terms is explored in chapter four. Generally speaking, immoral actions contravened prevalent ideals of chastity and marital sexual fidelity. Indecent representations tended to be suggestive, rather than explicit, depictions of activities that went on behind closed doors, between or within human bodies. The acts themselves were not necessarily immoral, but to depict them or suggest them in public was indecent, and if the depiction was particularly explicit it might be obscene. Obscenity, though, was more than an extreme form of indecency: it broke discursive rules, flouted conventions, offended through its affront to the idea of the normal. It was usually about sex or, less commonly, violence.

My aim with this thesis is not to produce a theory of whether or how obscenity should be regulated today. While I am concerned about the possible effects of pornography on society, this thesis is not an attempt to argue for or against regulation or unbounded free speech. Nor is it an attempt to carve out a middle ground between those two positions. This thesis is an attempt to articulate how obscenity was understood and regulated (in the widest sense) during a particular period of Ontario history and what that understanding and regulation meant.

A small but significant number of reported and unreported obscenity cases were heard in urban Ontario during this period. One case, *R. v. St. Clair*,¹ was notorious and generated a great deal of public discussion of obscenity and its regulation; *St. Clair* is the lens, ultimately, through which my views of obscenity during this period are tested, but its context could not be presented without attention to the earlier cases. This period is one in which, as many authors have noted, the English and American conceptions of obscenity were in a state of flux, so that it seems not unreasonable to examine the Canadian record for points of similarity and contrast. As well, Ontario had several of the first reported cases under the *Criminal*

1. *R. v. St. Clair* (1913), 21 C.C.C. 350 at 372 (Ont. C.A.).

Code of 1892,² and then, as now, the decisions of the Ontario courts (and particularly the Ontario Court of Appeal) carried considerable weight in the criminal courts of the other provinces of Canada. As a part of the English-speaking world, Ontario's experiences illuminate and refract light from developments elsewhere, in England and the United States. While I do consider briefly the reported cases on obscenity and indecency from other jurisdictions, my focus is on urban Ontario, particularly Toronto. It may be that quite different patterns of regulation characterized, for example, the "wild" north (as Karen Dubinsky describes it³), and I think the rural regions, and the north in particular during this period, should be considered separately first, on their own merits.⁴

The major primary sources for my research on *St. Clair* and a few other cases from early twentieth-century Ontario are contemporary newspapers, many case files from the Archives of Ontario, some reported legal cases, and various materials in the United Church and Law Society of Upper Canada archives. My approach to these materials is to pay careful attention to their language and to the circumstances of their production. Written records must be understood within the discourses around obscenity that prevailed when they were created. Discourse is most usefully understood as a sort of frame of reference, made manifest in language and associated with particular institutions, that has a large part in constituting the subjectivities, identities, and relations of persons. Discourses put in place a set of linked signs that structure what can be thought, known, experienced, said and done. Discourses often conflict with each other.⁵ By focusing on discourse, I do not mean to exclude the importance of human agency in human events. Rather, what can be conceived or done by a particular agent is shaped by the prevailing currents of thought and behaviour.⁶

Foucault's remarks about the pervasiveness both of power in social relations and of resistance to power are also germane, as they operate through the combination of agency and discourse.⁷ A multitude of voices and discourses within urban Ontario society at the turn of the century governed and were governed by prevalent ways of speaking and thinking in law, art, literature, theology and philosophy. These voices made their mark on the realm of the obscene and its regulation. This thesis explores the interrelationship of regulatory processes and understandings of obscenity, indecency and immorality. Regulation, in this formulation, is about more than legislation, more than prosecution and conviction, more even than policing with all of its sometimes tyrannical exercises of discretion - regulation is about certain understandings of obscenity, conceived within certain discourses, seeking to prevail in ever-broader realms.⁸ This conception of regulation makes it possible and necessary to consider not just statutes, court cases or overt acts of censorship by police but also the involvement of non-state actors, like women's groups and churches, in deciding what people could read or watch. This conception of regulation also encompasses the idea that it is not just explicit, legal standards that come into play in a field like obscenity but also informal, often unarticulated understandings of the right, the good and the appropriate; these notions are held and contested by state and non-state actors.

2. *Criminal Code*, S.C. 1892, c. 29.

3. Karen Dubinsky, *Improper Advances: Rape and Heterosexual Conflict in Ontario, 1880-1929* (Chicago: University of Chicago Press, 1993).

4. A hint that the northern and rural areas of Ontario may have treated obscenity differently from the urban areas, or ignored it completely, comes from the annual reports of the Ontario Provincial Police, which indicate that they dealt with only about five cases involving obscene language or literature between 1909 and 1914, which is far fewer than urban police forces dealt with during the same period: Provincial Archives of Ontario, Annual Reports of the O.P.P., 1909-1926, RG23-9-0-1.1/ B-12, 1.1, Box 1.

5. See Alan Hunt and Gary Wickham, *Foucault and Law: Towards a Sociology of Law as Governance* (London: Pluto Press, 1994) at 7-8; and with respect to discourses on sex, see Michel Foucault, *The History of Sexuality: Volume I: An Introduction*, trans. Robert Hurley (New York: Vintage Books, 1990; originally published as *La Volonté de savoir*, Paris: Editions Gallimard, 1976) at 33-35 [hereinafter *History of Sexuality*].

6. Kirsten Johnson describes the importance of remembering agency in a discourse analysis in *Undressing the Canadian State: The Politics of Pornography from Hicklin to Butler* (Halifax: Fernwood Publishing, 1995) at 10-11.

7. Johnson, *ibid.*

More specifically - that is, at the level of the sentence, as it were, as opposed to at the level of the text as a whole - my general approach to my primary materials is to perform upon them a close, literary reading. I take as a starting point the understanding that language is, as Mariana Valverde calls it, "a kind of object among objects."⁹ Following Robert Scholes, I would argue that discourses rely on the operation of "codes." Scholes calls his approach to texts "semiotics," the study of signs. His idea is that users of language, writers and readers, have "divided psyches traversed by codes."¹⁰ The idea is that particular linguistic patterns, produced and shared by those who use a language, reflect and produce particular conceptions of reality. Scholes is particularly interested in literary language, and in those characteristics of texts that give them their "literariness"; other disciplines, such as law, will have their own codes. It is also clear that the same codes may cross from the texts of one discipline into the texts of another: witness Scholes's examination of the way that the clitoris is elided in the explicit descriptions of female anatomy not just in John Cleland's *Fanny Hill* or D.H. Lawrence's *Lady Chatterley's Lover* but also in Freud's *Three Essays on the History of Sexuality*.¹¹ Mariana Valverde's *Age of Light Soap and Water* is in many senses an exploration of the way that expressions relating to cleanliness, whiteness and purity operated as codes for a particular moral and racial order in early twentieth-century Canada. Valverde makes it clear that these codes operated across literary, legal, journalistic and other disciplines.¹² I would only add that I understand codes to be very specific linguistic practices, expressions like "white slavery" or "social purity," while "discourse" refers to a looser assemblage both of these terms and of the concepts to which they point.

It may seem odd that I am focusing so much on language, where the field of obscenity deals so frequently in images. The first reason is that I am predominantly interested in approaches to obscenity and arguments about it, rather than in the content of the material itself. In many instances the material was ephemeral and can no longer be analyzed for its own sake. Another reason for talking about how obscenity was discussed, rather than about obscenity itself, is to avoid taking a certain narrative pose. Hunter, Saunders and Williamson observe, following Foucault, that since the seventeenth century our culture has taken the rhetorical position that sexuality is the great secret of our beings, that which is repressed and insufficiently discussed, whereas in fact we talk a great deal about sex through our fixation on repression.¹³ Much writing about pornography contains copious excerpts from it, placing the writer in the position of heroic taboo-breaker. As Hunter, Saunders and Williamson say, "[t]he rhetoric of taboo-breaking that dictates copious quotation simultaneously deprives these books [certain analyses of pornography] of the intellectual capacity to subordinate the excitatory power of pornography to the explanatory power of analysis."¹⁴ It is not my purpose to break taboos or to subordinate my analysis to the entertainment value provided by the texts I am examining (most of them could hardly be called particularly excitatory).

Occasionally, however, it may be necessary to attempt to decode "obscene" materials myself. Lynn Hunt's

8. For a description of the idea of regulation with which I am working, see Alan Hunt, "Law as a Constitutive Mode of Regulation" in A. Hunt, *Explorations in Law and Society: Toward a Constitutive Theory of Law* (New York: Routledge, 1993) 301. Hunt examines the varied ways in which social life is subjected to regulatory intervention, not just by government, as traditionally conceived, but also by quasi-state institutions, professional agencies and other bodies that exert a governing influence on human actions. Other literature with methodological similarities includes Hunt and Wickham, *supra* note 5; Philip Corrigan and Derek Sayer, *The Great Arch: English State Formation as Cultural Revolution* (Oxford, UK: Basil Blackwell Ltd., 1985); Mariana Valverde, *Sex, Power and Pleasure* (Toronto: Women's Press, 1985); Mariana Valverde, "The Love of Finery, Fashion and the Fallen Woman in 19th-Century Social Discourse" (1989) 32:2 *Vict. Studies* 169; and Richard Ericson, *Policing the Risk Society* (Toronto: University of Toronto Press, 1997).

9. Mariana Valverde, *The Age of Light, Soap and Water* (Toronto: McClelland & Stewart, 1991) at 10.

10. Robert Scholes, *Semiotics and Interpretation* (New Haven: Yale University Press, 1982) at 15-16.

11. "Uncoding Mama: The Female Body as Text," *ibid.*, 127.

12. Valverde, *supra* note 9.

13. Ian Hunter, David Saunders & Dugald Williamson, *On Pornography: Literature, Sexuality and Obscenity Law* (Houndsmills, England: MacMillan Press, 1993) at 28-29; *History of Sexuality*, *supra* note 5.

14. Hunter et al., *ibid.* at 4.

study of the pornography of the French Revolution provides a useful point of access for determining the discursive “meaning” of such materials,¹⁵ in that she makes evident the political uses of pornography at that time. Her observations and conclusions are illuminated as well by Monica Juneja’s study of the gendered iconography (but not the pornography) of the French Revolution.¹⁶ These two studies, especially read together, suggest that sexually graphic imagery can be, and perhaps often is, a form for political criticism. If one is sensitive to the way current events were formulated discursively during a particular period, one may see the connections between the representations of sexuality and contemporary concerns. It may be possible to hypothesize about at least some of the discursive habits existing in later “obscene” visual works in Ontario from a close consideration of the connections between pornography and other visual realms in these other places and times. The work of Hunt and Juneja, therefore, leads back to a semiotic approach to texts of all sorts.

My overall conception of how one approaches a historical text follows writing in the hermeneutic tradition, particularly that described by Hans-Georg Gadamer.¹⁷ Ian Ward introduces Gadamer’s pivotal work on philosophical hermeneutics:

Gadamer specifically addressed the respective roles of author, text and reader, and by constructing his hermeneutic theory of understanding granted each a mutually dependent role. More precisely, he suggested that the historicity of all texts meant the reader, himself subject to socio-historical ‘prejudices’ or ‘fore-understandings’, would read a text that was historical, and had been created by an author who was historically situated. This did not mean that authorial intent was possible provided the reader knew that the text was historically situated, but it did suggest that the text, as constructed by the historically situated author, was always a socio-historical product.¹⁸

Without expecting to determine authorial intention, I agree that there are historically specific constraints on the interpretations that can responsibly be made of any given text. Although Gadamer describes his endeavour as solely to identify and articulate the epistemological foundations of the human sciences, and disavows any intention to prescribe a methodology for the human sciences, Gadamer has, in *Truth and Method*, also described the nature of historical understanding and particularly the process of understanding texts.¹⁹ As Ward says, Gadamer explores the “problem” of historical self-consciousness, the recognition that we and historical texts are always historically situated, so that timeless interpretation is never possible.²⁰ A historian can never isolate a past event or old text and examine it from within its own historical context.

The novelty of Gadamer’s approach is that rather than thinking of the historian as the subject and the text as the object, he imagines the two in conversation. The historian focuses on the text, and it is the text that

15. Lynn Hunt, ed. *The Invention of Pornography: Obscenity and the Origins of Modernity, 1500-1800* (New York: Zone Books, 1993).

16. Monica Juneja, “Imaging the Revolution: Gender and Iconography in French Political Prints” (1996) 12 *Studies in History* 1.

17. I find Gadamerian hermeneutics to be epistemologically more satisfactory than other philosophical positions one might take, particularly Derridean deconstruction. Basically, I believe that we can speak reasonably about the meaning of texts. I agree generally with Gary B. Madison, who takes the same position, in “Beyond Seriousness and Frivolity: A Gadamerian Response to Deconstruction” in Hugh J. Silverman, ed., *Gadamer and Hermeneutics* (New York: Routledge, 1991) 119.

18. Ian Ward, *Law and Literature: Possibilities and Perspectives* (Cambridge, U.K.: Cambridge University Press, 1995) at 32-33.

19. Hans-Georg Gadamer, *Truth and Method*, 2d ed., J. Weinsheimer & D.G. Marshall, eds. & trans. (New York: Crossroad, 1991) at xxviii. For a condensed version of the argument, see Hans-Georg Gadamer, “The Problem of Historical Consciousness” in P. Rabinow & W.M. Sullivan, eds., *Interpretive Social Science: A Second Look* (Berkeley, CA: University of California Press, 1987) 82 [hereinafter “Historical Consciousness”].

20. “Historical Consciousness,” *ibid.* at 89.

determines the historian's understanding.²¹ The historian never gets into the mind of the text's author.²² Gadamer invokes the concept of the hermeneutic circle: when a historian reads a text, she begins with her own understanding of the matters of which the text speaks. This understanding proceeds from her "tradition," which is the context in which she lives, works and exists - in Gadamer's words, "the light wherein all that we carry with us from our past, everything transmitted to us, makes its appearance."²³

A historian begins with her own understanding of the matters of which the text speaks. As she reads, she selects from among the text's possible meanings the one that seems best. What seems best will be governed by her own opinions and other preconceived notions. She is not free, however, to get anything at all out of the text. Gadamer says that a reader will always expect the text to inform her about something, something about the world or the author, something outside the text itself. A consciousness informed by the authentic hermeneutical attitude, Gadamer says, will be receptive not only to familiar ideas but also to those that seem foreign. The historian will become aware of the points where her own knowledge or experience fails her, or where her opinions are different from the author's, and these points signal her to consider renovating her views. She then holds both new and old ideas together in her mind, entertaining them both. Even if she eventually chooses one view over the other, she still retains the two in a dialectical relationship. Most critical is this attitude of receptiveness to the text, which lets the text speak against the reader and challenge her preconceived notions - what Gadamer calls prejudices.²⁴ Gadamer uses the word "horizon" to describe a reader's historically and contextually situated consciousness. The reader will be receptive to the origins and entirely foreign features of those things that come to her from outside her own horizons.²⁵ Through the process of hermeneutic interpretation, her horizons expand.

An argument that is often made, in some form or other, with respect to hermeneutic views is that, if every interpreter has somewhat different horizons, then there is no way of arriving at an interpretation of a text that is better than others. James F. Bohman takes on this argument in his essay "Holism without Skepticism": he argues that such scepticism is founded on a fundamental error of logic, which is in assuming that the tradition, or context, in which we all work and live provides conditions that limit our interpretations, whereas in fact they enable our interpretations. He remarks on a debate between James Clifford and Clifford Geertz with respect to ethnographic interpretation. Bohman writes:

How does one, then, responsibly and accurately portray another form of life in the categories of one's own? As correctly as possible, constantly revising and judging the adequacy of interpretation in light of an openness to new and broader evidence, discovered in this case by free and open dialogue with other interpreters and with participants in that form of life. When faced with these constraints, ethnography should not, with Clifford, produce "multiple interpretations," but rather, with Geertz, produce better, epistemically and morally justified ones, the evidence for which is an increased space for dialogue and mutual criticism.²⁶

21. *Ibid.* at 125.

22. *Ibid.* at 127. Making this point perhaps more clearly, Gadamer begins *Truth and Method* with an analysis of the phenomenon of understanding works of art. He observes, "[t]he mens auctoris is not admissible as a yardstick for the meaning of a work of art": *supra* note 19 at xxxi. He says as well, *ibid.* at 311:

[i]t is quite mistaken to base the possibility of understanding a text on the postulate of a "con-geniality" that supposedly unites the creator and the interpreter of a work.... But the miracle of understanding consists in the fact that no like-mindedness is necessary to recognize what is really significant and fundamentally meaningful in tradition. We have the ability to open ourselves to the superior claim the text makes and to respond to what it has to tell us. Hermeneutics in the sphere of philology and the historical sciences is not "knowledge as domination" - i.e., an appropriation as taking possession; rather, it consists in subordinating ourselves to the text's claim to dominate our minds.

23. "Historical Consciousness," *supra* note 19 at 87, 136.

24. *Ibid.* at 132, 137.

25. *Ibid.* at 132. See also David E. Linge, "Editor's Introduction" in Hans-Georg Gadamer, *Philosophical Hermeneutics*, David E. Linge, ed. & trans. (Berkeley, CA: University of California Press, 1976) xi at xii, xviii-xx.

Bohman, then, is optimistic that interpretations that are “better” than previous ones can be determined. This type of reasoning accords with reasoning commonly voiced by another school that partakes of the post-Gadamerian interpretive tradition, the law and literature movement. Where Gadamer sees no essential difference between the historian and the legal interpreter, except for a difference in their politics,²⁷ writers in the law and literature movement such as James Boyd White compare legal interpretation with the literary version and find, again, that there is no essential difference.²⁸

White has examined the questions about indeterminable meanings and the trouble with determining authorial intention and has said of both that they are really the wrong questions. He acknowledges that not only legal but also literary texts never have single, unitary messages that are restatable in simple terms, being too complex, too rich for easy paraphrasing. Both literary and legal texts have “a shifting relation to the cultural context upon which much of their meaning necessarily depends.” However, White sees the uncertainties of texts to be an essential part of them. Like Gadamer, he compares the interaction between the text and the reader to a conversation, and he imagines each text as prefiguring what he calls an “ideal reader.” Each actual reader is invited by the text to become the ideal reader, a process which shapes the readers into an interpretive community whose members have a “family resemblance.” This community publicizes and disciplines the readings that legal interpreters give to texts. The law is not composed of discrete rules with clear and plain meanings but is a culture of argument, external to each individual; the law cannot be described or analyzed completely, but it is not impossible to say something intelligible about it. White views as misconceived the search for authorial intention in American constitutional jurisprudence (and elsewhere), not (simply) because authorial intention cannot be known but because meaning must always be determined by the reader of the text, through reference to the reader’s own cultural context.²⁹

The views, which White and Gadamer share, that the text limits the interpretations possible and that the search for authorial intention is misconceived, seem valid and necessary. So does Bohman’s insight that better interpretations may be found through careful consideration of context. For literary critics and historians these assurances may be sufficient to ground disciplinary knowledge, but for those who perform functions in the legal system they still leave unanswered the key questions: who is the interpretive community that interprets the text and how do members of that community do it?³⁰ Although this thesis is about history, a discipline in which coming to better interpretations is probably an adequate goal, this thesis is also about judges and law-makers of other descriptions, whose activities I analyze. In considering the problem of legal interpretation in the late twentieth-century, I mean to place in the foreground the idea that

26. James F. Bohman, “Holism without Skepticism: Contextualism and the Limits of Interpretation” in David R. Hiley, James F. Bohman and Richard Shusterman, eds., *The Interpretive Turn: Philosophy, Science, Culture* (Ithaca, NY: Cornell University Press, 1991) 129 at 151.

27. In *Truth and Method*, *supra* note 19 at xxxii, Gadamer contrasts the “contemplative” nature of the historian’s task to the “practical” task of the judge (who, in passing judgment, may have to consider aspects of legal politics that do not affect the historian), but he asserts that the legal understanding of a law is the same for both. David Couzens Hoy takes up this point and, in my view, correctly clarifies Gadamer’s position by arguing that the judge still interprets these other concerns and does not merely apply personal, non-legal, non-textual interests to the situation, as some scholars have suggested: “Interpreting the Law: Hermeneutical and Poststructuralist Perspectives” (1985) 58 S. Cal. L. Rev. 135. See also Patrick Nerhot, who agrees on the similar positions of judges and historians, in *Law, Writing, Meaning: An Essay in Legal Hermeneutics*, trans. Ian Fraser (Edinburgh: Edinburgh University Press, 1992) at 24-29. For an example of how statutory interpretation might be viewed through a Gadamerian lens, see William N. Eskridge, Jr., “Gadamer/Statutory Interpretation” (1990) 90 Columbia L. Rev. 609 at 659-66.

28. James Boyd White, “Reading Law and Reading Literature: Law as Language” in *Heracles’ Bow: Essays on the Rhetoric and Poetics of the Law* (Madison: University of Wisconsin Press, 1985) 77. For an overview of this movement, see Ian Ward, “Law and Literature” (1993) 4 Law & Critique 43; and Anne McGillivray, “*Reserche Sublime*: An Introduction to Law and Literature” in *Adversaria: Literature and Law* (1994) 27 Mosaic i.

29. White, *ibid.*

30. Different forms of this critique come from different people. David Kennedy, for example, accuses Gadamer and others in his school of paying no attention to power: “The Turn to Interpretation” in (1985) 57 S. Cal. L. Rev. 251. Gadamer and Jürgen Habermas have debated whether Gadamer’s theory is inherently too conservative to permit critique of the tradition from which the interpreter operates: see Hoy, *supra* note 27 at 153-64; Eskridge, *supra* note 27 at 630-32.

legal interpretation is, and always has been, hermeneutic and difficult, framed within a context by particular actors. Interpretation is done within interpretive communities framed by particular ethical impulses. These interpretive communities are relatively open, involving not just judges and lawyers but also a variety of other state and non-state actors. My goal is to read the texts with a sensitivity to what I can know about the institutional and discursive contexts in which each speaker or writer acts, and to be aware that these individuals had their own interpretive horizons, just as I have mine.

I begin by describing, as far as reasonably possible, the cultural context of early twentieth-century Toronto. Because of the involvement of members of the Protestant clergy in censorship and moral reform efforts during that period and particularly in the *St. Clair* case, I start with the histories of these churches and the intellectual preoccupations of their clergy. This chapter - the second - sets out, in effect, those more intellectual dimensions of the culture that relate to the conceptualization and regulation of obscenity. While the beliefs of theologians or philosophers do not tell the whole story of a culture, they do provide insights that can usefully be compared with those gleaned through the methodologies of social historians.³¹ I rely heavily on this latter type of work in chapter three, in which I describe the texture of life in Ontario at the turn of the century. I consider the manifestations of nationalism and focus on how it affected the literary and especially theatrical dimensions of Ontario's culture and how these areas were regulated. Examining these aspects of the culture helps to explain why the law around obscenity and censorship during this period in Ontario's history differed from that in the United States and Britain. In the fourth chapter I turn to the law of obscenity itself, examining the events in Ontario in the light of certain theoretical positions developed with regard to the United States and England in the late nineteenth century. The construction of gender in Ontario is an essential component of the analysis in this chapter, as it is in chapter five as well. Chapter four moves from a discussion of broader trends into the specific cases, legislative changes and censorship practices between 1892 and 1911 that made up the backdrop to the *St. Clair* case.

The fifth chapter brings together the many different currents that emerge from chapters two, three and four and demonstrates how they affected and were affected by the experiences of Rev. Robert B. St. Clair. Chapter five is most reliant on primary texts, and in it my attention to discourse will be most apparent. The earlier chapters ground that discourse not only in the intellectual currents of the time but also in the material culture, which, like human agency, must not be forgotten in the study of discourse.³²

The sixth chapter draws conclusions about the nature of obscenity law in Ontario during this period and about the effect and regulation of obscenity, indecency and immorality in that society. During the first decade of the nineteenth century, Ontario's taste in literature, and particularly in theatre, was becoming increasingly affected by the developments in literary realism that were taking place elsewhere in Europe and the United States. For a variety of reasons - social, economic, theological and otherwise - the self-appointed guardians of the public morals felt their grip on the reins of public taste to be slipping. They tried to broaden their base of support and step up prosecutions, but their success was limited. Despite many commentators' habit of stating otherwise, the immoral, the indecent and even the obscene were becoming less universally recognizable, in the face of changing artistic sensibilities, journalistic and literary practices, gender roles and attitudes to discussions of sex. The range of topics that could not decently be referred to in public was getting smaller. The idea emerged that art could depict moral dilemmas without

31. Leslie Armour and Elizabeth Trott make this point in *The Faces of Reason: An Essay on Philosophy and Culture in English Canada, 1850-1950* (Waterloo, ON: Wilfrid Laurier University Press, 1981) at 507-8.

32. The need to take care to do this is emphasized by Ian Small, in "The Economies of Taste: Literary Markets and Literary Value in the Late Nineteenth Century" (1996) 39:1 *Engl. Lit. in Transition* 7 at 16:

a true "economy of taste" requires us to attend to the *relationship* between how the market was understood in the late nineteenth century, and how it actually worked. Bearing in mind the caveats I raised earlier about the attraction of sweeping generalizations, I should nonetheless like to propose that one reason why this question has not been addressed relates to the dominance in cultural history of the concept of discourse and the way in which modern critics have tended to reify discourse at the expense of explaining its social relations - that is, at the expense of attending to questions of authority and status, and therefore of identifying the relationship of discourse to social practice.

being immoral. This idea was one of the first harbingers of a later idea that obscenity was an inherent property of texts that could be identified through a consideration of aesthetics divorced from morality. Ontario's law had not reached that point by the early 1910s, but, as a result of changes in literary and theatrical taste, the first steps had been taken in that direction. In pre-World War I Ontario, literary taste, changes in theology and the urbanization of culture led to divisions among the middle and upper classes about the scope of the indecent and the immoral, and these divisions undermined the legal understanding of obscenity, as well as the legitimacy of censorship practices. The *St. Clair* affair and its aftermath demonstrate the complexity of the cultural accretions around obscenity, its threat to the legitimacy of moral reform movements and its increasingly uncertain essence.

Chapter Two: Protestantism in Toronto in the Early Twentieth Century

Of central importance to the culture of moral reform at the beginning of the twentieth century and to censorship efforts in particular are the three major Protestant denominations of the time: the Anglicans, the Methodists and the Presbyterians. The much smaller Congregational Church and its even smaller faction, the Congregational United Brethren, also require some description as Rev. R.B. St. Clair was associated with both. This chapter describes the background differences among these different bodies and their adherents and sets out the intellectual preoccupations of members of those churches during that period. The clergy's preoccupations had directly and heavily influenced Ontario's political culture since shortly after its founding but were starting to become less influential in this realm. On issues that involved both morality and politics, the laity did not fully accept that the clergy ought always to have the last word. The gradual decline in the influence of the churches is a major subtext, in my view, to the shifts in Canadian obscenity law that occurred during this period. It is, therefore, with the churches that I start.

The Churches and Canadian Philosophy in the Nineteenth Century

The largest Protestant denominations in Toronto in the early twentieth century were the Methodists, Presbyterians and Anglicans. Presbyterians, Anglicans and Roman Catholics each made up about 20 per cent of the population and Methodists between 25 per cent and 30 per cent. The next largest single religious configuration was the Baptists, with just over five per cent. These broad numbers, however, give the impression of stasis, which was not the case at all; these groups were, and had been for a century, locked in rivalry for the souls of believers. By 1911, the census revealed that 26.6 per cent of the Ontario population counted itself Methodist, a decline from 30.5 per cent in 1901 and 30.9 per cent in 1891. Presbyterianism had suffered a less dramatic decline, from 21.4 per cent in 1891 to 20.85 per cent in 1911. Anglicanism had gained slightly in strength, partly because of significant English immigration, from 18.3 per cent in 1891 to 19.4 per cent in 1911. The major gain, however, again mainly attributable to immigration, was made by Roman Catholicism, which had risen from 16.9 per cent in 1891 to 17.9 per cent in 1901 to 19.2 per cent in 1911.¹ To understand the meaning of these numbers it helps to understand the Canadian history of these various movements.

William Westfall describes the tremendous change, over the nineteenth century, in the picture of religious adherence in the area that became Canada. Initially the Protestant churches were small and almost 25 per cent of the population did not reveal a religious affiliation or was uncommitted. By 1881, however, only one per cent of the population said it had no religious affiliation, and the Methodists, Baptists, Presbyterians and Anglicans had grown tremendously to become the main players in the religious landscape, although a significant portion of the population was also Catholic.² Describing the same growth phenomenon, Michael Gauvreau calls the period between about 1830 and 1930 in Canada the "evangelical century." "Evangelical" can be a problematic term, but in this thesis it applies to those who emphasized the centrality to the Christian existence of a personal relationship with Jesus, and it contrasts with those who emphasized the importance of more formalistic and ritualistic signs of religion.³

1. This census data is from Neil Semple, *The Lord's Dominion: The History of Canadian Methodism* (Montreal: McGill-Queen's, 1996) at 181.

2. William Westfall, *Two Worlds: The Protestant Culture of Nineteenth-Century Ontario* (Kingston: McGill-Queen's University Press, 1989) at 10.

Anglicans

In outlining the histories of the Christian churches in what became Ontario during the nineteenth century, it seems appropriate to start with the Anglicans, because high church Anglicanism is the backdrop against which Methodism, in particular, formed itself theologically, and the fight against Anglican political hegemony was long and hard.⁴ While it is tempting to separate Anglicanism's political fortunes from its theological shifts and tensions, the two are so closely intertwined that it is necessary to speak of both at once. At the end of the eighteenth century, settlers from Quebec, the Maritimes, England and the United States began moving into Upper Canada. Much of the population experienced a harsh existence in frontier conditions, although some gathered in the small urban centres, especially between Kingston and Toronto. These settlers were overwhelmingly dissenters - adherents of Protestant denominations other than the Church of England or the Church of Scotland - but the Church of England was hopeful that with exposure to its teaching, these people might be converted.⁵

The Anglican Bishop John Strachan characterized the Church of England and the Church of Scotland as the churches of the moderate centre, between Roman Catholicism on one side and Methodism and the other sects on the other.⁶ As the century began, Anglicans claimed the privileges of establishment as the official, state-supported religion of Upper Canada. The church ultimately lost the battle to cause the English-speaking populace of the Canadas to accept the rightness of this view. Intense sectarian debate was the main feature of the political landscape of Upper Canada for approximately the first half of the century, as Anglicans and Methodists in particular, and also Roman Catholics, Baptists, Presbyterians and adherents of smaller sects, all competed for membership and the support of the imperial and colonial governments.⁷ The brew was thickened by huge immigration. Between 1815 and 1855, almost one million people left Britain for North America, some then moving to the United States but most remaining in the area that became Canada.⁸ The Anglican church in Canada and large branches of the Presbyterian, Baptist and Methodist churches all had strong links to Britain, and the immigrants who came carried with them their particular sensibilities toward the many different manifestations of Protestant Christianity then colouring the religious landscape in Britain.

William Westfall says that it has never been possible to answer absolutely whether or not the Church of England was, legally speaking, established in Upper Canada.⁹ Certainly, however, it had valuable prerogatives and privileges, including "substantial control over education, sole possession of the lucrative military chaplaincy appointments, financial support for Anglican ministers, and occasional grants for the erection of churches."¹⁰ It was largely under the control of the state, but it lacked other privileges that it had in England, including the support of institutions like the ecclesiastical courts.¹¹

The theology of the Anglican Church during the first half of the nineteenth century affirmed the inevitability and appropriateness of establishment. With broad brushstrokes, Westfall identifies Methodism as the religion of intense personal religious experience in Upper Canada and Anglicanism as the religion of

3. Michael Gauvreau, *The Evangelical Century: College and Creed in English Canada from the Great Revival to the Great Depression* (Montreal: McGill-Queen's University Press, 1991). George A. Rawlyk, John Stackhouse and Marguerite Van Die identify four pillars of Canadian evangelicalism over the last two centuries: first, the central belief that God has provided a route to salvation through the crucifixion and resurrection of Jesus; second, a belief in the pre-eminent authority of the Bible; third, an understanding that personal transformation is required, involving the experience of a personal relationship with Jesus and a disciplined life of increasing holiness; and fourth, a sense of needing to evangelize and introduce others to the gospel. In the nineteenth century the third element - the experience of conversion - was the key evangelical characteristic, while it was to some extent supplanted by biblicism around the beginning of the twentieth century. See George A. Rawlyk, "Introduction" in George A. Rawlyk, ed., *Aspects of the Canadian Evangelical Experience* (Montreal: McGill-Queen's University Press, 1997) [hereinafter Rawlyk, *Aspects*], xiii at xiv; John G. Stackhouse, "'Who Whom?': Evangelicalism and Canadian Society" in Rawlyk, *Aspects*, *ibid.*, 55 at 56; and Marguerite Van Die, "'A March of Victory and Triumph in Praise of 'The Beauty of Holiness': Laity and the Evangelical Impulse in Canadian Methodism, 1800-1884" in Rawlyk, *Aspects*, *ibid.*, 73 at 76.

order. Of the orderly Anglican ideal, he says:

The institutions of the state in effect were incorporated into the rational order of nature so that both the state and the church were allied in a reciprocal enterprise to bring about a common goal - the fashioning of a world of rational and happy human beings. Both religious and social institutions acted as a restraint upon the corrupting influence of human nature, they both inculcated the same types of values, and the result of their endeavours was mutually beneficial: the pious Christian would be a loyal subject, and the loyal subject would be a pious Christian.... A church establishment, the very key to the Anglican designs for Upper Canada, was the institutional expression of the way this pattern of interpretation integrated social values and religious institutions.¹²

In describing the actual Anglican creed, Westfall quotes John Strachan, its most prominent advocate in the mid-nineteenth century, who concluded a sermon by identifying as his basic religious beliefs: "the doctrine of the atonement - the satisfaction made for sinners by the blood of Christ - the corruption of human nature - the insufficiency of man, unassisted by divine grace - the efficacy of the prayer of faith, and the purifying, directing, sustaining, and sanctifying influence of the Holy Spirit."¹³ Strachan would also have emphasized the importance of not just faith but also good works and the sacraments of the church, which acted as an intermediary between God and sinners.

This measured Christianity, like that of many Presbyterians (especially those of the Church of Scotland), was the core of the dominant school of mental and moral philosophy that took root in Protestant Canada in the middle of the nineteenth century. Like A.B. McKillop, writers Leslie Armour and Elizabeth Trott identify Scottish "Common Sense" philosophy as the major concern of those Protestant philosophers and theologians - especially Anglicans and Presbyterians - in non-Catholic institutions who were concerned with mental and moral philosophy. This preoccupation was not surprising since almost all of these individuals had been trained at Scottish universities.¹⁴ A.B. McKillop describes the structure of Scottish Common Sense philosophy through a discussion of the Scottish philosopher Thomas Reid. McKillop emphasizes that Common Sense philosophy rested upon an assumption and a process. The assumption provided the epistemology of the movement: Common Sense philosophers spoke of particular faculties of

4. According to Richard Vaudry, the terms "high" and "low" come from the debates around the Revolution Settlement of 1688-89. High churchmen were those who fiercely defended establishment, and they dubbed those within the church who were less enthusiastic about it "low." This divide came to have theological connotations as well, high churchmen positioning themselves farther from Puritanism and closer to Roman Catholicism in their sympathy for the latter's rituals and formalism. High churchmen retained Roman Catholicism's episcopal structure of order and governance and claimed lineal descent from the apostles of Jesus. They also emphasized the necessity of good works for the achievement of salvation. They believed that low churchmen had been unduly influenced by the spirit of the age of Enlightenment and had softened their theology accordingly. In later years, high churchmen were also suspicious of evangelical movements within the Anglican church. They believed that the evangelical emphasis on justification by faith alone could undermine the necessity of good works and even lead to antinomianism, the assumption that once a person had achieved salvation, the person could no longer sin and could therefore carry on exactly as he or she pleased. High churchmen were also wary of the evangelical emphasis on a personal relationship with God, perceiving this to threaten the need for sacraments provided by a clergy, whose bishops stood in apostolic succession to the church Jesus founded. High church Anglicans often scornfully labelled evangelicals "low church," but the two movements were not the same. See Richard W. Vaudry, "Evangelical Anglicans and the Atlantic World: Politics, Ideology, and the British North American Connection" in Rawlyk, *Aspects, ibid.*, 154 at 159-60.

5. S.D. Clark, *Church and Sect in Canada* (Toronto: University of Toronto Press, 1948) at 91.

6. Westfall, *supra* note 2 at 21. Strachan himself was raised Presbyterian and converted to Anglicanism. He saw no fundamental differences between the theology of his youth and that of his adulthood, and his decision to convert does not seem to have caused him much angst. When he moved to Upper Canada as a young man, he met and was greatly influenced by certain Church of England clergymen, including John Stuart of Kingston. Strachan was turned down for a position in the Presbyterian church in Upper Canada and subsequently presented himself to the Anglican Bishop Jacob Mountain. Strachan was ordained an Anglican deacon in 1803 and priest in 1804. See "Strachan, John" in Mary McD. Maude et al., eds., *Dictionary of Canadian Biography*, vol. 9, 1861-1870 (Toronto: University of Toronto Press, 1976).

the mind, which were assumed to have a physiological reality. The faculties were variously identified, but the most important was the moral faculty, which had to subordinate others, most importantly the intellectual. The moral faculty was an innate capacity to arrive at moral truth from the data of consciousness. The process side of Common Sense philosophy involved an introspective concentration of the data of one's consciousness, so that one could discuss its attributes.¹⁵

Philosophers differed in their commitments, but another component of early and mid-nineteenth century philosophy was natural theology. Natural theology relied on the methods of Baconian experimentation, which had a great deal in common with the processual dimension of Common Sense philosophy. According to Westfall, "[o]ne began with certain general principles from which one drew certain arguments or theories that could be applied to a number of specific issues. The original premise could then be evaluated in the light of this examination. Knowledge, then, was acquired as one moved from the general to the specific and then from the specific to the general."¹⁶ Carl Berger describes natural theology thus:

The chief claim of natural theology was that there existed an overall design in nature, a rank and order in the chain of life, and a regularity in the operation of laws, all of which were evidence of a transcendent guiding intelligence. For theologians, these truths became abstract arguments for the existence of God; for naturalists they offered a religious sanction for scientific investigation. Nature was worth studying because it was a product of divine activity; since God created everything, the more intricate the patterns discovered, the more testimony there was to his wisdom and artistry. Thus natural science enlarged man's comprehension of God's works and intentions just as theology revealed the laws of salvation in scripture. Natural theology gave to natural history a legitimacy and status in Victorian evangelical culture that went beyond practical utility.¹⁷

McKillop also describes the nature and role of natural theology, and he emphasizes its points of contact and overlap with the teachings and political implications of the Scottish Common Sense school of philosophy. Common Sense philosophy dovetailed nicely with natural theology in making scientific inquiry subservient to the demands of Christian theology.¹⁸ Both Common Sense philosophy and this particular, orderly Anglican Christian theology supported a particular understanding of the state. Westfall

7. Brian J. Fraser, *The Social Uplifters: Presbyterian Progressives and the Social Gospel in Canada, 1875-1915* (Waterloo, ON: Wilfrid Laurier University Press, 1988) at 53; and Leslie Armour & Elizabeth Trott, *The Faces of Reason: An Essay on Philosophy and Culture in English Canada, 1850-1950* (Waterloo, ON: Wilfrid Laurier University Press, 1981) at 32.

8. David Bebbington, "Canadian Evangelicalism: A View from Britain" in Rawlyk, *Aspects*, *supra* note 4, 38 at 44.

9. Westfall, *supra* note 2 at 93-97, discusses the different aspects of establishment.

10. Semple, *supra* note 1 at 77.

11. Westfall, *supra* note 2 at 93-97.

12. William Westfall, "Order and Experience: Patterns of Religious Metaphor in Early Nineteenth Century Upper Canada" in Mark G. McGowan and David B. Marshall, *Prophets, Priests and Prodigals: Readings in Canadian Religious History, 1608 to Present* (Toronto: McGraw-Hill Ryerson, 1992) 93 at 100 [hereinafter "Order and Experience"].

13. Westfall, *supra* note 2 at 22.

14. A.B. McKillop finds distinctive Common Sense thought in the work of such people as James Beaven, James Bovell, William Dawson, Daniel Wilson, James George and William Lyall. Even those who came to be critical of Common Sense, like John Clark Murray, still imbued their students with its tenets. See A.B. McKillop, *A Disciplined Intelligence: Critical Inquiry and Canadian Thought in the Victorian Era* (Montreal: McGill-Queen's University Press, 1979) at 23-58. John A. Irving's overview of the growth of philosophy in central Canada in the second half of the nineteenth century makes the predominantly Scottish origins of these thinkers very apparent: "The Development of Philosophy in Central Canada from 1850 to 1900" (1950) 31 *Can. Hist'l Rev.* 252.

15. Armour & Trott, *supra* note 7 at 40-41; McKillop, *ibid.* at 26-27.

16. Westfall, *supra* note 2 at 35.

17. Carl Berger, *Science, God, and Nature in Victorian Canada* (Toronto: University of Toronto Press, 1983) at 32.

18. McKillop, *supra* note 14 at 87-88.

describes a sermon of Anglican Bishop John Strachan in this passage:

In short, Christianity was a religion of salvation, offering the means to redeem people from sin, to reconcile God and humanity, and to draw heaven and earth together.

To be saved a person had to proceed along a specific path. Strachan began with the fall when God punished Adam and Eve for their disobedience and expelled them from a state of harmony and innocence. All their descendants continued to suffer under the weight of their original sin. The world had fallen from grace; people had become the creatures of their instincts and passions. The first step towards redemption, therefore, was to restrain the "selfish passions and appetites" and learn to abide by the rules that God had given to humanity. Both the character of the world and divine revelation taught people that they could only attain true happiness by recognizing their own sinfulness, having faith in God, and living a life of virtue and good works. Then as time moved forward, as more and more people came to understand the eternal benefits that such obedience would bring, society itself would slowly change and humanity would return to God. Then everyone would enjoy the freedom and order that had been lost when our ancestors' apostasy led them out of Eden.¹⁹

Strachan advocated the need for religious establishment by emphasizing that redemption was a gradual process of increasing virtue and self-control that required consistent, regular teaching from a well-educated clergyman, together with solid institutional support, including churches and schools. The financial resources of the state were required to sustain such a system. This alliance of church and state would benefit not just the church but also the state, as the church's advocacy of loyalty, order and virtuous behaviour would render the populace good citizens.²⁰ McKillop identifies the mid-nineteenth century as the peak of the influence of Common Sense philosophy, as it grew into philosophical orthodoxy by 1870. McKillop links Common Sense philosophy to the imperialist imperative and state building in British North America: it promised an integration of moral conviction and intellectual acumen that would provide a firm foundation for ethical, civilized public life as Canada became a nation.

During those decades the Anglican church fought its last unsuccessful battles about establishment.²¹ Despite its coherent understanding of the relationship between individuals, the state, the natural world and the divine, Anglicanism had an insurmountable problem in its inability to attract or keep its members. First, before 1820, it was unable to attract an adequate number of British clergy to minister to the dispersed, dissenting or irreligious, frontier population. Huge areas were unsupplied with clergy. In the wake of the depression that followed the Napoleonic War, more Anglican clergymen left for the colonies, but they tended to establish themselves in larger centres of population. The clergy that came after the 1820s tended to be socially respectable and well-educated, close observers of the practices of the church and not particularly evangelical - they tended to emphasize formalism and the centrality of the sacraments. When these priests did attempt to preach to the rural population, they did not gain as much favour as might have been hoped, to some extent because of the difference in manners and training between the Church of England clergy and the backwoods farmers, especially those of American origin.²² Insisting on full theological education for those they ordained and disdaining the Methodist connections, which adopted very rudimentary educational requirements, Anglicans, like Presbyterians, lost ground to the highly successful, itinerant, revivalist Methodist ministry.²³

As well, secure in the rectitude of their claims to establishment, the Anglican church resisted all efforts that

19. Westfall, *supra* note 2 at 22-23.

20. Westfall, *ibid.* at 23.

21. McKillop, *supra* note 14 at 52-53.

22. Clark, *supra* note 5 at 118-21.

23. Westfall, *supra* note 2 at 24; Clark, *ibid.* at 102-3.

might have tended to reduce its respectability - modifying its form of service, recruiting clergy from the lower ranks of society, worshipping in buildings that had not been properly dedicated or permitting signs of emotion or sensation in church services. Anglicanism was the church of the colonial upper class and conducted itself such that it weakened its influence in the large rural population. Among other things, the rural population was unimpressed by the church's involvement in the political life of the colony.²⁴

The most heated, controversial and significant debate in the first half of the nineteenth century, which led to Anglicanism's eventual complete disestablishment, was over the "clergy reserves." Based on the Anglican church's interpretation of the constitutional words "Protestant clergy," the church claimed that it alone could draw support from an endowment based on the value of one-seventh of the land granted in Upper Canada. Presbyterians had some success in arguing that they, as members of the established Church of Scotland, were also included in that legal phrase, but funds were withheld from them by the Anglican oligarchy of Upper Canada.²⁵ After decades of turmoil, a compromise solution involving all of the Christian churches in Upper Canada, including Roman Catholics, was worked out in the 1840s, but even that solution did not hold, and the clergy reserves were eventually secularized and given over to purposes such as railways and public education in 1854.²⁶

Another source of much contention which eventually contributed to the completion of Anglicanism's disestablishment was the governance and funding of the universities, particularly the University of Toronto. In 1828 Anglicans established King's College to be the core of this institution, but after enormous pressure mounted against it, King's was abolished and replaced by the non-denominational University College in 1849, which took its place among three other universities then existing in Canada West: the Methodists' Victoria College at Cobourg, the Presbyterians' Queen's University at Kingston (founded in 1842) and the Roman Catholics' Regiopolis, also at Kingston (incorporated in 1837).²⁷ By 1853, the teaching that lay behind a University of Toronto degree could come either from University College or from one of the federated religious colleges, including Trinity College, which the high church Anglicans had established to replace King's.²⁸ Universities proliferated in mid-century, and by 1867, male youth in Ontario could choose from among seven chartered universities and "as many other post-secondary institutions, and with the exception of Hamilton, all the major centres of population had at least one institution offering education beyond high school."²⁹ In 1868, the government ceased funding any post-secondary educational institutions that remained under denominational control.³⁰

After these controversies and others, and after considerable financial uncertainty, the Anglican Church accepted that it would have to rely on the voluntary support of its congregations and that its old alliance with the state had come to an end. Westfall acknowledges that there may be some truth in the argument that the state was persuaded to end this relationship due to the influence of the growth of liberalism and reform, but he thinks it was more important that the state no longer thought it needed the church to maintain order or stability. He argues that, breaking with past custom, the state decided to put its faith in economic prosperity rather than religion and thus began to oppose itself to religion. As well, with so many people adhering to creeds other than Anglicanism, the state may not have thought the alliance with Anglicanism had much to offer. In any case, by the late 1850s and after some skirmishes with various powers in England, the Anglican Church had not only lost state funding but had also cast off the reins of state

24. Clark, *ibid.* at 125-31.

25. Semple, *supra* note 1 at 78.

26. Westfall, *supra* note 2 at 106-7, 111.

27. J. Harold Putman, *Egerton Ryerson and Education in Upper Canada* (Toronto: William Briggs, 1912) at 100, 106; Robin Harris, "Ontario and its Universities" in Hugh Oliver et al., eds., *The House that Ryerson Built: Essays in Education to Mark Ontario's Bicentennial* (Toronto: Ontario Institute for Studies in Education, 1984) 145 at 147; and George Bryce, *A Short History of the Canadian People*, rev'd. ed. (Toronto: William Briggs, 1914) at 393.

28. See Putman, *ibid.* at 106-9; Harris, *ibid.* at 147-48.

29. Harris, *ibid.* at 148.

30. Harris, *ibid.*

control.³¹

Between about 1830 and 1850, in the course of disestablishment, tensions within the Anglican church between the significant evangelical minority and the non-evangelical majority increased.³² The evangelical influence was strengthened through ties with the American, Irish and English branches of the Church and due to the influx of the Irish and English poor. The ecclesiastical authority, however, supported by settlers of upper class English origin, strenuously discouraged innovations in the administration of church services that threatened the traditional Anglican rites.³³ Non-evangelical, high church Anglicans were taken with the ritualistic, Roman-leaning Oxford movement, or Tractarianism,³⁴ "perhaps the most important development in the Anglican Church in the nineteenth century."³⁵ The leaders of the church in the Diocese of Toronto, especially Strachan, drew chiefly on particular, non-Roman, elements of this movement, especially its emphasis on the doctrine of apostolic succession, "because the assertion that the church enjoyed an unbroken link to the primitive church gave the colonial church what it was seeking - a sense of itself that did not rely on the state and could justify the independent course the church was now pursuing."³⁶ Evangelicals, on the other hand, were highly suspicious of Tractarianism and saw it as verging dangerously close to Roman Catholicism. The conversion of some of the most prominent Tractarians - including John Henry Newman - to Roman Catholicism did nothing to allay their fears. Although evangelical Anglican bishops, clergy and laity sometimes allied themselves with other denominations in missionary and philanthropic endeavours, mid-century high church Anglicans were always opposed to any cooperation with "dissent."³⁷ Toronto's evangelical Anglicans gathered momentum in the late 1860s and through the 1870s, as they established among other things the *Evangelical Churchman* and the Protestant Episcopal Divinity School, which became Wycliffe College and was federated with the University of Toronto in the 1880s.³⁸

Despite the tensions between generally high church and evangelical factions, the Anglican church in Canada did not suffer the divisions that characterized Presbyterianism and Methodism. Already one communion, they began negotiations to form a national body in 1891, and the first General Synod met in 1893. This body could speak officially on social and economic issues and could represent the entire Anglican church in Canada. Its establishment enabled Anglicans to form committees to address the moral, social and economic issues that were by this time causing a great deal of concern to other Protestant churches, particularly liquor consumption, sabbath observance and prostitution.³⁹ By the end of the century, the church as a whole had become more conciliatory and started to favour joint action with other Protestant groups against Roman Catholicism and various social evils and in favour of the development of Sunday Schools and the use of the Bible in public education. William Westfall speaks of a sense in

31. Westfall, *supra* note 2 at 106-15, 201

32. Clark, *supra* note 5 at 122-23.

33. Clark, *ibid.* at 122.

34. Tractarians are defined thus by Terrence Murphy & Gerald Stortz, eds., in *Creed and Culture: The Place of English-Speaking Catholics in Canadian Society, 1750-1930* (Montreal: McGill-Queen's University Press, 1993) [hereinafter Murphy, *Creed*] at xiv:

Members of the Oxford Movement within the Church of England, including among others John Keble, John Henry Newman, and E.B. Pusey. From its inception in 1833, the movement worked for the recognition of the divine authority of the Church of England as a branch of the Catholic church, the upholding of the authority of bishops as the successors of the apostles, the independence of the church from government control, and the restoration of Anglo-Catholic traditions of worship and piety. Some of the Tractarians, notably Newman, were eventually converted to Roman Catholicism.

35. Westfall, *supra* note 2 at 120.

36. Westfall, *ibid.*

37. Vaudry, *supra* note 4 at 165.

38. William H. Katerberg, "Redefining Evangelicalism in the Canadian Anglican Church: Wycliffe College and the Evangelical Party, 1867-1995" in Rawlyk, *Aspects*, *supra* note 3, 171 at 173-75.

39. Edward Pulker, *We Stand on Their Shoulders: The Growth of Social Concern in Canadian Anglicanism* (Toronto: Anglican Book Centre, 1986) at 25.

Protestant culture that the secular world had to be imbued with the sacred.⁴⁰

Methodists

Methodism began in England in the 1730s as a counter-reformatory movement in the Church of England. Founder John Wesley stressed the centrality of the direct experience of God in a Christian's life. A number of different English and American Methodist sects arrived in Ontario in the late eighteenth and early nineteenth centuries, through the efforts of a group of modestly trained English and American itinerant preachers who rode out on highly successful circuits into the bush to take the gospel and Wesley's sermons mainly to the white inhabitants of Ontario's hinterlands.

Methodism in the early and mid-nineteenth century was essentially an evangelical revival movement. It sustained an optimistic view of humanity's ability to attain conversion and salvation. Neil Semple describes Methodism as bringing into an environment defined by formalistic Anglican and orthodox Calvinist⁴¹ ideologies its earnest religious commitment and its trust in personal control of one's spiritual life under divine guidance. Central to Methodism was the tradition of revivalism, which also had analogs in the practices of most of the other Christian churches during the nineteenth century. The word "revivalism" refers to two phenomena: first, a widespread spiritual awakening in society aimed at achieving a post-millennial⁴² rule of Christ in the world; and second, the specific techniques of mass evangelism, which provided spiritual shocks to kindle or rekindle intense religious belief in individuals.⁴³

Because primacy was not placed on formal education and because the personal experience of God was understood to come equally well to men and women, preachers included the unordained and even women, whom Wesley had accepted, after some doubts, despite Methodism's denial of the social equality of women and men. Women played a large role in nineteenth-century Methodist revivals.⁴⁴ Methodism's emphasis on the primacy of the individual's relationship with God caused it to applaud women who sought God and the church against the wishes of their husbands or fathers. A common narrative in Methodist lore concerned the good woman whose piety eventually prevailed over her drunken, violent, unchurched husband and brought him to God, thus preparing him to fulfil his rightful function as head of the Christian family. In this way, while teaching patriarchal gender roles, Methodism nonetheless commended women for taking responsibility for the salvation of themselves and their households, even in defiance of husbands. This approach to gender roles was one harbinger of later developments that saw women participating more actively in public life.⁴⁵

Methodism was an optimistic creed but a strict one. During the pioneer period in Ontario, Methodists

40. Westfall, *supra* note 2 at 123-24.

41. The Calvinist current in Protestantism tends, in this context, to be opposed to Arminianism. Both Calvinists and Arminians take the view that human salvation can come only by divine grace, through faith. These doctrines differ on the question of predestination, orthodox Calvinists believing that God has chosen an elect few for salvation but Arminians believing that divine grace is universally available and predestination only exists in the sense that God has foreknowledge of human choices. Because grace is universally available, in the Arminian view, and all humans have free will, all are responsible for seeking salvation. Where Presbyterianism was generally Calvinist, Arminianism made its way into the theology of Anglicanism and Methodism. It has left its legacy in a range of Protestant theologies.

42. The expression "post-millennial" refers to an interpretation of the scriptural prophecy of the second coming of the Messiah in Revelations. The major Protestant denominations, including the Methodists, believed that only after the rule of God had been fully established on earth through the good acts of Christians would Christ return in the flesh. The different aspects and manifestations of millennialism are numerous and complex. For more information, see Westfall, *supra* note 2 at 159-90.

43. Semple, *supra* note 1 at 127-28.

44. Semple, *ibid.* at 21, 144.

45. See Cecilia Morgan, *Public Men and Virtuous Women: The Gendered Languages of Religion and Politics in Upper Canada, 1791-1850* (Toronto: University of Toronto Press, 1996) at 114-15.

denounced dancing, drinking and popular amusements and were accused of excessive self-righteousness. Sunday was to be observed strictly with religious activities and "quiet, reverential pursuits." On the other days of the week, reading had to be wholesome, and all kinds of amusements were to be shunned, including the theatre, gambling, cricket, the race-track, brothels and the circus. Women were warned against fancy dress, jewelry and frivolous behaviour.⁴⁶ Alcohol was considered the greatest danger, however, being the root of nearly all personal degeneration, vice and misery. During the early nineteenth-century, Methodists shifted from advocating moderation to decrying any consumption of alcohol at all.⁴⁷ Methodism addressed itself to the whole range of elements, spiritual and social, that composed Christianity. In its pronouncements about the whole range of human activities, Methodism declared that there was no distinction between the sacred and the secular.⁴⁸

The economy in Ontario matured into a settled agricultural and commercial one in the 1840s. The Methodists (joined by the Baptists, whose numbers were smaller⁴⁹) were the vanguard of opposition to the Church of England's claim to the clergy reserves, and when these were secularized in 1854, Methodists were pleased to see a significant portion of the proceeds directed toward the school system. The provision of public education was hugely important to Methodism; Egerton Ryerson, a Methodist of Scottish origins, spent much of his life ensuring that schools were non-denominational (meaning broadly Protestant), good quality, centrally controlled, accessible to all and publicly funded. Over the second half of the nineteenth century, a considerable amount of legislation was passed to bring about the transformation and modernization of schools according to the vision propounded by Ryerson and other less prominent individuals. In 1871 school attendance became compulsory for boys and girls aged seven to twelve for four months a year, but the objectives of the legislation were not met. What were previously known as common schools became public schools and were responsible for elementary education. Grammar schools became high schools, some - the collegiate institutes - with a focus on university preparation and some more generalized.⁵⁰ Teacher training academies, known as normal schools, opened. As the universities began to open their doors to women, so did the collegiate institutes. The ages for which school attendance was compulsory increased in the closing decades of the century, as did the calibre of high school education.⁵¹

Between the middle and the end of the nineteenth century, Methodism underwent a substantial transformation. Frontier revivalism was moderated by the 1860s. Although it had offered considerable attractions for many people, certain problems with it had become evident. Revival converts were unreliable and often quickly slid away from the church, often back to Anglicanism or Presbyterianism.⁵² Revivals strengthened ecumenism and a shared evangelical Protestant vision of British North America, of which the church was broadly in favour but which threatened to weaken its base of support, just as it weakened the support of other mainstream denominations. This problem was compounded by the fact that many evangelists often had little formal education, adhered to no particular denomination and preached a theology tending away from conventional Methodist views.⁵³

With the population now settled, itinerancy became unpopular with both preachers and congregations.

46. Regarding moral regulation and the semiotics of fancy dress in nineteenth-century English and American literature, see Mariana Valverde, "The Love of Finery, Fashion and the Fallen Woman in 19th-Century Social Discourse" (1989) 32:2 *Vict. Studies* 169.

47. Semple, *supra* note 1 at 56, 67-68.

48. Semple, *ibid.* at 8.

49. David T. Priestley, "Introduction: Strands of One Cord" in David T. Priestley, ed., *Memory and Hope: Strands of Canadian Baptist History* (Waterloo, ON: Wilfrid Laurier University Press, 1996) [hereinafter Priestley, *Memory*] 1 at 1.

50. Dormer Ellis, "The Schooling of Girls" in Oliver, *supra* note 27, 89 at 89; William Brehaut, "Trends in the History of Ontario Education" in Oliver, *ibid.*, 7 at 10; Delmar McCormack Smyth, "The Gradual Emergence of Ontario's Community Colleges" in Oliver, *ibid.*, 159 at 163-64; Putnam, *supra* note 27 at 225-26.

51. Putman, *ibid.* at 230-31; Brehaut, *ibid.* at 10.

52. See Westfall, "Order and Experience," *supra* note 12 at 108.

53. Fraser, *supra* note 7 at 24; Semple, *supra* note 1 at 214-15, 218, 391.

Methodist congregations, becoming more educated and respectable, grew impatient with frantic, disorganized harangues about "the so-called simple saving truths of religion" and came to require intelligent, reasoned responses to the challenges to faith posed by Darwinism and scepticism. The need for an educated, cultivated clergy was increasingly felt.⁵⁴ Enthusiasm for lay preachers also declined in the mid-nineteenth century, partly because of the demand for better sermons and partly because of a fear that Methodism would lose adherents to other churches with professional clergy.⁵⁵ As the century progressed, the educational attainments of the Methodist clergy increased, from rudimentary education, to secondary training, to university matriculation. During their training periods, young clergy began to spend time in the departments of theology at universities.⁵⁶ Methodists, like other denominations, wanted to train their young ministers in Canada and not rely on American colleges. Their suspicion of republican political ideals and their sense that the United States harboured a coarser culture than their own are dimension of middle-class Ontario's bourgeois sensibility that remained important in later decades. Methodists were also afraid, with good reason, that their young men would not return after going south.⁵⁷ As a result, the Wesleyan Upper Canada Academy at Cobourg became Victoria College in 1841, and Albert College, founded at Belleville as a seminary by the American-leaning Episcopal Methodists, became an independent university in 1866. With the union of the two main branches of Methodism, the two institutions became Victoria University in 1884, which aimed to provide an advanced education that would deepen the soul as well as broaden the intellect.⁵⁸

As the Methodist clergy became more educated, it became more preoccupied with the intellectual dilemmas of the age, such as methods of biblical criticism and the challenges to faith posed by science. Though, as S.D. Clark says, the majority of members of the congregations likely clung to the simple faith of their parents, the faith of the clergy became, in a word, modernized. The religious presses, reflecting this change and the competition from secular presses, shifted away from a purely religious message to literary, philosophical and political matters of interest to an educated readership.⁵⁹

Besides the perceived problem of inadequately educated preachers, another common concern about revivalism was that over-emotional behaviour undermined the "maturity and respectability of institutionalized Methodism." The more reserved Wesleyan branch of Methodism had always disliked revivalism's emotional enthusiasm.⁶⁰ The "enthusiasm of the Methodists" was one of the threats perceived by Presbyterians "to the ordered evolution of democratic institutions within the British system favoured by the rising middle classes."⁶¹

In 1884, a series of mergers of the various Methodist connections culminated in one final union, which incorporated almost all Methodists and made Methodism the largest Protestant denomination in Canada.⁶² The focus of the church moved from the frontier to the urban centres. Methodists built impressive gothic churches, including Toronto's spectacular Metropolitan Wesleyan "cathedral," specialized missions, hospitals, residential mission schools, secondary schools and colleges across the country. Mirroring the organizational culture of the business world, the church consolidated and organized its internal

54. Semple, *ibid.* at 237, 254.

55. Semple, *ibid.* at 237.

56. Semple, *ibid.* at 254-62.

57. See Bebbington, *supra* note 8 at 49.

58. Semple, *supra* note 1 at 243-44, 251. Methodism had many branches but the two most important were the Wesleyans and the Episcopal Methodists. The Wesleyans looked to England for missionaries and support for their endeavours. They were less enthusiastic in their revivalism than were the Episcopal Methodists, a more aggressive manifestation of Methodism that looked to the eastern United States for support. See Semple, *ibid.* at 4-8 for a complete outline of the many branches of Canadian Methodism.

59. Clark, *supra* note 5 at 341-42.

60. Clark, *ibid.* at 213-14.

61. Fraser, *supra* note 7 at 55.

62. Semple, *supra* note 1 at 7.

organization and expanded its bureaucracy to include a number of boards and standing committees, which over time became highly specialized offices with their own personnel. By the early twentieth century, the large Department of Evangelism and Social Service had field secretaries and regional offices across the country.⁶³

By the end of the century, Methodists came not from the lower ranks of society but mainly from its middle and also from its the upper echelons. "[T]he Methodist church increasingly defined its goals and social values according to the attitudes of an upwardly mobile middle class and in particular by a small group of wealthy commercial and industrial leaders who hoped to create a nation in their own image and who were willing to spend their resources to see it achieved."⁶⁴ The clergy took a benign attitude toward wealth. They toned down the emphasis on the terrors of hellfire and began to stress God's love and the benefits of right living. Professional evangelists such as Dwight L. Moody appealed to Methodists and gained much influence teaching a moderate, optimistic, evangelical creed.⁶⁵ Massive urban churches with large organs were built, as were more modest ones in smaller centres and prosperous rural areas. Services became refined and decorous, so that they would not jar the nerves of cultivated people. Churches often reintroduced a more Anglican-like structured liturgy based on John Wesley's *Sunday Service*. Bach recitals and other concerts that were part of the community's cultural life took place in churches. Refined behaviour and dress came to be expected and to mark the members of the fellowship.⁶⁶

From earliest times, the institution that provided the best opportunity for the maintenance of Methodist practices was the class meeting, which Semple describes as the "essential and distinguishing institution of Methodism."⁶⁷ This was originally a small, weekly group meeting, held under the leadership of a mature Christian leader, at which confession and self-examination occurred (and also fund-raising). The class meeting provided Methodism with a means of disciplining its members. Regular attendance at class meetings was compulsory, and during the early years, Methodism dismissed anyone who would not be bound by the fellowship of the class meeting. However, as Methodism became institutionalized during the second half of the century, and as its membership grew more diverse, people became less and less interested in openly baring their faults to their social superiors and particularly inferiors. The class meeting became unable to maintain attendance, even with the disciplinary sanctions it had available to it, and it evolved into a larger, less demanding fellowship gathering. From 1854, when Egerton Ryerson launched his attack on its compulsory nature, until the 1870s, debate raged; the institution's relevance declined dramatically during this period, but the hierarchy had still not dropped the class meeting as a test of membership by 1925.⁶⁸

Although Methodism sympathized with workers and tried hard not to alienate the labour movement, its commitment to an ordered conception of the state made it unsympathetic to attacks on the capitalist system. Hard, sober work was viewed as essential to happiness and spiritual health, and wealth obtained thereby was thought to reflect God's grace. Methodists came to see drunkenness and sloth as signs of spiritual depravity, and the miseries of the poor came to be suspected to result from their own moral failings. Although Methodists did not abandon the poor, and wealth was to be spent in God's service, the poor became increasingly alienated not only from Methodism but also from other organized religions that were undergoing related changes.⁶⁹ Not only the urban poor were isolated by Methodism's renovated message. Some of the Methodist's church's most conservative members became isolated within the church

63. Semple, *ibid.* at 208-9; Phyllis D. Airhart, "Condensation and Heart Religion: Canadian Methodists as Evangelicals, 1884-1925" in Rawlyk, *Aspects*, *supra* note 3, 90 at 93.

64. Semple, *ibid.* at 334. See also Van Die, *supra* note 3 at 79, 83-84, 87.

65. Clark, *supra* note 5 at 401-3; Semple, *ibid.* at 337-38. See also Kevin Kee, "'The Heavenly Railroad': An Introduction to Crossley-Hunter Revivalism" in Rawlyk, *Aspects*, *supra* note 3, 320.

66. Semple, *supra* note 1 at 338.

67. Semple, *ibid.* at 19.

68. Semple, *ibid.* at 227-32.

69. Semple, *ibid.* at 339-40; Clark, *supra* note 5 at 393-95.

and, as part of a movement that caused serious upheaval not only among Methodists but among the general Protestant community, broke off to form other bodies, increasingly taking over the language of revival as their own.⁷⁰

By the end of the nineteenth century, then, Methodism was a confident, urbane, socially aware faith. It had led the revivalism of the nineteenth century and the opposition to the establishment of the Churches of England and Scotland. It had made significant contributions to public schooling in Ontario, had developed a centralized, bureaucratic structure and seemed well placed to continue to provide leadership on the social and moral front as the twentieth century began.

Presbyterians

The history of Presbyterianism in Canada is complex. Its historiography is complicated by different writers' emphases on different aspects of a creed with many faces - popular and academic, evangelical and non-evangelical, intertwined with the state and politics or resolutely aloof from secular concerns. The story of nineteenth-century Presbyterianism has elements of the Methodist story of transition from sect to church (in S.D. Clark's terms) and elements of a progression of many churches toward one unified one. It is also a story of congregations resolutely maintaining their identities. The intellectual history of nineteenth-century Canada is largely a history of Presbyterians and their institutions. All of these threads appear in what follows.

Presbyterians in frontier Upper Canada at the beginning of the nineteenth century came mainly from Scotland, Ireland and the United States. There were three major groups: Americans, adherents of the Church of Scotland, and secessionists. These groups tended to agree on most points of doctrine but to disagree on points of religious practice and on the proper relationship between church and state, most, including the Church of Scotland (the largest segment), favouring state support through establishment but the secessionists holding strictly voluntarist principles.⁷¹

Unlike the situation with respect to Anglicans, because of the Presbyterian stress on congregational autonomy, where two or three Presbyterian families settled together (as often happened, particularly among the clannish Scots), their attachments tended to be maintained, even without ministers. Where, however, people of different creeds were thoroughly mixed together and no Presbyterian ministers were available, particularly on the edges of the frontier, Presbyterianism tended to lose adherents to Methodist revivalists.⁷² The missionaries of the Church of Scotland in pioneer Canada rooted themselves in the upper strata of urban communities. The secessionist sects - who in Scotland had taken issue with the Church of Scotland's established status - did make some efforts to evangelize in rural areas, but because of their commitment to congregational structures and an educated ministry, they were never as successful as the Methodists.⁷³ Scottish Presbyterianism tended to have high quality preachers where it had preachers at all, but its lack of evangelizing personnel meant that it often lost those adherents whose commitment to the church required continual nourishment.⁷⁴ Although some early nineteenth-century Scottish Presbyterians were evangelical, most preferred decorum and relied on the sacraments, good works and other ordinary means of grace to bring people to God. During this period Scottish Presbyterians (evangelical and otherwise) disliked revivalist practices, including not only those of Methodists but also those of American Presbyterians. Evangelical Scottish Presbyterian clerics did not adopt revivalistic practices until after about

70. Semple, *ibid.* at 349, 391. These were fundamentalist, holiness, premillennialist, dispensationalist and even spiritualist groups, including the Hornerites, the Salvation Army, the Free Methodists, the Holiness Movement of Canada, the Gospel Workers Church, the Church of the Nazarene and adventist and pentecostal churches.

71. Westfall, *supra* note 2 at 116-17.

72. Clark, *supra* note 5 at 135-36.

73. Fraser, *supra* note 7 at 54; Clark, *ibid.* at 106-7.

74. Clark, *ibid.* at 139-40.

1837.⁷⁵ Between the late 1830s and early 1870s, both the Church of Scotland and the Free Church adherents increasingly used these practices.⁷⁶ American Presbyterianism was like Methodism in that it used revivalist methods and employed similar techniques in recruiting preachers, although itinerancy was not so much insisted upon.⁷⁷

By 1844 in Canada there were ten separate Presbyterian denominations. These had their roots in the developments in Scotland during the eighteenth and nineteenth centuries. The established Church of Scotland, which (like the Church of England) accepted the principle of state funding and control, had been subjected to criticism and sectarian splits by those disaffected with the established powers and whose personal and religious needs were not being met by the established church. The Church of Scotland and its secessionist sects were also susceptible to inroads from eighteenth-century evangelical revivals. At the beginning of the nineteenth century, changes in social and economic structures in Scotland created a commercial middle class, whose interests conflicted with the landed interests that supported the Church of Scotland. The central point of conflict was the right of lay patrons to force particular ministers on their parishes. In 1843, Thomas Chalmers led the evangelical Free Church of Scotland out of the Church of Scotland in an episode known as the "Great Disruption." The Free Church did not abandon the principle that the state should provide it with financial support but it believed that the state should not be able to affect the theological direction of the church.⁷⁸

In sympathy, a large group of Canadian Presbyterians, the majority of whom had been evangelical anyway, also established Free Church congregations and presbyteries. After 1843, Free Church evangelicalism took root in Canada and the Maritimes and its adherents soon substantially outnumbered adherents of the "Auld Kirk," or Church of Scotland. The Free Church was strongest in western areas of Upper Canada, "where an expanding agricultural and commercial economy, together with the liberal political views fostered by the publishing empire of Free Churchmen Peter and George Brown, created a favourable environment for denominational growth."⁷⁹

Like the Scottish Free Church, however, the Canadian Free Church did not abandon the principle that the state and church should work together; "[i]ndeed its strong evangelicalism confirmed its belief that the state must support the moral reform of society."⁸⁰ By 1840, the Church of Scotland had succeeded in its argument that it too was an established church and had begun drawing from the clergy reserves. A certain amount of Presbyterian unity had flowed from this eventuality. When the Free Church broke off, it initially adopted the position that it was entitled to state funding but ought to be exempt from state control. However, it more or less abandoned its claim to state support by the 1850s because the state had demonstrated a complete lack of enthusiasm for supporting religion generally and had given the proceeds of the clergy reserves to all Christian denominations, including Roman Catholics, before eventually secularizing them entirely in 1854.⁸¹

In the wake of these events, the Church of Scotland accommodated itself to the exigencies of disestablishment, which it found less painful than did the Church of England.⁸² The Free Church fairly quickly became the dominant Presbyterian force in Canada and the basis for the 1875 union of all the major Presbyterian groups.⁸³ Brian Fraser argues that this last unification occurred in a spirit of patriotism

75. Clark, *ibid.* at 136-37; Bebbington, *supra* note 8 at 47; Duff Crerar, "'Crackling Sounds from the Burning Bush': The Evangelical Impulse in Canadian Presbyterianism before 1875" in Rawlyk, *Aspects*, *supra* note 3, 123 at 127.

76. Crerar, *ibid.* at 128.

77. Clark, *supra* note 5 at 161-62.

78. Fraser, *supra* note 7 at 51-53; Westfall, *supra* note 2 at 117.

79. Fraser, *ibid.* at 54.

80. Westfall, *supra* note 2 at 117.

81. Westfall, *ibid.* at 116-18; Fraser, *supra* note 7 at 55.

82. Westfall, *ibid.* at 116.

83. Fraser, *supra* note 7 at 51, 55-56.

and religious enthusiasm felt largely by the Canadian Presbyterian commercial middle class, particularly those with Scottish affiliations or roots.⁸⁴ Once the Free Church had abandoned its hope of state support in the 1850s,

[w]hat remained of the original Free Church stance ... was the insistence on God's universal sovereignty over both church and state. The Free Churches adopted an aggressive attitude in matters of social policy, such as temperance, Sabbath observance, and anti-slavery, as well as an openness to co-operate with other groups in support of these movements for moral and social reform. Further, that belief gave impetus to the competitive drive against the challenges of the papal aggression of the Roman Catholics, both French and Irish, and the enthusiasm of the Methodists, both of which were seen as threats to the ordered evolution of democratic institutions within the British system favoured by the rising middle classes.⁸⁵

The union of 1875 ushered in a period of increasing growth for the church.

I turn now to developments in philosophy before and around the turn of the century in Ontario. It is appropriate to discuss these developments in the context of an analysis of Presbyterianism because so many of these individuals taught philosophy or theology in the Presbyterian colleges, the two in Ontario being Knox (originally Free Church) and Queen's (originally Church of Scotland). Canada's early Protestant philosophers were all clergy, and most were educated at Scottish universities: indeed one writer observes that "[p]hilosophically, Central Canada was a colony of Scotland."⁸⁶ The developments in Methodist theology are also discussed in this part because it was subjected to similar forces and experienced related changes.

Intellectual, social and political currents were mixed at the end of the nineteenth century. The population was becoming increasingly industrial and urban. Large churches had been and were being built in Toronto and other centres in accordance with the middle and upper classes' increasing sense of their own respectability, importance and ambitions. Public education had been entrenched and was reaching even the children of the poor. Teacher training had been standardized. The middle and upper classes could send their children to local universities. Tremendous scientific discoveries and technological advances were being made. The secular social sciences of sociology and political economics were coming of age, and history and philosophy were separating themselves from theology. Industrialization was well under way, and economic liberalism held sway. Canada was a nation from sea to sea with a sense of its historical position and a great optimism about the future.⁸⁷ Women were taking public roles. No state religion had been entrenched and French language rights - of use mostly to Roman Catholics - had been entrenched in the constitution. Catholics and Protestants, though still disagreeing on many things, agreed that Canada would be an English-speaking country, proud of both its independence and its favoured position within the British Empire. Revivalist practices were being muted as the churches consolidated and became solid, urban institutions.

Tracing the development and manifestations of theology and philosophy during this period is difficult. The number of competing views that have been put forward underlines the difficulty in weighing currents in intellectual history. What follows is a discussion of some major currents that affected the actions and thought of those in the vanguard of the moral and social reform movements in Ontario around the turn of the century.

84. Fraser, *ibid.* at 50-51.

85. Fraser, *ibid.* at 55.

86. Irving, *supra* note 14 at 285; Armour & Trott, *supra* note 7 at 48.

87. Armour and Trott describe the optimistic flavour of philosophical pursuits of the period and of the sense that things were improving in most socio-cultural realms, *supra* note 7 at 407-8.

In *The Evangelical Century*, Michael Gauvreau argues that it is critical to remember that the Canadian intellectual tradition, forged between 1820 and 1840 and continuing until the 1930s, was not an Enlightenment tradition but an evangelical one, driven largely by Methodism and Presbyterianism. In the Canadian universities, philosophy began as a servant to theology and only gradually, over the course of about a century, divided from it.⁸⁸ Gauvreau argues that the defining intellectual preoccupation of Methodist and Presbyterian clergymen-professors in mid- and late nineteenth-century Canada was with human history. Unlike their colleagues in Britain and the United States, they were not, he says, particularly concerned with the natural sciences and the challenges they might pose to Christian doctrine. The central point was the status of the Bible as the basis of the reason, understanding and faith necessary for Christian civilization. Not only was the Bible the sole source of religious truth but it was the history of God's intervention in human affairs. "It can be said without exaggeration that the equation of theology and history was the chief mode of expression among English Canadian evangelicals, the very determinant of their creed and their efforts to build a Christian civilization."⁸⁹ This belief in the confluence of history and theology reflected a post-millennialist eschatology: these churches read Revelations as meaning that Christ's second coming would follow the establishment, by devout humans, of the Kingdom of God on earth. They understood biblical passages to have foretold Canadian history and changes they anticipated in society in the future, and they were optimistic that Canada was leading the world toward the development of the Kingdom. Theologians carefully addressed challenges posed to this way of understanding history and theology by secular or natural explanations of the origins, change and decline of human societies.⁹⁰ Gauvreau argues that the last four decades of the nineteenth century saw the evangelical clergymen-professors in Presbyterian and Methodist institutions grappling with the challenges posed by a variety of developments in the intellectual world - particularly higher criticism and secondarily Darwinism - and adapting or neutralizing them so that they did not contradict the view that the Bible told the story of human history and foretold the future.

The publication of Darwin's *Origin of Species* in 1859 and the subsequent publication of *The Descent of Man* provoked heated discussion in intellectual Christian circles.⁹¹ Those who believed in the literal truth of the Bible were shaken. As well, as Armour and Trott argue, although it had been accepted by thoughtful religious believers for centuries that scientific investigation would reveal the hand of God in the design of the universe, central to this view was the understanding that humans had been devised for a particular purpose. Evolution showed, at best, that God had chosen an untenably sloppy means for arriving at the production of humans and at worst that humans were not the end-product of evolution - that humanity might be merely a phase in the passage to some more advanced form of life. Humans had not been created in the image of God, so their centrality to the universal design of things was not assured. In the same vein, evolution also undermined the supposition - essential to Common Sense philosophy - that human minds had been designed particularly to enable them to understand the universe and to attend to matters necessary for achieving their salvation, including devising a correct system of morality. Darwin's theories suggested that humans might simply be the product of the exigencies of evolution in particular environments. God might not care about humans at all, and human morality might have nothing to do with God.⁹²

A.B. McKillop, however, asserts that in Canada, *The Origin of Species* itself was not considered a major threat to orthodox religion but was seen as part of a more generalized threat posed to eternal Christian truth by untrammelled intellectual inquiry.⁹³ Gauvreau implicitly agrees, arguing that because most Canadian theologians outside the Anglican tradition were preoccupied with human, rather than natural, history, they took Darwin's theories at one remove: to them, there was no need for a precise, external, reasonable

88. Gauvreau, *supra* note 3 at 16, 37; Armour & Trott, *ibid.* at 41, 44.

89. Gauvreau, *ibid.* at 58.

90. Gauvreau, *ibid.* at 59.

91. For some examples, see McKillop, *supra* note 14 at 126.

92. Armour & Trott, *supra* note 7 at 179-81.

93. McKillop, *supra* note 14 at 117.

justification for Christian faith anyway, as they were much more interested in the human world of history.⁹⁴ Gauvreau argues that although clergymen-professors recognized the challenges posed by the doctrines of evolution and natural selection, they adapted themselves to evolutionary theory without abandoning their belief in the divine rule of the world.⁹⁵ This accommodation was achieved by attacking Darwin as unscientific because his theories were speculative and did not adhere to the tenets of Baconian science. I have discussed Common Sense philosophy above, in connection with Anglicans such as James Beaven and James Bovell of High Anglican Trinity College, who required "precise, external, reasonable justification of Christian truth."⁹⁶ What must be added here is that, except for its methodology, Common Sense philosophy did not particularly interest Presbyterian or Methodist clergymen-professors, who were wary of a line of argument that suggested that Christian faith might be based in or substantiated by anything other than the direct personal experience of God.⁹⁷ Methodists, including Ryerson, linked natural theology to the Anglican establishment and its religion, which they perceived to be undemocratic, hierarchical, orderly and dependent on external evidences rather than personal experience.⁹⁸ Baconianism, however, was a mainstay of evangelical, non-Anglican thinking.⁹⁹

Canadian Presbyterian and Methodist clergymen-professors were more concerned with evolution as a subset of the problem of the application of historical criticism to the Bible.¹⁰⁰ In the period before the publication of Darwin's theories, German idealism and historicism - which created great controversy and debate in the United States and Britain - had been unattractive to Canadian evangelical theologians.¹⁰¹ The German universities had seemed the source of a rationalist infidelity that threatened liberty and morality.¹⁰² After Darwin's views had been aired, however, the idea of the existence of evolutionary laws began to make its way into the social sphere, threatening to displace the notion that all of human history had been mapped out by God and set forth in the Bible. German idealism and historical criticism came to Canadian shores around the same time and were adapted such that they could meet the challenge to orthodoxy posed by the ideas of social Darwinism.¹⁰³

This German idealism emerged from the thinking of Kant and was taken up by an expanded upon by Hegel. The influence of German idealism first took root in anglo-American intellectual circles through the literary imagination of such individuals as Coleridge, Carlyle and Emerson.¹⁰⁴ Idealism was taught at the University of Glasgow by Edward Caird, who instilled its principles in its most important Canadian devotee, John Watson. Watson spent his long career at Queen's and influenced many others, both teachers and students.¹⁰⁵ One of the principles that emerged from idealism was that the universe was an organic whole, and all the objects of observation - including historical observation - were merely partial manifestations of a single, spiritual principle. Hence, says A.B. McKillop, quoting Watson on this spiritual principle,

it "manifests itself fully only in the life of man, with his self-conscious intelligence. Hegel's doctrine thus seemed ... to be the philosophic rendering of the essential principle of Christianity, the union or identity of the human and divine." By means of this Hegelian influence, religion, for both Caird and Watson, became, in Watson's words, "the process by which man

94. Gauvreau, *supra* note 3 at 70, 74, 129.

95. Gauvreau, *ibid.* at 125-27.

96. Gauvreau, *ibid.* at 70.

97. Gauvreau, *ibid.* at 61.

98. Gauvreau, *ibid.* at 68.

99. Gauvreau, *ibid.* at 18, 38-45.

100. Gauvreau, *ibid.* at 130.

101. Gauvreau, *ibid.* at 86-87.

102. McKillop, *supra* note 14 at 119-20.

103. Armour & Trott, *supra* note 7 at 13.

104. Fraser, *supra* note 7 at 3-4.

105. McKillop, *supra* note 14 at 171-72.

comprehends, and comprehends ever more clearly and more fully, the spiritual unity which combines all existence and manifests its power in that process, while the salvation of society and the influence of great men he [Caird] ascribed to the free play of reason in converting all that seems foreign to it into a means of its own realization."¹⁰⁶

This philosophy permitted humans to seek and even to know ultimate reality, and it seemed to remove the opposition between philosophy and science in its confidence that no truths could contradict each other. All thought would eventually lose itself in the divine. Idealism "cultivated a pious disposition in the minds of students without belittling intellectual inquiry. It showed the essential rationality of the universe and placed everything within the perspective of a new and modern interpretation of the Christian experience, even while defending the essentials of the faith."¹⁰⁷ Idealism encouraged students to push their intellectual limits, secure in the knowledge that such inquiry would always eventually deepen their faith as they came to a better understanding of the mind of God - this contrasted with the earlier sense in especially Canadian philosophical circles that the intellect had to be carefully disciplined by faith.¹⁰⁸

Idealist thinking has been linked by writers like Brian Fraser and A.B. McKillop with the rise of the social gospel movement.¹⁰⁹ One of the currents within idealism that probably lent itself to this way of thinking was the conception of the universe as an organic whole, with the moral and ethical responsibility of each individual being to seek out and serve the greater good of society. John Watson argued that the true good of the individual was inseparable from the good of society as a whole. Society, in this formulation, tended to be considered to mean Canada, building site of the Kingdom of God on earth and Canadians' missionary activities elsewhere in the world. The individual had no right to oppose society as a whole, embodied in the state, unless society was acting against its own best interests - opposition to the liquor trade, for instance, was necessary because the state's leaders had evidently perverted the state's laws by failing to prevent it. If one function of the state, considered as an organ of the whole body, had ceased to perform its functions adequately, it was the responsibility of other organs, like the churches, to take over these functions.¹¹⁰ The sense of the organic nature of society dovetailed with the Methodist and Presbyterian idea that society had to be perfected by humans before the second coming could occur and gave a moral imperative to their vision. Idealism also apprehended no distinction between the secular and sacred realms and thus contributed to moral reformers' sense of the appropriateness of imposing religious tenets on society.

Idealism was widely accepted; not so the higher criticism. The most bitter religious controversies around the turn of the century were over historical scholarship and attempts at biblical interpretation.¹¹¹ Neil Semple describes this new "critical" scientific and historical approach to the Bible as having two forms. "Lower" (or "textual") criticism involved careful study of the biblical texts themselves in pursuit of their correct meaning. Lower criticism had long been an accepted part of academic biblical scholarship. The idea was that language could not perfectly represent the mind of God, so that careful consideration and correction were appropriate, guided by faith. Higher criticism, on the other hand, treated the Bible like any other literary or historical work. The appraisal of authors, nature and the authority of the biblical texts was to be done without reference to Christian doctrine or the final arbitration of faith. Scepticism and agnosticism acquired power and respectability. "By suggesting that the Bible was full of allegory and legend, that it was designed to suit a primitive Hebrew society, or that the chronology and information in its books were faulty, higher and historical criticism appeared to many to illustrate a heretical breakdown of faith and a contempt for organized religion."¹¹²

106. McKillop, *ibid.* at 185.

107. McKillop, *ibid.* at 182.

108. McKillop, *ibid.* at 190-92.

109. Fraser, *supra* note 7 at 3-8, 17; McKillop, *ibid.* at 216-17.

110. McKillop, *ibid.* at 198-99; Fraser, *ibid.* at 39-40, 103.

111. Armour & Trott, *supra* note 7 at 328, and witness Albert Carman's anger at George Workman's scepticism about the reputability of the "dictation" theory of the Bible: *ibid.* at 326.

112. Semple, *supra* note 1 at 267-68.

Gauvreau observes that the general response of evangelical professor clergymen to the higher criticism (which when applied to biblical history was called historical criticism) was to combine it with Baconian scientific methodology and the main tenets of their creed. They devised a kind of reverent criticism, called "historical theology" which they blended with the tenets of Christian idealism to accommodate the idea of evolution (translated into the concept of progress) within a creation that still featured the immanent presence of God. The result was the practices of "biblical theology" (the Presbyterian term) and "inductive theology" (the Methodist term), which allowed clergy in both the pulpits and the universities to rely on the Bible as the pre-eminent source of history, prophecy and Christian truth, while still coping with the insights of Darwinism and historical criticism.

Gauvreau argues that biblical and inductive theology performed a reconciliation of views that kept the institutions of the Canadian evangelical movement from splitting, as they did in the United States, into modernist, or liberal, and conservative, often fundamentalist, camps, based on their understandings of the nature of biblical truth.¹¹³ Another difference between the Canadian and American situations lay in theological liberals' attitudes to idealism. Brian Fraser cites W.R. Hutchinson's *Modernist Impulse in American Protestantism* for the proposition that the American social gospel actually privileged social salvation over individual salvation, whereas in Canada, if pressed, most mainline Protestant clergy would have come down on the side of individual salvation as primary.¹¹⁴ This difference was one reason why the schism between liberals and fundamentalists that took place in the churches of the United States was not as significant in Canada.¹¹⁵ With the clergy not tending so much toward division along these lines, the laity too probably felt less call to choose sides in Canada than in the United States. They must not all have been oblivious to the American situation, but they probably felt that their own, more conciliatory theological culture was superior.

Gauvreau emphasizes the great confidence of leaders like George Monro Grant and Nathanael Burwash, as the nineteenth century ended, that they had met the onslaught of Darwinism and the higher criticism and were entering the twentieth century secure in their faith and mission. Gauvreau understands the social gospel movement to have arisen from the optimistic, evangelical, post-millennialist views of people like Grant and Burwash, views that were based in their understanding of biblical history and prophecy. Gauvreau disputes the view, which other authors have propounded, that between 1890 and 1905 the social gospel was an unstable mixture of "philosophical idealism, evolutionary naturalism, higher criticism, and sentimental humanism" that grew out of an evangelicalism whose theology had been badly weakened by higher criticism, Darwinian evolution and inexorable secularization.¹¹⁶ Gauvreau argues that the optimistic belief that the past could be interpreted and the future foretold through the Bible sustained the interest in social reform that people like Grant and Burwash held as the twentieth century began.¹¹⁷

Another spur for the optimism of the social gospel movement, which Brian Fraser stresses, was the popular, optimistic evangelical revivalism of Dwight L. Moody. In 1873, Moody was a basically unknown Chicago evangelist. By the time he died in 1899, he had become one of the most influential evangelists of his age and had toured the United States, Canada and Britain - and was particularly well received in

113. Gauvreau, *supra* note 3 at 138-42, 153-54, 180.

114. Fraser, *supra* note 7 at 43.

115. Undoubtedly the reasons for the differences between Canada and the United States on this issue are as deep as the differences between the cultures in all of their aspects. Urbanization came earlier to the eastern United States than it did to Canada, creating a different social context for philosophical changes. The United States had recently been divided over slavery and had experienced civil war. Canadian evangelical society was smaller than its American counterpart. British religious impulses were stronger in Canada. Canada has been described as being characterized by a Tory spirit, by contrast to the individualist, egalitarian and often violent founding mythology of the United States. For an analysis of some of these differences, see Mark A. Noll, "Canadian Evangelicalism: A View from the United States" in Rawlyk, *Aspects*, *supra* note 3, 3.

116. Gauvreau, *supra* note 3 at 183.

117. Gauvreau, *ibid.* at 184-85.

Scotland - preaching forgiveness, the love of God and the practical morality of the Christian faith.¹¹⁸ Through Henry Drummond, Moody's optimism was blended with Darwin's theory of evolution in the positing of "an ascent of humanity based on the evolutionary principle of self-sacrificing love rather than a descent of humanity from lesser species through a random process of the survival of the fittest."¹¹⁹

In essence, then, at the turn of the century, for a significant group of Presbyterian clergymen-philosophers (and also Methodists) the mood was one of optimism. The challenges of Darwinism and the higher criticism had been met. Most Presbyterians and Methodists were convinced that their creed had a firm grasp on biblical truth that would stay the course in the twentieth century. Some were inspired by the imperatives of Moody's optimistic evangelicalism, and some felt the idealist urge to push outward the sphere of human knowledge and endeavour in order to seek the perfection of society contemplated in the Bible. This mixture of intellectual currents not only fuelled the social gospel and moral reform movements but also exhibited patterns of thinking about human culture that extended beyond religion: I pick up this thread in chapter three. I turn next to a brief description of certain smaller groups in the religious landscape of turn-of-the-century Ontario. The remainder of this chapter then describes how those same intellectual currents that gave the social gospel and moral reform movements their strength also provided some of the seeds of the decline of the influence of the Protestant clergy in the early twentieth century.

The Congregational Church of Canada and the Congregational United Brethren

New England Congregationalism made an appearance in Nova Scotia in the mid-eighteenth century but lost out to the evangelical "Great Awakening" later that century.¹²⁰ It subsequently had little impact on Canada, existing mainly in isolated parts of the country. S.D. Clark links eighteenth-century New England Congregationalism to village organization, describing as "interlocked" the elders of the church and the proprietors of the town. Status in the community was associated with status in the church, and acts contravening the welfare or teachings of the church attracted civic sanctions.¹²¹

Congregationalism lacked both evangelical force and effective missionary organizations in frontier Ontario. Influenced at different times by both Calvinism and Arminianism, Congregationalism stressed that the congregation was the fundamental church, and that within it the Holy Spirit had to be able to move. Ministers were appointed by individual congregations. Because of these beliefs, Congregationalism was suspicious of organized creeds administered by church hierarchies. Frontier Ontario lacked congregations, so Congregationalism languished. During the nineteenth century it lost many of its adherents to Presbyterianism and Methodism.¹²²

By around the end of the nineteenth century, American congregationalists often dispensed with the practice of installing permanent ministers and instead engaged - and ordained - individuals for fixed terms of one or two years. Canadian practices were greatly influenced by the much stronger American connection. The Canadian Congregational churches lost to the United States many of those trained at the Congregational college in Montreal, and received from the United States and Britain many preachers whose theology was uninformed at best. During this period, the Congregational Union of Canada became increasingly concerned that its ministers have appropriate doctrinal and ecclesiastical views and adequate literary attainments.¹²³ These efforts followed the 1901 and 1911 censuses, which showed the Congregational churches in Canada to be in decline, with only 34,054 members in 1911.

118. Fraser, *supra* note 7 at 12-17.

119. Fraser, *ibid.* at 13.

120. See Clark, *supra* note 5 at 3-44.

121. Clark, *ibid.* at 13-14.

122. Clark, *ibid.* at 142-43; "Congregationalism," *Encyclopaedia Britannica*, 11th ed. (Cambridge: Cambridge University Press, 1910).

In 1906, the Congregational Union was joined by twenty-four congregations of the small sect called the United Brethren in Christ.¹²⁴ The United Brethren were a German-speaking offshoot of Methodism, which “had begun organized work in Canada during the 1830s among the German-speaking population in what is now southwestern Ontario and the Ottawa valley.”¹²⁵ They were one of only four Methodist connections not to be joined in 1884.¹²⁶ Their American counterparts were negotiating union with the Congregational church in the United States in the early twentieth century,¹²⁷ so it was logical that they seek union with the Canadian branch of this church.

By the beginning of the twentieth-century, then, and despite the addition of the United Brethren congregations, Congregationalism was a church in decline. Congregationalists shared with Methodists and Presbyterians a sense of the state’s obligation to be imbued with religious principles, an institutional history of taking charge of the morals of the public, and an awareness of the need for a Canadian-educated clergy.

Minor Protestant Groups

The eighteenth and nineteenth centuries also saw an enormous number of smaller religious groups taking root in Canada. The Mennonites had become a visible place in Canada’s religious geography with the migration of a large group of Dutch-German Mennonites from Russia starting in 1874. These followed a group of Swiss-German Mennonites who had arrived after 1786 from the United States.¹²⁸ As well, there were the Lutherans, who had long been a small presence on the Ontario religious front. There were also a number of Holiness sects, including the Salvation Army, a British sect that made its first Canadian appearance in 1883.¹²⁹ These sects were founded as an alternative to the increasing worldliness of Methodism in particular. The military-styled, enthusiastic Salvation Army adopted free-form street preaching and had great success among the dispossessed working poor in the urban slums.¹³⁰ The Methodist church had become alarmed about the noisy, physical demonstrations of faith of some of these people and had taken steps to prevent disorderly performances within their church.¹³¹ These smaller movements drew their adherents from all mainline Protestant sects.

Unlike the Holiness sects and most other Protestant movements, many other, generally evangelical sects

123. In a note in the United Church archives files entitled “Congregational Growth and Decline in Canada,” C.E. Silcox describes the exodus from Canada of graduates from the Congregational College of Canada in Montreal. He identifies as a major reason the sheer strength of the movement in the United States. He says as well:

A good deal of the trouble in Canadian Congregationalism however, was undoubtedly due to a habit of the leading churches of calling men from the Motherland or from the United States of questionable training. The history of Bond Street in Toronto has been notorious, but for many years Toronto Northern had as its pastor a graduate of the Moody School in Chicago. A good many half-baked people arrived in Canada from the United Kingdom without any particular recommendations, but somehow or other worked their way into the Congregational ministry in Canada. In certain instances these men made a very distinct contribution but others were sheer theological and ecclesiastical bounders and under these circumstances Gresham’s [sic] Law seems to operate, “Poor currency driving out a good mintage”. The native born Canadians retreated before the immigrants!

This note was in the United Church Archives file on the 7th annual meeting of Congregational Union of Canada, June 4-9, 1913. Those minutes evidence considerable concern about the educational attainments of ministers who will be members of the Congregational Union and outline new requirements. It should not be thought, however, that Congregationalism had a history of uneducated preaching - these events were peculiarly Canadian. Harvard and Yale universities were both founded as Congregational institutions, and Congregationalism had a rich intellectual heritage.

124. Semple, *supra* note 1 at 431, 435, 444; Clark, *supra* note 5 at 142-43. Following their American parents, the remaining United Brethren congregations joined with the Evangelical Association in 1946, and the Ontario and Quebec branches of this joined body merged with the United Church of Canada in 1968.

125. Semple, *ibid.* at 444. Before 1911, the records of the church in Port Elgin to which R.B. St. Clair said he had been called were in German.

126. Semple, *ibid.* at 7, 390. The others were the British Methodist Episcopal Church (an offshoot of the African Methodist Episcopal Church), the Evangelical Association (German-speaking, like the United Brethren) and the Canadian branch of the American Free Methodist Church.

had formed and been active in Ontario from the early nineteenth century, and many had a pre-millennialist eschatology, "that is," as Westfall says, "they believed that the second advent would precede the millennium and that it would begin as Christ returned to the earth in physical form."¹³² Unlike those espousing a post-millennialist eschatology, as the Methodists did, adherents of these sects saw no reason to attempt to improve the world in view of its imminent destruction, and only if individual members were chosen could they be saved. Westfall observes that these sects tended to emerge from the tensions and changes in more established creeds.¹³³ They were the latest developments in the eighteenth- and nineteenth-century English and American patterns of revivalism and progress producing apocalyptic sects that prophesied the imminent end of the world - Bebbington enumerates a long list of sects with peculiar beliefs, including one started by the particularly odd, prolific prophet, Joanna Southcott, who claimed authority through direct divine revelation.¹³⁴

Adherents of the holiness, pentecostal and other small Protestant movements were generally regarded as irrational, embarrassing fanatics by mainstream Christians.¹³⁵ These movements tended to reject the liberal tendencies of the mainline churches and to stress strict biblical literalism and an immediate experience of God.

The Decline of the Major Protestant Churches in the Early Twentieth Century

The major Protestant denominations threw themselves into social and moral reform work in the late nineteenth century with the temperance movement and the pursuit of Lord's Day legislation, and their momentum and range of interests expanded in the early twentieth century. As I have noted, some of their motivation probably came from the idealist belief that human society was perfectible and that saving people meant saving society. This idea was combined with a confidence that the Bible foretold the coming kingdom of God on earth, which they anticipated building in Canada. Optimism reigned. The scripturally founded impulse to spread the Word was strong. The churches were eager to share biblical teachings about proper behaviour and dangers to the soul.¹³⁶ Another likely source for their confidence was the institutional history of disciplinary structures in both churches: the Methodists had the fairly egalitarian class meetings¹³⁷ and the Presbyterians the more hierarchical Kirk Sessions¹³⁸ (the Anglicans had no comparable bodies, church courts not being established in Canada). These were very different kinds of bodies, but they both took jurisdiction over the moral and spiritual health and behaviour of their congregations. In both cases, as the churches' congregations became wealthier and larger and their communities more heterogeneous, the reach of these disciplinary structures grew shorter.¹³⁹ Probably the churches' willingness to threaten their members with expulsion faltered as their representation in the population declined. With their reduced direct influence over the lives of their members, the clergy felt justified in imposing their views about temperance and other social issues on society at large: they

127. Semple, *ibid.* at 425.

128. Bruce L. Guenther, "Living with the Virus: The Enigma of Evangelicalism among Mennonites in Canada" in Rawlyk, *Aspects*, *supra* note 3, 223 at 223.

129. Clark, *supra* note 5 at 368.

130. Clark, *ibid.* at 418-22. See also Mariana Valverde, *The Age of Light, Soap and Water* (Toronto: McClelland & Stewart, 1991) at 65-67.

131. Marilyn Färdig Whiteley, "Sailing for the Shore: The Canadian Holiness Tradition" in Rawlyk, *Aspects*, *supra* note 3, 257 at 261-62.

132. Westfall, *supra* note 2 at 181. Regarding post-millennialism, see *supra* note 42.

133. Westfall, *ibid.* at 166-68.

134. Bebbington, *supra* note 8 at 50. See also Semple, *supra* note 1 at 146 and Gauvreau, *supra* note 3 at 23-24.

135. Rawlyk, *supra* note 3 at xxii.

136. The editor of the *Presbyterian* described the attitude that one could ignore corrupting plays if one never attended the theatre oneself as "selfish and unchristian": "What Can Be Done with the Theatre?" (13 October 1910) *Presbyterian* 387.

137. See page 19 *et seq.*

perceived a need to reform society in order to provide for the salvation of the individual.

These churches were united in many of their concerns. They perceived Canadian cities to be in decay, especially Toronto. By the end of the nineteenth century, Toronto's downtown had been transformed by commercial expansion and residential crowding, as the working class, particularly immigrants, lived among the factories where they generally worked. All of the major denominations were concerned about the situation in the city, none more so than the reformers in the Presbyterian church. Warnings that the church was abandoning the poor through the movement of its members moving northward away from the slums came from Presbyterian reformers like James A. Macdonald, editor of the *Toronto Globe* and formerly of the Presbyterian *Westminster*, and John G. Shearer, formerly of the Dominion *Lord's Day Alliance* and latterly of the Moral and Social Reform Council of Canada. Their arguments, however, fell on deaf ears in their congregations.¹⁴⁰

Presbyterian reformers were ambivalent to the claims of organized labour. They saw themselves as ideal, impartial, middle-class arbiters in labour disputes. They were concerned that great extremes of wealth and poverty could destabilize society, but they thought that organized labour had a place in a Christian nation only if it worked through established institutions and if a spirit of mutual understanding and self-sacrifice characterized all parties. Presbyterians tended to think that work, though it might be unpleasant and hard to bear, contributed to character growth and was part of the divine order: if, therefore, the workers agitating within the labour movement wanted greater opportunity for social and moral progress, Presbyterians could be in favour, but if they simply wanted more leisure time or more money, they would be opposed. Presbyterians disliked socialism's selfishness, materialism and atheism and thought it violated the principles of community and harmony that ought to govern social relationships. Aside from the struggle for the *Lord's Day Act*, obtained in 1906, the Presbyterian church was never able to form successful alliances with organized labour, and the working classes were not attracted to its teachings.¹⁴¹

Using military imagery and moral persuasion through scientific study and education, Presbyterian progressives promoted urban reform, featuring improved city planning and replacing vicious pastimes with morally improving ones.¹⁴² The Presbyterian Board of Moral and Social Reform spent much time and money uncovering laxity in Canadian police forces' investigation and prosecution, especially with respect to prostitution and the liquor traffic.¹⁴³

Methodists were engaged in ventures similar to and often the same as those of Presbyterians. Both of these denominations and the Anglicans promoted their views through their substantial publishing interests. With

138. The Kirk Sessions were and continue to be a body composed of the elders of a Presbyterian congregation, who deal with the functioning of the church. Duff Crerar, *supra* note 75, 123 at 131-34, suggests that the elders of these Presbyterian churches exercised, within those Ontario Scottish and Irish settlements he examines, authority over a wide range of not just spiritual or moral but also more conventionally civil or criminal offences. Crerar mentions not only sexual offences, dancing and drinking but also business fraud, absenteeism, Sabbath-breaking, shoplifting, duelling, wife-beating, exposure of newborns, manslaughter and attempted murder. These disciplinary practices tapered off in most Church of Scotland parishes after the 1850s, in Free Churches in the 1860s and overall after Presbyterian Union in 1875. These disciplinary structures became inactive just as the concern about the decline in parish religion peaked in the face of widespread revivalism in Upper Canada. Crerar sees as possible links between these two phenomena the increasing enthusiasms of evangelical zealots, the increasing status of women in the church and the marginalization of strict, conservative elders. I owe thanks to Mr. Justice Douglas Lambert for information about these bodies and for referring me to the Presbyterian *Book of Forms*.

139. With respect to the numerical decline of the mainline Protestant churches, see above, page 9 *et seq.* S.D. Clark explicitly links the emergence of the temperance movement with the decline in the power of the class meeting over Methodists: Clark, *supra* note 5 at 266. About the tailing off of kirk-session discipline, see Crerar, *ibid.*

140. Fraser, *supra* note 7 at 66, 79-84, 91-94.

141. Fraser, *ibid.* at 40-41, 132-36.

142. Fraser, *ibid.* at 82.

143. Fraser, *ibid.* at 144.

the growth of Anglican evangelicalism between 1900 and 1914, evangelicals, who already ran the *Evangelical Churchman*, purchased the *Canadian Churchman* in 1912.¹⁴⁴ The Presbyterians published *The Presbyterian* and *The Westminster*, which could monitor a wide range of secular and religious affairs. James A. Macdonald edited the *Toronto Globe*, whose purpose he understood to be to defend the fundamentals of Christianity, to discuss fearlessly the moral issues of the day and to make sure the church stayed well informed on current issues so that it could provide leadership.¹⁴⁵ In justifying his decision to leave *The Westminster* for the secular and Liberal *Toronto Globe* in 1903, Macdonald identified his chief interests as opposing political corruption and maintaining the *Globe* as an ethically sound newspaper, not merely a party organ.¹⁴⁶ During his tenure at the *Globe*, Macdonald crusaded against political corruption in favour of moral purity and social virtue, and he periodically became involved in libel suits as a result of material he published.¹⁴⁷ Similarly, Methodists, who had become prosperous, well-regarded members of society, founded a publishing house and expanded their publishing empire far beyond their traditional flagship newspaper *The Christian Guardian*.¹⁴⁸

Methodists too were very concerned about the city. Suspicious of immigrants and the urban poor who relied on the income of wives and children, Methodists associated vice and crime with poverty.¹⁴⁹ The number of people living in "the Ward," Toronto's immigrant ghetto, had increased from about 4000 in 1902 to over 14,000 in 1912. Seeking both to improve the living conditions of these people and to increase their own numbers, Methodists opened their first Italian mission in Toronto in 1905 adjacent to the Ward.¹⁵⁰ Their efforts to convert Italian Roman Catholics, particularly men, who were considered less attached to their faith, met with the alarm of the city's English-speaking Roman Catholic population.

Just as Presbyterians were concerned about activities they considered vicious and tending to lead to social instability, so were Methodists. Cities had been depicted as dens of vice for a very long time, and people, particularly youth, were being drawn to them in ever greater numbers. For Methodists, the urban migration created two problems: first, rural membership and therefore financial support for the church was declining, and second, the city was considered "inherently immoral, foreign, and corrupting" by many Methodists, who saw rural and small-town society as the upright, moral and spiritual heart of the nation. Although many rural domestic missions received only sporadic visits by clergy, the Methodist Board of Home Missions took on the task of improving rural life to make it more attractive to young people, promoting libraries, medical facilities, farm training, electrification, and religious and secular activities (even proposals that the church provide dancing and card-playing were made). Adolescents required these institutions to dissuade them from migrating to cities, to tame their awakening sexual capacities, and to discipline them during their lengthening period of education-related dependence. Young men were considered more dangerous to society and to themselves than were young women, because the latter had superior moral sense and were more closely guarded within the home. Girls and young women had to be practical, tidy and economical as they prepared to run a household; boys had to tame their sexual passions, develop respect for women and become "Christian soldiers," "brave, self-reliant and honourable" representatives of "'muscular Christianity,' with its assumptions that the true Christian was not weak or insipid, but rather bold, virile, physically fit, and assertive." Methodists' attitudes to cities and to the development of the young were linked together.¹⁵¹

144. Katerberg, *supra* note 38 at 176.

145. Fraser, *supra* note 7 at 66, 109-10.

146. Fraser, *ibid.* at 112.

147. Fraser, *ibid.* at 112-14.

148. Semple, *supra* note 1 at 395.

149. Semple, *ibid.* at 341.

150. Semple, *ibid.* at 303.

151. Semple, *ibid.* at 188, 287-88, 375-76, 381-82. See also Airhart, *supra* note 63 at 100 and Valverde, *supra* note 130 at 129-54. The ideal of muscular Christianity also had considerable currency in the United States: E. Anthony Rotundo, *American Manhood: Transformations in Masculinity from the Revolution to the Modern Era* (New York: BasicBooks, 1993) at 224. I explore this topic at greater length in the chapters that follow.

The range of entertainments considered appropriate by Methodists, though somewhat broader than in the mid-nineteenth century, was still much smaller than the range of entertainments available to the urban population. Following in their predecessors' footsteps, early twentieth-century Methodists attacked "dancing, card-playing, attending the music hall or light theatre, horse-racing and reading novels," which they associated with "immodest or fashionable dress, gambling, smoking, unsupervised late night activities, or evil companions." These were thought to be popular among the growing sector of urban, blue-collar workers, whose morality and activities were of greatest concern.¹⁵² In the light of the social gospel movement's post-millennial eschatology and organic conception of society, such activities were understood not merely as personal sins but as sins against society and a disgrace to the nation. The church began to ally itself with other Protestant denominations to censor and prevent various amusements and to fight for legislation to prevent or regulate suspect activities.¹⁵³ One of Methodism's important contributions to the "fight for a clean stage" was Rev. John Coburn.¹⁵⁴

As I have noted, despite the concern for the disadvantaged evidenced by Methodist home missions, including those in Toronto, Methodism lost some of its attractiveness to the urban poor during this period. As a result of the church's increasingly benign attitude toward the acquisition of wealth (provided it was spent in proper ways) and of its increasing marketing of itself toward the cultivated, wealthier classes, the static underclass of industrial society came at times to be uncomfortable within it. Sermons on the sins of poverty, instead of the earlier evangelical piety, provided little comfort, and neither did the church's optimistic message about the progress and perfectibility of society.

A large part of Methodism's moral reform activities - and this was the case with all of the Protestant denominations and also the Roman Catholic church - was performed by women. Latent ambiguities characterized Methodists' attitudes to the proper role of women. Women's most appropriate vocations were marriage and full-time motherhood. The family was understood by Methodists to be the cornerstone of society, "a sanctuary for purity and power in the work of God in the earth."¹⁵⁵ However, women had historically had an active role in the work of the church, even becoming respected lay preachers. Especially among middle-class urban dwellers, wives, freed by labour-saving inventions and low wages for servants, had more time to involve themselves in church, charity and reform work. Women did a great deal of work in, among other things, the temperance movement, but the Methodist church took an ambivalent attitude toward them. Phyllis Airhart remarks,

One wonders how WCTU representatives at the meeting of the Quebec Branch of the Dominion Alliance felt upon hearing S.D. Chown's address. "Many developments are helping to roll our old chariot along," he remarked. "The zeal of our godly women always full of enthusiasm has been chastened by disappointment and corrected by experience so that it is now being applied with a wisdom, a certainty and force that it did not possess a few years ago. Their impetuosity has been curbed," he added.¹⁵⁶

Women, who were generally denied voting privileges and representation on the church's courts, were not greatly involved in the institution-building efforts of Methodists at the end of the nineteenth century.¹⁵⁷ Women's organizations within the church functioned so well that there was a concern that the church might become too feminized. Although the Methodist church made a concerted effort to attract men (whom it feared "were reducing their commitment to Christian work as they participated more fully in the economic, political, and social life of the community and the country") to the organizational activities of the church,

152. Airhart, *ibid.* at 94.

153. Semple, *supra* note 1 at 355-56.

154. See John Coburn, *I Kept My Powder Dry* (Toronto: Ryerson Press, 1950) at 112-27.

155. Semple, *supra* note 1 at 341.

156. Airhart, *supra* note 63 at 95-96.

157. Semple, *supra* note 1 at 341; Airhart, *ibid.*

laymen's organizations never functioned as well as women's organizations.¹⁵⁸

The Methodist church took an ambivalent attitude to the possibilities social change offered women. Through its own institutions, it expanded their opportunities for higher education. Methodists supported calls for improved working conditions for women in factories, offices and stores. Maintaining that the proper vocation for women was marriage and that married women should stay at home and raise their children, Methodists nonetheless advocated women's suffrage and encouraged women to enter politics, but the Methodist church did not want women in its own political structure.¹⁵⁹ In describing Methodist attitudes to the role of women during this period, Semple identifies three views: the first saw women as blessed ministers in their proper sphere, which was the home and nowhere else; the second, radical view, saw women moving toward total emancipation and equality with men; and the third, most popular view, was that some spheres of activity were equally suited to men and women and that in those spheres women should have equal opportunities.¹⁶⁰ The Methodist perspective on the place of women in Canadian society had important implications for the construction of gender, as I describe further in the chapters that follow.

In *We Stand on Their Shoulders*, Edward Pulker describes the impulses in Canadian Anglicanism that favoured action on moral and social reform issues. Pulker addresses himself to modifying the common observation, which he accepts as generally valid, that the conservative, individualistic Anglican church was the least enthusiastic of all the Protestant churches in addressing itself to the drive for social and moral reform that characterized the end of the nineteenth century and the beginning of the twentieth. Of course, some Anglicans, like Samuel Blake, one of the Blakes practising at the firm that has become Blakes, Cassels & Graydon, were evangelical and active in a variety of moral reform causes like prohibition and the Young Men's Christian Association.¹⁶¹ But generally Anglicans tended not to be avid social critics or reformers.

Anglicans were extremely well represented in upper crust Toronto society (as were Presbyterians, only some of whom were enthusiastic supporters of moral reform causes). C. Ian Kyer notes the prevalence of Anglicans in Toronto business and especially legal circles at the turn of the century. He observes,

There can be no more dramatic proof of the dramatic role of Anglicans in the law than to walk through St James Cathedral and read the many plaques commemorating the leaders of Toronto's legal community or to stroll through St James Cemetery, where one finds the remains of many, many "name partners" in the large Toronto firms, such as the Blakes, the Oslers, and the Beattys.¹⁶²

Pulker observes that unlike English Anglicans, Canadian Anglicans did not show even hints of becoming interested in economic inequities until almost 1900, being focused instead on temperance and prohibition. However, even where they focused on these topics, they were at odds with Presbyterians, Methodists and Baptists. These groups were, by the end of the nineteenth century, united in their belief that the only solution to the liquor problem was prohibition; Anglicans favoured temperance. They understood problems to arise only from immoderate consumption of alcohol and they disapproved of the fanaticism of prohibitionists, foreseeing that it would bring about a counter-reaction. When Anglicans in the first decade of the twentieth century addressed themselves to the reformist platforms that drew the attention of the other Protestant churches, they focused on moral issues. On social and economic issues, unlike Methodists, most

158. Semple, *ibid.* at 345.

159. Semple, *ibid.* at 414.

160. Semple, *ibid.* at 343.

161. T.D. Regher, "Élite Relationships, Partnership Arrangements, and Nepotism at Blakes, a Toronto Law Firm, 1858-1942" in Carol Wilton, ed., *Essays in the History of Canadian Law*, vol. 7, *Inside the Law: Canadian Law Firms in Historical Perspective* (Toronto: University of Toronto Press, 1996) 207 at 219-20.

162. C. Ian Kyer, "The Transformation of an Establishment Firm: From Beatty Blackstock to Faskens, 1902-1915" in Wilton, *ibid.*, 161 at 169.

Anglicans tended to be satisfied with the *status quo* and not to see any need for action on issues like labour reform.¹⁶³

In the early twentieth century, the major Protestant denominations considered church union. Among the Presbyterians, Congregationalists and Methodists, who eventually formed the United Church of Canada in 1925, their differences had come to seem much less important than their similarities. They had similar social and moral concerns and similar attitudes to the relationship between the churches and the state. Most advocates of the social gospel thought the state should be run on religious principles, since only the state was capable of making the changes that were necessary to improve working and living conditions, reduce crime and immorality and bring about social justice. They accepted the organic conception of the political body and the view that they and the state should step in to prevent the evils they saw in families, on the streets and in society as a whole. Furthermore, they believed in the desirability of worldwide ecumenism - the unification of Christianity - and considered it Canada's destiny to lead the effort toward it.¹⁶⁴ Brian Fraser also identifies a sense that in the spirit of the doctrine of evolution, a mixed church would be stronger, would produce a nobler form of Christianity and would be better able to assimilate the heterogeneity of Canada - all shared in a desire to assimilate native peoples and new immigrants, especially in western Canada.¹⁶⁵

A Basis of Union document was hammered out in 1907. The Anglicans and Baptists had declined to participate, so Congregationalists, Presbyterians and Methodists went forward together. When Congregationalists, in particular, objected to requiring their ministry to swear allegiance to particular creeds, that requirement was quietly dropped in the revised Basis of Union proposed in 1908. The three churches agreed about most doctrinal matters, and incompatibilities were papered over; there was general agreement that doctrine was less important than other matters.¹⁶⁶

The Congregationalists and Methodists obtained agreement for union within their churches fairly easily.¹⁶⁷ Presbyterianism, however, split, and the divide got deeper with time. Between 1909 and 1912, several votes were taken in the General Assembly, and church members, elders and adherents were separately polled. Although support tended to run in the range of 70 per cent in favour and 30 per cent opposed, opposition to union grew increasingly vociferous. Some objected to the abandonment of formal creeds and doctrines, and some objected to the emphasis on the social gospel. Strong congregations in Montreal and Toronto were reluctant to be subsumed into a greater whole, especially if they could be rid of the need to support weaker congregations elsewhere, and some congregations in the Maritimes feared losing their uniqueness. Scottish ethnic pride, perceptions of social status, and personality conflicts played a role in the opposition. Some congregations thought their historic uniqueness had been sabotaged. Other activists tried to undo the amalgamation of 1875. Fraser says that the laity targeted for mobilization by Presbyterian reformers like John Shearer and James Macdonald were among the most resistant and indifferent to union. Opposition remained at about 30 per cent until 1925, when only a large majority of Presbyterian congregations entered into union.¹⁶⁸

While the impetus to church union may have flown partly from the strength of the optimistic, ecumenical spirit of the time, there were also demographic reasons for the movement. As I noted at the beginning of this chapter, between 1891 and 1911, the Methodists and Presbyterians saw their numbers falling. Congregationalism had started small and was shrinking. Talk of union strengthened after 1901, when the

163. Pulker, *supra* note 39 at 11-14, 25-33.

164. Semple, *supra* note 1 at 416, 424.

165. Fraser, *supra* note 7 at 131. For a good discussion of the importance of the western context and other factors in the drive for church union, see Mary Vipond, "Canadian National Consciousness and the Formation of the United Church of Canada" in McGowan and Marshall, *supra* note 12, 167.

166. Semple, *supra* note 1 at 421-22.

167. Semple, *ibid.* at 421, 431-32.

168. Semple, *ibid.* at 432-34; Fraser, *supra* note 7 at 132.

census showed large Roman Catholic advances, especially in eastern and northern Ontario. That church benefited from the influx of Catholic immigrants from eastern Europe. Although by this time, the extreme tensions that had characterized relations between Protestants and Roman Catholics in the nineteenth century had waned to a certain extent, these groups continued to regard one another warily, and they battled for believers in Western Canada and in the inner city ghettos where immigrants found work and accommodation.¹⁶⁹ To aid immigrants and to keep them in the church, Roman Catholics set up a variety of moral and social reform organizations paralleling those of the Protestant churches.¹⁷⁰

Roman Catholicism was not the only source of pressure on the major Protestant churches at the beginning of the century. The period between 1900 and 1910 was one of enormous social change. Women were acquiring the vote. Leisure time developed, as did popular commercial amusements to absorb it. Factories multiplied, and people migrated in large numbers into urban areas. Universities and colleges with denominational affiliations fended off efforts by more conservative factions within them to restrict their intellectual pursuits.¹⁷¹ This period probably marked the beginning of religion as a consumer choice.

There is also evidence that significant numbers of churchgoers became disenchanted with the type of religious experience they were being offered: harangues about the need for social salvation of one kind or another, with less emphasis on personal religious experiences. Some Protestants turned to evangelical splinter denominations.¹⁷² The heat generated by the Presbyterian debates around church union hints at a cantankerous backlash against the social gospel movement. Brian Fraser gives a sense of what was likely happening in the Presbyterian pews. Describing Presbyterian reformers in the early years of the twentieth century as having a "garrison mentality," Fraser indicates that Shearer's Board of Social Service and Evangelism was very much in debt by 1915 as a result of lay indifference to its optimistic, expensive campaigns.¹⁷³ He describes the Presbyterian progressives as naive and ends his text with these words:

Writing to C.W. Gordon to acknowledge the receipt of a Christmas copy of *Corporal Cameron*, Laurier pronounced a fitting epigram for Presbyterian progressivism. "Your books," he wrote, "are particularly attractive to me because they will preserve a special phase of our national history, and customs which are rapidly passing away."¹⁷⁴

Fraser emphasizes that the efforts to mobilize the church of the six Presbyterian "progressives" on whom he focuses were met with limited success in the church and much indifference in society at large.¹⁷⁵

Many writers have attempted to explain the decline of the major Protestant churches in the first decades of this century. In *The Social Passion*, Richard Allen advances the "secularization thesis" - the theory that the

169. Recent issues keeping tensions afoot included fallout over the *Ne Temere* decree issued by Pope Pius X in 1908, which contended that marriages involving Catholics had to be performed according to the rites of the Roman Catholic church and which seemed to deny the validity of civil and Protestant marriages. See J.R. Miller, "Anti-Catholicism in Canada: From the British Conquest to the Great War" in Murphy, *Creed*, *supra* note 34, 25 at 41; and Margaret Prang, *N.W. Rowell: Ontario Nationalist* (Toronto: University of Toronto Press, 1975) at 93-94. As well, tensions were simmering about the usage of French in schools, a crisis that caused peculiar alliances and divisions amongst English-speaking Protestants and Catholics, among others: see Prang, *ibid.* at 145-57; and Mark McGowan, "Toronto's English-Speaking Catholics, Immigration, and the Making of a Canadian Catholic Identity, 1900-30" in Murphy, *Creed*, *ibid.*, 204 at 205, 212-13.

170. Murray Nicolson, "The Growth of Roman Catholic Institutions in the Archdiocese of Toronto, 1841-90" in Murphy, *Creed*, *ibid.*, 152 at 162-63; Brian Clarke, "The Parish and the Hearth: Women's Confraternities and the Devotional Revolution among the Irish Catholics of Toronto, 1850-85" in Murphy, *Creed*, *ibid.*, 185.

171. John S. Moir, "Frank, Scientific Discussion" in McGowan and Marshall, *supra* note 12, 266 at 273, 277.

172. Semple, *supra* note 1 at 424-25; Miller, *supra* note 169 at 41.

173. Fraser, *supra* note 7 at 17, 156, 165-68.

174. Fraser, *ibid.* at 177-78.

175. Fraser, *ibid.* at x. Fraser's six "progressives" are John G. Shearer, James A. Macdonald, C.W. Gordon (novelist Ralph Connor), George Campbell Pidgeon, Robert A. Falconer and T.B. Kilpatrick.

churches' influence declined because society was simply becoming more materialistic and pleasure-oriented, and that the moral and social reformers' effort to imbue the secular with the sacred simply increased society's sense of the importance of the secular.¹⁷⁶ Ramsay Cook makes a similar argument in *The Regenerators*, and he observes that doubts about religious faith became a noticeable preoccupation of the newspapers even in the last decades of the nineteenth century. Cook argues as well that the clergy's appeal to the authority of the emerging social sciences ultimately undercut their own authority.¹⁷⁷ N. Keith Clifford also evidently has sympathy with this view.¹⁷⁸ Phyllis Airhart adds the observation that as the range of careers that afforded an opportunity for a kind of Christian ministry expanded, individuals heard the call to ministry less often¹⁷⁹; the sense of the uniqueness of the ministry may have declined and with it some of the ministry's prestige. David B. Marshall describes secularization as a multi-faceted process, beginning in the middle of the nineteenth century, with sociological, economic and theological components.¹⁸⁰

Nancy Christie and Michael Gauvreau take issue with the view that the churches' influence declined as they adopted social scientific knowledge and adapted its approaches to their goals. The authors argue that in fact these strategies sustained the churches' influence in Canada considerably longer than in the United States. As James W. Opp observes, however, Christie and Gauvreau push their thesis somewhat too far in their efforts to see the influence of the sacred on the secular.¹⁸¹ Like other church historians who have written about this period, they ultimately make it clear that the churches' direct influence over politics, civic life and social welfare declined in the first two decades of the twentieth century.

Other writers have looked mainly to failings in the churches' theology to account for the decline. That something happened to the significantly different belief structures of the Presbyterians and Methodists is clear in the absence of sustained theological debate in the church union negotiations - evidently, as Semple observes, because the negotiators wanted to avoid conflict.¹⁸² McKillop sees the lack of debate about theology around the church union debates as resulting not just from the potential for conflict but from idealism.¹⁸³ Semple asserts as well that the churches simply were less interested in theology, as they focused on their ecumenical social and moral crusades.¹⁸⁴

Michael Gauvreau objects to the secularization thesis on the grounds that it commits the logical error of starting from our position at the end of the twentieth century and looking backward for our origins, rather than paying adequate heed to what those who lived through the early part of the century were thinking and doing. Gauvreau finds that the secularization thesis fails to account for the timing of a feeling of gloom that spread over the Presbyterian and Methodist churches between 1905 and 1914.¹⁸⁵ He argues that the intellectual movement that ultimately crippled the churches was the rise in "relativism" (all values being understood to be culturally and historically specific):

In the ten years before World War I, clergymen-professors and preachers felt the corrosive

176. Richard Allen, *The Social Passion: Religion and Social Reform in Canada 1914-28* (Toronto: University of Toronto Press, 1971) at 356.

177. Ramsay Cook, *The Regenerators: Social Criticism in Late Victorian English Canada* (Toronto: University of Toronto Press, 1985) at 46-64, 228-32.

178. N. Keith Clifford, "His Dominion: a Vision in Crisis" (1973) 2 *Studies in Religion* 315 at 323-24.

179. Airhart, *supra* note 63 at 101.

180. David B. Marshall, *Secularizing the Faith: Canadian Protestant Clergy and the Crisis of Belief, 1850-1940* (Toronto: University of Toronto Press, 1992).

181. Nancy Christie and Michael Gauvreau, *A Full-Orbed Christianity: The Protestant Churches and Social Welfare in Canada, 1900-1940* (Montreal: McGill-Queen's University Press, 1996) at 75-130; James W. Opp, "Revivals and Religion: Recent Work on the History of Protestantism in Canada" (1997) 32:2 *J. Can. St.* 183.

182. Semple, *supra* note 1 at 421-22.

183. McKillop, *supra* note 14 at 227-28.

184. Semple, *supra* note 1 at 424.

185. Gauvreau, *supra* note 3 at 219-20.

force of currents of thought that had been at work in Europe and America since the 1890s. Usually lumped together under the term “relativism,” these new developments in history, philosophy, psychology, and the social sciences rejected the search for moral, metaphysical, scientific, or doctrinal absolutes, preferring to view human experience and the universe as uncertain and open-ended, not governed by fixed, unchanging laws. Unlike Darwinism and the higher criticism, the “relativist revolution” struck at the central pillar of evangelical thought, the belief that historical study, whether it be of the Bible or of human societies, provided some assurance of certainty or predictability in understanding and influencing the behaviour of individuals and communities.¹⁸⁶

Gauvreau does not argue that these developments were apprehended by all clergymen-professors, but he does argue that they radically destabilized the teaching occurring in theological colleges, so that the individuals who were grappling with the new developments and continuing to seek certain truth were for the first time focused for their scholarly audiences not on congregations but on the international community of Bible scholars. They were unable to explain themselves or otherwise to find common ground with the clergy in the pulpits, who had to find something stable to preach to their congregations week after week, congregations experiencing the many attractions of consumerism. Although congregations remained evangelical, the validity of evangelicalism as an academic tradition came to be called into question by the academic clergy.¹⁸⁷ College teaching increasingly accentuated the moral rather than historical value of biblical narratives. Without the backing of the church colleges, the Methodist and Presbyterian clergy in the pulpits increasingly displayed uncertainty about the ability of inductive or historical theology to safeguard the supreme authority of the Bible. Their queries were met with silence by the church colleges.¹⁸⁸ When they preached the moral value of biblical narratives, they alienated their congregations.

Gauvreau’s argument that it was the pressure of relativistic doctrines that finally brought the demise of the moderate evangelical apologetic suggests that the momentum of such secular thinking (combined with silence from the pulpit) reduced the laity’s confidence in the churches. Indeed, Gauvreau acknowledges that by the 1890s many secular thinkers rejected the intellectual claims of the Christian tradition, preferring evolutionary thinking, as well as the relativistic dimensions of the new historical thought.¹⁸⁹

Conclusion

The picture that develops, then, is of an academic church infrastructure caught up in philosophical debates that were difficult, if not impossible, to resolve, and unable to assist clergy in the pulpits when the latter looked for eternal biblical truths with which to guide their flocks. Instead, the flocks were chided about the hazards of popular amusements, the perils of alcohol and prostitution, the depraved habits of the poor and the need for the reform of society. Members of congregations who looked for a personal, emotional relationship with God may have difficulty believing this was still the main focus of the Methodist or Presbyterian churches. Those who doubted the solidity of Christian doctrine (perhaps by catching wind, through literature or otherwise, of the very movements that were plaguing the religious academics) would find no help from their ministers. The poor were alienated by the benign attitude toward wealth and the distaste of poverty that Methodism and Presbyterianism came to have; the middle class and rich were alienated by the constant exhortations to reform the poor.

This history of the Protestant churches outlines as well some other currents that shed light on the changes

186. Gauvreau, *ibid.* at 221.

187. Gauvreau, *ibid.* at 222, 234-35.

188. Gauvreau, *ibid.* at 235, 247.

189. Gauvreau, *ibid.* at 133-34, 181.

in the regulation of obscenity in Canada at the beginning of this century. Some very important strands in theology and religious culture were: (1) the strong belief that the secular and sacred realms could not appropriately be separated; (2) the belief in the appropriateness of clergy acting as moral guides for all aspects of the community's behaviour; (3) the increasing acceptance of women in some aspects of public life; and (4) the distaste among intellectuals around the turn of the century for an important branch of fashionable European - especially German - philosophy, which was nonetheless making its presence known. Other currents that also made themselves felt are the development of higher education and the public school system; the felt need for an educated clergy, particularly one educated in Canada or Britain rather than the United States; and the casting off of a sense that the intellect had to be tightly controlled by faith in favour of a confidence that untrammelled intellectual inquiry would instead increase faith. Most significantly, however, and ominously for the Methodist and Presbyterian churches, this history shows as well that by about 1905, even as they reached the apex of their influence on social and moral reform issues, the confidence of the clergy in the ability of Protestant Christianity to weather all challenges was waning, and congregations were becoming dissatisfied. As will be shown, these changes in religious culture and theology affected obscenity law by undercutting the legitimacy of the clergy's claims to act as moral censors and by influencing the conception of the decent. These changes played out particularly in the behaviour of the clerical and lay forces involved in the *St. Clair* case.

Chapter Three: The Texture of a Culture

Having outlined the backgrounds of the different Protestant churches and identified some of the intellectual currents within those churches as the twentieth century opened, I now attempt to set out those material and intellectual aspects of the culture that shaped the conception of obscenity and the identification and regulation of materials perceived as obscene. This chapter begins with an overview of the expanding opportunities for education in late nineteenth-century Ontario, an expansion that contributed to the way moral reform efforts were conceived and executed. I emphasize that literary studies were an essential component of all branches of education throughout this period. The result was a highly literate population and a vibrant print and theatrical culture. However, tastes in theatrical performances and reading material varied among those with higher educations, the clergy and the working classes. The popularity of burlesque stage performances and melodramatic novels and theatre, instead of more modern forms like realism and problem plays, had a strong effect on the patterns of censorship that prevailed. Also beginning to affect the concept of obscenity were changes in the nature of literary criticism and the standards for judging literary and theatrical productions (popular and otherwise). This chapter ends by describing the censorship forces in Ontario during the period and those who felt the effects of this censorship. A complex picture of interlocking forces emerges, whose effects will become apparent in chapters four and five.

Education

Founding educational institutions and rendering education widely available were important goals of many individuals in the nineteenth century, including the Scottish Methodist Egerton Ryerson. By the mid-nineteenth century in Ontario, literary attainments, elocution and the theatre were well established as important both to individuals and to the culture as a whole. As Ann Saddlemeyer remarks, "[a]s Ontario achieved 'High Victorian' seriousness, training in the arts became an even more essential asset to well-born young ladies and gentlemen."¹ Education was to provide the "refined manners and respectable religion, proper speech and, finally, the ability to read and write proper English" that were the marks of respectability that those promoting public education hoped to provide to all children, not just the "well-born."² Among the Methodists, mid-nineteenth-century education for both boys and girls included a heavy dose of English and modern languages. Neil Semple observes:

The courses at all the Methodist institutions tended to fall into three basic categories, although students were not constrained by these boundaries. At the most select academic level, Greek, Latin, and occasionally Hebrew were augmented by natural history, natural science, natural and mental philosophy, and Christian evidences to prepare students for university or the ministry. These subjects were usually supplemented by logic, rhetoric, geography, modern languages, and English grammar to develop confident, articulate men and women. A second group of subjects was designed for those interested in commercial or other practical occupations. These included mathematics, chemistry, botany, astronomy, surveying, navigation, bookkeeping, and telegraphy. Finally, there were the "ornamental" or "accomplishments" subjects including vocal and instrumental music, drawing and painting, and in some instances, calisthenics and riding. When combined with English grammar and modern languages, they furnished what many considered the proper education for Canadian women.³

1. Ann Saddlemeyer, "Introduction" in Ann Saddlemeyer, ed., *Early Stages: Theatre in Ontario 1800-1914* (Toronto: University of Toronto Press, 1990), 3 at 13 [hereinafter *Early Stages*].

2. Alison Prentice, *The School Promoters: Education and Social Class in Mid-Nineteenth Century Upper Canada* (Toronto: McClelland & Stewart, 1977) at 68.

3. Neil Semple, *The Lord's Dominion: The History of Canadian Methodism* (Montreal: McGill-Queen's University Press, 1996) at 245-46.

The collective sense of the importance of languages and literary attainments continued through the nineteenth century and into the twentieth.⁴

As the nineteenth century progressed, the public school system became established, regularized and publicly funded. By the turn of the century, public education in Ontario was divided into two school systems, "separate" (Roman Catholic) and "public" (broadly Protestant). The latter had public (elementary) schools and high schools, with those providing university preparation called collegiate institutions. Attendance was mandatory for children between eight and fourteen. Teacher training was provided by normal schools.⁵ Co-educational secondary schooling became increasingly common during the early part of the twentieth century, but many people continued to consider the practice promiscuous.⁶

Education was available not just to young people but to adults who worked during the day. The Mechanics' Institutes, which provided adult education in the arts (including general literacy), sciences and technology during the nineteenth century, were converted in 1895 into public libraries.⁷ The function of the Mechanics' Institutes was taken over to a large extent by technical and industrial schools such as the privately funded and organized Toronto Technical School, which opened in 1891 and was eventually absorbed by the Toronto Board of Education.⁸ Organizations like the YMCA, YWCA, the Roman Catholic Church and the Methodist Epworth League provided education, entertainment and moral improvement to young adults, including university students.⁹ All of these organizations emphasized written and oral literacy and religious and literary attainments.

As described earlier,¹⁰ universities multiplied in Ontario during the nineteenth century. An appreciation of literary and artistic culture was a fundamental component of the university curriculum - for example, the liberal arts, including the classics and English language and literature, figured prominently in the curriculum of the Methodist Victoria College in its earliest days.¹¹ From 1868 on the government funded only institutions not under denominational control.¹² By 1867, Ontario's male youth had access to seven chartered universities and a similar number of other post-secondary institutions; most major centres of population had at least one of these institutions.¹³ By the turn of the century, the first wave of Ontario's universities had been founded.¹⁴ From 1880s on, they educated women as well as men.¹⁵

Professional training was also becoming regularized and institutionalized. The social sciences became established in Canada, backed by the Protestant churches which thought they would help improve society.

4. Saddlemyer, *supra* note 1 at 13-16. The origins of a sense of the importance of universal education at any or all levels and the role of literary studies in it is a complex study. Leslie Armour and Elizabeth Trott, in *The Faces of Reason: An Essay on Philosophy and Culture in English Canada, 1850-1950* (Waterloo, ON: Wilfrid Laurier University Press, 1981) at 41 link the carefully reasoned Scots Presbyterian pattern of sermons to the emphasis placed on the importance of universal education by Scots like Ryerson - since one had to reason one's way to salvation, training in reasoning was essential. Franklin E. Court, in *Institutionalizing English Literature: The Culture and Politics of Literary Study, 1750-1900* (Stanford: Stanford University Press, 1992), describes Adam Smith's view that literature was necessary to education as the force that would provide the ethics that would counteract the absence of social responsibility entailed in an individualistic, capitalist society. Smith's views went underground, both in Scotland under the influence of the belletristic Hugh Blair and in England under pressure from advocates of philology, and reemerged in a different form in the high colonial mid-nineteenth century as part of the project to create a sense of English national identity reaching back into time.

5. Delmar McCormack Smyth, "The Gradual Emergence of Ontario's Community Colleges" in Hugh Oliver et al., eds., *The House that Ryerson Built: Essays in Education to Mark Ontario's Bicentennial* (Toronto: Ontario Institute for Studies in Education, 1984), 159 at 163-64; William Brehaut, "Trends in the History of Ontario Education" in Oliver et al., *ibid.*, 7 at 10; Murray Nicolson, "The Growth of Roman Catholic Institutions in the Archdiocese of Toronto, 1841-90" in Terrence Murphy & Gerald Stortz, eds., *Creed and Culture: The Place of English-Speaking Catholics in Canadian Society, 1750-1930* (Montreal: McGill-Queen's University Press, 1993) 152 at 164-65.

6. Dormer Ellis, "The Schooling of Girls" in Oliver et al., *ibid.*, 89 at 91.

7. Smyth, *supra* note 5 at 160, 162.

8. Smyth, *ibid.* at 164-65.

9. Semple, *supra* note 3 at 271, 386; Mariana Valverde, *The Age of Light, Soap and Water* (Toronto: McClelland & Stewart, 1991) at 63-65; Nicolson, *supra* note 5 at 165.

10. See page 14.

Nancy Christie and Michael Gauvreau describe how the Protestant churches advocated training in economics, modern industrial problems and Christian "sociology" - social work aiming at inculcating Christian practices into the lives of the poor. Filtered out of these fields were the unholy American tendencies toward determinism and behaviourism. Canada was somewhat behind the United States in seeing its social science departments become populated by people whose chief faith was in technocratic expertise; in Canada in the 1910s the social sciences were developing as disciplines, and the churches still firmly believed that what they taught was consistent with Christianity. Part of the reason the social sciences were so attractive to the churches was that it was felt that their logic and credibility would appeal to men, which would prevent the church from becoming feminized.¹⁶

Congruent with the growth of faith in science, the end of the nineteenth century and the beginning of the twentieth saw as well the institutionalization in universities of training in the professions, such as medicine, engineering and veterinary medicine.¹⁷ A university education did not become the norm for lawyers, however, in any common-law province in Canada until the 1920s, and Ontario's legal training did not come to coincide with this "evolving national standard" until after World War II.¹⁸ By 1909, when Dalhousie University funded and controlled legal education in Nova Scotia and when university law schools were rapidly taking hold in the United States, Ontario's legal training was a professional course run by the Law Society of Upper Canada.¹⁹ This course supplemented a long period of apprenticeship. Many Ontario lawyers did attend university anyway, acquiring a general education by way of arts courses, but this process was neither necessary nor normal. Most lawyers would have acquired whatever literary attainments they possessed through their primary and secondary education and through their own reading. For all segments of the population, therefore, literacy and literary attainments were becoming more available and widespread.

Literature, the Stage and Criticism

Before about 1880 there was little home-grown literature or theatre in Ontario. Theatrical performances tended to be produced by circuits emanating from the United States. There were undoubtedly various opinions on the theatre, with many educated lay people admiring good performances of Shakespeare and so forth when they came through. Religious people, however, were often deeply wary of the effect of the theatre on the human soul, and as I have described in chapter two, their opinions were very important. Some of their criticisms echoed much older vilifications of the stage as a teacher of immorality, such as

11. Semple, *supra* note 3 at 247-50; A.B. McKillop, *A Disciplined Intelligence: Critical Inquiry and Canadian Thought in the Victorian Era* (Montreal: McGill-Queen's University Press, 1979) at 17-18. Other subjects that were intended to be included in education even for those not headed for the ministry, law, politics or business were mathematics, natural science (natural philosophy, chemistry, physiology, geology and astronomy), the outlines of mental and moral philosophy, evidences of Christianity, geography and general history: McKillop, *ibid.*

12. Robin Harris, "Ontario and its Universities" in Oliver et al., *supra* note 5, 145 at 148.

13. Harris, *ibid.* at 148.

14. These include University of Toronto and many of its federated colleges, Queen's University, the University of Windsor (founded as such in 1962 but previously Assumption College, founded in 1857), McMaster University, the University of Western Ontario, the University of Ottawa and the University of Guelph. See Harris, *ibid.* at 147-48.

15. Harris, *ibid.* at 145.

16. On the promotion of the social sciences by the Presbyterians and Methodists, see Nancy Christie and Michael Gauvreau, *A Full-Orbed Christianity: The Protestant Churches and Social Welfare in Canada, 1900-1940* (Montreal: McGill-Queen's University Press, 1996) at 75-130; Semple, *supra* note 3 at 392-93; and Brian J. Fraser, *The Social Uplifters: Presbyterian Progressives and the Social Gospel in Canada, 1875-1915* (Waterloo, ON: Wilfrid Laurier University Press, 1988) at 90. Christie and Gauvreau observe that the "masculine" social sciences were drawn into social and moral reform efforts that were, on the whole, driven by "maternal feminists," who were generally middle-class and farming women: *ibid.* at 130. As noted above, page 36, Ramsay Cook sees the movement into the social sciences as ultimately contributing to the marginalization of the clergy in modern Canadian society, as they undercut their own authority by appealing to the authority of the social sciences, whose bases were not in Christian doctrine: *The Regenerators: Social Criticism in Late Victorian English Canada* (Toronto: University of Toronto Press, 1985) at 228-32.

Jeremy Collier's 1698 attack on the English stage, a response to the almost ribald comedies of the Restoration:

The business of plays is to recommend virtue, and discountenance vice; to show the uncertainty of human greatness, the sudden turns of fate, and the unhappy conclusions of violence and injustice: 'tis to expose the singularities of pride and fancy, to make folly and falsehood contemptible, and to bring everything that is ill under infamy and neglect.²⁰

Robertson Davies argues that much of the distrust and dislike of nineteenth-century theatre expressed by religious people was about more than the theatre's potential to provoke frivolity and immorality:

There was a substantial body of opinion that was utterly opposed to the theatre in any form, for complex reasons that are not simply to be explained as puritanism. The hatred of pretence, of assuming a personality not one's own, of bodying forth actions that had no precise correlative in "real-life" is a complex study The theatre was suspect, as a home of what was not wholly serious.²¹

The theatre was understood to endanger the souls not only of those whom it might teach vices but also of every performer and, by extension, the audiences, who colluded in this falseness and whose own behaviour might in a sense also be considered false - when an actor asks a question, for example, the audience sits in rapt silence rather than responding, as it would if the situation were real. Those marketing theatre (especially popular theatre, such as vaudeville) in nineteenth-century Ontario therefore had to elude not just the prejudice against on-stage immorality, but also this ingrained (but not universally felt) distrust of all kinds of theatrical representation. Melodrama, the genre of theatrical writing that had the greatest currency in the nineteenth-century, and not just in Ontario, was the antidote to these prejudices. Melodrama was not just a genre but a "spirit that influenced the way in which the nineteenth century looked at life and desired to see life presented in art."²² Melodrama "concentrates on individual suffering, individual redemption, and the belief in an ultimate righting of individual wrongs best described by poetic justice. Melodrama is more 'moral' in the popular sense of the word than either comedy or tragedy."²³ Observing that the writing of George Eliot falls into this category, Davies adds that melodrama "can provide both the comic and the tragic aspects of life, side by side, in terms that reflect the ordinary life of ordinary mortals."²⁴ As Davies points out, the emphasis on individual redemption, on the righting of wrongs in the lives of ordinary people, accorded with the revivalistic, evangelical spirit of religion in nineteenth-century Ontario and provided a defence to the argument that the theatre imperilled the soul.²⁵

Related but not always identical concerns had been expressed about the novel as it emerged in the eighteenth and nineteenth centuries in England. It depicted something untrue; it was not wholly serious; it was widely accessible; it seemed to be for and about women.²⁶ Victorian novelists wrote against this

17. Victoria College acquired faculties of law and medicine in 1854 and 1862, respectively, and it opened facilities dedicated to the sciences in 1878. Ontario had three independent professional schools by 1867: the Ontario Veterinary College at Toronto and two medical schools organized by local doctors in Toronto and Kingston. The medical schools were affiliated with the University of Toronto and Queen's and subsequently merged with them. In 1884 the Royal College of Dental Surgeons (founded in 1875) and the Ontario College of Pharmacy (founded in 1882) became affiliates of the University of Toronto, which also acquired a small law faculty. The provincial government established the School of Practical Science at Toronto in 1873 (it later became the faculty of applied sciences at the University of Toronto) and the Ontario College of Agriculture at Guelph in 1874. The establishment of the School of Practical Science in Toronto was staunchly opposed by William R. Meredith, Member of the Ontario Legislature for London, and later Chief Justice of Ontario and Chancellor of the University of Toronto. He argued in 1877 that it was absurd and unjust to expect young men to travel from London to Toronto to be educated and that a more appropriate avenue was evening classes for working men in London and elsewhere. The newly established Kingston School of Mines began receiving public funding in 1893; in 1912 it became the faculty of applied sciences at Queen's University, which in turn divested itself of its ties to the Presbyterian church and so also became entitled to public grants. See Semple, *supra* note 3 at 250-51; Harris, *supra* note 12 at 147-50; Smyth, *supra* note 5 at 163.

suspicion for popular audiences; much of the work of writers like Thackeray, Dickens, Trollope and George Eliot relies on melodramatic plots with moral messages. The novel almost certainly did not, however, form part of the literary component of a classical education in Ontario.²⁷ The portion of an education that focused on written texts included poetry, some drama (such as Shakespeare's,²⁸ Milton's and Jonson's) and some prose. The prose, including the elegant non-fictional prose of the late eighteenth-century, tended to be "improving" and didactic. The English writer John Ruskin, "[p]erhaps the most extreme example of a Victorian writer with a sense of mission," was popular among the well-educated in dealing with the many political and philosophical challenges posed by their age.²⁹ History and English literature had not yet separated into separate disciplines in Canada, and history, written mainly by interested, literary-minded amateurs, was viewed as an especially instructive branch of literature.³⁰

By 1914, Ontario had 2.7 million people, and over half the population was urban.³¹ The process of urbanization had occurred over approximately the previous forty years and had mainly resulted from migration from rural to urban areas, rather than immigration.³² Between 1880 and 1900, Ontario's print culture expanded tremendously. Susanna Moodie, not an unbiased observer of course, stated rather optimistically in 1871:

Canada can boast of many good and even distinguished authors, and the love of books and booklore is daily increasing.

Institutes and literary associations for the encouragement of learning are now to be found in all the cities and large towns in the Dominion. We are no longer dependent upon the States for the reproduction of the works of celebrated authors; our own publishers, both in Toronto and Montreal, are furnishing our handsome bookstores with volumes that rival, in cheapness and typographical excellence, the best issues from the large printing establishments in America. We have no lack of native talent or books, or of intelligent readers to appreciate them.

Our print shops are full of the well-educated designs of native artists. And the grand scenery of our lakes and forests, transferred to canvas, adorns the homes of our wealthy citizens.³³

18. W. Wesley Pue, *Law School: The Story of Legal Education in British Columbia* (Vancouver: University of British Columbia Faculty of Law, 1995) at xxvii. In the decade or so before Confederation, students could enter legal studies in Ontario at the age of 16. For example, in 1858, Britton Bath Osler, intent on becoming a lawyer, faced a choice of spending five years as an articled clerk in a lawyer's office and writing a series of Law Society of Upper Canada exams, or getting a university degree and also spending three years as an articled clerk. If he had taken the former option, he would also have read on his own and periodically attended lectures at Osgoode Hall. Osler elected to do his clerkship while attending university and thus reduced to three years the time it took him to be called to the bar. He studied on his own to pass the law society entrance exams before starting his articles, exams which seem to have been in French, algebra, geometry, Latin and "Blackstone." He subsequently wrote law society exams every year. Curtis Cole remarks that this program was not as rigorous as it seemed, because the university did not actually require him to do anything except pay fees. This loophole was closed in 1860. There were separate examinations for barristers and solicitors, but most lawyers wrote both. See C. Ian Kyer, "The Transformation of an Establishment Firm: From Beatty Blackstock to Faskens, 1902-1915" in Carol Wilton, ed., *Essays in the History of Canadian Law*, vol. 7, *Inside the Law: Canadian Law Firms in Historical Perspective* (Toronto: University of Toronto Press, 1996) 161 at 165; Curtis Cole, *Osler, Hoskin & Harcourt: Portrait of a Partnership* (Toronto: McGraw-Hill Ryerson Limited, 1995) at 13-15.

Somewhat later, the extent to which legal training was a professional, rather than an academic, endeavour is evident in the *Canadian Law List* of 1890, which lists the professors, honorary lecturers and other instructors in the University of Toronto faculty of law: two were judges, and almost all the rest were Queen's Counsels, which indicates that teaching was by no means the centre of their professional lives. The list includes several whose names still figure prominently in large Canadian law firms - Edward and S.H. Blake, D'Alton McCarthy and Britton Bath Osler - and several who subsequently became judges - W.R. Meredith, Charles Moss and J.J. Maclaren. Only three have academic degrees listed after their names, and only two of the three degrees are in law. Similarly the law society's law school had a principal, two lecturers and two examiners. By 1900, it had four lecturers and four examiners: R. Hardy, ed., *The Canadian Law List 1890* (Toronto: Imried Graham, 1890); H. Cartwright, ed., *The Canadian Law List 1900* (Toronto: Canadian Legal Publishing Company, 1900).

Turn-of-the-century Ontario presented a wide range of attractions to those who appreciated the arts, literature and the theatre. A nationalistic surge saw the production of novels, poetry, short stories and major studies in Canadian history. Popular periodicals like *Saturday Night* and *Maclean's*, serious literary magazines like *The Week*³⁴ and new academic journals like *Queen's Quarterly* and *The University of Toronto Quarterly* were among the many serials serving a growing reading public. Serials were becoming increasingly specialized to suit particular portions of the reading population.³⁵ The Royal Canadian Academy, Ontario College of Art and Ontario Arts Student League fostered a rising artistic community, and the forerunners to the Group of Seven were starting to make their marks. Local dramatic, artistic, literary and university societies multiplied.³⁶ City-dwellers no longer readily able to take advantage of "the unplanned leises of the countryside" looked to the theatre for entertainment.³⁷

Theatres multiplied in urban Ontario. Around the turn of the century, the major theatres on the Toronto scene included the aging Grand Theatre, the Royal Alexandra, the Princess (these last two had close links with major American and British touring companies), Shea's Victoria Music Hall (a vaudeville³⁸ houses) and two burlesque houses, the Gayety and the Star. Massey Hall contributed to the dramatic scene as well, but it was more of a music hall than a theatre. Moving-picture shows had also started to appear.³⁹

A certain amount of the drama that played in these theatres was home-grown, but to a much greater extent, its roots were in Britain or, more importantly, New York. J.M.S. Careless notes that "resident stock companies, where they had existed, had been considerably supplanted by big touring professional enterprises that operated out of American metropolitan centres or imported travelling British companies. They played the New York successes, or London ones largely endorsed in New York, along with the older British-American standard fare."⁴⁰

The influence of American and British tastes and markets on Canadian writers was not small either. After 1890, the North American market for fiction expanded rapidly and the amount of Canadian fiction produced increased substantially, as did the number of Canadians earning a substantial portion of their livings from writing.⁴¹ Most of these writers had been born in Canada. While they grew up in an age concerned with the need to create a body of literature for the new nation, these writers tended to be more concerned with the details of the experience of growing up in small towns in the Maritimes or Ontario, how it felt and what people did and said. These writers had grown up in a rich print environment,

19. Pue, *ibid.* at 33-34.

20. Jeremy Collier, "A Short View of the Immorality and Profaneness of the English Stage, Together with the Sense of Antiquity upon this Argument" in G.H. Nettleton et al., eds., *British Dramatists from Dryden to Sheridan* (Carbondale: Southern Illinois University Press, 1969) 389 at 389.

21. Robertson Davies, "The Nineteenth-Century Repertoire" in *Early Stages*, *supra* note 1, 90 at 92.

22. Davies, *ibid.* at 93.

23. Davies, *ibid.*

24. Davies, *ibid.* at 93-94.

25. Robert Hughes has argued, in *The Culture of Complaint: The Fraying of America* (New York: Warner Books, 1993) at 172-77, that the end of the nineteenth century saw a similar but more secularized approach to painting in the United States. He identifies, as a reaction to the Puritan suspicion of all types of art and adornment, a tendency in mid-nineteenth-century American discussions of art to stress, "indeed wildly exaggerate" (*ibid.* at 176) the moral force of visual art. He identifies a popular sense that art can be therapeutic as developing by the 1880s in the United States, a sense that he says never developed to anywhere near the same extent in Europe: *ibid.* at 178, 180, 183.

26. "The Restoration and the Eighteenth Century: 1660-1798" in M.H. Abrams, ed., *Norton Anthology of English Literature*, 5th ed., vol. 1 (New York: W.W. Norton & Company, 1986) 1766 at 1784. See also Patrick Brantlinger, "The Case of the Poisonous Book: Mass Literacy as Threat in Nineteenth-Century British Fiction" (1994) 20:2 *Victorian Rev.* 117; and Walter Kendrick, *The Secret Museum: Pornography in Modern Culture* (New York: Viking, 1987) at 84, 92.

27. Gordon Roper, "New Forces: New Fictions 1880-1920" in Carl F. Klinck et al., eds., *Literary History of Canada: Canadian Literature in English*, 2d ed., vol. 1 (Toronto: University of Toronto Press, 1976) 274 at 281 [hereinafter *Literary History of Canada*].

28. See e.g. McKillop, *supra* note 11 at 129-30.

29. "The Victorian Age: 1832-1901" in M.H. Abrams, ed., *Norton Anthology of English Literature*, 5th ed., vol. 2 (New York: W.W. Norton & Company, 1986) 917 at 933 [hereinafter *Norton 2*].

populated by serious Victorian fiction (published both in serial and book form), "high romance, historical romance, tales of everyday life, local colour stories, domestic sentimental fiction, boys' adventure books, girls' stories, pious moral tales, stories of detection, crime, Indians, and the West and Northwest. What was not sentimental was apt to be sensational, and often fiction was both sentimental and sensational."⁴² Much of this literature came from Britain, but a great deal more came from the United States.⁴³ Gordon Roper remarks on the high number of Canadian writers after 1880 who had a university education, observing that as students they would have become even more aware of the power of the word, even though the classical educations they obtained did not generally include such "sub-literary things as romances and novels."⁴⁴ Young writers published particularly in the proliferating popular literary serials in the United States and Britain. In those places it was a writer's market, while in Canada the market for books and magazines was still small.⁴⁵

The popular Canadian writers of this period were more widely read by contemporary audiences than writers of any other period in Canadian history before or since.⁴⁶ These writers, an important minority of whom were women, absorbed the view of late nineteenth-century British and American authors that it was necessary either to entertain or to instruct readers. If the latter goal was chosen, it was still necessary to be interesting. This fiction tends to have a "high moral tone ... which was usually intended to teach and inspire as well as to entertain; a large dollop of justice offset a sprinkling of scandal and adventure."⁴⁷ Intended more to communicate with the reader than to express the soul of the author, it is decorous and observes the decencies of the dinner table or the fireside.⁴⁸ Stylistically, it is characterized by strong, fast-paced plots, idealized characters, exotic settings that reinforced the power of the action and clear, moral conclusions that evinced an emotional response: it was melodrama - "sentimental or sensational, or a fusion of both."⁴⁹ Much historical fiction and many historical romances were written during this period.⁵⁰ The work was concerned with individuals, rather than institutions, and unlike realist literature that was developing elsewhere in the world, it posed no challenges to political ideals or gender norms.⁵¹ Characters dreamed of emotional, not economic or social success, and they usually ultimately attained their ends. Few characters

30. Carl Berger, *The Writing of Canadian History: Aspects of English-Canadian Historical Writing since 1900*, 2d ed. (Toronto: University of Toronto Press, 1986). The process by which history and English literature came to be considered one subject may be understood to be part of the larger story of the creation of the discipline of English literature, which is in turn understood by some authors to be part of the story of the creation of Englishness. Court, *supra* note 4, tracks the beginnings of the discipline of English literature back several centuries but looks particularly to Adam Smith in the mid-eighteenth century, who, in a utilitarian way, saw literature as a way to inculcate in the emerging, liberal, individualistic middle class the ethics that would be required if civilization were not to collapse. Court goes on to describe the influence of Scottish belletristic and English philological practices on the repute of English literature as a serious discipline. The influence of the belletristic Hugh Blair was particularly important in setting English literature on the path it has since taken, even though his methods tailed off in popularity for some time after him. University College in the University of London opened its doors in 1828 intent on inculcating through literature a set of ethics appropriate to the growing, liberal, capitalist, individualistic middle class. Nevertheless, the discipline took more than a century to establish a foothold as an essential part of an English university education for men. Court's study shows that the formation of English literature as an independent discipline was affected by many forces - religious, philosophical, geo-political - and had a great deal to do with founding an English national identity. As the nineteenth century passed, "[l]iterature came to be taken as a symbolic index to history" (*ibid.* at 87) and constructing English history, with literature, ethnology, Burkean politics and evangelical Christianity as keys, was a major part of constructing an English national identity. Through this constellation of discursive practices, literature came to be understood, by 1870, as a source of improving, Christian wisdom that would ennoble both individual and nation. See also Alastair Fowler, "Leavis of the North: The Role of Hugh Blair in the Foundation of English Literary Studies" *Times Literary Supplement* (14 August 1998) 3. Gauri Viswanathan examines the purposive use of English literary study in the colonizing of India in *Masks of Conquest: Literary Study and British Rule in India* (New York: Columbia University Press, 1989). The formative processes will not have been the same in Canada as in England, due in part to a greater sense of the democracy of the wilderness, where hard work creates a meritocracy, a pattern of thinking that emerges in Susanna Moodie's *Roughing it in the Bush, or, Forest Life in Canada* (Toronto: McClelland & Stewart, 1923) at 502-3. In any case by 1880 history and literature together (or more specifically the consciousness of an absence of home-grown literature) seem to have functioned similarly in forging the sense that Canada had a national identity and required a literature to depict and solidify it. Indeed, Margery Fee has seen the preoccupation with developing a literature reflecting the nation's essential character as the most significant literary convention of English Canadian criticism between 1890 and 1950: *English-Canadian Literary Criticism, 1890-1950: Defining and Establishing a National Literature* (Ph.D. Thesis, University of Toronto, 1981).

expressed alienation from the world.⁵² It has been argued that it was the real or imagined need to publish in Britain or the United States that tended to discourage Canadian writers from addressing in subtle ways serious themes of national significance, such as relations between native peoples and those of European descent or the tensions between English and French or between Americans and Canadians in Canada.⁵³ For whatever reason, melodrama governed Canadian writing.

As is still the case, the popular fiction of the time did not generally appeal to the highly educated, who considered it at best mere entertainment and at worst debasing to the public morals.⁵⁴ Evangelical newspapers and pulpits were the least enthusiastic about this fiction:

A fiction was a lie, inspired by the Father of Lies, unless, of course, it was a "parable" or "allegory" to inculcate moral views. Popular fiction was denounced because it made vice attractive, and made violence seem natural. It spread irreligious, free-thinking, or undemocratic (or democratic) sentiments in seductive form. Many lay members of the fundamentalist flock were equally suspicious of fiction. Some would open a new book to the title-page, and if the title included the word "romance" or "novel," would read no further; if the title claimed the book to be a "tale of real life" or of "everyday life" they might venture on. Some parents prohibited the reading of all fiction to their children; some permitted the reading only of what came from church-sponsored presses and libraries. Some permitted it only on weekdays. When the Toronto Public Library opened in 1882, the guardians of public morality and the public purse tried to prevent fiction from being placed on the shelves. They argued that fiction led readers into sloth; it gave them irresponsible notions about life; it sapped the moral fibre. Or they argued that since it was mere entertainment, public money should not be squandered on providing it free for library readers.⁵⁵

These views notwithstanding, fiction proliferated, even in public libraries.

Canadian poetry during this period shows the influence of an emerging Canadian nationalism and, unlike the fiction, has a distinctive Canadian character.⁵⁶ It is, however, heavily influenced by English Romantic and Victorian poetry in its spirit, form, diction, and subject-matter, so that it emphasizes life and landscape, spirituality and patriotism. The poetry is not all optimistic: nature is often depicted as having a spiritual dimension, which is frequently indifferent or hostile to human needs; but this poetry tends to avoid

31. J.M.S. Careless, "The Cultural Setting: Ontario Society to 1914" in *Early Stages*, *supra* note 1, 18 at 43.

32. Careless, *ibid.* at 39, 43.

33. Moodie, *supra* note 30 at 13-14.

34. For a discussion of the role and attitudes of *The Week*, see Claude T. Bissell, "Literary Taste in Central Canada" (1950) 31 *Can. Hist'l Rev.* 237.

35. See Wynne Francis, "Literary Magazines in English" in William Toye, ed., *The Oxford Companion to Canadian Literature* (Toronto: Oxford University Press, 1983) 455 at 456-57 [hereinafter *Oxford Companion to Canadian Literature*].

36. Careless, *supra* note 31 at 47.

37. Careless, *ibid.* at 39.

38. Vaudeville featured variety minstrel shows, plus song-and-dance men, balladeers, patter comedians, acrobats, jugglers and animal acts: Careless, *ibid.* at 48.

39. Careless, *ibid.* at 48-49.

40. Careless, *ibid.* at 48.

41. Roper, *supra* note 27 at 275-77.

42. Roper, *ibid.* at 277-78.

43. Roper, *ibid.* at 280.

44. Roper, *ibid.* at 281. Although in England familiarity with the classics may have been in the process of being superseded by familiarity with science and English literature as the main distinguishing marks of an educated mind, Canada was probably not there yet: see Kendrick, *supra* note 26 at 46, 48.

45. Roper, *ibid.* at 282-85.

46. Cal Smiley, "Novels in English 1900 to 1920" in *Oxford Companion to Canadian Literature*, *supra* note 35, 569 at 569.

explorations of human existential dilemmas or the gritty, unpleasant realities of life. Stylistically, the poetry tends to be conservative in form and meter and, again, heavily reliant on its English forebears.⁵⁷ These tendencies in the poetry written by Canadians reflects the nature of the taste in English and American poetry held by contemporary readers.⁵⁸

On stage, most drama was presented by touring American enterprises that played New York or London hits and older Anglo-American standard fare. These companies tended not to be experimental, and local managers relied on them, rather than risking shows by unheralded Canadian playwrights or new forms of drama.⁵⁹ The sense that theatre endangered the soul through its representation of "falseness" had faded by the end of the century, but the sense that a proper play, in the melodramatic vein, could provide moral improvement to the masses was still highly prevalent and responded to the long-standing criticism that the stage provoked immorality.⁶⁰ One form of drama that did not gain great popularity in Canada was the "problem play," a new form of drama that was appearing on British and American stages. Done best by Shaw and Ibsen, these plays used the emerging techniques of realistic theatre to depict the conflict of social institutions with human feeling.⁶¹ Forays into these forms of drama attracted audiences, particularly among the highly educated classes, but were harshly criticized by those committed to upholding the morals of the nation.⁶² With many theatre productions, like novels, emanating from the United States, that country was frequently associated with infamy, and cries went out to "guard our national frontiers."⁶³ Overall, the inhibitions of public morality restrained ventures into the new theatrical and literary conventions of realism on the main commercial stages.

Linked to these new forms of drama was realism, an equally unpopular and maligned movement in literature that made little impact on Canadian writing between 1880 and 1914:

Between 1880 and 1920 few Canadian writers revealed in their work any awareness of the various kinds of 'new fiction' which appeared in Great Britain and in the United States as these years rolled by, from writers as diverse as James, Conrad, Crane, Norris, Dreiser, Wells, Forster, Ford, Mackenzie, Lawrence, Joyce, Andersson, Virginia Woolf, and Willa Cather. Often experimental in form, the 'new fiction' frequently explored the darker side of human experience. Usually it was written to express the writer's private vision, not to please the tastes of the common reader. Canadian writers, however, like most of their British and American contemporaries, lived and worked on another floor in the house of fiction.... [T]hey

47. Mary Jane Edwards, "Novels in English: Beginnings to 1900" in *Oxford Companion to Canadian Literature*, *supra* note 35, 565 at 567. Contemporary narratives about white slavery also had this melodramatic quality, and Carolyn Strange observes that some of these narratives even appeared on the stage of the Grand Theatre: *Toronto's Girl Problem* (Toronto: University of Toronto Press, 1995) at 62. For a description of these white slavery narratives, see Strange, *ibid.* at 99-10; Valverde, *supra* note 9 at 95-98; and John McLaren, "White Slavery: The Reform of Canada's Prostitution Laws and Patterns of Enforcement, 1900-1920" (1987) 8 *Crim. J. Hist.* 53 at 66-67 [hereinafter "White Slavery"].

48. Roper, *supra* note 27 at 290-91.

49. Roper, *ibid.* at 287-88; Smiley, *supra* note 46 at 569.

50. "Fiction in English" in Noah Story, ed., *The Oxford Companion to Canadian History and Literature* (Toronto: Oxford University Press, 1967), 252 at 254-55.

51. Elaine Showalter, at 76-104, describes the growth in England of the romance novel (about a quest into some dark unknown territory) and the boys' adventure story as part of a reaction to the death of George Eliot, the queen of fiction, in 1880. Male writers sought to stake out economic territory for themselves after her tremendous success, but they also sought "to remake the high Victorian novel in masculine terms," "to reclaim the kingdom of the English novel for male writers, male readers, and men's stories" (*ibid.* at 78-79). Canadian literary culture came of age as the resolutely masculine romance came into the ascendant in England, eclipsing the feminine realism of Eliot, and Canadian were probably not intensely aware of the English tensions around these two forms.

52. Gordon Roper, S. Ross Beharriell and Rupert Schieder, "Writers of Fiction 1880-1920" in *Literary History of Canada*, *ibid.*, 327 at 352-53.

53. Edwards, *supra* note 47 at 567-68.

54. Roper, *supra* note 27 at 285. Note that in 1913, the National Council of Women's Committee on Objectionable Printed Matter favoured encouraging people "'to read less fiction and to substitute books of a more educational character'": Valverde, *supra* note 9 at 63.

wrote in the varieties of fiction read by the great middle band in the spectrum of the reading public. Panoramas of their values, their forms, their characters, and their fictional techniques would show similar community. What did distinguish their work, as a body, was the remarkable extent to which they used their own native grounds as material in their stories.⁶⁴

Realism had developed considerable readership in France and was making headway in Britain and the United States, but most well-educated Canadian readers disliked it, objecting that it degraded human experience and endangered youthful readers; they preferred uplifting melodrama, if they tolerated novels at all, or history.⁶⁵ Recall Michael Gauvreau's identification of human history as the defining intellectual preoccupation of the period⁶⁶: subjects of study that we would now identify as history, geography or English literature were all components of the nationalistic project of the time. This project showed how the past had given birth to the present and it set the stage for the future. While it tended to focus on political and economic progress, two of its abiding preoccupations - always linked - were to explain the absence of a worthy national literature in the past and to detect the signs of flowering in the present.⁶⁷ A call went out for the creation of a Canadian literature that could be what Franklin E. Court calls "a symbolic index to history."⁶⁸ Indeed, Margery Fee has found the preoccupation with developing a literature to express the soul of the nation to be the predominant convention of English Canadian literary criticism between 1890 and 1950.⁶⁹ (Writers, however, realized that it was easier to call for it than to write it and that there was not much market for it outside Canada.⁷⁰) Historical writing had shades of the epic in its plot and of the romantic in its tone. Understanding it as literary was thus not unreasonable.

Another movement that never made much headway in Canada was the "art for art's sake," "decadent" or "aesthetic" movement, personified by Oscar Wilde, which denied that art should lead a person toward moral thought and behaviour and thus "assaulted the assumptions about the nature and function of art held by ordinary middle-class readers, deliberately, provocatively." This movement widened the gap in England and in Europe between artists and writers, on one side, and the ordinary public on the other, fostering the image of the alienated artist.⁷¹ This movement was probably even less attractive to the Canadian public than it was to English and American audiences.

A corollary to the unpopularity of the art for art's sake movement is that the problematizing of masculinity and femininity that occurred in this work seems to have been rejected by Canadian audiences, as it was in England and the United States. Oscar Wilde, in his person, embodied the idea that masculinity is constructed; his homosexuality underlined the homosexual subtext of the homosocial culture of boys' schools and men's clubs in which upper-class English men lived. Similarly a character such as Vivie

55. Roper, *ibid.* at 286. The strength of the denominational presses such as the Methodist Book and Publishing House (later the Ryerson Press) probably helped stave off the arrival of realist work on Canadian shores.

56. Tom Vincent, "Poetry in English to 1900" in *Oxford Companion to Canadian Literature*, *supra* note 35, 652 at 656.

57. Susan Gingell, "Poetry in English 1900 to 1950" in *Oxford Companion to Canadian Literature*, *ibid.*, 656 at 656.

58. Claude T. Bissell, "Literary Taste in Central Canada" (1950) 31 *Can. Hist'l Rev.* 237 at 247-48.

59. Careless, *supra* note 31 at 48.

60. The most common attitude even in the church presses was that proper, clean theatrical performances would have benign effect on public morals (neutral or even elevating), but bad shows would corrupt. See e.g. "Censorship of Theatres" *Presbyterian* (15 October 1908) 412; "A Wave of Indecency" *Presbyterian* (22 April 1909) 484; "The Theatre" *Presbyterian* (6 October 1910) 355; and "What Can Be Done with the Theatre?" *Presbyterian* (13 October 1910) 387 [hereinafter "What Can Be Done?"]. One article that explicitly proclaimed the "immortal popularity" of *Uncle Tom's Cabin* and "the scores of domestic plays and melodramas in which vice is held up to execration and virtue glorified" is "Moralities on the Stage" *Toronto Daily Star* (4 May 1910) 8. See also "Influence of the Stage in Forming Impulses" *Toronto World* (30 October 1909) 8 and "Reforming the Playhouse" *Toronto Daily Star* (1 February 1904) 3.

61. See Henry F. Salerno, "The Problem Play: Some Aesthetic Considerations" (1968) 11 *English Literature in Transition* 195.

62. See e.g. "No Help to Morals of City," *Evening Telegram*, 27 November 1912) 20, reporting on the condemnation of a local play of this type by Rev. John Coburn at a meeting of the Toronto Social Studies Club. The play involved adultery. He called the whole play degrading, even though there was not an indecent word or act in it.

63. "The Theatre," *supra* note 60.

Warren, in George Bernard Shaw's *Mrs. Warren's Profession* challenged the notion that women could be fulfilled only through marriage and motherhood. England and the United States were experiencing the challenges to gender norms involved in these constructs and felt deeply threatened by Wilde's and Shaw's writings. Ontario's rejection of this movement was quieter. Possibly this was because there was less general anxiety about gender norms in Ontario, but likely the theatrical circuits simply did not mount such shows in conservative Ontario, so that the threat they posed was mainly a rumour from elsewhere.

Between 1880 and 1910, then, a large market developed in Canada for fiction and drama. Better educated and probably older members of society, consistent with their schooling, considered most novels to be at best mere entertainment and a waste of time; these people preferred literary tales of history that educated as they entertained and foretold a glorious future for Canada.⁷² The historical fiction of Sir Walter Scott and others was very popular.⁷³ Theatre of all descriptions was disdained. The better educated had little use for any fiction, particularly problem plays or realist fiction that depicted difficult moral dilemmas or sordid conditions of life.⁷⁴ The majority of the reading public, however, liked the fiction that proliferated in books and magazines around the turn of the century, and the multiplying urban theatres drew large audiences from the middle and working classes. The most popular genre for fiction and drama (as opposed to variety and burlesque shows, which were also very popular) was melodrama, with its clear plots, characters and moral resolutions.

While realism did not appeal to the majority of the reading and theatre-going public, authors like Conrad, James, Woolf, Joyce, Crane, Dreiser, Wilde, Shaw and Ibsen were attracting attention and objection elsewhere in the English-speaking world, and they were beginning to enter Canada, to be enjoyed by a small segment of the population and to have an impact on the developing discipline of English literature and the nature of literary criticism. One significant literary periodical of the late nineteenth century (1883 to 1896) was *The Week*, published in Toronto. Claude T. Bissell asserts that on the whole, "the *Week* is a better source for material illustrative of cultivated literary taste than most of the Canadian periodicals that have appeared since it ceased publication."⁷⁵ The *Week* presented a synthesis of the academic and literary realms that has since broken down. It published contributions from various Canadian writers like Charles G.D. Roberts, William Dawson LeSueur and Sara Jeannette Duncan, but it gave more space to writers in the United States and England. French literature received the next largest amount of attention. Bissell speaks of a split between those who liked "the traditional novel of complicated plot stiffened by abundant passages of generalized description and of wholesome morality" and those who preferred "the novel that scorned the machinery of plot, strove for a calm objectivity, substituted close analysis of character and motives for elaborate background descriptions, and aimed to trouble the mind rather than strengthen the moral fibre."⁷⁶ The practitioners of this latter class were the American realists and the French naturalists.

64. Gordon Roper, Rupert Schieder and S. Ross Beharriell, "The Kinds of Fiction 1880-1920" in *Literary History of Canada*, *supra* note 27, 298 at 326. See also Kendrick, *supra* note 26 at 177. In *The Closing of the American Mind* (New York: Simon & Schuster, 1987) at 204-5, Allan Bloom describes realist literature this way:

The artists whom Nietzsche saw around him, those whose gifts were the greatest, attested to this loss [of the ability to inspire through myth]. They were what he called decadents, not because they lacked talent or their art was not impressive, but because their works were laments of artistic impotence, characterizations of an ugly world that the poets believe they cannot influence. Immediately after the French Revolution there had been a stupendous artistic effervescence, and poets thought they could again be the legislators of mankind. The vocation provided for the artists in the new philosophy hearkened to them, and a new classic age was born. Idealism and romanticism appeared to have carved out a place for the sublime in the order of things. But within a generation or two the mood had noticeably soured, and artists began to represent the romantic visions as a groundless hoax. Men like Baudelaire and Flaubert turned away from the public and made the moralism and enthusiasm of their immediate predecessors look foolish. Adulteries without love, sins without punishment or redemption became the more authentic themes of art. The world had been disenchanted. Baudelaire presented sinning man as in the Christian vision, but without hope of God's salvation, piercing pious fraudulence, *hypocrite lecteur*.

65. Roper, *supra* note 27 at 285; S. Craig Wilson, "'Our Common Enemy': Censorship Campaigns of the Woman's Christian Temperance Union and the National Council of Women, 1890-1912" (1998) C.J.W.L. (forthcoming). See also "A Wave of Indecency," *supra* note 60.

66. See page 23 *et seq.*

The former were courteously accepted; the latter were impossible to support.

Brian Doyle identifies the period between 1880 and 1920 as the period when English literature as a credible academic discipline for men came to exist in England.⁷⁷ Canada underwent a related process, as university departments took shape and literature and history began to take their current shape as separate discipline.⁷⁸ In this, Canada was perhaps a decade or two behind the United States.⁷⁹ Influenced by Darwinism and German philosophy, history developed a scientific slant and tone, with an emphasis on "documentation, detachment, specialization, and a scientific frame of mind."⁸⁰ The separation of history from literature left literature to develop new methodologies of its own.

What those methodologies were, however, shifted. The older way of evaluating writing was to assess the moral uprightness of its author through an examination of some of the qualities of her or his writing. An exemplar of this type of criticism is Augustine Birrell, on the defensive in England by 1894. In a collection of essays on a number of writers, Birrell castigates and dismisses Jonathan Swift, focusing on the man, his manners, his relationships and his doings. Birrell does not analyze the artistic merit of Swift's texts but instead stresses their moral impact, their indecency.⁸¹ The moral and aesthetic components of a text are inseparable. In his criticism Birrell examines the character of the writers and what they say, rather than how they say it. He dislikes just about everything written after 1800 and accuses contemporary authors of demanding admiration for their realist seriousness, even as they produce texts that supply not the slightest bit of joy to the reader - one suspects he has Thomas Hardy in mind.⁸² This type of criticism espouses a different writing ethic: to instruct and entertain decorously, through an illustration of life as it may best (or ideally) be lived, rather than to explore and faithfully represent hardship.

Canadian literary criticism of the late nineteenth and early twentieth centuries has a similar idealism and didacticism. The European and American realist and "naturalist" (darker than realist) movements in literature were debated by writers in Canada, but the preponderance of literary opinion favoured "idealism." "Literature was not a personal expression of a particularly sensitive individual who could unmask his own and society's soul, but a social force that would entertain while instructing, leading, and inspiring."⁸³ The majority of critics were certain that literature should offer a moral lesson. George Herbert Betts, in a 1912 book intended to provide teachers with an introduction to psychology, found in literature an avenue to teach students "what to look for in life and experience" and a description of "life in the

67. Berger, *supra* note 30 at 2-3. The linkage of history and literature in a nationalistic project was still evident in Carl Wittke's *A History of Canada* (Toronto: McClelland & Stewart, 1935). It is clear from Wittke's writing that when he speaks of literature he includes history. His lengthy paragraph itemizing the recent work of historians in Canada begins "[p]ractically all of the noteworthy literary productions of English Canadians date from the time of the Confederation": *ibid.* at 289. Wittke observes a "desire for a literature and an art which should give emotional expression to Canada's rise to nationhood"; but evidently he does not find a great deal to celebrate just yet: *ibid.* at 291. He remarks that Canadians are just starting to achieve distinction in the fine arts but that "[t]he theatre in Canada, from legitimate drama through musical comedy, burlesque, and moving pictures, is really an appendage of the theatrical activities of the United States and of Great Britain": *ibid.* at 290. The writers Wittke admires are all representatives of a style of English writing that became less popular as modernist writing made its appearance in Canada: T.C. Haliburton (who "stands out as almost the only exceptional genius Canada has produced"), Stephen Leacock, Rev. Charles W. Gordon, Norman Duncan, Ernest Thompson Seton, Margaret Saunders (for "*Beautiful Joe*, one of the most popular children's books ever written"), Charles G.D. Roberts, Archibald Lampman, Bliss Carman, William Henry Drummond, D.C. Scott, Marjorie Pickthall, E.J. Pratt and Wilson Macdonald: *ibid.* at 288-89.

68. See *supra* note 30.

69. Fee, *supra* note 30.

70. Roper, *supra* note 27 at 286-87.

71. "The Twentieth Century" in *Norton 2*, *supra* note 29, 1727 at 1727-28. The editors of the *Canadian Churchman* clearly had no truck with this doctrine: see "Immoral Literature" *Canadian Churchman* (14 January 1909) 19 at 20. Oscar Wilde rejected many ideas dear to the hearts of those concerned with the moral well-being of the populace. For example, in *The Picture of Dorian Gray*, he critiqued the idea that literature could poison the mind: see Brantlinger, *supra* note 26 at 129-30.

72. Roper, *supra* note 27 at 281.

73. Wilson, *supra* note 65.

ideal.”⁸⁴ He warned that literature and the stage had to be imbibed judiciously, so that students would not come to view their own lives as humdrum or develop nervous strain from over-excitement.⁸⁵ These concerns echo similar ones from a century or more before about the effects of novels on girls and young women.

Similarly, Arnold Bennett said in his 1905 tract on how to acquire literary taste,

The aim of literary study is not to amuse the hours of leisure; it is to awake oneself, it is to [enliven] the intensity of one's capacity for pleasure, for sympathy, and for comprehension. It is not to affect one hour, but twenty-four hours. It is to change utterly one's relations with the world.⁸⁶

Bennett advised his readers to avoid modern writing and stick to the classics, since only time would tell if the moderns were worth reading. He advocated studying carefully the life of the writer, to get a sense of the individual trying to speak through the book; this awareness would sensitize the reader to the emotion being conveyed through the text.

Around the mid-1910s, though, under the influence of realist and other modernist writing and in tandem with the development of English as a discipline, a different approach to and understanding of literature developed. This approach eschewed considering the text as the mouthpiece of an author, whose psychological make-up had to be unearthed and admired or condemned. It also stopped making judgments about the moral message of the texts and focused instead on how effectively they said what they said. The origins of this criticism likely lie in a number of places, including the international recognition then being given to modern authors, the relativism of contemporary German philosophy, the “art for art's sake” movement and the elevation of English literature itself in the academy. One text that exemplifies the transition to this new kind of criticism sought “to find modern illustrations of some of the great truths to which the [Methodist] Church stands committed.” The author, Trevor H. Davies, finds these truths in such texts as Nathaniel Hawthorne's *Scarlet Letter*, which “does not preach Christ as Redeemer ... [but] has tremendous power to make us feel our need of Him.” Davies thus combines the didacticism of earlier generations of critics with the close readings of texts advocated by later critics.⁸⁷ In a related vein, when J.D. Logan and Donald D. French speak of poets in their introduction to the literary history of Canada, their language combines an emphasis on poetic artistry with the idealistic language of earlier writing on literature.⁸⁸

The older dismay at modernist writing is completely gone in W.A. Deacon's 1926 irreverent collection of essays on literature, which describes Thomas Hardy as one of the greatest of the moderns.⁸⁹ Deacon has no doubt that one's taste improves through reading, but he has no sense that taste has anything to do with morality. He does not speak of the temperaments or characters of particular authors. He is positively

74. Roper, at 290, says:

The realists were strongly opposed by a large, diverse, and influential force of writers, reviewers, and readers who denounced the view of life presented by the realists as narrow, mean, pessimistic, and degrading. They argued that the realists looked down, not up, that they showed the animal in man rather than the angel. They feared that Howells and James were opening their optimistic, genteel, middle-class, provincial Anglo-Saxon world to a flood of French realism by Balzac, Flaubert, the de Goncourt brothers, De Maupassant, and Zola, with all its “cynicism,” “decadence,” and “nasty emphasis” upon sex. An unsystematic sampling of the reviews and articles on fiction in Canadian periodicals during these years suggests that the bulk of Canadian opinion was on the side of the conservatives. Canadian writers like Gilbert Parker and the Protestant ministers who wrote fiction championed romanticism and “idealism,” as they understood “idealism.”

See also “A Wave of Indecency,” *supra* note 60, and “The Fight Against Impurity” *Toronto Globe* (14 April 1909) 6.

75. Bissell, *supra* note 58 at 242.

76. Bissell, *ibid.* at 246.

77. Brian Doyle, *English and Englishness* (London: Routledge, 1989) at 2, 20-21. See also Court, *supra* note 4 at 159-60.

impish in his disdain for censorship, and he has a delightful chapter called "Making the Bible Safe for Democracy" about recent American rewritings of the Bible (by fundamentalists who in the same breath insisted on Bible's perfection) that eliminated favourable references to wine and other questionable material.⁹⁰ Deacon calls literature "self-expression or nothing."⁹¹ Conspicuously absent from his examination is his predecessors' obsession with the place of Canadian writing in history; Deacon is concerned about the quality of the writing itself. In his examination of book reviewing, he attributes the low quality he perceives in the periodicals around him to the fact that "there has been comparatively little written about reviewing as an art."⁹²

[T]he review which does not deliver a verdict has failed in its chief function. The reader, guided by a very true instinct, does not want a bloodless description of what is in the book. He want to know what the reviewer "thinks" about it.

And here we strike the core of the whole matter. How is the reviewer to know what to think? How is he to judge between good literature and bad? Which throws us back on the more fundamental query - "What is art?"

It is the question "what is art" that lies at the heart of the major censorship wars of the English-speaking world in the twentieth century. The question arose earlier in the United States and Britain than it did in Canada.⁹³ As will emerge in the next two chapters, the peculiarly Canadian configuration of literary taste and criticism through the first two decades of the twentieth century goes some way to explaining the shape of Canadian obscenity law during those decades.

The Clergy, the Women's Groups and Censorship

Familiarity with the arts and literature was a mark of an educated person in turn-of-the-century Ontario, but educated people considered useless many, if not most novels, and much of what appeared on the stage. But for some people, a certain number of novels and plays were more than useless; they were actively harmful, and they had to be stopped. Theatre had attracted vehement censure since the mid-nineteenth century.⁹⁴ In the last two decades of the nineteenth century, activist members of the Presbyterian and

78. J.M. Bumsted sees the disciplines separating by 1892, when G.M. Wrong was appointed as a lecturer specifically in history at the University of Toronto in 1892, the first person to receive such a university appointment in Canada. Between his appointment in 1894 and his retirement in 1927, Wrong devoted his best efforts to establishing history as a separate discipline. While a transitional figure who by no means represents a complete break with preceding traditions of historical scholarship, Wrong created a separate department at the University of Toronto and established there the critical apparatus of historical scholarship. Wrong's contemporary Adam Shortt of Queen's University was more committed to the idea of historical science and did much to further the creation of history as an independent discipline in Canada, particularly economic history. The transition in the relationship between history and English is evident in the different authorship of two large history projects completed between 1904 and 1917: the *Makers of Canada* series, published between 1904 to 1911, was edited by two literary figures, while the multi-volume *Canada and its History* compendium, published starting in 1913, was written by specialists. See J.M. Bumsted, "Historical Writing in English" in *Oxford Companion to Canadian Literature*, *supra* note 35, 350 at 352; Berger, *supra* note 30 at 9-17, 21-31; "Canada: Bibliography" in *Canadian History and Literature*, *supra* note 50, 132 at 141.

79. See Berger, *ibid.* at 7.

80. Berger, *ibid.* at 6-8, quotation at 8.

81. See Augustine Birrell, *Essays about Men, Women and Books* (New York: Charles Scribner's Sons, 1894) at 2-3: No fouler pen than Swift's has soiled our literature. His language is horrible from first to last. He is full of odious images, of base and abominable allusions. It would be a labour of Hercules to cleanse his pages. His love-letters are defaced by his incurable coarseness. This habit of his is so inveterate that it seems a miracle he kept his sermons free from his blackguard phrases. It is a question not of morality, but of decency, whether it is becoming to sit in the same room with the works of this divine. How the good Sir Walter [Scott] managed to see him through the press is amazing. In this matter Swift is inexcusable.

82. Birrell prefers "the immortal dead": Homer, Dante, Milton, Vaughan, Herbert, Dryden, Addison, Grey, Coleridge, Keats, Lamb, Hazlitt, Bagehot, Swinburne: *ibid.* at 212-17, 226-27.

Methodist churches girded their loins to combat immorality in fiction as well, joining forces with other groups like the National Council of Women (NCW) and the Woman's Christian Temperance Union (WCTU) in campaigns to prosecute those who produced and circulated immoral billboards, indecent books and magazines, obscene postcards and immoral or indecent theatrical performances.

As described in chapter two,⁹⁵ between about 1890 and 1905 the most vocal members of the Methodist and Presbyterian churches were highly influential advocates of prohibition, and they set up impressive, often interdenominational organizations to pursue Sabbath observance, the regulation of sources of public amusement and various other social goals. The "war on the white slave trade" and prostitution heated up around the same time and obtained tremendous discursive power. The "trade" was thought to be rampant in the United States. The "war" featured attempts to pressure government to cause rigorous laws to be passed and enforced.⁹⁶ It was considered desirable, necessary and theologically appropriate to involve the state in these reform endeavours.⁹⁷

So it was with censorship. Few cases centred on visual art,⁹⁸ but the campaign against immoral literature was broad and enthusiastic. In 1911, the reputable proprietor of Britnell's Books faced charges of selling obscene books, but he was acquitted because he had been in charge of the antiquarian part of the book business in his shop and had not known his store had such books in the basement.⁹⁹ Those intent on stamping out "vicious literature" had somewhat more success two years earlier. In 1909, through contacts with the New York Society for the Suppression of Vice, the prominent Presbyterian reformer John G. Shearer¹⁰⁰ promoted the prosecution of booksellers L.J. Skill and J.C. King of the Toronto Antiquarian Book Company. Skill and King pleaded guilty to a charge of selling copies of twelve books by a variety of mostly French authors. The books were English translations of texts by such authors as Barbey D'Aurevilly; Hector France; Petronius; Pierre de Bourdeille, Seigneur de Brantôme; and Honoré de Balzac. Some were simply lewd, but others have since come to be viewed as naturalist or realist classics.¹⁰¹ Each defendant was sentenced to a year in prison.¹⁰² Unfortunately for Shearer, Laurier's Minister of Justice, A.B. Aylesworth, pardoned the booksellers after they had served two months of their sentence, claiming that the books were classics and of scientific interest. The outraged Board of Moral and Social Reform, at its Assembly of 1910, quoted Toronto's chief coroner, A.J. Johnson, who called the material "utterly vile, reeking with filth from beginning to end," and "absolutely without scientific value." Shearer and his colleagues, including *Toronto Globe* editor James A. Macdonald, engaged in an unsuccessful letter writing campaign with Laurier. The *Globe* added that the books' "only value to science

83. Smiley, *supra* note 46 at 569.

84. George Herbert Betts, *The Mind and its Education* (Toronto: Copp Clark Co., Limited, 1912) at 221.

85. Betts, *ibid.* at 222.

86. Arnold Bennett, *Literary Taste: How to Form It: With Detailed Instructions for Collecting a Complete Library of English Literature* (Toronto: Musson Book Company, Limited, Publishers, c. 1905).

87. Trevor H. Davies, *Spiritual Voices in Modern Literature* (Toronto: Ryerson Press, 1919) at vii, 267.

88. See J.D. Logan and Donald G. French, *Highways of Canadian Literature: A Synoptic Introduction to the Literary History of Canada (English) from 1760 to 1924* (Toronto: McClelland & Stewart, 1924) at 279:

To become a poet may not be a moral duty. But if one elects the office of poet, then to perfect oneself, as far as possible, in poetic artistry for the sake of beautifully or compellingly embodying in verse whatsoever is lovely in Nature or noble in ideas is to attain to high moral dignity in one's own soul as a poet and to impress on the world the high spiritual function of poetry.

89. William Arthur Deacon, *Poteen: A Pot-Pourri of Canadian Essays* (Ottawa: Geographic Publishers Limited, 1926) at 33.

90. Deacon, *ibid.* at 29-48, 131-38.

91. Deacon, *ibid.* at 141.

92. Deacon, *ibid.* at 118.

93. By the time of W.E. Collin's publication of *The White Savannahs* (Toronto: Macmillan, 1936), the criticism is firmly fixed on the artistry of the texts. Collin analyzes, in nine separate essays, the poetry of Archibald Lampman, Marjorie Pickthall, Marie Le Franc, Dorothy Livesay, E.J. Pratt, F.R. Scott, A.M. Klein, A.J.M. Smith and Leo Kennedy, looking to their early influences, quoting liberally from their writing and coming to a critical opinion on each. Unlike earlier criticism, this is not especially concerned with the writers' patriotism or their effect on the moral development of young women and men.

is as samples of the erotic factors in the making of degenerates and perverts. As literature they range all the way from the scrofulous French novel, unexpurgated, vilely illustrated, and elegantly bound, to still more lecherous exposition and advocacy of the grossest unnatural sensuality.[']” Laurier declined to be moved: he simply did not sympathize with their views on this subject.¹⁰³

While advocates of moral reform did not win these two cases, they seem to have done better with local campaigns to have objectionable material removed from libraries and local bookstores. Overall, however, they were most successful behind the scenes in having legislation passed to further their ends. The WCTU coordinated its work with John Charlton, M.P., who drafted a bill to criminalize the sale of obscene literature in 1892, a bill which was incorporated into the first *Criminal Code* two months later. Under pressure from the WCTU, the NCW and allied organizations, the criminal legislation with respect to obscene material became more detailed and more extensive over the next twenty years.¹⁰⁴ The WCTU and NCW also pressured Customs and the post office to prevent many kinds of literature from getting into Canada. In these efforts they received the support of the New York Society for the Suppression of Vice, headed by the redoubtable Anthony Comstock.¹⁰⁵

Some of the most committed, active opponents of “impure” literature were members of the NCW and the WCTU, and suppressing the sale, display and distribution of immoral works was central to their moral reform project.¹⁰⁶ They were supported by the Methodist and Presbyterian churches.¹⁰⁷ The non-denominational but broadly Protestant Canadian WCTU was founded at Picton, Ontario in 1874, by the Methodist Letitia Youmans. The first Toronto branch formed in 1875. As Wendy Mitchinson describes, Youmans was inspired by her attendance at the first meeting of the American WCTU in Ohio in 1874. Mitchinson says Youmans was encouraged by the fact that her American counterparts were “ladies” and engaged in temperance work for the greater good of society and not in order to attract attention to themselves. Unlike the American women, who arranged public demonstrations in bars, Youmans and her colleagues in Picton adopted more reticent tactics such as petitioning the town council to abolish licences that permitted liquor to be sold in shops.¹⁰⁸ Membership increased through the 1880s and 1890s. In 1891, Ontario had 4,318 members, and there were more than 5,000 other members across the country, with particularly strong representation in small towns.¹⁰⁹

The WCTU was an evangelical Christian organization that did educational and lobbying work aimed at the moral improvement, or purification, of society at all levels.¹¹⁰ It was the first organization of its kind in Canada and also the most feminist; the WCTU advocated women’s suffrage, praised the activities of militant English suffragettes and admired women who entered non-traditional professions.¹¹¹ It was the first such women’s organization but not the last. One of the most significant organizations to follow it was the NCW, founded in 1894 by Lady Ishbel Aberdeen, an English aristocrat who headed a British middle-class women’s research and advocacy group before she came to Canada with her husband, the Governor General.¹¹² The NCW differed from the WCTU in several respects. It was less feminist, beginning to

94. John P.S. McLaren, “‘Now You See It, Now You Don’t’: The Historical Record and the Elusive Task of Defining the Obscene” in David Schneiderman, ed., *Freedom of Expression and the Charter* (Toronto: Carswell, 1991) 105 at 117-18 [hereinafter “Now You See It”].

95. See page 29 *et seq.*

96. See generally McLaren, “White Slavers,” *supra* note 47; John McLaren, “Recalculating the Wages of Sin: The Social and Legal Construction of Prostitution, 1850-1920” (1995) 23 Man. L.J. 524 [hereinafter “Recalculating the Wages”]; Valverde, *supra* note 9 at 77-103.

97. Semple, *supra* note 3 at 355. Moral reformers had a good deal of confidence in the legitimacy of the civil state, especially the upper levels of government: Valverde, *ibid.* at 26.

98. The only cases of this kind that I have found have concerned bill-boards advertising upcoming theatrical events. See *R. v. F.W. Stair* (1895), Provincial Archives of Ontario, York Criminal Assizes case file RG 22-392-0-8643, Box 259; *R. v. F.W. Stair* (1912-13), Provincial Archives of Ontario, Minutes of York General Sessions, RG 22-94; General Sessions case file RG 22-5871, 187-12; York Criminal Assize Clerks’ Indictment Reports, RG 22-391; York County case file RG 22-5870, 119-13. For critical commentary specifically concerned with playbills, which, it was feared, might provide an unsuitable substitute for “art” for impressionable youths, see Rev. J.C. Speer, *The Ethical Outlook of the Current Drama* (Toronto: William Briggs, 1902) at 25-26, United Church Archives, PAM PN 2049 s53.

advocate women's suffrage only in 1910, and it was from its inception close to the federal state.¹¹³ Lady Aberdeen and her husband were not abstainers from alcohol, and the NCW was non-denominational, with Jewish, Quaker and Catholic membership.¹¹⁴ Its more secular orientation made it less inclined to adopt traditional, evangelical face-to-face measures in advocating social purity and more inclined to seek the aid of the state's coercive power.¹¹⁵ The NCW was "a powerful force in favour of tough enforcement of obscenity law" against books, shows, films and postcards.¹¹⁶

The WCTU's department of Purity in Literature, Art and Fashion, founded in 1890, was the avenue through which it pursued its censorship campaigns. The NCW had a Standing Committee on Pernicious Literature, formed by its executive in 1895.¹¹⁷ These women's fear, as Craig Wilson argues, was that immoral literature would undermine the family by endangering the mental and physical health of youth by promoting, among other things, masturbation, "the secret vice."¹¹⁸ They targeted crime-story newspapers, mostly from the United States; magazines and papers with objectionable stories, illustrations or advertising, again often from the United States; dime novels depicting crime and violence; and contemporary fiction, foreign or otherwise. They were concerned not only about the family but about the "purity" of the race, so they reserved special venom for foreign novels, especially French ones, as in the Skill and King case.¹¹⁹ Wilson buttresses his argument that the censorship campaign was about the family and the race by observing that it could not have been simply a middle-class effort to control the reading habits of the working classes and poor, since translated French novels were too expensive for the poor anyway.¹²⁰ Bruce Ryder says it is impossible to know exactly what effect this particular dimension of the campaign against immoral literature had: no records exist of how many books were turned back at the border, and all we have is an ever-lengthening list of banned books and magazines.¹²¹

Not only books attracted the attention of moral reformers: the morality of theatrical performances on the Toronto stage generated an enormous amount of press and heat during this period. An extreme view of the stage was expressed in 1902 by Rev. J.C. Speer in an address to the Toronto General Ministerial Association. Speer condemned the stage absolutely. He accepted a remark by one Charles Kingsley that "few highly-educated men now think it worth while to go to see any play,"¹²² and he resolutely denied that any defects in what occurred on the stage could be blamed on the society it mirrored.¹²³ "[H]istory," he said, "proves that the theatre has persistently refused to reflect the laws of the land, the claims of the Christian Church; and the lowest conditions of human life, and not the highest, have, in the past, formed the staples of the most popular performances." Speer observed that bill-boards advertising plays had a very demoralizing influence on youth, exposing them to what they would assume were manly displays of handgun handling, for example. The effect of these bill-boards was made worse, Speer argued, because they were in many cases the only art gallery to which youth were exposed.¹²⁴ He continued, beginning by quoting Professor H.M. Scott:

"The favorite dramas of Germany now come from France, and 99 per cent. of them hinge upon matrimonial infidelity. One vile play has been given over three hundred times in Ber-

99. *R. v. Britnell* (1911), 26 O.L.R. 136 (C.A.); Rowell, Reid & Co. case file on *R. v. Britnell*, Provincial Archives of Ontario, RG 4-32, App. A2, Pt 1, 1911, #530. One of the two books for which Britnell was prosecuted, Elinor Glyn's *Three Weeks*, was specifically mentioned by the *Globe* two years before in an article on the need for censorship of immoral literature: "Literature, Plays, and the Censor" *Toronto Globe* (6 January 1909) 4. The other book was called *The Yoke*. In the trial, police inspector George Kennedy testified that *Three Weeks* "describes a sexual intercourse between a married woman and a single man, which is its principle part. The book 'The Yoke' is a similar book describing connection between a young man and a woman in the position of his foster mother." Kennedy also testified that *The Yoke* "tells of a young man who went to a music hall and took up with a girl there from whom he contracted syphilis and it then describes his great sufferings ending in suicide." One witness, a self-described editorial writer named John V. McAvy, compared *The Yoke* with Henry Fielding's *Tom Jones*, which he called coarser in places than *The Yoke* but nevertheless "a useful book describing the manners and ideas of the time." Britnell's clerk testified that *Three Weeks* and *The Yoke* only referred by inference to sexual intercourse, while Fielding, Smollett "and other classical authors" actually describe the acts. The Court of Appeal judgment mentions a third book, to which the charge did not refer. This book is called *Diary of a Lost One*.

lin.” In his comment on this statement, Rev. Perry W. Sinks has this to say: “Some of our cities have out-Parised Paris itself in disgraceful plays, as they have out-Londoned London in the matter of Living Picture exhibitions.”¹²⁵

Note that London is here connected with immoral shows. While England, or Britain, was usually held up as the torch to light the world in moral reform discourse, in the matter of shows, London, especially, was suspect. As was characteristic of censorship efforts in this period, though, Speer’s views did not end with condemnation but with a call for church support for “clean, inspiring, up-to-date entertainment, held in halls convenient to the people, conducted upon sound commercial principles, with admission so low that the wage-worker and his wife and family can, at least once a week, take the rest and relaxation so necessary for his tired muscles and also for her tingling nerves.”¹²⁶

More commonly, especially outside clerical circles, it was accepted that some kinds of drama could be morally edifying but others were harmful. Commentators in the churches, newspapers and elsewhere railed against two forms of shows: modernist or realist dramas, especially “problem plays,” and the antics of performers on burlesque stages.¹²⁷ Aside from problem plays, the genre of theatre that attracted the most unfavourable attention in Toronto was the burlesque, which graced the stages of two houses, the Star and the Gayety, both patronized mainly by Toronto’s working men. The Gayety offered daily women’s matinees, while the Star, owned by Fred W. Stair, the “pioneer of burlesque in Toronto,”¹²⁸ courted a resolutely male crowd.¹²⁹ Like the Gayety, the Star presented its clientele with a new, travelling show approximately every week, and shows ran most nights. During this period, burlesque performances were “a lively revue-like sequence of vaudeville routines, broad stand-up comedy (off-colour, slapstick, and dialect), interspersed with statuesque chorines strutting their stuff.”¹³⁰ The last element was the most important and featured pretty young women in short, comic, suggestive but not explicit sketches. The burlesque had not yet metamorphosed into a striptease.¹³¹

Working from court records, Steven Maynard has described the lower class theatres and their surrounding streets and lanes (especially around the intersection of Queen and Bay) as key sites in the homosexual subculture involving men and teenaged boys during this period. This area was proximate to the Ward, the Jewish and immigrant working-class area that attracted much attention from moral reformers. The Star was the most notorious. It is paradoxical that the Star’s girlie shows provided a site for homosexual encounters, but this seems to have been the case. Teenaged boys, often living by their wits on the streets, were crazy about the theatre. They seem to have been willing to enter into straightforward commercial arrangements

100. Rev. Dr. John G. Shearer (1859-1925) was for most of his adult life not linked to any particular congregation but instead deeply involved in various moral and social reform organizations associated with the Presbyterian Church. According to Valverde, *supra* note 9 at 54, Shearer

appears to have been a man of limited intellect and narrow views. From 1899 to 1906 he was the indefatigable general secretary of the Lord’s Day Alliance, and after the Alliance’s success in obtaining the federal Lord’s Day Act, he was asked to organize a Presbyterian counterpart to the Methodist Department of Temperance and Moral Reform. He headed this department from 1907 to 1915. In 1909 he became one of the founders of the Moral and Social Reform Council of Canada (MSRCC) and headed that Council’s subcommittee, the National Committee for the Suppression of the White Slave Traffic

Valverde adds, “[a] self-described Puritan of the twentieth century, Shearer comes closer than any other figure studied here to the stereotype of the moral reformer keen on prohibiting pleasures and uninterested in people’s welfare”: *ibid.* at 54-56.

101. Margaret Prang mentions these in her discussion of the case in *N.W. Rowell: Ontario Nationalist* (Toronto: University Press, 1975) at 92-93. Craig Wilson discusses the provenance of these texts, *supra* note 65.

102. *R. v. King, R. v. Skill, R. v. Skill & King* (20 December 1909) York County No. 145, 146, 147 (Gen. Sessions), Provincial Archives of Ontario RG 22-5871, files 145-09, 146-09, 147-09; see also Minutes of the General Sessions, York County, Provincial Archives of Ontario, RG 22-94.

103. Fraser, *supra* note 16 at 146-47.

104. See McLaren, “Now You See It,” *supra* note 94 at 123-24.

105. See Wilson, *supra* note 65; McLaren, “Now You See It,” *supra* note 94 at 126-29; Brenda Cossman & Shannon Bell, “Introduction” in Brenda Cossman, et al., *Bad Attitude/s on Trial: Pornography, Feminism, and the Butler Decision* (Toronto: University of Toronto Press, 1997) 3 at 13-14.

in which their admission was paid in exchange for the delivery of oral or manual sexual services in the darkened, smoky rows. For the customer with homoerotic urges, the heterosexual fare on stage may have provided a kind of cover for his actual desires. The boys who provided the sexual services very often saw themselves as heterosexual and genuinely enjoyed the show. As well, because working-class boys were so fond of the theatre, it was a place where a boy could hang out and be picked up by an older, wealthier man or, where a longer term relationship was afoot, simply await the man's arrival. At least one contemporary critic, C.S. Clark, believed that boys sometimes blackmailed these older men (one a member of the judiciary) in connection with these encounters.¹³²

Between 1895 and 1912, Fred Stair¹³³ and the Star Theatre¹³⁴ ran up regularly against agents of Toronto's law enforcement.¹³⁵ Viewed as a source of low-grade, popular entertainment,¹³⁶ the Star was subjected to much more police scrutiny than were the higher class theatres.¹³⁷ In 1895, Stair was convicted of exposing to public view pictures tending to corrupt morals: copies of a playbill.¹³⁸ About 1911, a fairly young Methodist minister named John Coburn,¹³⁹ backed up by the prominent Methodist moral reformer Rev. Dr. S.D. Chown and the equally prominent Presbyterian John G. Shearer, instigated a prosecution against the Star. Apparently they were encouraged by Judge Winchester, one of the members of the Toronto Board of Police Commissioners.¹⁴⁰ When the case reached Toronto Police Court, Police Magistrate Colonel George T. Denison - (another member of the Board who, according to Coburn, was generally less than enthusiastic about acting against the Star Theatre) fined it ten dollars. This sum represented about half what a woman in the chorus would make in a week. In his memoirs, Coburn speaks well of the Crown Attorney, J.S. Corley, but he describes foot-dragging by the police. He identifies J.W. Curry, the Star Theatre's lawyer, as previously "the lawyer for the wet interests" in an earlier battle over the closure of certain bars.¹⁴¹ All of these people played significant roles in the events at issue in chapter five.

A number of aspects of the burlesque stage seem to have upset moral reformers. These will be examined in more detail in chapter four, but in brief, the shows were sexually suggestive and might encourage extramarital sexual activity and masturbation; the theatres themselves - especially the Star - were associated by some with homosexual activities, often involving teenaged boys; the patrons of the burlesque theatres belonged to the working class, whose morals were always considered to be at greater risk than the morals of wealthier citizens; and the substance of what appeared on stage offended the practices of decency by saying, showing or suggesting what was supposed to remain unsaid, unshown and

106. See Wilson, *supra* note 65, and McLaren, *ibid.* More generally, on the activities of these organizations and others like them, see e.g. Sharon Anne Cook, "'Earnest Christian Women, Bent on Saving Our Canadian Youth': The Ontario Woman's Christian Temperance Union and Scientific Temperance Instruction, 1881-1930" (1994) 86 *Ont. Hist.* 249; McLaren, "White Slavers," *supra* note 47; Wendy Mitchinson, "The WCTU: 'For God, Home and Native Land': A Study in Nineteenth-Century Feminism" in Linda Kealey, ed., *A Not Unreasonable Claim: Women and Reform in Canada, 1880s-1920s* (Toronto: Women's Press, 1979) 151; Wendy Mitchinson, "The Woman's Christian Temperance Union: A Study in Organization" (1981) 4 *Int'l J. Women's Studies* 143 [hereinafter Mitchinson, "Organization"]; Wendy Mitchinson, "The YWCA and Reform in the Nineteenth Century" (1979) 12:24 *Histoire Sociale/Social History* 368; Valverde, *supra* note 9 at 58-63.

107. This support came despite these churches' intermittent unease about the appropriateness of women assuming public roles. As noted in chapter two, Methodists had a history of accepting women's role in the church, even as clergy, but as the church had grown more influential, its acknowledgment of the importance of women and their organizations had lessened. The major Protestant denominations, like the Roman Catholic church, relied on the work of women for their outreach programs and their moral and social reform work but, out of a fear that the churches might become too "feminized," preferred not to see it as terribly important. They continued to emphasize that woman's proper vocation was to be a wife and mother, and they accommodated themselves reluctantly to the presence of influential women in their own organizations and in society in general. See Semple, *supra* note 3 at 21, 144, 341, 345, 414 and Phyllis D. Airhart, "Condensation and Heart Religion: Canadian Methodists as Evangelicals, 1884-1925" in George A. Rawlyk, ed., *Aspects of the Canadian Evangelical Experience* (Montreal: McGill-Queen's University Press, 1997) 90 at 95-96 [hereinafter Rawlyk, *Aspects*].

108. Mitchinson, "Organization," *supra* note 106.

109. Mitchinson, "Organization," *ibid.* at 149.

110. Valverde, *supra* note 9 at 58-61.

111. Valverde, *ibid.* at 61.

unsuggested. As well, there was probably discomfort with the women performers publicly displaying themselves, as they flouted the female association with the private realm of home and family.

The most difficult part of analyzing censorship efforts during this period is determining how much enthusiasm they garnered from those who were not promoting them. The churchmen's attitudes to the vices they were trying to prevent were shared by many influential members of society, including members of the bench and bar.¹⁴² Mariana Valverde has observed that the language of social purity pervaded much of the discourse of the period and evidently attracted sympathy from many quarters, including smaller women's groups, people in charge of prisons and reformatories, teachers and doctors. This social purity discourse features imagery of whiteness, cleanliness and light imagery in code words like snow, milk, water, candles, searchlights, soap and so forth.¹⁴³ On the other hand, despite the fact that much of this language was used by those with an avowedly Christian vision for Canada, John Stackhouse has noted an absence of evangelical or Christian allusions in general Canadian political discourse fifty or one hundred years ago. Even though evangelicals supposedly insisted on the inseparability of the sacred and the secular, Stackhouse wonders whether biblical concerns and categories were compartmentalized and hived off from political life. He grants as well that Christian convictions may have simply been assumed to be held by the majority and therefore not in need of commentary, but he does not seem to believe this.¹⁴⁴ The compartmentalization thesis seems more plausible to me as well. There is no question, therefore, that there was a rhetoric of social purity that was used enthusiastically by its advocates, and it likely framed the way many people thought about moral questions. The proliferation of particular messages, however, does not provide a means to determine how much these messages influenced their targets.

One measure of the effectiveness of moral reform discourse would be the extent to which moral reform leaders were able to galvanize others to follow their causes. Certainly the NCW and the WCTU attracted considerable followings, but they had many objects as well. Not all the respectable young women who boarded at the YWCA welcomed the intense surveillance of their conduct that the ladies in charge provided.¹⁴⁵ Women had a variety of reasons for associating themselves with these organizations, and not all were as firmly committed as their leaders to all aspects of moral reform causes. C.S. Clark doubted that the suppression of prostitution was possible and advocated a licensing system.¹⁴⁶

Besides converts to the cause, another measure of support for moral reform might be the enthusiasm with

112. Valverde, *ibid.* at 61.

113. Valverde, *ibid.* at 61.

114. Mitchinson, "Organization," *supra* note 106 at 153; Valverde, *ibid.* at 62

115. Valverde, *ibid.*

116. Valverde, *ibid.* See also "A Wave of Indecency," *supra* note 60.

117. Valverde, *ibid.* at 59; Wilson, *supra* note 65.

118. Wilson, *ibid.*

119. Kendrick observes that in England there was a political dimension to the suspicion of French novelists as well, an association with radical opinions and the French Revolution: Kendrick, *supra* note 26 at 101-2. This suspicion may have been residual in Canadian minds, but morality was much more important.

120. Wilson, *ibid.* Wilson's argument is supported by John McLaren's observations in "Recalculating the Wages," *supra* note 96.

121. Bruce Ryder, personal communication, Toronto, June 12, 1998.

122. Speer, *supra* note 98 at 13. It will be noted that Kingsley's observation implies that some educated men used to believe that it might be worthwhile to attend plays. My discussion has focused mainly on popular entertainments in the Canadian context, which had little in the way of theatre for much of the nineteenth century and was dominated by the churches. Drama by Shakespeare, Jonson, the Greek playwrights and others always had considerable popularity among the highly educated, although at times - including during the nineteenth century - people found them too coarse or irreligious. England had a history of tension between churchmen (usually not high Anglican and not always highly educated), who were often suspicious drama, and educated, high society types who embraced it. Undoubtedly many members of Toronto's upper crust did think playgoing could be a worthy pastime and applauded the appearance of Shakespeare and other high quality drama in Toronto's theatres. (They likely did not particularly admire melodrama, but they approved of it, considering that it could have morally uplifting effects.) Rev. Speers was probably engaging in wishful thinking to the extent that he was considering higher quality drama, and he was casting aspersions on the educations of its defenders.

which these efforts were funded. When the Presbyterian churches called upon the laity for this purpose, the call often went unheeded. Brian Fraser describes a "garrison mentality" among John Shearer and other "Presbyterian progressives" just before the World War I, and he notes that Shearer's Board of Social Service and Evangelism was mired in debt by 1915 as a result of lay indifference to its optimistic, expensive campaigns.¹⁴⁷ Fraser describes how the Presbyterian laity quietly retreated from the inner city to uptown residences in Toronto, over the cries of James Macdonald and their clergy that they owed a duty to the downtown's denizens to inculcate them with middle-class virtue by their presence if nothing else.¹⁴⁸

Ramsay Cook describes a generalized decline in religious faith during this period. In particular, he observes that J.W. Bengough, a journalist and caricaturist, criticized not the efforts toward moral reform of the Methodist church but its self-satisfaction and indebtedness to wealthy individuals like Hart Massey, who endowed a chair in theology at Victoria College in 1892.¹⁴⁹ Not in Bengough but in others some of this suspicion of the major denominations probably spilled over into scepticism of their projects.

The censorship campaigns also seem not always to have been enthusiastically received. In the context of the tightening of the censorship provisions of the *Criminal Code* in 1903, Sir Charles Tupper observed that those who considered all modern novels and plays indecent held very extreme views.¹⁵⁰ Tupper's opinion must have been shared by many others. While the churches and women's organizations seem to have been quite successful in using Customs and the post office to censor books and magazines entering Canada, this was no doubt partly because many would not have been aware this process was occurring. When these campaigns were turned on booksellers, the results were not uniformly in the moral reformers' favour. Even after they achieved victory in the Skill and King case, it was short-lived, thanks to Laurier and Aylesworth.¹⁵¹ At another point Laurier observed that a robustly Christian novel of the time would "preserve a special phase of our national history, and customs which are rapidly passing away."¹⁵² These events suggest that even the Liberals, approaching the end of their tenure as government, were ambivalent about at least some types of censorship or some types of books, even though they generally supported the efforts of reformers like John Shearer and James Macdonald. One suspects that moral reformers overstepped their accepted role when they went after booksellers who supplied books to the classes that did not consider their morals to be endangered by what they read and who relied on these booksellers and, likely, other channels like direct mailings as well, to provide what they wanted.

123. Speer, *ibid.* at 17-18.

124. Speer, *ibid.* at 25-26.

125. Speer, *ibid.* at 27-28.

126. Speer, *ibid.* at 32. For the expression of a similar attitude, see "What Can Be Done," *supra* note 60 and Wilson, *supra* note 65.

127. The Star, the Gayety and their advertisements were undoubtedly the target in "The Low Class Theatre" *Presbyterian* (4 June 1908) 708 and "Censorship of Theatres," *supra* note 60. Realist drama was a target of "A Wave of Indecency," *supra* note 60. Both kinds of drama attracted unfavourable attention in "The Theatre," *supra* note 60.

128. Gerald Lenton-Young, "Variety Theatre" in *Early Stages*, *supra* note 31, 166 at 197.

129. Strange, *supra* note 47 at 122.

130. David Gardner, "Burlesque" in Eugene Benson & L.W. Conolly, eds., *The Oxford Companion to Canadian Theatre* (Toronto: University of Toronto Press, 1989) 67.

131. See Gardner, *ibid.*; W.D. Adams, *A Book of Burlesque* (London: Henry & Co., 1891); H.M. Alexander, *Strip Tease: The Vanished Art of Burlesque* (New York: Knight Publishers Inc., 1938); H. Jennings, *Francis & Day's Twelfth Book of Dialogs, Gags, Burlesque Lectures, and Sketches* (London: Francis, Day & Hunter).

132. Steven Maynard, "'Horrible Temptations': Sex, Men, and Working-Class Male Youth in Urban Ontario, 1890-1935" (1997) 78 *Can. Hist'l Rev.* 191 at 191-212 [hereinafter "Horrible Temptations"]. Maynard cites C.S. Clark, *Of Toronto the Good* (Montreal, 1898). See also Steven Maynard, "Through a Hole in the Lavatory Wall: Homosexual Subcultures, Police Surveillance, and the Dialectics of Discovery, Toronto, 1890-1930" (1994) 5:2 *J. Hist. Sexuality* 207 [hereinafter "Lavatory Wall"].

133. Stair was not only the proprietor of a theatre but also apparently consul general for Liberia, according to the Toronto City Directories from 1909 to 1915: *Toronto City Directory, 1909* (Toronto: Might Directories, Limited, 1909) and subsequent volumes. Liberia seems, however, to have demitted him in 1913: "Grant of Demission to Mr. F.W. Stair, Consul General of Liberia, 1913," National Archives of Canada, RG-25, Series A-3-a, vol. 1135, file 1913-911.

Most likely, there was general acceptance that some kinds of expression were not appropriate - indecorous, indecent or worse. A system of "private censorship," of refraining from purchasing novels and visiting theatres, prevailed among most of those who had access to these things in the middle of the nineteenth century. But by the end of the century, a wider range of materials was available to a wider audience whose taste could not be trusted. As Ann Saddlemeyer observes, there was no official censor in Toronto until 1913 "partly because until then religious disapproval of public entertainment had provided an effective restraint, and the major variety syndicates shrewdly prided themselves on offering 'a clean show.'"¹⁵³ The efforts toward official censorship were widely but not universally supported; and they were a sign of the weakening of private censorship by personal taste, a taste arbitrated in large part by the clergy. As chapter five will show, the appointment of the first public censor in Toronto in 1913 was a sign that public censorship was in trouble too and that the clergy's power to control what appeared on Toronto's stages was in decline.

The Police and the Courts

John McLaren and Constance Backhouse have, in different ways, demonstrated that the late nineteenth and early twentieth-century judiciary was not unanimously in favour of white slavery campaigns. Backhouse has argued that containment and surveillance were their goals, as they believed that prostitution was a necessary evil in the patriarchal society they upheld. McLaren observes that many members of the judiciary seem to have viewed the moral reformers' views on the suppression of prostitution as unworkable, extreme, unnecessary, undesirable or encroaching too far on the civil rights of many who encountered the criminal justice system.¹⁵⁴

Canadian police magistrates also differed in their views of moral reform elements, but McLaren suggests that few magistrates viewed prostitution as more than an irksome nuisance deserving mostly of regulation by fining.¹⁵⁵ One prominent Anglican was Colonel George T. Denison III, a former military man from one of the city's wealthiest families. Denison was police magistrate from 1877 to 1921 and the last to sit on the Board of Police Commissioners.¹⁵⁶ An "intense supporter of imperialism," Denison owed his appointment to his friendship with Premier Oliver Mowat.¹⁵⁷ Denison's immoderately hasty, "intuitive" approach to the law and his disdain for legal "technicalities" were notorious.¹⁵⁸ He was not noted for lenience with crime in general, and he was fairly severe with the prostitution cases that came his way, but he was also not fond of moral reformers. In his memoirs, he heaps considerable criticism on them, setting out an anecdote in which a Presbyterian elder, becoming suspicious of the virtue of a young woman who lived alone next door to his shop but having nothing upon which to base his beliefs, contrived to frame her.¹⁵⁹

134. Before 1901, the Star Theatre was called the Royal. Stair bought it from the trustee of the Police Benefit Fund, who had run it for two years after foreclosing on a mortgage. It was a marginal operation and scandalous one for its owners. Taking back a mortgage, Stair paid significantly less than the assessed value. The value of his holdings on that block of Temperance Street increased dramatically over the next ten years, as he purchased neighbouring properties, performed major renovations in 1904, with fire regulations in mind, and rebuilt the theatre in 1907, turning the venture into a roaring success. See "Police Once Owned the Star, Sold it on a Mortgage," *Evening Telegram* (23 September 1912) 13, 16; Lenton-Young, *supra* note 128 at 197; Richard Plant, "Chronology: Theatre in Ontario to 1914" in *Early Stages*, *supra* note 1 at 344; "Changes in a Theater" *Toronto Daily Star* (15 February 1904) 1.

135. I have examined the records of the York General Sessions, County Court and Criminal Assizes. Most of the records of the Police Court have been destroyed.

136. See John Coburn, *I Kept My Powder Dry* (Toronto: Ryerson Press, 1950) at 112.

137. Lenton-Young, *supra* note 128 at 195-96. According to Lenton-Young, by 1909, "Salomé dances" and words like "hell" and "damn" were common fair on the stages of the legitimate theatres but banned from burlesque houses. A controversy arose involving the Salomé dances, in which it became apparent that the police had cut parts of 20 of the first 22 burlesque shows seen in Toronto that season but had not investigated a single performance at a legitimate theatre. Lenton-Young writes that Stair endured dozens of censorship battles during the first fifteen years of the century.

138. *Stair* (1895), *supra* note 98. This playbill may have been for a performance at Hamilton's Grand Opera House, for which Stair was the press agent and business manager before he purchased the Royal Theatre in Toronto in 1901 and changed its name: Lenton-Young, *supra* note 128 at 197.

After the plot was exposed in Denison's court, the elder "at once went to his pastor for sympathy and encouragement. The pastor called a meeting of the ministers of different churches, and a Ministerial Association was organized."¹⁶⁰ Denison pronounces as well, in his memoirs:

We have had a Ministerial Association in Toronto for a great many years, I should think more than thirty, composed of very worthy religious people who formed themselves into an organization for bringing pressure upon the Board of Police Commissioners, to enforce the most drastic and cruel punishment, upon certain classes of the criminal population who offended their tender susceptibilities. I have found many of these really worthy people, in well-meaning enthusiasm, and forgetting the example of their Master, who told the woman to go and sin no more, urging the most severe punishments on people who, if erring, were certainly unfortunate and to be pitied. They showed the spirit of the old Puritan, who said of his opponents, "Smite them, oh Lord, hip and thigh, from Dan even unto Beersheba, from the rising of the sun until the going down thereof."¹⁶¹

Note Denison's criticism of coercive responses to sin, a criticism which is scripturally based and seems to reflect the more cautious Anglican attitude to moral reform. While Denison was not necessarily typical in all of his views, in his ambivalence toward moral reformers he was not alone.

One faction that took a decidedly dim view of many moral reform campaigns was the police. The problem was not, it must be said, that the goals of the police were always at odds with those of the moral reformers. John McLaren finds that the evidence indicates that, at least when David Archibald was morality inspector (and Archibald was generally viewed as being very tough on vice), containment was a more significant objective than suppression.¹⁶² However, Greg Marquis relates in *Policing Canada's Century*, that a few years later, in 1908 to 1909, the Chief Constables Association of Canada (CCAC) secured amendments to the *Criminal Code* that displayed not only an interest in legal and bureaucratic clarity but also a concern with moral causes. These amendments

tightened up or clarified sections dealing with offensive weapons, immoral literature and pictures, procuring for purposes of prostitution, disorderly houses, manslaughter, search warrants, warrants issued against imprisoned convicts, and arrest without warrant. In 1909-10 the association was involved in amendments relating to race-track betting and gambling, a concern of moral-reform groups. Provincial governments were also approached - for example, regarding laws regulating motor vehicles and motion pictures. The chiefs relied on the execu-

139. L.W. Conolly describes Coburn (1874-1954) as "[o]ne of the most fervent and dedicated, perhaps *the* most fervent and dedicated of all religious critics of theatre in Canada": "The Man in the Green Goggles: Clergymen and Theatre Censorship (Toronto, 1912-13)" (1980) 23 *Theatre Hist. in Can.* 111 [hereinafter "Green Goggles"]. Although born in Wisconsin, Coburn was educated in Ontario and graduated from Victoria University in 1897. He continued his work on Methodist, and later United Church, boards of temperance, moral reform and social service for most of his life: United Church Archives, biographical file.

140. In his memoirs, John Coburn identifies Winchester as an elder at Parkdale Presbyterian Church and "a fine man": *supra* note 136 at 113.

141. Coburn, *ibid.* at 112-17.

142. With respect to prostitution, see John McLaren, "The Canadian Judiciary and the Anti-White Slavery Campaign, 1900 - 1920" (address to the Canadian Law in History Conference, Carleton University, 8-10 June 1987) 413 at 444-45 [hereinafter "Canadian Judiciary"].

143. Valverde, *supra* note 9 at 34-43, 47-51.

144. John Stackhouse, "'Who Whom?': Evangelicalism and Canadian Society" in Rawlyk, *Aspects*, *supra* note 107, 55 at 65-66.

145. Valverde, *supra* note 9 at 64.

146. Clark, *supra* note 132 at 86-90.

147. Fraser, *supra* note 16 at 17, 156, 165-68.

148. Fraser, *ibid.* at 79-84, 91-94.

149. Cook, *supra* note 16 at 129-31.

tive and special committees to examine problems in detail. In some cases they worked in tandem with groups such as the Moral and Social Reform Council of Canada.¹⁶³

The CCAC advocated censoring motion pictures that "glamourized violence, sex, and the criminal life."¹⁶⁴ At a CCAC convention in 1906, the Secretary-Treasurer said that ideal morality was out of the question but that an "efficient police department, with the support of the citizens, could curb the more obvious examples of vice, such as public gambling and the sale of obscene literature."¹⁶⁵

Nevertheless, between 1910 and 1920, the police had an image problem. They were criticized by moral and social reformers who "were not mean-spirited or radical" but who "often were idealistic, a characteristic lacking in most senior police administrators."¹⁶⁶ Marquis says the police viewed middle-class reformers as more troublesome than the working class¹⁶⁷ and that "[b]y 1914, when hostilities commenced in Europe, the police were already at war with moral and social reformers."¹⁶⁸

The Toronto police in 1912 were accused of tolerating widespread prostitution.¹⁶⁹ At a CCAC convention in 1912, Inspector George Kennedy, who favored making adultery an indictable offence, discussed fornication and seduction but asserted that, contrary to the view widely held among moral reformers, there was no organized white slavery in Toronto.¹⁷⁰ (Kennedy echoed the view widely held among Canadian police chiefs, that no international system of white slavery existed.¹⁷¹) Kennedy argued that young women willingly drifted into prostitution because of their preference for idleness and luxury and because there was something wrong with their homes.¹⁷² One of the resolutions produced at that 1912 meeting included this statement:

"[w]e submit that the cause of moral reform is not likely to be helped by such senseless tirades [white slavery allegations and the misrepresentations of the police by reformers and the press], even when delivered from church platforms, by those whose methods are only sensational and denunciatory and whose only policy seems to be a vindictive condemnation of immoral people and unreasoning abuse of the police."¹⁷³

Marquis says that the police felt their efforts to control prostitution were frustrated by the courts, although the courts were not the whole problem.¹⁷⁴ The CCAC also could not decide whether it was entitled to criticize law-makers and the courts.¹⁷⁵

150. *Official Report of the Debates of the House of Commons of the Dominion of Canada*, Vol. 58 at 317 (16 March 1903). By way of comparison it should be noted that the advent of the *Obscene Publications Act* in England in 1857 inspired not pleased expressions of support but bitter struggle and in particular concern that the extensive search and seizure provisions of the Act might be used against serious literature: see Colin Manchester, "Lord Campbell's Act: England's First Obscenity Statute" (1988) 9 J. Legal Hist. 223.

151. Fraser, *supra* note 16 at 146-47.

152. Fraser, *ibid.*, at 177-78 - see above, page 35. Malcolm Dean, in an account that relies heavily on Conolly, "Green Goggles," *supra* note 139, also doubts that the moral reformers had the full support of upper-crust Toronto society, despite the appearances they at times gave: *Censored! Only in Canada: The History of Film Censorship - the Scandal Off the Screen* (Toronto: Virgo Press, 1981) at 7.

153. Saddlemeyer, *supra* note 1 at 12.

154. McLaren, "Canadian Judiciary," *supra* note 142 at 420-21, 432-47; Constance Backhouse, "Nineteenth-Century Prostitution Law: Reflection of a Discriminatory Society" (1985) 18:36 *Social History/Histoire Sociale* 387.

155. McLaren, "Recalculating the Wages," *supra* note 96: "White Slavers," *supra* note 47 at 56.

156. Gene H. Homel, "Denison's Law: Criminal Justice and the Police Court in Toronto, 1877-1921" in R.C. Macleod, *Lawful Authority: Readings in the History of Criminal Justice in Canada* (Toronto: Copp Clark Pitman, 1988) 167 at 167, 168, 172, 174-75.

157. See McLaren, "Canadian Judiciary," *supra* note 142 at 425 and Homel, *ibid.*

158. See Homel, *ibid.* at 169-70.

159. G.T. Denison, *Recollections of a Police Magistrate* (Toronto: Musson Book Company, 1920) at 59-61. See also McLaren, "Canadian Judiciary," *supra* note 142 at 427-28;

160. Denison, *ibid.* at 61.

161. Denison, *ibid.* at 58.

Helen Boritch and Steven Maynard paint a different picture of the police in Toronto. Maynard describes the operation of what he calls the "dialectics of discovery" between the police and the creation of a homosexual - and thus criminal - subculture in Toronto. He describes the actions of the police as having brought the existence of sex between men to the awareness of a public that did not conceive of it before the police began their campaign. Inspired by moral reform impulses, between 1911 and 1914 the Toronto police engaged in a dogged campaign to bring under surveillance, scrutinize and prosecute homosexual encounters in public spaces, like parks and alleys, in working class areas of the city. Maynard's description of this campaign is consistent with Boritch's observations about the great increase in the types of activities performed by the police by the end of the nineteenth century. Boritch takes pains to emphasize that unlike other Canadian and American cities, where the ranks of the police were drawn from the working classes, in mid- to late-nineteenth-century Toronto there was an effort to disengage the police from civic life and to compose the force from the more respectable lower ranks of the middle class. This made the Toronto police force more enthusiastic about working with moral reformers to enforce middle-class understandings of morality on the working classes. Boritch notes as well that institutional necessities - a desire for prestige and increased revenue, through fines - prompted the police to pursue offences like public disorderliness and drunkenness, which bolstered their revenues but had no noticeable effect on people's behaviour. The combination of Maynard's and Boritch's arguments leads to the hypothesis that a combination of organizational imperatives and class-based divisions, as well as heterosexist bias, made the police particularly keen to pursue working-class men engaged in homosexual sex in public spaces.¹⁷⁶ Similar logic would apply to the keen pursuit of working-class women engaged in heterosexual sex in the same places.¹⁷⁷

On the whole, the judiciary, the magistracy and the police had a general commitment to the goals of moral reform but a suspicion that moral reformers had extreme views. The police viewed themselves as pragmatists set upon by idealistic clergy and women's groups. The judiciary were concerned not just about the pragmatic dimensions of the campaigns like that against prostitution but also about the incursions they represented into the freedoms of those who came up against the justice system. These groups' attitudes to censorship are not well articulated in the secondary literature, but given their general attitudes to moral reform, one would expect to find caution and occasionally scepticism mixed into their general enthusiasm for upholding the law against obscene literature and theatrical performances.

162. McLaren, "Recalculating the Wages," *supra* note 96. See also Helen Boritch, "Conflict, Compromise and Administrative Convenience: The Police Organization in Nineteenth-Century Toronto" (1988) 3 Can. J. L. & Soc'y 141 at 161.

163. Greg Marquis, *Policing Canada's Century: A History of the Canadian Association of Chiefs of Police* (Toronto: University of Toronto Press, 1993) at 81.

164. Marquis, *ibid.* at 86.

165. Marquis, *ibid.*

166. Marquis, *ibid.* at 84.

167. Marquis, *ibid.* at 86-87.

168. Marquis, *ibid.* at 83.

169. Marquis, *ibid.* at 90.

170. About the widespread belief that an internationally organized system of white slavery (organized attempts to introduce vulnerable young women into forced prostitution) existed in Toronto, see Strange, *supra* note 47 at 96-109. I hope it is not redundant to add that, in fact, according to McLaren's analysis, there was no organized international system of white slavery operating in Toronto, although the patterns of law enforcement by the police may mean that some of the villains behind prostitution (e.g. the property owners of leased brothels, who had better access to lawyers) were not assiduously prosecuted: "White Slavers," *supra* note 47 at 102-8.

171. Marquis, *supra* note 163 at 89.

172. Marquis, *ibid.* at 90-91.

173. Marquis, *ibid.* at 91. This is probably part of the discussion John McLaren calls "petulant": McLaren, "Recalculating the Wages," *supra* note 96.

174. Marquis, *ibid.* at 85-86.

175. Marquis, *ibid.* at 87.

176. See Boritch, *supra* note 162 at 160-62; and Maynard, "Lavatory Wall," *supra* note 132.

177. See Strange, *supra* note 47 at 93-96, 118-24.

The Working Classes and the Performers on the Burlesque Stage

The people whose morals were considered most at risk as a result of the continued operation of theatres like the Star and the Gayety belonged to the working class. These people did not leave records of how they felt about what they saw and heard on the stages, but they voted with their feet to see the brightly attired "statuesque chorines" of the burlesque stages. To understand what these theatres represented to the women on their stages and to their audiences - even those who did not go there in search of homosexual encounters - it is useful to examine the life of the working class in Toronto during this period.

In *The Condition of the Working Class in Toronto - 1900-1921*, Michael J. Piva observes that during this period "most adult male manual workers earned less than what was required to support a family at this study's definition of a healthy and decent standard of living."¹⁷⁸ Manufacturing increased dramatically, as did the physical dimensions of the city under the influence of immigration and in the aftermath of a fire, in 1904, which destroyed housing in the central business district and prompted people to rebuild in the suburbs.¹⁷⁹ Although more than ever before this immigration came from non-English speaking countries, most of this immigration was still from the United Kingdom, the United States, New Zealand, Australia, South Africa and Newfoundland. In 1901, 91.7 percent of the population described their ethnic origins as British or Irish, a percentage that had dropped significantly but was still over 85 per cent in 1911.¹⁸⁰

In 1911, Toronto's work-force numbered 169,663, of which 57,199 were white-collar (a designation that includes owners, proprietors, agents, sales workers, clerks and foremen) and 112,464 were blue-collar. Over one-fifth of the blue-collar workers were women, or around 23,000. About 8,000 of these women worked in the clothing industry, which was the most important industry in Toronto, in terms of employment, between 1901 and 1921. The other major industries were iron and steel, food and related products, printing and engraving, wood products, and leather and leather goods.¹⁸¹

Male white-collar workers over fifteen years of age earned an average of \$32.11 per week, while blue-collar workers of the same age range and gender earned \$24.05. The irregularity of blue-collar employment meant that these white-collar workers earned \$1605.33 annually, while the blue-collar workers earned \$1053.32.¹⁸² Within the blue-collar trades, locomotive engineers and others who worked on the railways were among the highest paid, and those who worked in service industries (especially domestic and personal service, who were often women) were among the lowest.¹⁸³ Piva's analysis of the cost of living reveals that the vast majority of adult male blue-collar workers in Toronto could not support a family of five at an "acceptable level of 'health and decency,'" as the language of the time put it.¹⁸⁴

Piva says adult women workers earned on the whole less than half the wages of adult men, averaging \$577.95 per year and \$12.30 per week. They fared best, economically, in manufacturing, where their wages were only 42.6 percent lower than men's.¹⁸⁵ Carolyn Strange, who focuses on young women, describes much lower wages in the range of four to nine dollars a week, with some making even less than that.¹⁸⁶ Between 1911 and 1921, women's opportunities for employment in clerical and sales occupations "allowed many women to move out of the sweat-shops, with their deplorable conditions and marginal wages."¹⁸⁷ Piva finds as well that between about 1892 and 1916, the number of married women who

178. Michael J. Piva, *The Condition of the Working Class in Toronto - 1900-1921* (Ottawa: University of Ottawa Press, 1979) at xii.

179. Piva, *ibid.* at 3-8, 11.

180. Piva, *ibid.* at 8-9.

181. Piva, *ibid.* at 17-19.

182. Piva, *ibid.* at 31.

183. Piva, *ibid.* at 34-35.

184. Piva, *ibid.* at 36-39.

185. Piva, *ibid.* at 39.

186. Strange, *supra* note 47 at 28-41.

187. Piva, *supra* note 178 at 25.

worked increased dramatically, and not just in the war years.¹⁸⁸ An inflationary spiral occurred between 1900 and 1920, increasing the average family budget more than three-fold.

Prosperity and rising real earnings for workers marked the first five years of the new century. But a steep rise in retail prices in 1906 brought real earnings down; unemployment associated with the depression of 1907 and 1908 lowered real annual earnings even further. The return of relatively full employment brought a recovery in real wages between 1909 and 1911. Real earnings, however, did not recover their pre-depression level. The sharp rise in prices in 1912 again reduced real earnings, and this was followed by another period of widespread unemployment during 1913 and 1914 - and 1915 in the building trades - which lowered real earnings still further. What made the depression particularly acute for the working class was the continuing rise in retail prices in 1913 and 1914.¹⁸⁹

In the vast majority of cases, real annual earnings were lower in 1920 than any time after 1901.¹⁹⁰ Unless a second member of the family earned an income, and unless both income earners were fully employed, most blue-collar families lived at or below Piva's conservative poverty line. And full employment was not the standard in an economy heavily reliant on seasonal work.¹⁹¹ Various endeavours to alleviate the effects of unemployment were attempted, but their ambition and reach were limited.¹⁹²

The living and working conditions of these working poor were not good, and overall they worsened between 1900 and 1920. Definite improvements were made in the area of public health and hygiene between about 1910 and 1914, with certain vaccines, including one for diphtheria, becoming available and initiatives being introduced to improve the cleanliness of Toronto's water, especially after the typhoid outbreak of 1910, which was linked to the contamination of drinking water by sewage.¹⁹³ Contaminated, adulterated milk was identified as a factor in Toronto's high infant mortality rate (twice that of Rochester, New York), and dairy inspection began in 1911.¹⁹⁴ Infant mortality declined, but not by half. Dr. Helen MacMurchy, a school medical inspector, blamed the absence of the mother at home to nurse for infant mortality, but few inquired into the reasons why mothers worked.¹⁹⁵

Legislative initiatives to reduce the length of the work week and to increase the safety, ventilation, and cleanliness of working conditions were introduced during this period, but their salutary effects were limited.¹⁹⁶ Although Toronto lacked tenements, it did have very bad single-family housing, and the worst slum was the "Ward," visible from City Hall and close to the jobs where the working class worked - and to the theatre district.¹⁹⁷ Between 1911 and 1913, City Hall embarked on a project to destroy outdoor privies and decrepit houses. Such houses were infrequently replaced by better houses, and the poor could not afford to buy the houses that were available. Rents were exorbitant, and people doubled up.¹⁹⁸ In 1912, initiatives began to appear to improve the access to housing for Toronto's poor. However, none of these initiatives reached far enough to put a dent in the basic problem of poverty.¹⁹⁹

188. Piva, *ibid.* at 40-43.

189. Piva, *ibid.* at 56.

190. Piva, *ibid.* at 58.

191. Piva, *ibid.* at 58, 65-66.

192. Piva, *ibid.* at 70-86.

193. Piva, *ibid.* at 115-18.

194. Piva, *ibid.* at 119-22.

195. Piva, *ibid.* at 123. Dr. Helen MacMurchy was a school medical inspector.

196. Piva, *ibid.* at 87-111.

197. Piva, *ibid.* at 125-26.

198. Piva, *ibid.* at 127-30. Valverde, *supra* note 9 at 23, has described how moral reform materials of the time linked pure water and pure milk to the moral purity of the nation, implying through her analysis that the morals of the nation ought to be as pure as milk and water. In view of the actual material condition of the milk and drinking water of Toronto during this period, it is possible that some of the rhetorical force of this linkage ran the other way as well - in other words, that the purity of milk and water ought to be increased so that they would be appropriate for the morally pure nation that was under construction.

Despite the growth of trade unionism, Piva concludes that no working class-consciousness had really begun to show in Toronto by 1920. "Indeed, many workers, perhaps a majority, continued to accept in general terms the dominant liberal-capitalist ideology of the period, although they opposed specific policies."²⁰⁰

This profile of the working and living conditions of working-class women and men provides a useful background for a word about the wages of the women who performed on the burlesque stage and how they compared to the wages of the wives, mothers, sisters and daughters of the men in the audience. Fred W. Stair, proprietor of the Star Theatre, announced at one point that the women in the chorus "got" twenty to twenty-five dollars per week and all their travelling expenses paid.²⁰¹ He did not say how many weeks of an average year such a woman could expect to work, but one "soubrette" who performed at the Star Theatre said she had been with the company 42 weeks, which likely means her employment was seasonal at best. Stair also neglected to mention whether a performer would have to pay for her costume rental, catered meals or other costs that could cut significantly into her income.²⁰² A ministerial critic of Stair, who may or may not have known much about the industry, interpreted Stair's information to mean that these women made \$1,000 to \$1,300 a year, which means he believed or assumed they had steady employment.²⁰³ If her expenses did not take too large a bite out of her income, at either twenty dollars a week or \$1,000 a year, a woman in the chorus on a burlesque stage would have made almost twice as much as an average woman in a blue-collar job identified by Piva and two to six times as much as one of the young women Strange studies.

As Strange has described, young women in the emerging industrial and commercial economy posed a particular problem for Toronto in this time period. Their poverty, which was dire, was discursively constructed not as one related to money and exploitation but as one of morality.²⁰⁴ Young women living beyond the control of husbands and fathers were perceived to be, by turns, too innocent to protect themselves in the sexually dangerous city and, on the other hand, constantly in pursuit of pleasure such that they could seduce vulnerable young men and bring about their ruin by exposing them to moral degradation and sexually transmitted diseases. Young women were believed to be susceptible not only to the influences of white slavers but also to the attentions of men who could take them places and entertain them. The suspicion was that young women, like the young men Steven Maynard studies, exchanged sex for amusement. The dilemma that presented itself was that if young women were paid more than a living wage they might become less susceptible to this "occasional prostitution" or to the wiles of white slavers. But the same wage would guarantee that they would be able to live independent of male influences. Sexuality that occurred outside the proper bounds of matrimonial life brought the spectre of "feeble-minded" offspring (because the women themselves must be feeble-minded to be engaging in this type of activity) and miscegenation. The subtext of sexual suspicion, Strange observes, lurks behind discussions of women's work during this period.²⁰⁵

This concern with the morals of young women was part of the more general concern that upper and middle

199. Piva, *ibid.* at 133-42.

200. Piva, *ibid.* at 173.

201. "Replies to Rev. R.B. St. Clair," *Toronto Globe* (29 May 1912) 9.

202. Lea S. VanderVelde has found that American women actors often also faced legal difficulties when they wanted to leave one theatre for another: the *Lumley* doctrine, which places restrictions on employees' freedom to change jobs, developed in cases involving women stage performers and then spread to other areas of employment. VanderVelde sees the relationships between female performers and male theatre owners as being likened, in legal eyes, to marriage. See Lea S. VanderVelde, "The Gendered Origins of the *Lumley* Doctrine: Binding Men's Consciences and Women's Fidelity" (1992) 101 *Yale L.J.* 775.

203. "Mr. St. Clair Replies," *Toronto Globe* (31 May 1912) 8.

204. Strange, *supra* note 47 at 51, 109-12.

205. Strange, *ibid.* at 52, 62, 90, 94-95, 113-15, 123-24, 127-29. In "Recalculating the Wages," *supra* note 96, McLaren discusses the amalgam of scientific and moralizing discourses that produced the concept of mental hygiene and hereditary "feeble-mindedness."

class reformers had for the moral condition of the poor. As noted above, these people conceived of the problems of the poor as having moral origins and tended to blame the poor for their poverty.²⁰⁶ It was also thought that the poor and members of minority groups had a greater tendency to be sexually promiscuous than did the white middle class.²⁰⁷ This suspicion was founded partly in the fact that the poor, who were often immigrants, lived in cramped quarters, in which adults, boys and girls all slept in the same room (often sharing beds, even with boarders²⁰⁸), without sufficient space for the preservation of privacy and therefore modesty.²⁰⁹ A concern about incest runs through discussions of living quarters.²¹⁰ In view of the perceived need to enhance the "white" and generally British racial purity of the country, the sexual proclivities of those whose origins lay outside British dominions was highly suspect.²¹¹

An examination of the lives of the working class and poor, then, reveals harsh economic conditions, in which the majority of people lived marginally at best. Moral reformers' linkage of the improvement of moral conditions to pure milk, fresh water, soap and so forth had considerable resonance in an environment in which these things could not be taken for granted. In such an existence, public entertainments, like cheap fiction and theatres like the Gayety and the Star, were tremendously popular.²¹² Moral reformers correctly observed that such theatres took people's minds off their difficult lives.

Despite the concern of the time for the morals of young working women in the city, the discussion about the moral hazard posed by the theatre was always framed in terms of its effect on their audiences, rather than in terms of the way it affected the lives of the young women who populated its stages and were its main draw. A couple of potential explanations present themselves. First, these women were mainly transient, being attached to American circuits, so their morality may not have been of major concern to a group of people who were intently focused on their own country and on the effect that the women's actions had on their own men in the audience. Second, since these women were already on the stage, they were considered already corrupted; prospects of reform were better with the possibly redeemable audience, especially boys - and there were far more people in the audience than there were on the stage. Third, moral reformers probably felt it might be better not to know how these women lived. Even if they lived respectably on their incomes, that could show that other young women needed to be paid better. That conclusion would take middle-class moral reformers into areas of social criticism that most of them preferred to avoid.

Conclusion

This chapter has shown, first, the centrality of literature in the educations of Ontario's people around the end of the nineteenth century. Higher education became widely accessible; literacy was increasing, especially in the middle and working classes; cheap fiction was readily available especially from American sources; and many theatres catered to working-class tastes. The most popular form of entertainment, both in fiction and on the stage, was the melodrama, with its fast-paced plots, black and white characters, and

206. See page 19, page 30, page 31.

207. Valverde, *supra* note 9 at 104-39, describes moral reform efforts being directed toward the poor and ethnic minorities.

208. See Maynard's description of the relationships between boarders and young males: "Horrible Temptations," *supra* note 132 at 212-15.

209. Strange, *supra* note 47 at 113.

210. Valverde, *supra* note 9 at 134-39.

211. Strange, *supra* note 47 at 112-13. Regarding the Protestant response to immigrants across Canada, see also N.K. Clifford, "His Dominion: A Vision in Crisis" (1973) 2 *Studies in Religion* 315.

212. Evening burlesque performances probably cost about 25¢ a seat. The Gayety charged ladies about 10¢ to view matinees, whereas the middle-class Grand charged 25¢ for Wednesday matinees and 50¢ for Saturday matinees. The high-end playhouses seem to have charged around \$2 for a seat. See "Theatre-goers are Prejudiced" *Toronto World* (3 March 1912) 15; advertising in the *Toronto Star* (26 February 1912) 13. Recall that the average adult, male blue-collar worker earned around \$24 a week: see above, page 64.

straightforwardly moral outcomes. Those with classical educations, such as those provided by the old grammar schools, the new collegiate institutes, and universities, declared a preference for classical literature and historical writing, including historical fiction. They tended to disapprove of cheap fiction and theatre for wasting people's time (especially young people's), but they were mollified when the entertainment was instructive, as the melodrama supposedly was.

Realist writing, which included novels by such authors as James, Conrad and Hardy and problem plays by playwrights like Shaw and Ibsen, attracted little favour in turn-of-the-century Canada. They were criticized for depicting human experience in its most degraded form and for an obsession with self-expression that failed to observe the niceties of parlour conversation. However, this kind of writing did have an impact on some people. English literature was starting to emerge as a discipline separate from history in Canada. History became increasingly preoccupied with scientific method; English went a different direction. Formerly, critics had tended to examine closely the personalities of writers for their moral and political views, seeking a Canadian literature to mark Canada's maturity as a nation. Under the influence of philosophical relativism, the "art for art's sake" movement and other European developments as well as literary realism, by around 1910, Canadian critics of literature were beginning to develop a methodology for studying texts that focused on the artistry of the text itself, casting off concern with the temperament and intentions of the author and concentrating on describing the coherence of plots, the trueness of characters, the exquisiteness of description, the cadences of language. Obscenity law was just starting to show the impact of this new way of thinking about texts.

As part of a larger campaign to elevate the morals of Canadians, and to produce a productive, racially unified (predominantly British) population, the Methodist and Presbyterian churches and the NCW and WCTU embarked on serious censorship campaigns, with the women's organizations starting in the 1890s and the churches gathering steam after the century changed. They had particular success in lobbying the federal government to introduce and then improve the *Criminal Code* provisions on obscenity and in involving Customs and the post office. They also had at least some, and probably a good deal (but of course, it is very difficult to judge), of success in making American syndicates rethink any plans they may have entertained to send risky theatrical performances north of the border. They had some difficulty, however, in two noteworthy cases concerning Toronto booksellers in the 1910s, difficulties that suggest that their efforts were not uniformly appreciated, their reach was unacceptably wide and their standards were not uniformly held. An examination of the attitudes that the police, magistrates and higher courts held toward other dimensions of the moral reform project suggests that some likely quietly dissented, viewing moral reformers as extreme. The working classes who bought the cheap fiction and attended the cheap playhouses to break the misery of their economically marginal lives likely were not just out of step with the moral reform project but found it oppressive.

Women's organizations increasingly came into public view. These organizations campaigned not just for temperance and other reformist causes but also for suffrage, entrance to the professions and university educations for women. Two other classes of women who appeared in public view were the female members of the working class, who eked out a marginal financial existence, and women who appeared on Ontario's many stages. All of these women contributed to a destabilizing of the always permeable boundary around women's proper activities.

Finally, this chapter raises the widely felt suspicion of things foreign, a suspicion that encompassed the moral standards of immigrants and the literature of France and the United States. Even England had produced a deeply unsettling literary trend: decadence, which challenged gender roles. About the United States, however, a few more words are necessary. While the United States was linked discursively with white slavery, republicanism and objectionable literature and fiction, it was also admired.²¹³ After all,

213. In 1914, George Bryce wrote of the disreputable Americans who had arrived in Canada in earlier decades but said that a much better type of person was now arriving: George Bryce, *A Short History of the Canadian People*, rev'd ed. (Toronto: William Briggs, 1914) at 458.

much that was morally good and improving also came from the United States. Many Canadians had close ties to the their southern neighbour, through family, commerce or education. The WCTU and Methodism had roots there, and Anthony Comstock himself could only have been an American.

All of these factors were in play in forming obscenity law in Ontario during this period and in shaping the debates around it when one moral reformer pitched himself against the Star Theatre in Ontario's most notorious censorship battle in the first two decades of the twentieth century.

Chapter Four: Obscenity and Law

The legal concept of obscenity in Ontario in the 1910s was a product of English, American and Canadian precedent, cultural and literary influences, and the local legal and cultural climate. This chapter has two parts. It begins with a discussion and consideration, in the Ontario context, of some of the theorizing about obscenity law and censorship that has been done with respect to England and the United States. I then turn to the development of Canadian obscenity law between 1892 and 1911, describing both the case law and the debate around the ever-growing criminal legislation. The Canadian - and particularly Ontarian - experience of obscenity law and censorship practices demonstrates the influence of forces identified by theorists of English and American obscenity law, but it also demonstrates the way that local circumstances played themselves out.

Many books that describe the birth and growth of pornography and censorship legislation adopt one particular narrative: the nineteenth century was inhabited by a ruling class of repressed, repressive "Victorians" (of which Anthony Comstock was simply the most visible, extreme example) who had simplistic assumptions about the direct, mimetic effect of literature on young minds and who persecuted artists and publishers until, eventually, saner heads prevailed, who saw that sexuality was a natural function of life and that artists had to tell their truths, and the law loosened up. This heroic narrative, with its air of historical inexorability leading up to our enlightened (though still bedevilled) selves, negates the subjectivity of our forebears, presumptuously calling them "Victorian," prudish or repressive of others' sexualities and refraining from examining what they thought they were protecting. Even if what they understood themselves to be doing (shoring up "the family," for example) was oppressive to ways of being that could not conform to the mold, we do no favours to ourselves as historians or even to those whose suppressed experiences we may be trying to reclaim or celebrate by misunderstanding or simplifying the forces that were arrayed against them. The course I follow here, therefore, is to explore how the immoral, indecent and obscene were understood and what threat they were considered to pose to society.

This inquiry necessitates viewing censorship practices as a function of articulations of obscenity or indecency, whether these articulations occur in judgments, statutes or newspapers. It involves taking the broad understanding of regulation outlined in chapter one, and viewing the law not simply as censorship, a "monolithic refusal of sexual expression," but as a cultural practice that is one form of governance among many in a complex field.¹ It also involves attending carefully to how the many actors in this field thought their actions would address the perils they perceived. It involves paying careful heed to their language.

In early twentieth-century Ontario, the law and its surrounding discourse demonstrated a small but increasing uncertainty about the boundaries of the immoral, the indecent and the obscene. Doubt about the nature of these concepts would be asserted in one breath and denied in the next. Definitions of these terms were proffered increasingly often. English and American precedents were introduced into the Canadian context, where they did not always entirely make sense. One particular problem in Toronto in the first two decades of the twentieth century was the burlesque stage, which constituted a major headache for moral reformers. The burlesque stage was one of the most important influences on obscenity law and censorship practices in the Ontario context. Others were the nature of the publishing and writing culture and the prevalent literary, dramatic and philosophical taste; the expansive nation-building enterprise of the time, with its religious and racial aspects; the significant presence of the Protestant clergy and their institutions in public life; the erosion of the boundaries respecting what could and could not be said or depicted in public by respectable people; and the increasing role of women in public life. Creeping into the law through the influence of these factors was the idea that the aesthetic sense could be detached from the moral one, so that a text could depict moral questions or immoral situations without itself being considered immoral. This was the beginning of the twentieth-century dilemma of how to distinguish art from

1. See Ian Hunter, David Saunders and Dugald Williamson, *On Pornography: Literature, Sexuality and Obscenity Law* (Houndsmills, England: MacMillan Press, 1993) 48-52, 57-59, 90-91, quotation at 48.

pornography.

The Wider Context: Theorizing about Obscenity

The English criminal courts first took jurisdiction over obscenity in 1663.² Previously only the ecclesiastical courts had been responsible for such matters. The common law crime of obscene libel was hived off the crime of criminal libel, and took its place with seditious and blasphemous libel. All three forms of criminal libel had at their heart an attack on the government or on religion. As Colin Manchester argues, the material that resulted in convictions for obscene libel for most of the eighteenth century, including the 1727 case of *R. v. Curll*,³ contained more than simply graphic representations of sexual activity: there was always a dimension defamatory either to religion or to politics.⁴ Concomitantly, pornography - depictions of sexuality intended purely for sexual arousal - did not really exist until around the end of the eighteenth century; before this time graphic depictions of sexuality were generally used to add the shock of sex to criticisms of politics or religion. For example, the advocates of democracy generated an enthusiastic pornography around the French Revolution.⁵ The word "pornography" first appeared in English print in 1850, and its first appearance in American judicial discourse occurred in 1894.⁶ Pornography as we now understand it, with sex being susceptible to detachment from the moral, legal and religious contexts that often house it, came into widespread use only in the nineteenth century.⁷ During that time period, the state and the churches of England and the U.S. became more liberal and less prone to charging people with sedition and blasphemy.⁸

At the same time, the offence of circulating obscenity came to be considered capable of targeting material in which sex was graphically depicted for purposes that were not related to politics or religion.⁹ The word "libel" in the offence came to be interpreted as meaning only "little book," so that a thing could be obscene despite the lack of a defamatory impulse.¹⁰ This separation of obscene libel from blasphemous and seditious libel seems to have been completed by around the turn of the nineteenth century, so that there was no sense of their relationship in the late nineteenth-century Canadian context. The pre-1892 postal legislation prohibited sending through the mail matter of "an indecent, immoral, seditious, disloyal, scurrilous or libellous character," but this conjunction of adjectives does not seem to have been understood to be anything other than an expedient way of grouping things that should be banned.¹¹ When the postal legislation was incorporated into s. 180 of the new *Criminal Code* in 1892, seditious material was not included. Wilfrid Laurier argued that this chapter dealt with offences against morality, where sedition was of an entirely different character.¹² Similarly, defamatory content or intent was not understood to be a necessary component of the codified crime of circulating obscenities, but the Canadian case law suggests that defamatory content or intent made the obscenity of the material seem more egregious.¹³

2. *R. v. Sedley* (1663), 1 Sid. 168, 82 E.R. 1036 (K.B.). Sedley breached the peace and blasphemed and also committed an obscene act in urinating onto a mob from the top of a tavern.

3. (1727), 93 E.R. 849. *Curll* was a political case that pertained to a pamphlet called *Venus in a Cloister* or *The Nun in her Smock*, an affront to religious sensibilities by Curll, a well-known pamphleteer. That Curll's case was viewed as having political connotations is evident from T.B. Howell's indignant description of the crowd's response to Curll's conviction:

This Edmund Curll stood in the pillory at Charing-Cross, but was not pelted, or used ill; for being an artful, cunning (though wicked) fellow, he had contrived to have printed papers dispersed all about Charing-Cross, telling the people, he stood there for vindicating the memory of queen Anne; which had such an effect on the mob, that it would have been dangerous even to have spoken against him: and when he was taken down out of the pillory, the mob carried him off, as it were in triumph, to a neighbouring tavern.

T.B. Howell, *A Complete Collection of State Trials and Proceedings for High Treason and other Crimes and Misdemeanors from the Earliest Period to the Year 1783, with Notes and other Illustrations*, vol. 17 (London: T.C. Hansard, 1816) at 160.

Further evidence of Curll's notoriety and of the nature of his publications is evident in a booklet in the Metro Toronto Reference Library by Curll, entitled *Curlicism Display'd: Or, an Appeal to the Church. Being Just Observations upon Some Books publish'd by Mr. Curll, viz. The Cases of Impotency, &c. Eunuchism Display'd. Onanism Display'd. A Treatise on Flogging, &c. In a Letter to Mr. Mist* (London: 1718).

The case that provided the definition of obscenity that charted the course of future obscenity law in England, the United States and Canada was *R. v. Hicklin*.¹⁴ *Hicklin* concerned an effort to have destroyed, under the *Obscene Publications Act* of 1857,¹⁵ a number of copies of a pamphlet called *The Confessional Unmasked; showing the depravity of the Romish priesthood, the iniquity of the Confessional, and the questions put to females in confession*. The pamphlet combined criticisms of the Roman Catholic church and the confessional with graphic depictions of sexual activity. The accused's object was to "protest against those teachings and practices which are un-English, immoral, and blasphemous, to maintain the Protestantism of the Bible and the liberty of England."¹⁶ Sir Alexander Cockburn made the statement that became the touchstone for obscenity for the next eighty years:

I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.¹⁷

Literary erotica had always been housed in private libraries among the educated and wealthy elites in England and in northern Europe, though it may have been much less common in the United States, and Americans do not seem to have created their own until the mid-nineteenth century.¹⁸ In the nineteenth century, the advent of cheap printing and wider literacy¹⁹ made it possible and profitable to produce such material in large quantities. It was available to the masses at low prices around Holywell Street in London where pornographers freely hocked their goods. In *On Pornography*, Ian Hunter, David Saunders and Dugald Williamson show that the regulation and policing of sexually explicit material was tied to the channels for distribution of such material.²⁰ The problem in *Hicklin* was not that these pamphlets contained sexually explicit material but that they were readily available to the general public. The purpose of the *Obscene Publications Act*, as perceived by Cockburn and his contemporaries, was to prevent the indiscriminate distribution of this kind of material to the masses on the street. As Hunter et al. observe, Cockburn L.J.'s test for obscenity is almost hidden in the text, and it seems unlikely that its author thought he was laying down a principle that would guide lawyers and judges all over the English-speaking world for the next eighty years.²¹ The authors argue that Cockburn in fact did not understand it to be necessary to define obscenity. Obscene material - styled "erotica" or "curious literature" - was already well-known in literate circles. In England, "obscene publication was defined not in the abstract but concretely and circumstantially by its mode and place of dissemination."²²

4. Colin Manchester, "A History of the Crime of Obscene Libel" (1991) 12 J. Legal Hist. 36 at 40-44 [hereinafter "History of Obscene Libel"]. As John McLaren points out, the Restoration and early eighteenth-century stage also caused a lot of concern for moral reasons and particularly because of the political implications of some of the plays. In 1737 the Lord Chamberlain was granted licensing power over all plays on the British stage. See John P.S. McLaren, "Now You See It, Now You Don't": The Historical Record and the Elusive Task of Defining the Obscene" in David Schneiderman, ed., *Freedom of Expression and the Charter* (Toronto: Carswell, 1991) 105 at 110-11 [hereinafter "Now You See It"]. See also the excerpt from Jeremy Collier's attack on the English stage, page 41 *et seq.*

5. Lynn Hunt, "Pornography and the French Revolution" in Lynn Hunt, ed., *The Invention of Pornography: Obscenity and the Origins of Modernity, 1500-1800* (New York: Zone Books, 1993) 301 [hereinafter *Invention of Pornography*].

6. Walter Kendrick, *The Secret Museum: Pornography in Modern Culture* (New York: Viking, 1987) at 11.

7. Lynn Hunt, "Introduction: Obscenity and the Origins of Modernity, 1500-1800" in *Invention of Pornography*, *supra* note 5, 9 at 9-10; Hunt, "Pornography and the French Revolution," *supra* note 5 at 305; McLaren, "Now You See It," *supra* note 4 at 111; Kendrick, *ibid.* at 65.

8. This observation is made by Donald Thomas in *A Long Time Burning: The History of Literary Censorship in England* (New York: Frederick A. Praeger, 1969) at 6 and by Rochelle Gurstein in *The Repeal of Reticence: A History of America's Cultural and Legal Struggles over Free Speech, Obscenity, Sexual Liberation, and Modern Art* (New York: Hill and Wang, 1996) at 30.

9. In the American context, see Robert A. Jacobs, "Dirty Words, Dirty Thoughts and Censorship: Obscenity Law and Non-Pictorial Works" (1992) 21 Southwestern U. L. Rev. 155 at 162-63.

10. Manchester, "History of Obscene Libel," *supra* note 4 at 39-40, 46-47.

11. No one therefore argued with Laurier when he asserted in 1892 that a prohibition against sending seditious matter through the mail did not belong in a section banning the use of the mail for the sending of obscene material: see below, page 85 *et seq.*

This point requires one more. The *Obscene Publications Act*, or Lord Campbell's Act as it is sometimes known, was not intended to prevent the distribution of erotic literature to literate households, nor to prevent this material from reaching the hands of any young persons who might reside in such households. Though it was widely assumed that harm would be done to these people if they were exposed to such material, other channels that would improve the taste, combined with parental (especially maternal) monitoring of reading, could be relied upon as a way of governing the access to these materials of these other vulnerable people. Thomas Bowdler and others expurgated parts of otherwise respectable literature - most importantly Shakespeare - that they considered to need pruning for family consumption.²³ The *Obscene Publications Act* was not intended to result in the prosecution of other "serious literature," because serious literature was defined by its channels of distribution too and could be otherwise managed where necessary. "[E]stablished literary works had no uniform condition of existence under the law. If and when they entered the 'penny edition' circuit, Boccaccio, Balzac, Maupassant and Zola could become objects of routine street corner policing."²⁴

As far as I have discovered, no work has been done on whether mid-nineteenth-century Canadians owned pornographic literature, or if so, of its methods of distribution. It is hard to imagine that none of this kind of material made its way to Canada with the English governing families. But it does seem clear that there was no Holywell Street in Canada, no place where cheaply published versions of privately circulating erotic texts were made available to all at low prices. The absence of a vibrant print culture, high standards of literacy or a large urban population until the 1870s undoubtedly contributed to this lack, and when these conditions changed, the churches and their presses exercised considerable influence over what the residents of Ontario read. As a result, the 1892 debates on the *Criminal Code* do not resonate with the English debates in 1857 over the *Obscene Publications Act*: Parliament was codifying earlier law, not trying to stamp out a pressing social evil through means that would target particular means of distribution.

If obscenity was defined by how it was distributed, what was the harm that could be done through its ready availability, either to the masses or to those whose access to it was to be restricted by non-legal means? Many commentators have examined the nature of the harm that a person like Lord Cockburn in *Hicklin* would have perceived. In *The Secret Museum* Walter Kendrick speaks of the potential damage to the morals of the impressionable "young person" who would undoubtedly do exactly what was put before her (and, in England, she tended to be gendered female). A subtext of Kendrick's study of the history of pornography is about a change - what Kendrick would see as an increasing sophistication - in thinking about representation, the development of a sense that a text does its work in different ways, on different

12. *Official Report of the Debates of the House of Commons of the Dominion of Canada*, Vol. 35 at 2971 (25 May 1892) [hereinafter H.C. *Debates*, 25 May 1892]

13. This reasoning is not explicit but seems to be present in *R. v. Beaver* (1905), 9 O.L.R. 418, 9 C.C.C. 415 (C.A.) [hereinafter cited to C.C.C.] and *R. v. MacDougall* (1909), 15 C.C.C. 466. *Beaver* involved an attack on public officials by a member of a small religious sect. Mayor Drake of Windsor was called "the Drake, that a webb-footed, unclean bird" and it was said "it is well known that drakes can do up the hens, but they have no power over the roosters, and they have the reputation of being the most licentious fowl of the barnyard" (*ibid.* at 416). The pamphlet also says "Drake means 'wild oats,' and our readers are well aware of the significance of this term" (*ibid.* at 417). The death of the ex-Chief of Police of Detroit from a wasting bodily illness, possibly cancer, was also described (*ibid.* at 417-18). In *MacDougall*, the obscenity issue involved an allegation of marital infidelity on the part of an unidentified woman.

14. *R. v. Hicklin* (1868) L.R. 3 Q.B. 360. Jacobs, *supra* note 9 at 164 notes that *Hicklin* entered American jurisprudence through *United States v. Bennett*, (1879) 24 F. Cas. 1093 (C.C.S.D.N.Y.).

15. 20 & 21 Vict., c. 83, s. 1.

16. *Hicklin*, *supra* note 14 at 360.

17. *Hicklin*, *ibid.* at 369.

18. Hunt, "Introduction," *supra* note 7 at 12-13. With respect to the situation in the United States, see Felice Flanery Lewis, *Literature, Obscenity, & Law* (Carbondale, Ill.: Southern Illinois University Press, 1976) at 13. Before cheap printing, few texts of this kind actually existed. They circulated in Europe under cover and very often in Italian or Latin, and their readership was a small sector of the literate public with some means: middle-class and aristocratic men, "pre-disposed to self-cultivation and possessing sophisticated literate abilities": Hunter, *supra* note 1 at 34. See also Kendrick, *supra* note 6 especially at 71-83, 129.

levels, for different people and has to be considered as a whole, as the art that the author intended it to be, rather than as the leader in a game of "Simon says." The twentieth-century judges' readings of texts like *Ulysses* make sense to Kendrick - one can almost hear him sighing with relief at finally encountering a rational voice - because they coincide with his own ideas about texts: that language can be arranged in better and worse ways that represent the speaker's reality, that these representations elicit a formal, analyzable aesthetic response, rather than a didactic, moral one. Kendrick is also relieved that these later judges finally understand that not all books will be read by, or could possibly endanger, everyone.²⁵

While Kendrick's essential observation about the prevalent understanding of representation is a useful one that Rochelle Gurstein also makes,²⁶ it is one that results from the emergence of English literature as a discipline and the discursive and analytical practices attendant on that development, and it does not describe the nineteenth-century idea except in terms of its absence of what seems like rational thinking from a mid- to late twentieth-century perspective. It is important to take seriously the beliefs that people in the nineteenth-century held about physiology, morality and pedagogy and the risk they perceived from the collapsing boundaries around the circulation of print material. No one had any way of knowing how young people would respond to such reading material. Unlike Gurstein, Kendrick reduces the problem to a fear that the troublesome, impressionable "young person" would simply do as she was shown and does not attend enough to whether obscene or indecent material might have posed a more complex type of danger to mid-nineteenth-century England or America. In fact, the harm seems to have been understood to work in at least two ways: on the mind and body of the individual reader and on the character of public discourse.

We need to distinguish here between two kinds of reading material. The *Obscene Publications Act* and Lord Cockburn were concerned with explicit depictions or descriptions of sexual activities that were circulating on Holywell Street: cheaply printed translations of Italian, Latin and French works, with some English ones like John Clelland's *Fanny Hill* thrown in. Among the cultivated classes, these erotic novels were "confined to a tolerated specialist zone, which added an erotic space, a 'habitus' of secrecy, to the definition of a true (that is, hidden) self identified with the activity of reading erotica."²⁷ The other form of reading material whose impact on morals is generally mixed into these discussions is the novel, whose widespread availability and dubious respectability were described in chapter three. Most mid-century novels eschewed erotic content and therefore were not the target of the *Obscene Publications Act*. Many of these were decorous and educative, although a significant subset followed the "sensationalism" of the local

19. For a discussion of the motif in eighteenth- and nineteenth-century novels of the danger of mass literacy and the "poisonous book," see Patrick Brantlinger, "The Case of the Poisonous Book: Mass Literacy as Threat in Nineteenth-Century British Fiction" (1994) 20:2 *Victorian Rev.* 117. This language was common in Canada too, occurring both in Riddell J.'s judgment in *Graf*, *infra* note 152 at 248 and in the Kingston Children's Aid Society's description of the crime stories that purportedly flooded into Canada in 1895 - see S. Craig Wilson, "'Our Common Enemy': Censorship Campaigns of the Woman's Christian Temperance Union and the National Council of Women, 1890-1914" (1998) 10:2 *C.J.W.L.* (forthcoming). Cf. Mariana Valverde, *The Age of Light, Soap and Water* (Toronto: McClelland & Stewart, 1991) at 34-43.

20. Hunter et al., *supra* note 1 at 53. Writing specifically about the United States, Kendrick, *supra* note 6 at 146, implicitly agrees with this assessment.

21. Hunter et al., *ibid.* at 68-69.

22. Hunter et al., *ibid.* at 71. Lush J. observed in argument, "[i]t does not follow that because such a picture is exhibited in a public gallery, that photographs of it might be sold in the streets with impunity": *Hicklin*, *supra* note 14 at 365. A similar lack of discussion of the nature of the obscene marks the late nineteenth-century American obscenity trials: Gurstein, *supra* note 8 at 180.

23. See Kendrick, *supra* note 6 at 50-54.

24. Hunter et al., *supra* note 1 at 51-54, 74-76, 80-81, quotation at 75. Further, Hunter et al. make the case that "serious literature" (that is, such literature kept off the street corners) was not in fact subjected to prosecution until writers, toward the end of the nineteenth century, started to incorporate pornographic conventions and techniques into their mass-distributed writing, and thus deliberately undermined the regulatory framework that had been set up mid-century.

25. See Kendrick, *supra* note 6 at 95-124, 167-72, especially at 115 and 179; the tone of Kendrick's critique is particularly apparent at 179, where he speaks of twentieth-century judges finally learning to assess "form": "And 'form,' like most other ideas kicked back and forth in the pornography debate, is also a function of intention, the blameless desire to make art."

newspapers and ran lurid tales of crime and immorality.²⁸ This last class of fiction was understood to coarsen the public taste and possibly constitute a threat to morals, but it was not erotica and does not therefore seem to have been the target of the *Obscene Publications Act*. The real problem for English obscenity law and policing began when twentieth-century novelists like D.H. Lawrence began to incorporate into widely circulated educative fiction the literary practices that had previously been confined to erotica. Lawrence and others justified this transgression of genres by representing the discovery of the sexual self as an important component of romantic self-examination and self-fulfillment.²⁹ Earlier, though, in the late nineteenth century, pornography was understood to constitute a definite harm to anyone outside a particular group of educated, upper- and middle-class men. The *Obscene Publications Act* aimed at preventing the circulation of erotica beyond this segment of the population. Some novels that circulated in England, on the other hand, especially naturalist and realist ones, were not erotic but raised moral questions or depicted life too realistically for the demands of decency. These novels could attack not just individual morals but the nineteenth-century ideals of domesticity.³⁰ The potential harm posed by this class of literature was generally felt to be most effectively addressed through the cultivation of individual taste, rather than by legal means.

I turn first to the harm posed to the majority of readers by erotic texts. Those who passed the first laws about obscenity harboured a particular understanding of human physiology. Males were thought to have a certain, limited amount of vital fluid, which was expended on ejaculation but could be reabsorbed into the system through sexual continence. Masturbation and excessive copulation were therefore thought to pose health risks, and boys and young men were to be carefully monitored by their parents - mothers especially - to make sure they did not seem to be indulging in the "secret vice" of masturbation. (This understanding of physiology also taught men to exercise sexual restraint with their wives, and thus dovetailed with the idea of feminine purity and the economic imperative of keeping family sizes smaller.) In the hands of males whose consciousnesses had not been properly schooled to receive it, pornography posed an obvious threat to health. Masturbation posed a threat to female health as well, causing a wasting away that was accompanied by extreme pain, other bodily abnormalities and insatiable sexual urges, which contrasted dramatically with the passivity that was thought to characterize healthy female sexuality.³¹

As noted, however, it was not just sexually graphic reading material that posed a danger, although that was the only thing specifically targeted by the *Obscene Publications Act* of 1857. Literature that undermined the integrity of the home or the privacy of the person, though not at all sexually graphic, was also deemed deeply harmful and attracted censorship efforts. Following Hannah Arendt, Rochelle Gurstein says that until the eighteenth century, the public sphere was understood as the place of freedom, where citizens - men - displayed their individuality and exercised the rights of citizenship. At least in the abstract, the home was oppressive for men, in that they were unable to express their unique selves. It was a private, female sphere where individuals were alone, where bodily functions were performed, where people were least individuated. In the eighteenth and nineteenth centuries, human labour moved out of cottages and into

26. See e.g. Gurstein, *supra* note 8 at 46.

27. Hunter et al., *supra* note 1 at 92.

28. For a description of this literature and identification of it with the dark side of the cultural consciousness of mid-nineteenth-century England, see Thomas Boyle, *Black Swine in the Sewers of Hampstead: Beneath the Surface of Victorian Sensationalism* (New York: Viking Penguin, 1989). Anne Baltz Rodrick reads some of this literature as social criticism: "Only a Newspaper Metaphor": Crime Reports, Class Conflict, and Social Criticism in Two Victorian Newspapers" (1996) 29:1 *Vict. Periodicals Rev.* 1. Judith Walkowitz covers related territory a few decades later in her analysis of the discourse around Jack the Ripper: see *City of Dreadful Delight: Narratives of Sexual Danger in Late-Victorian London* (Chicago: University of Chicago Press, 1992).

29. See Hunter et al., *supra* note 1 at 93-134.

30. Present-day authors describe a variety of purposes and effects of pornography: see e.g. Beverley Brown, "Debating Pornography: The Symbolic Dimensions" (1990) 1:2 *L. & Critique* 131. One subversive possibility that pornography would have offered in the mid-nineteenth century would have been to deliberately undermine the ideal of domesticity, as its opponents argued that it in fact did.

31. See Jay Cassel, *The Secret Plague: Venereal Disease in Canada 1838-1939* (Toronto: University of Toronto Press, 1987) at 81-82, 114; Kendrick, *supra* note 6 at 89-91; Hunter et al., *supra* note 1 at 65-66, 104.

factories, where workers became alienated from their labour. At the same time, the home began to be understood to be the place where individuals were free to realize their authentic selves. The cult of domesticity developed, with womanly virtue at the centre safeguarding the integrity of the personal heaven that was the middle class home.³² As Jay Cassel says, speaking generally of England:

Still, an idealized view of women came to figure prominently in middle-class thought. The woman was seen by many as the embodiment of human virtues and the heart of the family. She was supposed to be a reflection of virtues - goodness, purity, loyalty, devotion, and, some would add, conformity. She was often portrayed as delicate, even weak or helpless, needing a man to protect her and provide for her. In return she would care for the home and their family. A woman at her best was a dedicated mother, a competent, diligent housekeeper, and a supporter of the moral and religious values of her society. From the mid-nineteenth century onward there was an intensification of the emphasis on limited expression of a woman's sexuality. Many maintained that a woman's sexual life should revolve around the bearing and raising of children. By extension, women were expected to limit their sexuality so that it did not head off in undesirable or unproductive directions. A woman who behaved otherwise was considered "deviant" and a threat to society and its values.³³

Nineteenth-century English moral reformers were concerned with protecting the family, especially the sexual and moral purity of the wives and daughters, and with establishing and maintaining this ideal of domesticity in the lower classes.³⁴

E. Anthony Rotundo makes similar observations about the middle-class white "Yankees" he studies. He finds that with the growing sense that a tendency to competitive self-promotion was an inherent component of manhood around the beginning of the nineteenth century, wives came to be seen as a counterbalancing source of virtue and restraint.³⁵ Also in the American context, Gurstein uses the word reticence to describe the sense that it was imperative to protect the private realm from public exposure. "[P]ublic exposure of matters relating to it was perceived as a threat to its authority." A person guided by the demands of reticence would avoid speaking freely of bodily functions or emotions like love or fear. For example, a person who was called upon to publish her or his correspondence with some noteworthy figure (even one deceased) would carefully edit the correspondence to remove the material that touched on the private life and emotions of the subject. The reticent sensibility was designed to protect the fragility of the innermost human feelings and experiences that gave each human life its uniqueness. It recognized and held to be of primary importance the joining of privacy, shame and reverence. There was a sense that public exposure of not only bodily functions but also intimate emotions like love coarsened them, and those who partook of the public exposure of such things had their own sensibilities coarsened. The moral and the aesthetic were inextricably entwined in the reserve, the caution about revealing feelings and thoughts, that characterized the reticent sensibility.³⁶ The utility of the concept of reticence is that it aids in the identification and explanation of gaps in what is said, places where a speaker might have said more but did not, or where a newspaper declined to provide the full quotation. The concept also aids in the identification of places where a speaker or actor has overstepped the bounds of propriety in public discourse.

32. Gurstein, *supra* note 8 at 13-20, 28-31.

33. Cassel, *supra* note 31 at 79-80.

34. The operation of the ideal of purity in nineteenth-century male and female erotic and moral imaginations is explored by Walter Herbert, Jr. in "The Erotics of Purity: *The Marble Faun* and the Victorian Construction of Sexuality" (1991)

36 Representations 114. Herbert remarks, "A middle-class man had reason to dread the power of his wife to arouse him sexually, and her financial well-being and social status were equally dependent on keeping the family small. The Victorian ideal of purity was a psychic contraceptive; the moral alchemy of the domestic angel enabled her husband to pay her adoring attentions that would not get her pregnant": *ibid.* at 116.

35. E. Anthony Rotundo, *American Manhood: Transformations in Masculinity from the Revolution to the Modern Era* (New York: BasicBooks, 1993) at 4.

36. Gurstein, *supra* note 8 at 39-45, 50, 58-60.

Given the similarities between the English and American cultures, it seems safe to say that before the age of moral reform, the purpose of the law on immoral, indecent or obscene material had at least two interwoven dimensions: to prevent the exposure of the impressionable young to material that might corrupt them physically and morally, and to refuse entry into the public sphere of any kind of material that would expose the innermost person or undermine the private sphere, ranging from books about prostitution or adultery, to lurid newspaper reports and stories, to pamphlets about sexual hygiene. In the United States, privacy laws developed in the face of these kinds of materials, and the 1873 Comstock Postal Act was designed to prevent the public realm from being used to damage the private.³⁷ The circumstances of distribution of materials could be critical: medical treatises, for instance, while unobjectionable if kept in their proper place, would be obscene if exposed on the street, according to Lord Cockburn in *Hicklin*.³⁸ Because of the sense that the private sphere, including private lives, had to be protected, there was no place in nineteenth-century obscenity law for the more modern question of whether the "whole" of a thing was obscene or just a "part": if any part of it exposed this private sphere, it was obscene.³⁹ Laws against obscenity and indecency did not simply protect the individual morality of the corruptible young person but also regulated material that would lay open to public view the domestic sphere or the inner workings of the human mind at its most vulnerable.⁴⁰ This type of material would include a depiction of the conditions that caused marital estrangement or a lurid report of an accident that made it apparent exactly how the victim suffered. Obviously much material, such as information about contraception, could offend by both corrupting the young person and exposing the private sphere.

The idea of exposing the private sphere incorporates the idea of challenging the ideology that formed it, the doctrine that a woman's place was in the home while a man's place was in the work-a-day world. This ideology was also a determinant of morality for women. The most radical harm that could therefore be done to the private sphere would be the interference with the purity of the female figure at its centre. If this female figure, or more particularly her younger manifestation,⁴¹ were shown material that exposed her to bodily functions or impure thoughts, her purity and that of the household that she was destined to run would be jeopardized. The route to moral destruction was not simply that the young woman would be inspired to rush out and have sexual adventures. The risk was that her very self would be corrupted. As Felice Flanery Lewis says,

The second and less obvious path lay through the continued reading of literature which was so shocking - though not necessarily erotic - that it brought a blush to the cheek of a young person. The danger was that as the young person became inured to certain words and phrases the blush would appear less and less promptly, until finally all sense of shame was lost and the young person became capable of acts and thoughts which would once have been quite impossible.⁴²

A question that might logically arise is at what point the doctrine of feminine purity at the heart of the domestic realm arose in Canada. It is hard to date with any precision the development of separate spheres ideology in Ontario, but it was unquestionably in place in urban Ontario by 1880. Although it was contested in various social contexts, the ideology was an essential component of the political, religious and

37. Gurstein, *ibid.* at 146-78

38. *Hicklin*, *supra* note 14 at 367.

39. See Manchester, "History of Obscene Libel," *supra* note 4 at 50-51. The Methodist and Presbyterian practices of "lower" (as opposed to "higher") criticism may also have led people trained in them to attend to the details of the text, rather than its overall impression. For a discussion of the higher criticism, see above, chapter two, page 25.

40. Gurstein, *supra* note 8 at 31.

41. Manchester sees the question of whether a thing would corrupt youth as the standard criterion for determining whether or not the thing was obscene: Colin Manchester, "Obscenity Law Enforcement in the Nineteenth Century" (1981) 2 J. Legal Hist. 45 at 49-50 [hereinafter "Obscenity Law Enforcement"]. Kendrick uses the female pronoun to describe the "young person" whose morality was so much at risk, although he says "boys and men could be equally obstreperous": Kendrick, *supra* note 6 at 68.

42. Lewis, *supra* note 18 at 245. See also Gurstein, *supra* note 8 at 52.

social discourses of that region in the middle of the century.⁴³ In the abstract, the separate spheres ideology had the same contours as its English and American manifestation, particularly among urbanites. Likely it was more acceptable to the middle and upper classes than to the working poor, who could not afford to rely on one wage-earner, and it also seems unlikely that it could have had the same currency in the rural situations, where most children would have been exposed to the reproductive facts of life quite young. Jay Cassel notes that rural Canadians outside Quebec seem to have put much less of a premium on female virginity than did their urban counterparts and tolerated much more readily the bearing of children outside marriage.⁴⁴ Canada, especially urban Canada, and the eastern United States did therefore have a similar cultural backdrop for the practices of reticence: both cultures espoused the ideology separate spheres with the morally pure woman as the heart of the home. As this chapter goes on to show, Canadians, like Americans, adopted the practices of reticence to protect the private sphere and private feelings, and they used censorship and obscenity laws to protect these practices after they had come under attack in the United States.

The idea of the inviolability of the private sphere not only resulted in obscenity legislation in England and the United States and privacy laws in the latter country. It also protected a man from legal action for activities he might perform in his home - domestic abuse, for example. Members of William Wilberforce's Society for the Suppression of Vice, who pursued purveyors of pornography in the nineteenth century, were vigorously attacked for their indifference to individual rights.⁴⁵ It also meant that any use a man might make of pornography in the privacy of his own drawing room or bedroom was his own business. When Samuel Pepys, in 1668, bought a "lewd book," used it for his own purposes and then burned it, no one else was concerned.⁴⁶ The paradoxical image that emerges is of the virtuous mistress of the house attending to the spiritual needs of the little ones, while the master of the house locks himself in his own rooms with his dirty books, protected from the very law whose purpose is to protect his wife and her domain from the assaults of public exposure. The tension between the desire to protect the private sphere and the private habits of individuals from surveillance and yet to reform the spirits and manners of at least some homes and their occupants in the name of God and nation affected the tactics of reformers in England, the United States and Canada. In Ontario, however, the liberal insistence on being free from state control in one's personal life had much less currency than it did in England or the United States.

It will be apparent that although erotica, or pornography, was the type of material that would induce masturbation and particularly endanger young men, a much broader range of reading material could trench on the purity of young women and thus endanger the domestic sphere. John McLaren, citing Walter Kendrick who quoted Charles Dickens, observes that the test of whether or not a thing was acceptable was whether it would "call a blush into the cheek of a young person," who was at least somewhat more often female in England.⁴⁷ In the United States, this young person was strongly gendered male. Probably part of the reason for this difference arose from the personal priorities of individual reformers like Anthony Comstock, who focused on the corruption of males. Walter Kendrick sees as important a more warlike, frontier mentality in the United States. E. Anthony Rotundo also notes the anxiety about instilling an assertive masculinity in the United States during this period.⁴⁸ The middle and upper class in England may have been more tolerant of male shortcomings than were their American counterparts, having among other things a predilection for erotic literature. In any case, the different gender of the idealized "young person" in the two countries was a matter of degree: both were considered at risk from pornography and indiscriminate novel reading.

The reticent sensibility - the imperative to protect the individual's inner feelings and the respective roles of the public and private spheres - was threatened during the nineteenth century. This threat started earlier in England and the United States than in Canada, and its sources, though similar, had different weights. The forces that opposed reticence in the United States were very close to attaining the upper hand by 1900,

43. See Cecilia Morgan, *Public Men and Virtuous Women: The Gendered Languages of Religion and Politics in Upper Canada, 1791-1850* (Toronto: University of Toronto Press, 1996).

while in Canada this ethic of exposure took longer to work its way into the polity, and it is arguable that it has never had as much currency in Canada as it has in the United States.⁴⁹ Gurstein identifies three forces that challenged it:

The first arose from technological innovations that fueled mass-circulation newspapers, photographs, and advertising which gave publicity to subjects once treated with circumspection and with lowered voice. The second emerged when sex reformers attacked what they called "a conspiracy of silence," demanding that the private mysteries of sex be made public through lectures and pamphlets about sexual hygiene and morality. The third appeared in the form of the realist novel: in its Continental (usually French) inflection, private dramas having to do with adultery and prostitution were depicted in unsparing detail; in the United States, the trials and tribulations of everyday domestic life were given a full airing.⁵⁰

Gurstein employs the concept of the reticent sensibility to discuss both obscenity and indecency. Speaking of the United States between 1870 and 1900, in a description that accords with the usage of the terms in late nineteenth- and early twentieth-century Ontario, Gurstein says:

The capacity to discern the proper ordering of things, which these critics prized, was crucial to legal determinations of obscenity, for the very definition of obscenity depended on knowing which things belonged in public and which in private. In trial after trial, judges defined "obscene" as "offensive to chastity and decency, expressing or presenting to the mind or view something which delicacy, purity, and decency forbid to be exposed." "Indecency," too, was a key word, and judges emphasized that decency indicates fitness for appearance in public, citing dictionary definitions of "indecent" as "the wanton and unnecessary expression or exposure, in words or pictures, of that which the common sense of decency requires should be kept private or concealed," or that which is "unfit to be seen or heard."⁵¹

An examination of Gurstein's three categories in the Ontario context sheds light on the contours of Ontarian censorship approaches against the backdrop of the parameters of decency in Ontario.

44. See Cassel, *supra* note 31 at 78-86. In this vein, Constance Backhouse has written of the practice of bundling being common in nineteenth-century rural Canada: there not being much time for courting among young people in farm families, young couples were allowed to "stay up" over night in the young woman's home, and a "bundling board" - a piece of wood - was provided to be placed down the centre of her bed, to discourage the expected sexual experimentation from proceeding as far as intercourse. It was an unwritten convention that should this prophylactic measure fail and a pregnancy follow, marriage was to result. The practice became less common as the century passed, due to the astonished horror it elicited in evangelicals. See Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto: Osgoode Society, 1991) at 40-58.

The timing of the development of separate spheres in Quebec may have been slightly later than that in England or in English-speaking Canada. Allan Greer shows that this ideal of domesticity was strong among the French Canadian *patriots* in the late 1830s in Lower Canada. In the older absolutist understanding of society, upper-class women, especially property-holders could have influence and at times enfranchisement, whereas no one in the lower ranks of society had any claim to political sway at all, and women, indeed, tended to be the actors in the demonstrations that constituted political participation for these classes at that time. Like Upper Canadian reformers, the republican forces in 1837 insisted on separate spheres for women and men, deriding the accession to the throne of the seventeen-year-old Queen Victoria. While the Upper Canadian reformers seem to have accused Victoria of girlish frivolity, the French Canadian republicans went farther, depicting her as sexually immoral because of her place in the public realm. The ideology of separate spheres was in the ascendant and, as Jay Cassel points out, it seems to have reached farther down the social scale than it did outside Quebec. Working-class Quebec seems to have had a much lower incidence of extramarital cohabitation, illegitimacy or marital separation than did working-class Ontario during the same time period. See Cassel, *supra* note 31 at 83-85; Allan Greer, "The Queen is a Whore!" in Veronica Strong-Boag & Anita Clair Fellman, eds., *Rethinking Canada: The Promise of Women's History* (Toronto: Oxford University Press, 1997) 93 at 99; Morgan, *supra* note 43 at 89-90. Through a study of iconography, Monica Juneja shows that a similar alignment of masculinity with political power characterized the republican forces of the French Revolution: "Imaging the Revolution: Gender and Iconography in French Political Prints" (1996) 12:1, n.s. *Studies in Hist.* 1

In her first category of assaults on the reticent sensibility, Gurstein speaks of late nineteenth-century American gossip-mongering journalism, which featured among other things lurid reports of crimes and divorces. Respectable magazines like *The Atlantic Monthly*, *Forum*, *Harper's*, *Lippincott's*, *North American Review* and *Scribner's* decried these muckraking practices. Commonly using metaphors of the invasion of the home, critics likened this journalism to listening at keyholes.⁵² In the name of openness in reporting, it exposed individuals' inner thoughts to the public realm and trivialized intimate life.⁵³

While Gurstein's study is restricted to the United States, similar developments occurred in England. As Thomas Boyle describes in *Black Swine in the Sewers of Hampstead*, from at least the 1820s onward, the English press published reports of crime of all sorts. Their reportage had become cheaper and more lurid by the 1850s. By that time too, crime writing by such authors as Wilkie Collins, Mary Elizabeth Braddon, Charles Reade and J.S. LeFanu had become very popular, and some of Dickens's work, like *Our Mutual Friend* (1865), partook of the conventions of the developing genre as well.⁵⁴ In response, English organizations like the eighteenth-century Society for the Diffusion of Christian Knowledge and the later National Vigilance Association deplored the lurid "Newgate novel" and its spin-offs the "penny dreadfuls" and "shilling shockers" - crime stories all - which were thought to teach the methods of crime to the impressionable youngsters who purchased them.⁵⁵ W.T. Stead's "Maiden Tribute of Modern Babylon" was a lurid tale of the ease with which a young girl could be bought from her mother and ensnared into white slavery. Despite Stead's purpose, which was to draw attention to the horrors of white slavery, his article generated outrage from all sides when it was published in the *Pall Mall Gazette* in 1885. One common response was to deplore the obscenity and indecency of Stead's account. A campaign against obscene literature freely selling on the Strand followed. Stead was accused of placing explicit, obscene literature "within the reach of the poorest class in the population," in the words of a Middlesex judge. Policing efforts were stepped up, as were reformers' efforts to suppress French literature and information about birth control.⁵⁶ Lurid crime reporting, in which W.T. Stead is a key figure, was thus understood to threaten decency in England as well as in the United States.

Unlike the United States and England, until the last thirty years of the nineteenth century Canada did not have a flourishing print culture. The tradition that did develop in the late nineteenth century was steeped in the nation-building project and was heavily influenced by the church presses, like the Methodist Book and Publishing House. Institutions like the *Toronto Globe* had people committed to moral reform at the helm.⁵⁷ The domestic newspapers were not prone to muckraking journalism, and the censorship campaigns of the WCTU and NCW during the 1890s set out to stop many American publications at the border, although it is hard to know how effective these campaigns were or how attractive this journalism was to Canadians in the first place. These organizations monitored Customs lists, lobbied for additions to the lists and kept alert for the many books and innocuous-sounding American magazines that were banned from the country, if not

45. See McLaren, "Now You See It," *supra* note 4 at 113.

46. See Hunt, "Introduction," *supra* note 7 at 20; Hunter, *supra* note 1 at 1.

47. McLaren, "Now You See It," *supra* note 4 at 114-15.

48. Rotundo, *supra* note 35 at 222-46.

49. The ethic of exposure has a number of recognizable rhetorical strategies, such as "the public has a right to know" and "why do you care, if you have nothing to hide?" This is of course a huge, open topic, but an unscientific study of recent events like the Homolka-Bernardo and O.J. Simpson trials and the tribulations of U.S. President Bill Clinton suggest that the press (the greatest promoter of exposure) in the United States is more confident about the public's receptiveness to its tell-all ethic than is its counterpart in Canada.

50. Gurstein, *supra* note 8 at 32.

51. Gurstein, *ibid.* at 48-49.

52. Gurstein, *ibid.* at 33-36.

53. Gurstein, *ibid.* at 36-45.

54. See Boyle, *supra* note 28.

55. For a discussion of the place of these kinds of novels in the discourse of the "poisonous book" in the eighteenth and nineteenth centuries, see Brantlinger, *supra* note 19 at 128-30.

56. See Walkowitz, *supra* note 28 at 81-82, 102-5, 122-25.

57. See chapter two, page 30 and chapter three, page 46 and accompanying notes.

for their articles then for advertisements or illustrations featuring women inadequately clothed or in compromising poses.⁵⁸ There was a certain amount of concern about depictions of crime in the press and popular literature, particularly the latter. Craig Wilson speaks of “near hysteria” among moral reformers over the crime stories that entered Canada, mostly from the United States, and were cheap and popular among children.⁵⁹ On the other hand, even though the Hon. Mr. Monk, M.P. voiced concern about crime reporting in the House of Commons debates of 1909, he viewed it as inevitable and probably did not see anything terribly harmful about it. He described the crime reporting as “absolutely detrimental” but not immoral. His concern was more that it might teach children criminal techniques than that it would affect the standards of decency in Canadian public life.⁶⁰ The peculiarities of Canadian, and particularly Ontario publishing and reporting thus likely kept in place longer in Ontario than in the United States or in Britain the system of decorum that protected decency or the reticent sensibility. Between 1890 and 1914 in Ontario, when concern was expressed it tended to be for the morals of young people rather than for the intrusion on private lives or the coarsening of public discourse, and the reason seems generally to be that in general, public discourse was not perceived to be seriously under attack.

Gurstein’s second category of challenges to the practices of reticence is composed of the various tracts and doctrines of the first wave of late nineteenth-century American sex reformers. These radicals, free-love proponents, sexual hygienists, feminists and sociologists sought to expose private misconduct to public view and speak plainly about sexual morality, hygiene and birth control.⁶¹ The greatest number of obscenity cases in the United States between 1873 and 1934 were on sex education, a movement begun by this first wave of radicals around 1870 and taken over by the more liberal, progressive second wave after 1900.⁶² England saw similar challenges to gender norms and the ideals of reticence. The “Men’s and Women’s Club” was founded by the socialist and future eugenicist Karl Pearson in 1885 to provide a forum for discussion of various facets of relations between the sexes. One of the members of this club, the South African writer Olive Schreiner, was a university educated woman who attempted to live out the ideals espoused by England’s sex radicals and thus contributed to the challenges to gender norms and the ideals of reticence in England.⁶³ The American and English impulse to analyze and educate about sex is part of what Foucault describes as the process of bringing sex, or turning sex, into discourse, which started in the eighteenth century, under the guise of understanding and controlling it.⁶⁴ Hunter et al. speak of a multiplication of situations in which one had to talk about sex, in medicine, demography, pedagogy and psychiatry, so that sexual self-interrogation became a more widespread dimension of governance.⁶⁵ Not just through Freud but through many others, sexual matters came to be viewed as an appropriate subject of

58. Wilson, *supra* note 19. Wilson mentions in particular a picture of two white women reclining in a Chinese opium den. Graham Parker notes that in the period before codification in 1892, the legislators’ correspondents were concerned with depictions of prizefights and magazine advertisements peddling intimate items of female attire: Graham Parker, “The Origins of the Canadian Criminal Code” in David H. Flaherty, ed., *Essays in the History of Canadian Law*, vol. 1 (Toronto: Osgoode Society, 1981) 249 at 269.

59. Wilson, *ibid.* Crime comics became the subject of criminal legislation in 1949, and there were a number of cases on this subject in the 1950s: see Janice Dickin McGinnis, “Bogeymen and the Law: Crime Comics and Pornography” (1988) 20 *Ottawa L. Rev.* 3.

60. *Official Report of the Debates of the House of Commons of the Dominion of Canada*, Vol. 92 at 6384-85 (12 May 1909) [hereinafter H.C. *Debates*, 12 May 1909].

61. See Gurstein, *supra* note 8 at 61-66.

62. 1873 brought the Comstock Act governing the transmission of obscenity through the mail, and 1934 marked the decision on *Ulysses*, which reformulated the boundaries of the obscene: see Gurstein, *ibid.* at 179. Kendrick, *supra* note 6 at 150-57, describes some of the early sex reform campaigners.

63. See Walkowitz, *supra* note 28 at 135-69; Elaine Showalter, *Sexual Anarchy: Gender and Culture at the Fin de Siècle* (New York: Viking Penguin, 1990) at 47-58.

64. Michel Foucault, *The History of Sexuality, Vol. 1: An Introduction*, trans. Robert Hurley (New York: Vintage Books, 1990; originally published as *La Volonté de savoir* by Editions Gallimard of Paris in 1976) at 17-20. This insight is central to the work of Hunter et al., who relate the idea of the confessional to the growth of pornography. See Hunter et al., *supra* note 1 at 28-35, 38.

65. Hunter et al., *ibid.* at 43. The argument that Hunter et al. make relates the adoption of widespread practices of sexual self-interrogation to the particular form that pornography (or biblio-erotics) took, and to the literatures that developed under its influence; the evolution of pornography itself, however, is not at issue here.

public discourse, and sexual conduct became something that could be monitored and improved.

Canada between 1890 and 1914 did have sexual hygienists, but few had the political motivations of the early radical American or English activists. Few doubted that heterosexual marriage was the ideal to which all should aspire, and thus the normative content of the word "woman" did not receive the challenges it experienced in the United States or England. The Canadian WCTU and the NCW advocated frank discussions, in the right circumstances, of the type of intimate life idealized in heterosexual marriage. They do not seem to have been as aggressive as the post-1900 American progressives, who mounted a full attack on the "conspiracy of silence" around sexual matters.⁶⁶ The WCTU, the NCW and the Methodist Department of Temperance and Moral Reform did not advocate repressing sexual urges but bringing to light sexual questions, so that "healthy sexual subjectivity" - not ignorance - could be instilled in young people.⁶⁷

Prior to the development of this movement, bodily functions were not discussed in any but the most intimate of conversations. Pictures of surgery, in the hands of the wrong people, were considered obscene, as was evident in the debates around the creation of the first *Criminal Code* in 1892.⁶⁸ Venereal diseases were considered so repugnant that outside medical circles, they could not be named. Many reformers felt that the proliferation of venereal diseases made education imperative and reference to it unavoidable. They felt that young people - and their seniors - deserved instruction in the biological facts of life and in proper ways of managing the self at all stages of life. The ideal of continence for women and men, as discussed above, was presented. Not everything related to sexuality was on the table, of course - only matters that shored up the monogamous, fertile heterosexual marriage. By the turn of the century in Canada, *Almost a Man*, *Almost a Woman* and the *Self and Sex* series were recommended reading by moral reformers.⁶⁹ By 1905, the WCTU in Ontario - but not beyond it - had taken up teaching anatomy and the function of the sex organs.⁷⁰ As well, as mentioned in chapter three, not just sexual hygiene in Canada but also more general public health concerns entered the discourse of the period. Unsanitary conditions resulted in the quick spread of diseases like cholera and diphtheria. Milk and water were contaminated. Reformers began to talk about these things and to demand legislation and other initiatives.⁷¹ These too undoubtedly contributed to a breaking down of the reticent sensibility.

It should be noted, however, that the Canadian sexual hygiene movement was not as politically aggressive as the American version, and it insisted less on a complete abandonment of the practices of reticence that protected decency. Even when reformers began to talk about venereal diseases, they described symptoms but still generally refused to name the disease.⁷² Amendments to the *Criminal Code* in 1913 added a ban on the advertisement of potions to restore virility or cure venereal diseases or "diseases of the generative organs."⁷³ Canadian reticence in this area seems to have outlasted that in Europe and the United States.⁷⁴

66. Gurstein, *supra* note 8 at 91-115.

67. Valverde, *supra* note 19 at 67-69. See also Michael Bliss, "Pure Books on Avoided Subjects": Pre-Freudian Sexual Ideas in Canada" in Michiel Horn & Ronald Sabourin, *Studies in Canadian Social History* (Toronto: McClelland & Stewart, 1974). Valverde accuses Bliss of treating the sexual hygiene movement as "somewhat of a historical joke." She accuses Bliss of assuming the truth of both Freud's repression hypothesis and the bad press given to the sexual hygiene movement by more secular sexual educators of the 1910s and 1920s.

68. See Cockburn's remarks in *Hicklin*, *supra* note 38. The debates suggest as well that a photograph taken of a surgical operation for display to students in a medical school would be indecent, in the sense that it would not be acceptable in this decent, public sphere, but it would be excusable under the exculpatory provisions of the section. This reasoning follows that in *Hicklin*. See H.C. *Debates*, *supra* note 12 at 2969. Similar remarks are also made in "Immoral Literature" *Canadian Churchman* (14 January 1909) 19 at 20.

69. See Wilson, *supra* note 19; and Cassel, *supra* note 31 at 115. This series of American books, with titles like *What A Young Girl Ought to Know*, was first published in 1897 and targeted female and male readers in childhood, adolescence, married life and old age.

70. See Cassel, *ibid.* at 114.

71. See above, page 65 *et seq.*, and Cassel, *ibid.* at 104-5.

72. See Cassel, *ibid.* at 88, 94-100.

73. S.C. 1913, c. 13, s. 8.

Nevertheless, the sexual hygiene campaign was an important factor in making public a subject that had previously been treated with great circumspection.

The sexual hygiene movement was directed at protecting the moral and sexual purity of middle-class youth and instigating similar values in the working class.⁷⁵ A number of imperatives came together around this point. First, there was the sense of the moral and physiological risk posed to the individual by such practices as masturbation, a sense that existed in the United States and England. In Canada, the sexual hygiene movement was related discursively as well not just to a generalized evangelical desire to improve society⁷⁶ but to the specific goal of building a white, Protestant, generally British country. This imperative in turn was linked to the tremendous sense of confidence felt by theologians, philosophers and politicians alike that Canada stood at a turning point in its history, the moment that would herald greatness - even the imminent arrival of the kingdom of God. At the height of the strength of evangelicalism, the fate of the individual soul was entwined with that of the nation. This sense of the significance of the moment for the nation as a whole, combined with the medicalized view of the poor and poverty, goes some way to explaining why moral reformers felt it was so important and so unproblematic to invade the private lives of the working class. It also explains why they were willing to put on the discursive table the private behaviour of their own youth - masturbating, drinking to excess, reading harmful literature.⁷⁷

Gurstein's third category of threats to the reticent sensibility is the realist novel, which in its French form (commonly called naturalist) tended to depict in detail private dramas involving adultery and prostitution, and in its American form showed the difficulties of everyday domestic life. Even the less dark American form exposed its readers to the intimate details of imagined life. The reticent sensibility found that it laid open such delicate emotions as love, fear and reverence and, in exposing them, coarsened them. Defenders of reticence often used the metaphors of pollution, poison or disease to describe the impact of these depictions on the public realm. In the Canadian context, Mariana Valverde shows how moral reformers used the same metaphors to describe the impact of obscene literature on individuals, due largely to its propensity to promote masturbation. The metaphors discursively linked harm to the individual with damage to society as a whole.⁷⁸ The tremendous, ironic flexibility of these metaphors is evident in the way that the sexual hygienists used the idea of curing disease, or shedding light on darkness and ignorance, to attack masturbation but at the same time undermined the reticent sense of the bounds of decency in the public sphere.

As I described in chapter three, however, Ontario's taste in the late nineteenth century ran to fiction that was more idealistic than realist. French fiction was treated with considerable disdain, although some of the American writing by people like Henry James and William Dean Howells was well received. On the whole, though, the melodrama was most popular and was considered by the influential clergy to have a harmless, sometimes beneficial effect on morals. Clear plots rewarded the virtuous stock characters and punished the evil. Moral reformers preferred that people read this kind of literature and had considerable success in getting libraries and booksellers to modify their holdings accordingly. The Presbyterian Rev. C.W. Gordon was a popular novelist who wrote under the pen name Ralph Connor. There was most certainly concern in Ontario about realist fiction, but it seems that until about 1905, moral reformers felt they were winning the battle to keep Canadian reading "pure." As will appear below, it was around and after that time that Ontario started to see the prosecutions of booksellers and to sense that things were getting more difficult to police.

A fourth point related to the prevalence of reticent sensibilities concerns the role of women in public life.

74. Cassel, *supra* note 31 at 110-12.

75. See Valverde, *supra* note 19 at 76.

76. For a description of the evangelical movement in Britain, see Donald M. Lewis, *Lighten Their Darkness: The Evangelical Mission to Working-Class London, 1828-1860* (New York: Greenwood Press, 1986).

77. See McLaren, "Now You See It," *supra* note 4 at 126-27.

78. Gurstein, *supra* note 8 at 52-53; Valverde, *supra* note 19 at 34-43.

The sense of the importance of protecting the private sphere hinged on the presence in the home of the female domestic goddess. A "public woman" was a prostitute. As Cecilia Morgan has shown, the separation of spheres had not been absolute in nineteenth-century Ontario, even in upper-class urban life, owing in particular to women's strong participation in church societies and the substantial amount of public writing on the manners and morals of both men and women. The ideal, however, had been clear: women preserved their virtue by sticking to the private sphere, while men demonstrated their virtue in public life. Women in Upper Canada, especially Methodists, did take on roles with a public dimension through church work, but in general Upper Canada provides fewer examples than England of women making common cause to bring about political or social change in the middle of the century.⁷⁹

When middle-class women started campaigning for such causes as temperance and the franchise, the norms upon which the conception of the separate spheres rested became destabilized. Women involved in these movements felt the risk to their respectability that becoming public figures entailed. In 1875, Letitia Youmans, the founder of the first Canadian branch of the WCTU, was concerned not to direct that organization into very public sit-ins in local drinking establishments, which might offend people's sense of propriety and thereby damage the reputations of the women involved. These tactics had been pursued in the United States, where the assault on reticence was farther along than it was in Canada, but Youmans was not keen to have them here.⁸⁰ The temperance movement placed in the public realm the private lives of men and women who lived with alcohol abuse. An even larger step in the erosion of the sense that decency ought to protect women from this public exposure came with the involvement of women's organizations in campaigns against prostitution, unsanitary housing and immoral, indecent and obscene literature. Women were acting in the public sphere and demonstrating knowledge of matters that were supposed to lie outside their experience. As Wayne Roberts has shown, however, the full, radical potential of the "new woman" in Canada was not realized, as "women reformers narrowed their vision from an interest in labour, spiritualism, suffrage and citizenship to a professionally circumscribed role, based on an extension of 'maternal' abilities" - maternal feminism took over.⁸¹ Young women who took work in factories and women who appeared on Ontario's stages also had affected the stability of the private/public divide. Canadian women's activities before World War I did undermine the practices of reticence, to the extent that they placed women in the public sphere, but because Canadian women were less radical than their counterparts elsewhere, their effect on reticence more generally was less dramatic.

Rochelle Gurstein understands the American censorship campaign led by Anthony Comstock as a crude attempt to protect the practices of reticence from the onslaught of the various forces she articulates, specifically invasive journalism; sexual hygiene tracts, including information about contraception; and realist and naturalist novels. These forces inspired censorship campaigns and altered the face of obscenity law in the United States and England. As Felice Flanery Lewis describes, beginning in the 1860s, Comstock led an intensive and extremely successful campaign against a huge number of works.⁸² He adopted both private tactics - pressure on booksellers and producers of sexual hygiene tracts for example - and the very public tactic of prosecution. His crusade took him through the period during which imported literary classics, such as the *Decameron* and the *Arabian Nights*, met with prosecution. Among other things, Comstock fanned the flames for prosecution of the 1905 New York production of Shaw's *Mrs. Warren's Profession*, which the British Lord Chamberlain's office had repeatedly refused to licence.⁸³ The offensive elements in that "problem play" - which did not contain frank language - were Shaw's socialism, with the suggestion of lessened personal responsibility for acts traditionally considered immoral, and the "New Woman" in the character of Vivie Warren.⁸⁴ The New Woman, sexually independent and

79. See Morgan, *supra* note 43.

80. See above, page 54.

81. Wayne Roberts, "Rocking the Cradle for the World": The New Woman and Maternal Feminism, Toronto 1877-1914" in Linda Kealey, ed., *A Not Unreasonable Claim: Women and Reform in Canada, 1880s - 1920s* (Toronto: Women's Educational Press, 1979) 15 at 15, 19-20. See also Wilson, *supra* note 19.

82. Lewis, *supra* note 18 at 9-13.

83. Lewis, *ibid.* at 55; Kendrick, *supra* note 6 at 149.

university educated, defied gender norms by criticizing society's insistence that marriage and family were the only avenue to a fulfilling life for women.⁸⁵ As Lewis shows, the books and theatrical productions that were prosecuted in the United States beginning in this period did not necessarily contain even graphic sexual representations; it was enough that they offered some sort of critique of, comment on or even indifference to sexual virtue and monogamous heterosexual marriage.⁸⁶ These matters caused great upset in Toronto as well.

By 1900, the American sex radicals had been silenced by jail or other legal censure, and realist writing was receiving a cool reception. As Gurstein says, the proponents of reticence appeared to be maintaining the upper hand. However, realist novelists' attacks on the hypocrisy of refined society were having an effect, and in the popular domain, the new journalism was strong. Over the next twenty-five years, a younger, more aggressive generation of sex reformers and cultural critics managed to represent the practices of reticence as a malevolent "conspiracy of silence" that deformed marriage and human lives. Inspired by Freudian ideas, they went beyond exposing evils to accusing their elders of actually promoting repressive social and moral conditions. No longer apologizing for having to speak of things that offended delicacy, they shifted to bold attack. They pointed to the relativism of morality and obscenity. During the first decade of the twentieth century, Anthony Comstock became an object of ridicule in his native country. George Bernard Shaw invented the epithet "comstockery."⁸⁷ While some Canadian sex reformers had some of the same interests as their American colleagues, the full out assault on reticence does not seem to have had a counterpart in pre-war Ontario.

Canadian Obscenity Law by the 1910s

The obscenity provisions in the *Criminal Code* of 1892⁸⁸ represented an attempt to codify and supersede the common law on obscenity, including the offences of obscene libel and presenting an indecent exhibition.⁸⁹ Before 1892, Canada lacked legislation governing obscenity, except for the provisions of postal legislation and certain vagrancy legislation.⁹⁰ The 1892 codification incorporated as s. 180 the earlier offence of posting certain obscene, immoral and other matter for transmission or delivery through the postal service, but this offence was elevated from a misdemeanor to an indictable offence.⁹¹ As noted above, sedition was understood to be an unrelated offence, so seditious material was not mentioned in s. 180.⁹² The first crimes specified under the heading "Offences Against Morality" were buggery (s. 174),

84. Lewis, *ibid.* at 58.

85. For a discussion of the New Woman, see Showalter, *supra* note 63 at 38-58.

86. See Lewis, "The Mistress and the Prostitute," *supra* note 18 at 46-72.

87. Gurstein, *supra* note 8 at 89-91, 95-105, 125-29.

88. S.C. 1892, c. 29.

89. Regarding the history of obscenity legislation in Canada, see Paul Saint-Denis, *Legislating Morality: The Case of Obscenity Legislation in Canada* (M.A. Thesis, University of Ottawa, 1981) at 43-47. The provisions of the *Criminal Code*, including the wording of the exculpatory provision, reflect the verdict in *Hicklin*, *supra* note 14; for a discussion of this verdict, see Hunter et al., *supra* note 1 at 66-73. More generally on the codification of Canadian criminal law, see Parker, *supra* note 58.

For more information about obscene libel, see Manchester, "History of Obscene Libel," *supra* note 4. Manchester argues that the libel dimension of the crime was critical to the English courts that took jurisdiction around the beginning of the eighteenth century and that this aspect only drifted out of the law of obscene libel around the beginning of the nineteenth century. Manchester also makes the point that obscene libel referred to written and later pictorial publications, whereas shows were covered by the offence of producing an indecent exhibition. See also more generally Colin Manchester, "Lord Campbell's Act: England's First Obscenity Statute" (1988) 9 J. Legal Hist. 223 [hereinafter "Lord Campbell's Act"]; Manchester, "Obscenity Law Enforcement," *supra* note 41; Thomas, *supra* note 8; Jacobs, *supra* note 9 at 159-65; Brenda Cossman and Shannon Bell, "Introduction" in Brenda Cossman et al., *Bad Attitude/s on Trial: Pornography, Feminism, and the Butler Decision* (Toronto: University of Toronto Press, 1997) 3 at 10-12.

90. On the vagrancy legislation, see McLaren, *supra* note 4 at 118, 122, discussing *An Act Respecting Vagrants*, S.C. 1869, c. 28, s. 1.

91. See R.S.C. 1886, c. 35, s. 103.

92. H.C. *Debates*, 25 May 1892, *supra* note 12 at 2971.

attempted buggery (s. 175), incest (s. 176), committing an indecent act in a public place or with the intent to insult or offend anyone (s. 177) and the following:

178. Every male person is guilty of an indictable offence and liable to five years' imprisonment and to be whipped who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person.

179. Every one is guilty of an indictable offence and liable to two years' imprisonment who knowingly, without lawful justification or excuse -

- (a) publicly sells, or exposes for public sale or to public view, any obscene book, or other printed or written matter, or any picture, photograph, model or other object, tending to corrupt morals; or
- (b) publicly exhibits any disgusting object or any indecent show;
- (c) offers to sell, advertises, publishes an advertisement of or has for sale or disposal any medicine, drug or article intended or represented as a means of preventing conception or causing abortion.

2. No one shall be convicted of any offence in this section mentioned if he proves that the public good was served by the acts alleged to have been done.

3. It shall be a question for the court or judge whether the occasion of the sale, publishing, or exhibition is such as might be for the public good, and whether there is evidence of excess beyond what the public good requires in the manner, extent or circumstances in, to or under which the sale, publishing or exhibition is made, so as to afford a justification or excuse therefor; but it shall be a question for the jury whether there is or is not such excess.

4. The motives of the seller, publisher or exhibitor shall in all cases be irrelevant.

The immediate precedent for the obscenity provisions of the 1892 *Criminal Code* was a draft by John Charlton, an M.P.⁹³ Another model for s. 179 was certain English draft legislation prepared by a Royal Commission appointed to evaluate the feasibility of codifying the English criminal law of obscene libel. This draft legislation drew heavily on *Hicklin* and the English *Obscene Publications Act* of 1857. The Royal Commissioners remarked in their report that they did not think it wise to attempt "any definition of obscene libel other than that conveyed by the expression itself."⁹⁴

The Canadian parliamentary debates about this section reflect the particular cultural conditions of Canada and the passage of thirty-five years since the enactment of the *Obscene Publications Act*. Unlike the English debates surrounding that Act, the Canadian parliamentary debates show a conspicuous absence of liberal arguments about the need to limit government's intrusion into private lives.⁹⁵ Possible reasons are many. The issue had been canvassed in "the Mother country" and resolved in favour of censorship for the good of the masses, as determined by their social betters (who in turn were assured that the legislation would not affect them). With the English precedent behind them, Canadians did not doubt the appropriateness of their actions. After all, even the Americans had censorship laws. As well, the governing

93. For a discussion of the role of the WCTU in encouraging Charlton to bring this legislation forward, see Wilson, *supra* note 19. There is a paucity of secondary literature on the codification of the obscenity provisions of the *Criminal Code*.

94. Saint-Denis, *supra* note 89 at 46-47.

95. See above, chapter three, page 62, *supra* note 150.

class was swept up in the nationalist project of the time, with its post-millennialist theological certainty and its idealist notion of the organic state, in which the head and heart had to take responsibility for the other organs. On a more material level, universal suffrage was not in place, so large classes of the population were politically dependent on the paternal beneficence of others. Women's organizations and churches (discursively associated with feminine concerns like feelings and morals) appealed to these powerful male legislators, who stood in the symbolic (or in some cases actual) relation of father or husband to them, for the benefit of society's dependents, its children. There were few who would speak up for the immoral, indecent or obscene in such circumstances. Most understood these categories to be firm and well-recognized. If women felt that homes and morals were threatened by it, how could men refuse to legislate against it?

Not only arguments against censorship were notable by their absence from the Canadian debates. Whereas the English legislation was designed to target particular methods of distribution and was defended on those grounds from those who protested that it would be used against "serious literature" (or by implication privately circulating pornography), there is no evidence of any similar sense in Canada that literature could be endangered by the legislation. The debate was concerned entirely with pictures, both indecent and obscene, and in particular with photographs, often of art. The reason is probably the effectiveness of the informal methods of governance then operating in Ontario. As John McLaren notes, the absence of a long-standing print culture in Ontario and the dominance of the religious presses contributed to an absence of the brisk trade in cheap pornography that characterized England's Holywell Street. Authors and playwrights exercised self-censorship, and libraries, booksellers and parents exerted informal control over what could be lent, sold or displayed in drawing rooms.⁹⁶

In the course of the 1892 debates, several Members of Parliament expressed concern that the prohibition against the exposure for sale of indecent material might have deleterious effects on the art world and on the makers of medical texts. There was considerable debate about the risks of leaving undefined the terms "indecent" and "obscene." One M.P., Mr. Davies from Prince Edward Island, observed:

We should take care not to err on the side of prudishness. The other day in London some one brought an action against an exhibitor for exhibiting an indecent picture. The picture was in reality a work of art, and it was only after the exhibitor brought artists to prove this, and after the public press had brought its engine of ridicule to bear upon the action, that the case was dismissed. A man may have in his possession a picture which some people would object to as being indecent, which is not necessarily indecent, and there are many pictures imported by exhibitors which, in the eyes of the inexperienced might be supposed to be indecent, and it would be well for us to see that we do not go too far in this matter. Artists and others engaged in the study of human anatomy often have pictures in their studios which some people might think indecent.⁹⁷

Note first that Davies was clearly aware of current events in London pertaining to art and the law. As well, Davies's use of the idea of indecency resonates with Gurstein's, in that he seems to have envisaged a cognizable public sphere in which only decent material was acceptable. A person might make a mistake about what was decent, but this mistake was understood to arise from a lack of experience, a lack of knowledge of what the sphere tolerated.

Another point that must be made about the understanding of obscenity of Canada at this time concerns the construction of homosexual practices. Between 1869 and 1892, the legislation relating to sexual acts between men broadened and became more vague.⁹⁸ Concern was expressed in 1892 that justices of the peace might not know what constituted an "indecent act" within the meaning of s. 177, although it was

96. Newspapers maintained family reading standards for the novels they published in serial. John McLaren recounts that authors spoke out against the realistic depiction of sexual licence in literature: "Now You See It," *supra* note 4 at 115-18.

97. H.C. *Debates*, 25 May 1892, *supra* note 12 at 2969.

thought that a superior court judge would know. (Perhaps such knowledge would come from greater experience of the law or life, maybe through education at an all-male institution.) Davies and Laurier, the Leader of the Opposition, expressed uncertainty about the nature of the conduct being enjoined, Laurier remarking that "[w]hat makes the objection stronger is that in the next section you make a gross act of indecency an indictable offence. It is difficult to know what is a gross act of indecency, and what is not." He received an oblique response that adverted to the fact that responsibility for performing this act of exegesis would rest with a higher court judge. He was assured that the provision had to be there because this was a codification of a common-law manifestation of an ecclesiastical offence.⁹⁹ There was talk of replacing the penalty of imprisonment with flogging. It is impossible to know from the record what the Members of Parliament thought would constitute an act of gross indecency between two men, what they knew or suspected or would have agreed. The matter soon dropped, without any attempt at definition or discussion having been made.¹⁰⁰ Indecency, and especially gross indecency, would not be defined in the House of Commons.

It is possible to read the parliamentary debates as evidencing merely the members' unwillingness to enter into an itemization of all of the possible illicit behaviours that could constitute indecent acts. This absence of discursive clarity is also, however, consistent with certain observations that various writers have made about homosexuality, especially in Britain. Terry L. Chapman has commented on the lack of any definition of "gross indecency."¹⁰¹ Jay Cassel observes that there was no word for "homosexuality" until the later nineteenth century, "so it was not very well articulated in people's thoughts. In Britain, the actual 'condition' was not clearly defined in medical and legal terms until the 1870s."¹⁰² Similarly, in the United States until the last decades of the nineteenth century, intimate friendships between young men, which often involved physical displays of affection, were common and highly praiseworthy. Sodomy was a word for a prohibited act, not a person. Homosexuality had not yet been discursively invented. As well, American men did not begin sorting themselves into hardened, muscular, "manly" men and gentle, effeminate ones until the late nineteenth century. The word "sissy" seems to have made its first appearance in the United States in the 1890s. The idea of the male homosexual (and also the female) as a type emerged into public discourse, and effeminacy was linked with him.¹⁰³ It seems likely that the Canadian parliamentarians who were struggling with the gross indecency provisions in 1892 were aware of the beginnings of a discursive shift regarding homosexual acts but did not have clearly in mind what that might entail or how it might play out in the Canadian context.

There were no reported cases on obscenity law in Canada between 1892 and 1900 when the next set of amendments to these sections were passed, but the WCTU and the NCW, supported by the Methodist church in particular, began their campaigns against obscene material during this period. Moral reformers supplied libraries, booksellers and parents with detailed opinions on the appropriate content of shelves.

98. In 1869, the "abominable crime of buggery" with humans (sodomy, said the marginal note) or animals (bestiality), first appeared in the federal legislation that culminated in the *Criminal Code* (S.C. 1869, c. 20, s. 63). It was punishable by life imprisonment and with a minimum punishment of two years. The next section (s. 64) subjected to a penalty of two to ten years, with or without hard labour, anyone who "attempts to commit the said abominable crime, or is guilty of assault with intent to commit the same, or of any indecent assault upon any male person." This language seems to have been an effort to catch any kind of behaviour that might have looked like an attempt at sodomy within this section. By 1886, the Revised Statutes had dropped the minimum term of imprisonment for both of these offences. The first offence was a felony, and the second a misdemeanor (R.S.C. 1886, C. 157, ss. 1 & 2). The language of the misdemeanor was clearer: "[e]very one who attempts to commit buggery, or assaults any person with intent to commit buggery, or who, being a male, indecently assaults any other male, is guilty" The "abominable crime" language had disappeared. The *Criminal Code* of 1892 separated the indecent assault offence from the attempt to commit buggery and created two other offences, the offence of doing an indecent act in public (s. 177) and s. 178, about committing, being party to or procuring another male for an act of gross indecency. In effect, to what had simply been articulated as some kind of attempt to commit a particular kind of sexual assault had been added another type of behaviour, an "act of gross indecency," which did not need to contain the idea of assault but was not just buggery either. This latter provision adopted the same language as the Labouchère Amendment to the *English Criminal Law Amendment Act* of 1885, but while the maximum penalty under the English legislation was two years, with or without hard labour, in Canada it was five with the possibility of whipping as well. See Showalter, *supra* note 63 at 14.

Jessie C. Smith, writing for the WCTU around 1898 implored her readers, women who were concerned as mothers for the future of the nation, to "look out for the Press. Watch for objectionable stories, for smart reports of questionable plays, and for nasty advertisements, and help your Press Superintendent in her work for the suppression of all these features in your local as well as in our Provincial news-papers."¹⁰⁴ The NCW and WCTU also lobbied the post office and Customs to control what entered the country, and they lobbied for legislative change as well. Burlesque theatre on Canadian stages started to attract attention. Fred Stair was convicted of displaying an obscene playbill in 1895.¹⁰⁵ A man named McConaghy faced similar charged in 1899.¹⁰⁶ That year, another individual was acquitted of, as the indictment breathlessly put it, "unlawfully wickedly and scandalously [exhibiting] and [showing] for lucre and gain ... divers lewd wicked scandalous bawdy obscene and indecent shows performances representations figures practices and gestures to the manifest corruption of morals" at the Bijou Theatre in 1899. Apparently a woman and a man performed suggestive gyrations on the stage.¹⁰⁷ A few months later another case involving an indecent show was heard at the York General Sessions.¹⁰⁸

In May 1900 the Recorder's Court in Montreal convicted a male performer of making indecent gestures and singing an obscene song, "the words of which were suggestive of the immoral meaning of the gestures." The judge described the case as the first of its kind, meaning that it was the first case of this kind under the new *Criminal Code*. The case report recounts that the song and gestures concerned the bosoms of women in three different parts of Quebec. The defence argued that the same song had been sung in France to no objection from the censor and that Canadians made themselves ridiculous by objecting to such things. Rejecting this defence, the Court observed that crime was on the increase in Montreal and that there were many "lost children," by which was clearly meant homeless boys. Artists who came to Canada from France were advised to avoid material that might tend to corrupt Canadian youth.¹⁰⁹

In 1900, s. 179 of the *Criminal Code* was amended.¹¹⁰ The amendment drew into the reach of the section the manufacturing, circulation and distribution of obscene matter. One change that did not elicit much comment was the removal of the requirement that the sale or exposure for sale of this material be "public." The main emphasis of the legislation seems to have been to catch material that existed or was circulated in ways that would not have been considered public. This change seems like a shift away from the English articulation of the law and probably reflects the absence of the same material conditions of distribution in Canada that existed in 1857 in England. As had happened in England after the passage of the 1857 Act and

99. Sodomy was one of the forms of immorality that could cause a person to lose his church office. There is reference to such a happening in *Barton v. Ashton* (1754) 1 Lee 533, 161 E.R. 197 (Eccles. Ct.). It seems that sexual immorality was historically a ground for expulsion from the lay Anglican communion, but certainly by 1884, the ecclesiastical courts were not taking jurisdiction over the acts of the laity. Ecclesiastical courts may have punished men for sodomy in earlier centuries, but at least from the time of Henry VIII, criminal courts had jurisdiction as well: 25 Hen. 8, c. 6; amended 2 & 3 Edw. 6, c. 29; repealed 1 Mary, 1st sess., c. 1; reenacted 5 Eliz. 1, c. 17. See J. Dodd, *A History of Canon Law in Conjunction with Other Branches of Jurisprudence: With Chapters on the Royal Supremacy and the Report of the Commission on Ecclesiastical Courts* (Littleton, CO: Fred B. Rothman & Co., 1987; orig. pub'd Oxford: Parker & Co., 1884) at 246; and Robert E. Rhodes, Jr., *Law and Modernization in the Church of England: Charles II to the Welfare State* (Notre Dame, Ind.: University of Notre Dame Press, 1991) at 370-71. For a history of Roman Catholic theological perspectives and writing about sodomy since the Middle Ages, see Mark D. Jordan, *The Invention of Sodomy in Christian Theology* (Chicago: University of Chicago Press, 1997).

100. H.C. *Debates*, 25 May 1892, *supra* note 12 at 2968.

101. Terry L. Chapman, "Male Homosexuality: Legal Restraints and Social Attitudes in Western Canada, 1890-1920" in Louis A. Knafla, *Law & Justice in a New Land* (Toronto: Carswell, 1986) 277 at 284-86. See also Carolyn Strange and Tina Loo, *Making Good: Law and Moral Regulation in Canada, 1867-1939* (Toronto: University of Toronto Press, 1997) at 19, 85-86.

102. Cassel, *supra* note 31 at 82.

103. See Rotundo, *supra* note 35 at 82-87, 262-79.

104. Smith advocated the "white life for two": "Social Purity" (Nova Scotia: Woman's Christian Temperance Union, 1898) 58, appearing as "Social Purity, 1898" in R. Cook & W. Mitchinson, eds., *The Proper Sphere: Woman's Place in Canadian Society* (Toronto: Oxford University Press, 1976) 231 at 233-34.

105. *R. v. F.W. Stair* (1895), Archives of Ontario, York Criminal Assizes case file RG 22-392-0-8643, Box 259 [Archives of Ontario is hereinafter abbreviated AO].

as seems to have been the American practice, objectionable material in Canada probably generally circulated by mail, mainly from foreign parts, directly to collectors or to booksellers with special collections in back rooms. The Canadian legislation had to reflect these practices of distribution.

In 1900 as well, the exculpatory provision was tightened, so that the acts alleged not only had to be in the interests of the public good but also could not go beyond what the public good required. At this time, there was no discussion in Parliament of the specifics of these amendments, but there was a great deal of discussion about the problems with indecent and immoral shows, particular concern being expressed about shows from New York that featured “fallen” women and were thought to have a corrosive influence on the morals of male and female youth and the lower orders, regardless what some people might think of their artistic qualities. Probably sensing the threats to the practices of reticence in the United States, Canadian legislators generally agreed that culture in Canada rested on a higher plane. No actual changes were directed specifically at indecent or obscene shows, because the government believed that the addition of more words would not expand the reach of the section.¹¹¹

In 1901, Fred Stair purchased the Star Theatre and began turning it into a commercial success. The Toronto theatre scene as a whole became increasingly lively, as did the theatre elsewhere in Ontario. In 1900, an American production called *Sapho* attracted unfavourable attention for its depiction of lustful, suggestive behaviour.¹¹² Between 1900 and 1903, when the next *Criminal Code* amendments were passed, there was only one reported case under s. 179: *R. v. Karn*,¹¹³ which concerned the advertisement of a contraceptive. While these types of cases formed the bulk of American obscenity cases between 1873 and 1934, Canada reports only one. The reason probably does not reflect a different sense of the horrific degradation of the private sphere and feminine virtue if sexual activity became uncurtailed by concern with pregnancy. Nor does it likely reflect a different sense of the denigration of public discourse that overt exposure of such ideas would entail. The difference is probably that advocates of contraception seem to have been far more reserved in Canada than they were in the United States during this period.¹¹⁴

The next amendments to the *Criminal Code*, in 1903, reflected the increasingly risqué theatrical scene.¹¹⁵ Whereas the old s. 179 prohibited the exhibition of an “indecent show” and left it at that, the new section targeted lessees, agents, persons in charge and managers of theatres who presented, gave, or allowed to be presented any “immoral, indecent, or obscene play, opera, concert, acrobatic, variety, or vaudeville

106. *R. v. A. McConaghy* (1899), AO, York General Sessions minutes, RG 22-94, May 1899-November 1901.

107. *R. v. Thomas Coyne* (1899), AO, York Criminal Assizes case file RG 22-392-0-8723, Box 261.

108. *R. v. M.S. Robinson* (1900), AO, York General Sessions minutes, RG 22-94, May 1899-November 1901.

109. The case here is *R. v. Jourdan* (1900), 8 C.C.C. 337.

110. *The Criminal Code Amendment Act*, 1900, S.C. 1900, c. 46.

111. *Official Report of the Debates of the House of Commons of the Dominion of Canada*, Vol. 52 at 4703-14 (4 May 1900) [hereinafter H.C. *Debates*, 4 May 1900]. See also Saint-Denis, *supra* note 89 at 49.

112. See Ian Bushnell, “Historical Dimensions of Obscenity Laws and Morality: The Censored Society” (paper delivered 10 June 1987 to Law in History Conference, Carleton University, Ottawa, June 8-10, 1987) at 173.

113. (1903), 5 O.L.R. 704 (C.A.). The issue was the respective responsibilities of the judge and the jury for determining the meaning of the packaging for certain pills, which noted that many married ladies took these pills monthly for stimulating or renewing their menstrual flows but that the pills were not to be taken if pregnancy was suspected. The trial judge had ordered a directed verdict, holding that the packaging was not capable of supporting the meaning imputed to it, which was that it implicitly informed married ladies that by taking these pills they could terminate their pregnancies. The Court of Appeal disagreed but did not order a new trial.

114. Indeed, Angus McLaren and Arlene Tigar McLaren state categorically that there was no birth control movement in central Canada in 1930; one started to develop during the subsequent decade. Before the ideas of Margaret Sanger and Marie Stopes began circulating in Canada, especially among leftist British Columbians in the 1920s, birth control and abortion involved the condom, douche and pessary, home remedies (both contraceptive and abortifacient) and illegal abortions. Canadian women’s groups like the National Council of Women disliked birth control for a number of reasons. They advocated motherhood as woman’s highest calling, and they disliked burdening women with the responsibility of keeping family sizes down, arguing that birth control techniques would make sex even more responsibility-free for men. See Angus McLaren and Arlene Tigar McLaren, *The Bedroom and the State: The Changing Practices and Politics of Contraception and Abortion in Canada, 1880-1980* (Toronto: Oxford University Press, 1986) at 54-70, 92.

performance, or other entertainment or representation.” Such managers and others could be tried either summarily or on indictment. The performers in these shows could be charged summarily only and were liable to lesser penalties. A special subsection was aimed at people who appeared in “indecent costume”; such people were liable to be charged summarily and subjected to the same penalty as a manager or other responsible person who was tried summarily. A fourth subsection defined the term “theatre” to include “a place open to the public, gratuitously or otherwise, where dramatic, musical, acrobatic or other entertainments or representations are presented or given.”

These amendments were introduced by the Minister of Justice, Charles Fitzpatrick, on the instigation of unnamed people from Montreal.¹¹⁶ Concern was expressed that the words “indecent or immoral” in the section contained uncertain meanings. Fitzpatrick asserted that although “the definition of indecent or immoral must necessarily depend to some extent on the mind of the individual who is called upon to judge the case,” there was no definition of these words in the different sections of the *Criminal Code* where they appeared because “every man knows what is indecent, and every man ought to know what is immoral.”¹¹⁷ A member of the Opposition, Sir Charles Tupper, responded in a lengthy speech, warning that the section could “drive us back ... to a state of puritanism.”¹¹⁸ He argued that there was enough debate about what constituted immoral and indecent plays that the legislation could keep away from Canada some of the best talent on modern stages. He mentioned specifically that “a large class of the community” considered “all modern novels and all modern plays ... to use the language of this Bill, indecent and immoral.”¹¹⁹ He considered such persons to hold very extreme views. He remarked,

[W]e must remember that in all the best plays of the present day there is perhaps in a strict application of the word, something that might have an indecent tendency. In what I am saying I am giving my own experience that some of the very best citizens of this country, in order to reform society all at once, press upon parliament legislation that is too extreme, and is calculated in the end only to frustrate the good objects they have in view.¹²⁰

In this Tupper made the unusual argument that in some cases, modern novels and plays could have a morally improving effect even though they contained “something that might have an indecent tendency.”¹²¹

This debate suggests that the parameters of the decent were starting to be somewhat in question, although polite, bourgeois people did not want to mention this too loudly. There were still boundaries, even if there might be some disagreement about where they might lie. Some indecency could even be instructional in modern drama that sought to change and improve social conditions. There might even be disagreement about morality. Charles Fitzpatrick accepted Tupper’s objection, and they settled on the use of the term “obscene” alone. Tupper remarked that obscenity was a strong term, and “less susceptible to misunderstanding.”¹²² Subsequently, on third reading, an effort was made to reintroduce the words “immoral or indecent” with an additional paragraph defining an immoral show as one that ridiculed the marriage tie or the misfortune of a deceived spouse; presented in a favourable light “concubinage, adultery, adulterous love, or the life of the debauchee” or of the woman who was “kept”; or depicted without censure “the life or the conduct of concubines, or of those who habitually live in a state of forbidden love, concubinage, or prostitution.”¹²³ This resolutely heterosexual proposed amendment was rejected on the

115. *The Criminal Code Amendment Act*, 1903, S.C. 1903, c. 13, s. 3.

116. *Official Report of the Debates of the House of Commons of the Dominion of Canada*, Vol. 58 at 95 (16 March 1903) [hereinafter H.C. *Debates*, 16 March 1903]

117. *Ibid.* at 316.

118. *Ibid.* at 317.

119. *Ibid.* at 316.

120. *Ibid.* at 317.

121. Tupper might have seen some indecent tendencies in some melodramas, but he was clearly talking mainly about the more modern dramatic forms.

122. H.C. *Debates*, 16 March 1903, *supra* note 116 at 317-18.

grounds that it demonstrated how difficult it was to define the immoral. As Saint-Denis observes, however, when the amendment was placed in the 1903 statute books, without any apparent parliamentary justification, "it was inexplicably written up to include all three terms - immoral, indecent and obscene."¹²⁴

By 1906, the revised statute¹²⁵ said:

207. Every one is guilty of an indictable offence and liable to two years' imprisonment who knowingly, without lawful justification or excuse, -

- (a) manufactures, or sells, or exposes for sale or to public view, or distributes or circulates, or causes to be distributed or circulated, any obscene book, or other printed, typewritten or otherwise written matter, or any picture, photograph, model or other object tending to corrupt morals; or,
- (b) publicly exhibits any disgusting object or any indecent show; or,
- (c) offers to sell, advertises, publishes an advertisement of, or has for sale or disposal, any medicine, drug, or article intended or represented as a means of preventing conception or of causing abortion or miscarriage.

2. No one shall be convicted of any offence in this section mentioned if he proves that the public good was served by the acts alleged to have been done, and that there was no excess in the acts alleged beyond what the public good required.

3. It shall be a question for the court or judge whether the occasion of the manufacture, sale, exposing for sale, publishing, or exhibition is such as might be for the public good, and whether there is evidence of excess beyond what the public good required in the manner, extent or circumstances in, to or under which the manufacture, sale, exposing for sale, publishing or exhibition is made; but it shall be a question for the jury whether there is or is not such excess.

4. The motives of the manufacturer, seller, exposor, publisher or exhibitor shall in all cases be irrelevant.

208. Every person who, being the lessee, agent or person in charge or manager of a theatre, presents or gives or allows to be presented or given therein any immoral, indecent or obscene play, opera, concert, acrobatic, variety, or vaudeville performance, or other entertainment or representation, is guilty of an offence punishable on indictment or on summary conviction, and liable, if convicted upon indictment, to one year's imprisonment with or without hard labour, or to a fine of five hundred dollars, or to both, and, on summary conviction, to six months' imprisonment, or to a fine of fifty dollars, or to both.

2. Any person who takes part or appears as an actor, performer, or assistant in any capacity, in any such immoral, indecent or obscene play, opera, concert performance, or other enter-

123. *Ibid.* at 592-93.

124. Saint-Denis, *supra* note 89 at 51. For a discussion of the events surrounding the amendments of 1903, see Wilson, *supra* note 19. On an ironic note, Brenda Cossman and Bruce Ryder observe that the prohibition in customs legislation on "immoral or indecent" literature remained in place until 1985, when the Federal Court found it too vague. Within three weeks Parliament replaced these two words with "an apparently clear prohibition on the obscene": Brenda Cossman and Bruce Ryder, "Customs Censorship and the *Charter*: The *Little Sisters Case* (1996) 7 *Constit. Forum* 103 at 110n.

125. *Criminal Code*, R.S.C. 1906, c. 146.

tainment or representation, is guilty of an offence and liable, on summary conviction, to three months' imprisonment, or to a fine not exceeding twenty dollars, or to both.

3. Every person who so takes part or appears in an indecent costume is guilty of an offence and liable, on summary conviction, to six months' imprisonment, or to a fine of fifty dollars, or to both.

The old s. 178, governing acts of gross indecency, was unchanged, and a prohibition on "scurrilous" material was added to the postal provisions in s. 209.

A number of reported cases comprised the landscape of obscenity law between 1903 and the next statutory amendments in 1909. The first was another case about theatres, *R. v. McAuliffe*, a 1904 Halifax case tried under the new provisions respecting actors and performers.¹²⁶ Charges had been laid against an individual who was both the manager or director of a theatrical performance that took place at the Academy of Music and also a performer in the show. It was alleged that the conduct of a female singer was "indecent," but the Court declined to find this, holding that the words used were not objectionable and the conduct was merely playful. The Court observed that "[t]here is no fixed legal meaning to the word 'indecent,'" and it was "used or misused according to the taste or training or point of view of the individual or the custom of the community."¹²⁷ In acquitting the accused, the Court also rejected the contention that the costumes ordinarily worn by ballet dancers were indecent or that they would have a tendency to "deprave and corrupt those whose minds are open to such immoral influences."¹²⁸ The Court did not, however, cast doubt on the importance of the section of the *Criminal Code* governing theatrical performance, observing that it "might well be invoked in connection with a certain class of theatrical performances which contain subtle immorality and indecency; dramas, which appear to have for their chief aim the purpose of artfully excusing 'heroines' for having succumbed to temptation and committed sin and crime."¹²⁹ Although this Halifax judge seemed to take a different view of "modern drama" than did the M.P. Sir Charles Tupper, and although he went farther than Tupper in seeing indeterminacy in the term "indecent," he clearly still felt that certain things touching on feminine virtue were indecent. Like the maternal feminists of the WCTU and the NCW, this judge clearly would have disliked the New Woman of modern drama, who challenged gender roles with her independent sexuality and her questioning of the idea that marriage and motherhood constituted the peak of feminine existence.

The next reported case on obscenity took place in Ontario: *R. v. Beaver*,¹³⁰ which is not only the first appellate obscenity case decided under the *Criminal Code* but also the first case to address a text that is described as obscene, rather than indecent or immoral. The case concerned one Lodema Beaver, "an intelligent woman of mature years."¹³¹ Not much can be determined about Beaver, but she seems to have been employed, at least for a time, by the owner of a shop in Windsor, Ontario in 1898,¹³² and she may have been American.¹³³ Her offence, which received some press in Windsor but none in Toronto, was to circulate in Windsor on December 24, 1903 a pamphlet entitled "'To the Public. The evil exposed. The plot against Prince Michael revealed.'"¹³⁴ The pamphlet advocated the views of a millenarian sect called the

126. *R. v. McAuliffe* (1904), 8 C.C.C. 21 (Co. Crim. Ct.).

127. *McAuliffe*, *ibid.* at 23.

128. *McAuliffe*, *ibid.*

129. *McAuliffe*, *ibid.* at 24.

130. *Beaver*, *supra* note 13.

131. *Beaver*, *ibid.* at 423.

132. Beaver was arrested in Windsor in 1898 and charged with stealing \$90 - it was alleged that she, an employee of a local shop that did some business door-to-door, was accidentally handed by a customer \$100, rather than the \$10 that was owed to her employer, and that she pocketed the surplus. In the absence of proof that Beaver did receive the money, she was acquitted. See *R. v. Beaver* case file, AO, RG22-392, Box 37, 1898. Bushnell, *supra* note 112 at 185, has done some research on this case and found that the Flying Rollers had a group of small shops, of which this may have been one.

133. I found no sign of her in the Windsor or Essex County census records from 1901.

Flying Rollers.¹³⁵ It was written by "Rev." David L. McKay, apparently a Detroit-based priest of the sect who also posted bail for Beaver a few years earlier, when she had some unrelated trouble with the law.¹³⁶ The content of the pamphlet, which is set out in full in the judgment, is aptly described by Osler J.A. as "the disconnected ravings of a lunatic."¹³⁷ Using a bizarre mixture of apocalyptic symbolism, allusions to dirt and disease and implausible narratives, it heaps abuse on a large number of public figures, living and dead in the Windsor-Detroit region.¹³⁸ It attributes unfortunate incidents that befell these people - in several cases deaths - to their opposition to the Flying Rollers and to their leader, an individual known as Prince Michael. The pamphlet was apparently distributed house to house and was intended to bear on the candidacy for mayor of Windsor of one John R. Swinden, a member of the sect.¹³⁹

The contents of the pamphlet are incomprehensible without some information about Prince Michael and the Flying Rollers. An internet source called *The Encyclopedia Jill*¹⁴⁰ identifies Prince Michael, or Prince Mike, as Michael Mills, leader of the Flying Rollers and self-pronounced Seventh Messenger of God, as mentioned in the Book of Revelations and prophesied by Joanna Southcott, who also identified herself as the first Messenger after she began prophesying in 1792 in England.¹⁴¹ The Sixth Messenger collected his own sermons and those of his predecessors into an 800-page tract called the Flying Roll.¹⁴² The most noteworthy practice of the Flying Rollers was the "blood-cleansing ritual," in which the Messenger deflowered the female virgins of the flock before they married. In the late 19th century, word of this practice reached the press, and the group was chased out of Britain to Canada, the United States and Australia. By 1890, the largest division was the American one, which was located in Detroit and led by Mills. In 1894, after Mills announced that henceforth the wives of the group would be circulated among the men, his wife sued him for divorce. In the course of the proceedings, the blood-cleansing ritual was revealed. A lynch mob formed. Mills was charged, convicted and sentenced to five years' imprisonment. Much publicity seems to have arisen from these incidents, and Rev. McKay also may have spent some time in prison for his public descriptions of his rather different version of events.¹⁴³ A schism occurred among the Flying Rollers, and a man named Ben Purnell pronounced Prince Mike an imposter and himself the Seventh Messenger. He and his followers left for Ohio; *The Encyclopedia Jill* says the sect still exists there. *The Encyclopedia Jill* does not reveal what happened to Mills and his followers once Mills's jail term came to an end, but it appears that the sect continued to exist, probably in the form of a colony in which Beaver apparently lived.¹⁴⁴

134. *Beaver*, *supra* note 13 at 415.

135. A distinction is sometimes drawn between millennialist and millenarian sects. Anthony W. Rasporich says, As John Harrison has noted, by this time the biblical millennialists were quite intellectually sophisticated, whereas the adventist millenarians were often people "condemned by the opulent classes as imposters and by historians as cranks and the lunatic fringe. . . . A simplicity, often crudity, seemed to mark their mentality, for their reliance on the supernatural enabled them to dispense with many of the limitations imposed by logic and reason."

See Rasporich, "Utopia, Sect and Millennium in Western Canada, 1870-1940" in Mark G. McGowan & David B. Marshall, *Prophets, Priests and Prodigals: Readings in Canadian Religious History, 1608 to Present* (Toronto: McGraw-Hill Ryerson, 1992) 213 at 217.

136. See *supra* note 132. Regarding McKay, see "Prince Mike Sends Judge Horne a Warning Letter from Jehovah" *Windsor Evening Record* (30 January 1905) 1 [hereinafter "Warning Letter"]. McKay mentioned in the pamphlet that he was a former associate and student of Dwight L. Moody, but that Moody disowned him and was shortly afterward stricken dead: *Beaver*, *supra* note 13 at 418. McKay must have had trans-border operations, because Ian Bushnell found that McKay was convicted of displaying obscene material in a store window in 1899 and fined \$100: Bushnell, *supra* note 112 at 185.

137. *Beaver*, *supra* note 13 at 422.

138. These individuals are "Mr. McKay of the Windsor Record" (apparently the *Windsor Evening Record* had declared the publishers of the Flying Roll to be practising "filth"), "the Mayor of Windsor" (J.M. Drake, according to Frederick Neal, *The Township of Sandwich Past and Present* (Windsor, 1909) at 142), "Ex-Chief of Police Starkweather" (of Detroit), "Governor Pingree" and "D.L. Moody" (the American evangelist whose influence on the social gospel movement is described above: see page 26). The pamphlet also mentions a woman named "Mary McClean," who may have been Starkweather's sister but also may have been a reference to a young Chicago woman who had apparently acquired a certain amount of notoriety after a divorce that she sought because she had grown "tired" of her husband: see "Husband's Love is Too Intense - Wants Divorce" *Toronto World* (21 November 1909) 1.

Despite Rev. McKay's warning to the judge that the wrath of Jehovah would befall him (a warning which was signed on behalf of Jehovah, per Prince Michael),¹⁴⁵ Beaver was tried by Charles Robert Horne, the county court Judge of the county of Essex, on February 27, 1904, and judgment was pronounced March 5, 1904.¹⁴⁶ Moss C.J.O. and Osler, Maclennan, Garrow and Maclaren J.J.A. heard Beaver's appeal on a stated case on November 24, 1904, and judgment dismissing her appeal was given January 25, 1905. It is not clear what sentence she received.

The stated case covered two issues, first, whether or not the pamphlet was obscene, and second, the extent of Beaver's knowledge of the pamphlet's content. The second issue was resolved against her in short order. The first was more difficult. The "tendency to deprave and corrupt" test, which as Hunter et al. have shown was really a reflection of the certainty that obscenity could be recognized on sight, was inadequate for the task at issue. Mr. Justice Featherston Osler did not really attempt to use the deprave and corrupt test. To define the obscene, he began with the statutory context. Observing that "[t]he word 'obscene' has a great variety of meanings," he found that the relevant Part of the *Criminal Code* concerned "conduct involving sexual immorality and indecency," so that s. 179 could be aimed neither at "merely libellous publications, nor at those couched in merely coarse, vulgar and offensive language." Certain American case law substantiated this position. As Gurstein describes American judges as doing, he, like Mr. Justice Maclaren, also turned outside the law to dictionary definitions.¹⁴⁷ Turning to the Oxford Dictionary, Osler found a definition that suited him: "[o]ffensive to modesty or decency: expressing or suggesting unchaste or lustful ideas, impure, indecent, lewd." He concluded that while most of the material was mere ravings, "one or two wretched punning allusions to the name of some person ... may be said to have warranted the learned county Judge in concluding that it had or might have such a tendency, and therefore, that it was a 'document of obscenity' within the meaning of the section."¹⁴⁸

Maclaren's consideration of the meaning of the word "obscene" was similar:

The word was originally used to describe anything disgusting, repulsive, filthy or foul. This use of the word is now said to be somewhat archaic or poetic; and it is ordinarily restricted to something offensive to modesty or decency, or expressing or suggesting unchaste or lustful ideas, or being impure, indecent, or lewd.¹⁴⁹

While the pamphlet was "composed in the main of unintelligible jargon ... and foul abuse of officials in Detroit and Windsor," Maclaren concluded that some of the references to the chief of police of Detroit and the Mayor of Windsor did fall within the second part of the definition.¹⁵⁰ Maclaren next turned to the question, dictated by the *Criminal Code* and partially codifying *Hicklin*, of whether the material would tend to corrupt public morals. He held that while most people would be repulsed by the pamphlet (and

139. "Court at Sandwich: Two Criminal Cases Heard There Today" *Windsor Evening Record* (27 February 1904) 1 [hereinafter "Court at Sandwich"]; Bushnell, *supra* note 112 at 185.

140. The website address is <http://mars.superlink.net/marko/jill/apocrypha.html>

141. Joanna Southcott became a member of a Methodist society the year John Wesley died. A year later she had a vision of herself as the "woman clothed with the sun" in Revelations 12:1. She began writing and was subsequently expelled by both Arminian and Calvinist branches of Methodism. Between 1801 and her death in 1814, she wrote more than 65 books of prophecies. These centred on the claim that the messianic age was imminent. In 1814, when she was in her sixties, she declared that she was to bear a son, who would be named Shiloh and would usher in the reign of God. She was cruelly deluded, and she turned out to have cancer instead. She died on Christmas Day, 1814. She and other millenarians and sectarians caused no little embarrassment to evangelicals. For more information about Southcott and her followers, see W.T. Whitley, "Southcottians" in James Hastings, ed., *Encyclopedia of Religion and Ethics* (New York: Charles Scribner's Sons, 1921) 756; and with regard to Southcott's context in the history of religion, see above, page 28 *et seq.*

142. I found in the Metro Toronto Reference Library a long pamphlet by James J. Jezreel called *Extracts from the Flying Roll, Being a Series of Sermons Compiled for the Gentile Churches of All Sects and Denominations, and Addressed to the Lost Tribes of the House of Israel* (London, U.K., privately published, 1879). It purports to be sermons from extracts of the Flying Roll, the first of twelve such pamphlet-sermons. It is a kind of raving exegesis of scripture, linking current events to apocalyptic predictions. Its language has the same ranting madness as the pamphlet Lodema Beaver was circulating.

therefore would suffer no corruption of their morals), it would incite lustful ideas in some.

After thus defining obscenity using the dictionary, Maclaren concluded his analysis by pronouncing the appropriate test to be the one from *Hicklin*: "[t]he test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall."¹⁵¹ No application of this test followed. Both judgments demonstrate a sense that although the *Hicklin* test was law, it did not actually provide much assistance in defining the obscene.

The story of Canadian obscenity law as presented in the reported cases in the first decade of the twentieth century proceeds from *Beaver* in 1903 to *R. v. Graf* in 1909.¹⁵² However, a review of the minute books of the York General Sessions, Criminal Assize and County Courts reveals that there were a number of unreported cases as well. Most of the cases in the York courts concern private letters or small, crude cards with suggestive messages on them (generally more or less the equivalent of crank telephone calls now), which again were undoubtedly privately circulated,¹⁵³ although there was concern about postcards being prominently placed in shop windows.¹⁵⁴ Many of these prosecutions must have been begun by offended individuals, but the morality inspector David Archibald often had a hand in prosecuting the cases.

Graf is the first reported case involving the circulation of what must have been pornography, although that word is not used in pre-war Canadian jurisprudence. In early 1909 Martin Graf, an American from Buffalo and a "blackguard" in the court's view, applied unsuccessfully for *certiorari* and *habeas corpus*, on various grounds, one of which was that it had not been proven that he had sold his "obscene, filthy, and disgusting" books, pictures, and photographs in Toronto. Another ground was that the magistrate had looked at the materials before the actual trial of the case, and the material was so bad that this examination would have necessarily prejudiced him against Graf.¹⁵⁵ As he did with the other grounds of appeal, Riddell J. dismissed this argument, holding that the magistrate had to satisfy himself that a case had been made out, and to do that he might have to look at the material. Riddell remarked:

It is perfectly notorious that many of the best people in the world look upon that as obscene which others, equally good but of different training or temperament, consider not only harmless, but even a thing of beauty¹⁵⁶

143. A passage from the pamphlet upon which the judges did not comment described some of these events. *Beaver*, *supra* note 13 at 418-19, says:

And it was no 'strange coincidence' to those who take notice of God's dealing with me, for Starkweather's sister to die of the same terrible affliction, for she was accessory with him to do up Prince Michael, and make a name for himself. She murderously tortured innocent and virtuous girls, who were held prisoners until some would consent to lie against Michael, and she had these poor defenceless young girls examined with instruments, until they were badly bruised and received internal injuries, in order to make them appear to the medical doctors as girls who had been debauched by Prince Michael. Hell never produced such a one as this arch-fiendess of the bottomless pit, and thank God they are both damned there, body and soul - and may one and all who still oppose his word - the Flying Roll, quickly follow them, until there is not a smell of them left on the planet and God's word fulfilled. For publishing the revolting and disgusting facts of this foul crime committed upon my wife I was sent to prison, on the charge of selling obscene literature, tending to contaminate morals, etc.

Her description of the brutal manner in which she was debauched by instruments in the police station of Woodbridge Street was the article the Crown Attorney secured my conviction upon.

Where was the crime? An act is not a crime unless done with criminal intent according to law. Was the diabolical invention to use instruments on virtuous girls and make them appear otherwise not the most dastardly of crimes, done with the most determined criminal intent? How could any man keep quiet in the face of such an outrage on his wife? No never, and justice is not satisfied at their damnation, but one and all who have fought God in the Flying Roll are accessories with them, and they shall share a like fate.

Although this passage has the marks of one that might distress those who are concerned about indecency (indeed, it echoes some kinds of nineteenth-century English pornography: see Walkowitz, *supra* note 28 at 99-100), and although it also has a distinctly libellous ring to it, there is no indication in the appellate judgment that the judges took note of this passage or even understood what it was about. It seems likely that the events took place in Michigan and peripherally Windsor and did not attract much attention in Toronto.

For this principle, Riddell cited an American case, *Commonwealth v. Buckley*,¹⁵⁷ which does illustrate this principle but also makes clear that when making a thing public, an artist or writer must take cognizance of the effect that it will have on the morals of a public with more common standards or the thing can still be held to be obscene.

Riddell overstated the case in describing this principle as "perfectly notorious." Most people in Riddell's class realized that obscenity was something about which intelligent, cultivated people might differ at times with respect to certain kinds of material, but few doubted that there was an absoluteness to the obscene. Riddell's greater sense of the fluidity of the concept may have been linked to his own work on venereal disease, which would of necessity have pushed the limits of what could be said decently in public.¹⁵⁸ Ultimately, though, he seems to have joined his contemporaries in believing that there were things upon which it would be impossible to disagree. Ending his judgment by regretting that the maximum sentence Graf could receive was two years, Riddell said:

[o]ne who administers physical poison so as to inflict upon another grievous bodily harm is liable to 14 years' imprisonment; one who administers mental and moral poison, and thereby inflicts grievous harm upon the mind and soul, even if this is not possible, indeed probably, accompanied by bodily harm as well, is let off with two years - rather a reversal of the injunction not to fear them that kill the body and after that have no more that they can do.¹⁵⁹

Note again the language of poisoning the body and soul. Apparently for Riddell there were things upon which cultivated people might disagree, but whatever Graf was selling was not among them.

Although Graf's case was unsuccessful, the case pointed to the absence of a prohibition against mere possession for the purposes of sale.¹⁶⁰ Saint-Denis sees the case as possibly inspiring the 1909 amendments to the *Criminal Code*, which added this prohibition.¹⁶¹ These amendments again broadened the reach of the law with respect to circulating obscene material by further eroding the public dimension of the crime. They made it an offence to make obscene material; they banned not just the direct act of circulating or distributing but also the indirect act of causing circulation or distribution; they added possession of obscene matter for the purposes of sale, distribution or circulation; they criminalized assisting in these activities; and to the ban on obscene pictures and photographs they added plates for reproducing these things.¹⁶²

144. The reference to a colony where both Swinden and Beaver lived occurs in "Court at Sandwich," *supra* note 139.

145. See "Warning Letter," *supra* note 136.

146. "Found Guilty: Mrs. Beaver May Serve Two Years Imprisonment" *Windsor Evening Record* (5 March 1904) 1.

147. Gurstein, *supra* note 8 at 180-81.

148. These excerpts are from *Beaver*, *supra* note 13 at 421-22. The American case mentioned was *United States v. Males* (1892), 51 Fed. Rep. 41 (Dist. Ct. Indiana). This case concerned writing on a valentine in a sealed envelope sent through the mail. The Court concluded,

The language used on the valentine is coarse, vulgar, and indecent. Its tendency is to excite feelings of anger and contempt for its author. It would repel, rather than excite, feelings of an impure, licentious, or unchaste character.

In my judgment, the words in question are not "obscene," "lewd," or "lascivious," within the true construction of the statute. The jury will therefore return a verdict of not guilty.

Kendrick, *supra* note 6 at 258, note 46, says the words in question were "You can keep this to wipe your dirty arse on."

149. *Beaver*, *ibid.* at 422-23.

150. The references must be these. Mayor Drake of Windsor was called "the Drake, that a webb-footed, unclean bird" and it was said "it is well known that drakes can do up the hens, but they have no power over the roosters, and they have the reputation of being the most licentious fowl of the barnyard" (*Beaver*, *ibid.* at 416). The pamphlet also says "Drake means 'wild oats,' and our readers are well aware of the significance of this term" (*ibid.* at 417). The death of the ex-Chief of Police of Detroit from a wasting bodily illness, possibly cancer, was also described (*ibid.* at 417-18). Given reticent attitudes to medicine and depictions of the body, this was almost undoubtedly indecent and probably obscene.

151. *Beaver*, *supra* note 13 at 423, citing *Hicklin*, *supra* note 14 at 371.

152. *R. v. Graf* (1909), 19 O.L.R. 238 (S.C.).

In subsequent readings of these proposed amendments, R.L. Borden observed that it would be difficult to prove that a person intended to circulate immoral literature. Borden advocated either criminalizing mere possession or making possession *prima facie* evidence of intention to sell. He compared the possession of immoral literature to possession of a bowie knife or dagger, and hypothesized that a degenerate who flashed an immoral picture at the inhabitants of a boys' school but did not actually circulate it would remain above prosecution. The Minister of Justice, A.B. Aylesworth, however, responded that many fine minds had been at work on the amendments, including a delegation of clergymen, and that even the Methodist reformer Rev. S.D. Chown was content with the amendments as they now stood. Generally the sheer quantity of the material would shed light on the intention to circulate it. Displaying solidly liberal ideals and more discomfort than reformers generally evidenced about regulating deep in the private realm, Aylesworth stated that he did not think mere possession should be criminalized, as it was far less important if a person wanted to corrupt his own morals than if the person intended to corrupt those of someone else. The amending Act passed as it was.¹⁶³

The difficulty of dealing with such materials during this period could not be better illustrated than by the *Skill and King* case.¹⁶⁴ On the whole, the naturalist novels of Balzac and Zola, and even the realist novels of Henry James, did not appeal to the literary taste of the period, and most people preferred more idealistic, melodramatic fiction or else shunned fiction altogether in favour of the more edifying genre of history, with the occasional historical romance for variety. Of course, there was some market for such imported material (and it had varying degrees of literary merit), with its sometimes graphic sex and its questioning of institutions like marriage. The (still high church, not yet evangelical) Anglican *Canadian Churchman* observed in 1909,

There are clever and cultivated writers whose moral tone is low, and who pander to kindred spirits in the reading and play-going public. Our homes and public libraries and theatres should be protected from works of a suggestive or pernicious character. The plea of art for art's sake in such cases is no more justifiable than would be a plea to have surgical operations and dissecting demonstrations exposed to the public gaze. The moral sense of the community would be shocked at the latter proposition, though it would have a far more scientific justification than the prurient plea of the former.¹⁶⁵

Accordingly, between 1880 and 1914, the WCTU and others engaged in informal methods of censorship. The London, Ontario Local Council of Women asked librarians to remove questionable material from the shelves and to recommend purer reading material for people who wanted to read fiction.¹⁶⁶ Librarians all over the country received these requests and seem to have been generally cooperative, in Craig Wilson's

153. *R. v. Ann Weaver* (1905), AO, County Court of York Judges' Criminal Court minute books, 1890-1912, RG 22-5870, file 71-05; *R. v. Caleb T. Morgan* (1905), AO, County Court of York Judges' Criminal Court minute books, 1890-1912, RG 22-5870, file 81-05; *R. v. Frederick Roy* (1904), AO, York General Sessions minutes, RG 22-94, December 1901 - August 1904; *R. v. Kate Dixon* (1905), AO, York General Sessions Case Files, RG 22-5871, file 96-05; *R. v. George R. Cumming* (1907), AO, York General Sessions Case Files, RG 22-5871, file 93-07.

154. Valverde, *supra* note 19 at 62.

155. Graf, *supra* note 152 at 239.

156. Graf, *ibid.* at 243.

157. (1909), 86 N.E. Rep. 910 (Sup. Ct. Mass.). This case concerned a bookseller who sold Elinor Glyn's *Three Weeks*. The case stands for the proposition that a judge charging a jury is not required to give the meaning or synonyms of the words "obscene," "indecent," "impure" and "manifestly" but can rely on their common, well-understood meanings. The defence argued that even though the book described sexual relations, the language used in the book was not actually impure or corrupting and that if all language that could be used to describe such matters were banned, a large number of books considered great literature would become unacceptable. The judge noted that this "literary merit" type of argument was often made in cases of this kind, but he rejected it, making the analogy that just because an artist can look at a nude woman and be consumed solely with pure, non-sexual, reverent admiration for her beauty, it would not follow that a jury could not convict the same artist of exhibiting the obscene, if he invited the mob outside the window in to view the woman. The artist's thoughts will not protect him; the question is the effect the work would have on the amorphous public.

view.¹⁶⁷ The Toronto Council of the NCW recommended in 1913 “that journals be invited to refuse publicity or give prominence to scandals, murders, indecent happenings and certain medical advertisements [for abortifacients and v.d. remedies].”¹⁶⁸ The propriety of the purchase of novels for the Toronto public library was vigorously attacked.¹⁶⁹ Booksellers were invited to remove objectionable material from their shelves.

But the informal channels of censorship did not always work flawlessly, and reformers became increasingly enthusiastic about legislated solutions, as the proliferation of *Criminal Code* provisions between 1892 and 1913 suggests. In Toronto and London, Ontario a number of by-laws were passed regarding books and theatrical performances at the instigation of reformers who also pressured police to enforce these by-laws rigorously.¹⁷⁰ The view that private censorship was not sufficient was voiced by the WCTU even in 1894, according to Craig Wilson, - the WCTU was sceptical of the ability and desire of publishers of American newspapers to remove all objectionable articles from the publications they sent north of the border, and there was good reason for this scepticism.¹⁷¹ In 1909, the *Presbyterian* and the *Toronto Globe* also revealed a sense that private censorship - the decisions of individuals to patronize or not patronize particular plays, the decisions of booksellers and libraries to make available or not make available particular books - was no longer working and that “decency” was threatened. The *Globe* acknowledged that there was a real risk that a work of art could fall into the hands of “some official ignoramus whose standards of taste and culture had to be approved by a patronage committee,” but with the power of private censorship in decline, the *Globe* was willing to countenance even official censorship to protect decency.¹⁷²

In a climate in which prosecution seemed like an increasingly important tactic, moral reformers, aided by Comstock, promoted the prosecution of booksellers Skill and King, on charges of selling copies of twelve books by a variety of mostly French authors. As described earlier, each pleaded guilty and was sentenced to a year in prison.¹⁷³ To the outrage of moral reformers, however, Laurier’s Minister of Justice, A.B. Aylesworth, pardoned the booksellers after they had served two months of their sentence.¹⁷⁴ The sense of the danger posed by such literature was changing.

One question that John McLaren raises is why Canada did not have the big literary trials that the United States and England did. One reason McLaren gives is that Canada’s *Criminal Code* lacked seizure

158. Riddell was also a member and sometime president of the Canadian Mental Hygiene Association: John McLaren, personal communication, November 1998. There is a legend in the Canadian legal community that Riddell was himself fond of pornography and that his collection is housed in the archives of Osgoode Hall. Craig Wilson, however, told me that he and two archivists spent several hours searching for the collection in Osgoode Hall, and it was nowhere to be found. Craig indicated that the study of obscenity and pornography in Canada is one that is shrouded in fables and that the legend of Riddell’s pornography collection might be one of them.

159. Graf, *supra* note 152 at 248.

160. This was because despite the fact that Graf was found in possession of his materials in Toronto, he might have been released if there had not been evidence that he also sold them there.

161. Saint-Denis, *supra* note 89 at 53. Introducing the amendments A.B. Aylesworth remarked,

The next section proposes to widen the present provision of the statute in regard to the manufacturing or circulating of indecent or immoral publications or pictures. A case of considerable gravity in that connection has recently arisen and it has been felt that the provisions of the statute in that regard as they stand at present are possibly not wide enough to cover some of those who would participate in those offences, and I am proposing, therefore, to extend the penalties of the statute not only to persons who offend against the law as it now stands but also to those who either assist in the distribution or circulation or have in their possession for the purpose of distribution, circulation or sale any obscene picture or printed matter such as is struck at in the section; also to extend the provisions of the section to the exhibition or circulation of plates for the manufacture of such immoral pictures or literature.

162. *The Criminal Code Amendment Act, 1909*, S.C. 1909, c. 9, s. 2.

163. *Official Report of the Debates of the House of Commons of the Dominion of Canada*, Vol. 92 at 6384-85, 6391-93 (12 May 1909) [hereinafter H.C. *Debates*, 12 May 1909]. See also Saint-Denis, *supra* note 89 at 53-54.

164. See above, page 53 *et seq.*

165. “Immoral Literature” *Canadian Churchman* (14 January 1909) 19 at 20.

166. Valverde, *supra* note 19 at 62-63; Wilson, *supra* note 19.

provisions.¹⁷⁵ Another likely reason, in Ontario, is that the new literature simply was unpopular. On the whole, Canadians took longer to develop a taste for literature and plays that challenged Christianity or conventional understandings of morality. Probably Customs and the post office kept a good deal of material from reaching Canadian ground in the first place. As well, because of the dominance of the clergy in Toronto's culture, private or informal methods of censorship likely operated. There may have been little sense that the suppression of literature or plays constituted any kind of threat to individual rights, and the number of people who would have been willing to sully their reputations by coming forth and defending indefensible material against the proscriptions of moral reformers was probably very small indeed.

The next reported case under the obscenity provisions of the *Criminal Code* was *R. v. McCutcheon*,¹⁷⁶ a 1909 Alberta case in which an accused was convicted under the expanded s. 207 for having in his possession certain pictures which he had purchased for someone else and was delivering when he was arrested. As in *Graf*, the material was probably pornography, and the methods of distribution seem to have been private. There is no indication whether or not it was imported. The obscenity of the picture was not at issue in *McCutcheon*, but it was at issue in *R. v. MacDougall*, which was heard the same day by a five-member panel of the Supreme Court of New Brunswick.¹⁷⁷ The case concerned the publication, in a dubious publication called *Free Speech*, of a number of allegations that were by turns alleged to constitute defamatory libel and obscenity, contrary to the *Criminal Code*. The particulars of the different offences were set out at the beginning of the case report. The counts of defamatory libel pertained to frequenting prostitutes, bribing electors and being incompetent as a police magistrate. In each case the person defamed was male. The count of circulating obscenity pertained to these words:

"What married woman lets the young man in through the side window when her husband is attending lodge meeting?"

"Who is the married woman who went to Saint John last Saturday with an I.C.R. clerk and stopped at the hotel as clerk's wife?"¹⁷⁸

Presumably it was impossible to prosecute the last count as defamatory libel without identifying the woman in question, so obscenity was chosen. The argument was made that the words standing alone were not obscene and did not tend to corrupt morals, so that the case should have been withdrawn from the jury on this count. The Court rejected this argument, holding that in its context, alongside libels in a paper published under a pseudonym, enjoyed by a certain class of people and whose transmission by mail was prohibited, the possibility that this material would suggest obscenity to the mind of the reader was present, and the matter was properly left to the jury. In the reliance on the circumstances of distribution, through the mail, *MacDougall* thus follows American ideas about the inappropriateness of using public means to

167. Wilson, *ibid.*

168. Valverde, *supra* note 19 at 62. The material in brackets is provided by Valverde. See also McLaren, "Now You See It," *supra* note 4 at 128.

169. Gordon Roper, "New Forces: New Fictions 1880-1920" in Carl F. Klinck et al., eds., *Literary History of Canada: Canadian Literature in English*, 2d ed., vol. 1 (Toronto: University of Toronto Press, 1976) 274 at 286 [hereinafter *Literary History of Canada*].

170. See Wilson, *supra* note 19.

171. Wilson, *ibid.*

172. "Literature, Plays, and the Censor" *Toronto Globe* (6 January 1909) 4.

173. *R. v. King*; *R. v. Skill*; *R. v. Skill & King* (20 December 1909) York County No. 145, 146, 147 (Gen. Sessions), Provincial Archives of Ontario RG 22-5871, files 145-09, 146-09, 147-09; see also Minutes of the General Sessions, York County, Provincial Archives of Ontario, RG 22-94. See above, page 53 *et seq.*

174. Brian J. Fraser, *The Social Uplifters: Presbyterian Progressives and the Social Gospel in Canada, 1875-1915* (Waterloo, ON: Wilfrid Laurier University Press, 1988) at 146-47.

175. McLaren, "Now You See It," *supra* note 4 at 124.

176. (1909), 15 C.C.C. 362 (Alta. S.C.).

177. *MacDougall*, *supra* note 13.

178. *MacDougall*, *ibid.* at 473.

spread private vice and amounts to an inversion of the thinking in the *Hicklin* case, in that the general public was not exposed to the objectionable material.

The next reported case, *R. v. L'Heureux*,¹⁷⁹ again explores the nature of the obscene, determining that the photographic depiction of a fight may not be elevating but does not come within the meaning of obscene within s. 207, as laid down in *Beaver*, *Hicklin* and *U.S. v. Wabs*¹⁸⁰; s. 207 referred to sexual immorality and indecency. The Court took pains to note that only one of the four witnesses was concerned about the effect of the show on the morals of children.

The last major case on obscenity before the *St. Clair*¹⁸¹ decisions in 1912 and 1913 was the appellate decision in *R. v. Britnell*.¹⁸² The accused, "a reputable book-seller"¹⁸³ was convicted by R.E. Kingsford, a police magistrate, of exposing for sale and selling two books, *Three Weeks* and *The Yoke*. He was released on appeal on the grounds that as a result of the division of labour in his store between his clerks and himself, there was no evidence that he knew that he was exposing for sale or selling obscene books.

The judges' treatment of the books is not what one might have expected. A person had been convicted of circulating obscenity for selling *Three Weeks* in the United States a couple of years before in a case that had been cited by Riddell J.A. in *Graf*.¹⁸⁴ It had also attracted censure in England, and its author, Elinor Glyn had been criticized in the press and in court in England for novels featuring powerful, designing women. Her novels were on the proscribed list kept by Canadian Customs.¹⁸⁵ *The Yoke*, too, by Hubert Wales, had generated a scandal and an obscenity prosecution in England in 1907: in it, as Elaine Showalter says, "the forty-year-old unmarried Angelica, who is the guardian of the dashing young hero Maurice, decides that she will sleep with him regularly until he gets married, in order to save him from prostitutes and venereal disease."¹⁸⁶ Despite the notorious scandalousness of the texts, however, the judges in *Britnell* focused on the knowledge issue. Mr. Justice Richard Meredith's comments suggested that he doubted that the books were terribly obscene.¹⁸⁷ Similarly, discreetly referring to the books only as X and Y, Mr. Justice James Magee made the remarkable assertion that "[n]either book was manifestly or notoriously obscene or immoral; and it may be that neither is in that respect better or worse than a great number of books which are freely sold and read everywhere."¹⁸⁸ He concluded his judgment by emphasizing the essential, adversarial function of counsel, remarking:

No specific parts of any of the books have been referred to in the information, the conviction, the evidence, or in the argument. The statement by the Police Inspector as to the contents of X and Y was conceded to be at best inaccurate. No particulars seem to have been asked for by the defence, or delivered. The result would be that it would be necessary for the Court to

179. (1910), R.L. (N.S.) 32 (Que. cour des sessions de la paix).

180. (1892), 51 Fed. Rep. 41.

181. *R. v. St. Clair* (1913), 4 O.W.N. 856, 21 C.C.C. 350 (Ont. C.A.).

182. *R. v. Britnell* (1912), 26 O.L.R. 136, 20 C.C.C. 85, 4 D.L.R. 56 (C.A.) [hereinafter cited to O.L.R.].

183. *Britnell*, *ibid.* at 137. The accused Albert Britnell was probably the son of the shop's founder, John Britnell, who published in 1923 the transcript of a lecture describing the virtues of good reading and the perils of bad and advocating strenuous legislation to protect people against immoral and pernicious literature. See John Britnell, *Books and Booksellers in Ancient and Modern Times* (Toronto: John Britnell Son, 1923), which is held at the Fisher Rare Book library in the University of Toronto. Britnell's continues to be a reputable bookseller in Toronto.

184. The case was *Commonwealth v. Buckley*, *supra* note 157, described above in connection with *Graf*.

185. John McLaren, personal communication, November 1998. See also Hunter et al., *supra* note 1 at 79-82.

186. Showalter, *supra* note 63 at 200.

187. See *Britnell*, *supra* note 182 at 138.

188. *Britnell*, *ibid.* Kennedy's testimony was that *Three Weeks* "describes a sexual intercourse between a married woman and a single man, which is its principle part. The book 'The Yoke' is a similar book describing connection between a young man and a woman in the position of his foster mother." Kennedy also testified that *The Yoke* "tells of a young man who went to a music hall and took up with a girl there from whom he contracted syphilis and it then describes his great sufferings ending in suicide": Rowell, Reid & Co. case file on *R. v. Britnell*, Archives of Ontario, RG4-32, App. A2, Pt 1, 1911, #530 [hereinafter Rowell, *Britnell* case file].

peruse the books seized to see if it could discover any objectionable page, phrase, or sentiment, before it could answer the question propounded. In a sense this would be to ask the Court to be accuser instead of Judge. It is a course which should not again be adopted.¹⁸⁹

This is an extraordinary passage. The police magistrate had convicted Britnell, based on the finding that the books were obscene. Rather than declining to interfere with the magistrate's findings, Magee acted as if it were the Crown's job, as respondent on appeal, to reargue the case at first instance. Magee made it clear that the Court would not delve through material to seek out offensive passages: these had to be in the particulars. Even in the face of the police magistrate's finding that the material was obscene, the Court of Appeal voiced doubts, refused to name the texts and assured its readers of Britnell's respectability.¹⁹⁰ This practice of not describing the text is one that Gurstein sees as a deliberate effort to prevent public court records from perpetuating the insult to private feelings committed by the obscene work in question. Canadian courts generally observed this practice without comment: gestures and texts would be described with minimal detail and in terms of their overall effect. Meredith also displayed a distaste for the kind of prosecution and an awareness and preference for the prevalent informal methods of censorship "where there may be different opinions as to the immorality of a book." He recommended approaching the bookseller and objecting to the books in question and prosecuting only if the objection was not heeded.¹⁹¹

By the 1910s, then, the obscenity provisions covered a very wide range of situations. The exculpatory provisions were narrow, and the idea that literary merit ought to bear on the consideration of obscenity was nowhere in appearance in the law, but Laurier and Aylesworth were thinking along those lines when they pardoned Skill and King. The central concepts of immorality and indecency were undefined in the statute. *Jourdan* discussed the fact that a show accepted in France might be considered indecent in Montreal where the concern for the morality of boys was apparently more pronounced. *McAuliffe* denied that ballet costumes were indecent but accepted that modern drama might be. Sir Charles Tupper, on the other hand, remarked that people who thought all modern drama or modern novels were indecent held very extreme views, and he thought some of these things could be morally improving, even if they might have tendencies toward indecency. It was, however, generally agreed that while there might be some disagreement about the boundaries of these concepts, most people would agree on the general contours - like the *Hicklin* Court, they would know it when they saw it.

On the matter of what was obscene, well-made-up minds thought they were in agreement that there was much less room for doubt about the nature of the concept; but Mr. Justice Riddell voiced doubts about this in *Graf*, and both judges in *Beaver* found it necessary to try to define it. Material had to depict sexual immorality. Mere vulgarity or coarse language would not do. *McCutcheon* did not raise doubts about the nature of the obscene, presumably since the picture at issue depicted a sexual act. *L'Heureux*, however, expanded the legal definition of the obscene by adding that neither brutality nor violence came within it.

The idea that the offence of circulating obscenity involved only the use of the public sphere to damage morals or offend reticent sensibilities seems by about 1910 to have lost much of what currency it had in Ontario. The *Criminal Code* had been amended to reflect this sense, and the *Beaver* judges' discomfort with the *Hicklin* test reflects the fact that the material conditions for which it was created were not in existence in Ontario and never had been. The American feeling that the public mail was not to be used to spread material that undermined the interior lives of individuals had made it into the case law by the time

189. *Britnell*, *ibid.* at 144.

190. Respectability did count. Meredith remarked at the outset of his judgment, *ibid.* at 137-38:

Although neither his reputation, nor the character and extent of his business, is a reason why he should not be convicted, and punished, if guilty, yet they are not things without weight, and very considerable weight, in considering the probabilities of the truth of the charge against him upon the question whether there was any reasonable evidence of guilt adduced against him at trial, as well as upon the question of fact, with which the Court cannot deal, whether guilty or not guilty.

191. *Britnell*, *ibid.* at 139-40.

of *MacDougall*. The idealist conception of the organic polity, in which the state had an interest in the interior lives of individuals reveals itself in the shape of the law at this point.

Another observation that emerges from this admittedly small sample set of cases is that Americans and those with strong American links sometimes did not fare too well in Canadian courts (*Beaver, Graf*), and French drama was a source of suspicion (*Jourdan*). It helped one's case to be a person established in the community, especially if one had a reputation for respectability (see *Britnell* and to a lesser extent *Skill and King*). The courts seem to have viewed the less formal tactics of censorship practised - but increasingly questioned - by the WCTU and the NCW as preferable to prosecution, at least where respectable people were concerned (*Britnell*). A flavour of defamation seems to have helped obscenity charges to stick (*Beaver, MacDougall*).

The choice of method of censorship adopted by reformers depended to a large extent on what the objectionable material was. None of the cases I have examined concerned a home-grown Canadian pornography that was more sophisticated than small typed cards with a few lewd, ungrammatical, misspelled sentences. If there was a more elaborate Canadian pornography, neither the reported cases nor the York County court records betray its existence. One does not get the sense from the Canadian cases, the debates around the *Criminal Code* or the newspapers that pornography was considered terribly common in Canada or in Ontario. Where it did exist, its deleterious effects were considered extreme, but most likely it was not terribly prevalent. Most of this kind of material was probably imported from England and the United States. *McCutcheon* and *Graf* likely concerned visual or verbal pornography, but both obviously involved private channels of distribution, and at least in the *Graf* case, probably American material.

Another major reason for the absence of literary trials in early twentieth-century Canada and for the increasing sense of the ineffectiveness of private methods of censorship is that the theatre attracted outrage for being at least as morally corrosive as literature. Unlike England, Canada had no play censor to screen performances before they were shown, so it was the public taste and the police that upheld moral standards.¹⁹² As John McLaren finds, theatre was the earliest target of evangelical censorship fervour in Canada; he remarks on its opponents' success in rendering it unattractive to women, especially those who wished to be considered respectable.¹⁹³ As I have noted, the theatre was disliked in the mid-nineteenth century not just for its promotion of vice but because of the sense that its falseness imperilled the soul. The latter sense of the danger of the theatre was overcome by the end of the century by the popular, "elevating" melodrama. But there were still productions that taught vice, as the language of the time had it.

Unlike the concern with novels, which were typically understood to be attractive mostly to girls and young women, the problem with the theatre was articulated both as a generalized concern for young people and as a specific concern for young men.¹⁹⁴ Despite the public nature of show-going, the Canadian discourse around the theatre does not reveal a particular concern that the public discourse of the period was being corrupted or that private sensibilities were being offended by most of what occurred at the theatres. This probably reflects not a lack of a sense of what was "decent" but a lack of a sense that it was in jeopardy. Little concern was directed at the higher class theatres, which produced some but by no means all of the more modern drama, generally unmolested by either moral reformers or the police. Sometimes the more respectable theatres were suspected of having the potential to corrupt young people - often imagined as young couples - by exposing them to problem plays that presented subversive ideas about sexuality through depictions of prostitution and other forms of extramarital sex. The fear was that these young people would abandon moral constraint and enter into sexual liaisons that would result in the destruction of the woman's reputation (and possibly her life as she might then slide into prostitution), or in an illegitimate child, or in a hasty and unhealthy marriage that would sacrifice the emotional and physical health of both

192. On the effect of the English Lord Chamberlain's pen, see Kendrick, *supra* note 6 at 100.

193. "Now You See It," *supra* note 4 at 118.

194. The habit of seeing objectionable material in terms of the harm it would do to young males was shared with Americans, especially Comstock: Kendrick, *supra* note 6 at 142-43.

parties. Lurking behind these fears is not only a sense that the individual's soul is threatened through sin but also a fear that the future of the "race" will be imperilled by the uncurtailed breeding of individuals lacking in self-control (the lack of self-control was a sign of feeble-mindedness¹⁹⁵). On the whole, however, moral reformers, especially the clergy, seem not to have attended the theatre, possibly out of a residual sense that it was dangerous to the soul, possibly because they did not think it likely to improve their own morals. The higher class theatres and moral reformers seem to have let one another alone for the most part.

The cheaper theatres, however, were understood to pose significant danger to their clientele: men, male youths and boys. The nature of the danger is a bit more difficult to pin down. Certainly there was a strong feeling that these theatres prompted men to seek out sensual pleasures, probably with prostitutes but also possibly in the form of masturbation, which it was thought drained the body's moral and physical vigour. Moral reformers advocated a single standard of sexual purity for both women and men, and they hated prostitution, so anything that created a demand for prostitutes would disturb them greatly.

These reasons would be enough to explain the dismay about the cheap theatres that emerges from the Toronto papers by the early 1910s, but another possible concern is that they promoted or somehow contributed to illicit sexual acts between men. As I noted in chapter three, the Star Theatre and the theatre district generally were a common meeting-place for men and boys in search of same-sex encounters, and they acquired increasing scrutiny by police toward the end of the first decade of the century.¹⁹⁶ I noted the lack of clarity expressed in the House of Commons in 1892 about the nature of indecency and especially gross indecency between men, and I noted that it was consistent with the absence of discursive clarity about homosexuality that other writers have seen in the nineteenth century. No description of obscenity or indecency in Hansard or in any of the cases or newspaper articles I have read mentions anything about homosexual activity. Any uncertainties in the field of the immoral, indecent or obscene are characterized in strictly heterosexual terms, by their relation to marriage or prostitution.

Probably things became much clearer over the decade after 1892. As Elaine Showalter's *Sexual Anarchy* makes clear, cultural awareness and concern about homosexuality and homoeroticism emerged in England in the last three decades of the nineteenth century, challenging the naturalness of the idea of masculinity and creating a crisis of identity for men. This development paralleled the emergence of the New Woman, who similarly challenged gender definitions.¹⁹⁷ Hunter et al. rely on Foucault for the observation that during the nineteenth century sexuality came to be seen no longer as acts, licit or illicit, but as functions of the nature of being of their actors, so that new types of being required investigation, measurement and understanding. "So, for example, in contrast to the sodomite once defined primarily by his illicit act, the nineteenth-century homosexual came to be identified as a complex personality with 'a past, a case history, and a childhood', and a problematic future, a being with a specific character to be fathomed by being identified with a certain inversion of the masculine and feminine."¹⁹⁸ A few writers in Europe had begun to theorize about the causes of homosexuality.¹⁹⁹ In 1895 Oscar Wilde was convicted of homosexual practices and sent to prison. In 1898, in the spirit of scientific inquiry, Havelock Ellis published *Sexual Inversion*, which contained reasonably sympathetic case histories of homosexuals; he too faced well-publicized prosecution and received the support of George Bernard Shaw.²⁰⁰ Showalter understands R.L. Stevenson's Dr. Jekyll to depict the double life of the upper-class English man, a member of one of the many men's clubs, who is drawn beyond his homosocial tendencies toward homosexuality in his obsession with the working-class Mr. Hyde. Showalter notes the eroticization of working-class men in the upper-class imagination, the attraction of transgressing class boundaries as well as sexual norms.²⁰¹

195. See page 66 *et seq.*

196. See page 56 *et seq.*

197. Showalter, *supra* note 63.

198. Hunter et al., *supra* note 1 at 103.

199. See Jay E. Daily, *The Anatomy of Censorship* (New York: Marcel Dekker, Inc., 1973) at 61-62.

200. See Kendrick, *supra* note 6 at 162-63 173.

Showalter describes as well the linkage of homosexuality with blackmail, a practice that was further facilitated by an 1885 amendment to the English criminal law, popularly known as the "Blackmailer's Charter," according to Showalter. That amendment was mirrored in the 1892 *Criminal Code* in Canada.²⁰² In 1898, mentioning Oscar Wilde by name, C.S. Clark not only said homosexual practices occurred in Toronto, but also echoed the English example by describing young working-class males blackmailing older, apparently respectable male members of society.²⁰³ It was probably in the decade after 1892, that middle- and upper-class urban Canadians, particularly Torontonians, started to have an idea that not just Europe but also Toronto housed a particular type of man - a homosexual, though denoted by other, more effeminate terms - who engaged in illicit oral and anal sex.

Clark did not, however, use such words as oral or anal sex. He called the acts "indescribable" and said he had no idea where people learned them.²⁰⁴ Similarly, Showalter says of the male characters in R.L. Stevenson's book, "[i]n the most famous code word of Victorian homosexuality, they find something *unspeakable* about Hyde 'that gave a man a turn,' something 'surprising and revolting.'"²⁰⁵ The reticence about these acts was so extreme that it amounted to a discursive gap where no words could exist.

Ontario's concern about male homosexuality seems to have become a large issue around the end of the first decade of the twentieth century. Steven Maynard's work shows that Ontario's police took considerable interest in the surveillance and prosecution for sexual activity between males beginning in about 1909, to the extent that Maynard refers to a moral panic in London, Ontario.²⁰⁶ It is not until this point that the awareness of these practices seems to have generated much interest on the part of the police force or the public at large, and these practices do not appear in the discourse about obscenity. Probably until this point Torontonians were confident that homosexuality was a decadent, European problem. Its challenges to masculinity were not felt in manly Canada, land of the Christian soldier, just as that other huge challenge to gender norms, the New Woman, had been similarly toned down in Canada, her radicalism softened and gentrified.²⁰⁷ As well, given the unspeakableness of such sexual practices, some may have hesitated to admit to being aware of what they were.²⁰⁸ The idea of homosexuality being so new and its transgression of gender norms being so extreme, we would expect that descriptions of it would verge into the territory of the obscene.

The last point I want to make about the Canadian law and practice of obscenity relates to the way in which they tell the story behind them. In *Beaver* and *MacDougall*, the matter that was alleged to be obscene was set out clearly in the case.²⁰⁹ In *Jourdan*, *McAuliffe* and *L'Heureux*, the material was described, the

201. Showalter, *supra* note 63 at 111.

202. See *supra* note 98 regarding these provisions. See also Showalter, *ibid.* at 112.

203. C.S. Clark, *Of Toronto the Good* (Montreal: Toronto Publishing Company, 1898) at 90. See also Cassel, *supra* note 31 at 94.

204. Clark, *ibid.*

205. Showalter, *supra* note 63 at 112, emphasis in original.

206. Steven Maynard, "'Horrible Temptations': Sex, Men, and Working-Class Male Youth in Urban Ontario, 1890-1935" (1997) 78 *Can. Hist'l Rev.* 191 at 233-35; see also Steven Maynard, "Through a Hole in the Lavatory Wall: Homosexual Subcultures, Police Surveillance, and the Dialectics of Discovery, Toronto, 1890-1930" (1994) 5:2 *J. Hist. Sexuality* 207.

207. Wayne Roberts describes this scaling back of the ambitions of the Canadian New Woman, *supra* note 81.

208. For a discussion of the taboo against homosexuality in the American context, see Daily, *supra* note 199 at 61-62. This taboo was, however, of comparatively recent origin. Randolph Trumbach argues that it was only after about 1700 in northern Europe that the ideal of manliness stopped being able to countenance the practice of sexually penetrating adolescent boys and began to demand that a man desire only women for sexual purposes. Adolescent boys stopped experiencing a period of sexually passive relations with older men. By the mid-eighteenth century, the romantic marriage came to be understood among gentle people to be the ideal. The taboo against male homosexual activity likely took root among the noble class most strongly during this period and was well established by mid-nineteenth century among the poorer classes: "Erotic Fantasy and Male Libertinism in Enlightenment England" in Hunt, *Invention of Pornography*, *supra* note 5, 253 at 254-59.

209. Ian Bushnell observes that this was unusual in such cases: Bushnell, *supra* note 112 at 185.

performance and the place named, but the details that were allegedly obscene were not spelled out in detail. In *Graf* and *McCutcheon* the details were not at issue and therefore were not set out. *Britnell* made the point that for obscenity to be evaluated by the Court, the particulars had to be set out; as it was, the Court would not look at the books and discreetly refrained even from identifying them in the judgment. As a rule, then, the courts seem to have found it necessary to describe the material in such a way that it could be identified, even though the explicit details that caused offence might not be set out.

Conclusion

Pre-World War I censorship practices and obscenity law in Canada demonstrate the intermingling of English and American legal thinking and the transplant of foreign legal ideas to a set of material and cultural conditions that accommodated them in various ways. By the turn of the century in England and the United States, major obscenity cases were being heard that raised the problem of distinguishing art from obscenity. In Canada in 1892, on the other hand, it seemed that everyone knew what obscenity and indecency were, and informal methods of regulating the public sphere were functioning well. By 1910, more doubt was being expressed and more prosecutions were occurring. However, people mostly continued to believe that the indecent and the obscene could be recognized on sight by cultivated people, except perhaps at the very margins, although courts had been called upon to provide definitions on more than one occasion and Laurier and his Minister of Justice had evidenced a different view of matters from the moral reformers.

The Canadian law demonstrates many of the practices of reticence that Gurstein talks about, but it does not demonstrate the same anxiety about threats to the sanctity of the private sphere or the individual that she describes in the American context. Some objections to plays were couched in such terms - an example is the *Canadian Churchman's* objections to certain books and plays in 1909. But on the whole, Canadian obscenity law and reformers were more concerned with the moral and physical damage that could be caused to the individual young person who was exposed to suggestive ideas and inspired to heterosexual unrestraint. In Canada, the practices of reticence were not under as vigorous attack as they were in the United States and in England. Lurid journalism was less common. Sex reformers were fewer and less radical. Realist novels were less popular. Women had increased their visibility in public life through middle-class organizations and the waged employment of the working class and the stage. This movement, however, was accompanied by a maternal feminist apologia among the reformers and by economic arguments in the working class. Most theatre performers were understood to be American anyway. Women's presence in the public arena, therefore, was accompanied by justifications that did not often explicitly attack the doctrine of separate spheres or the reticent sensibility that protected it.

A major Canadian problem, which emerged with particular force during the first decade of the twentieth century, was theatrical productions, especially burlesques. The burlesque stage constituted a problem for a number of reasons. It was suggestive and seemed to encourage sexual immorality and masturbation. It also was increasingly a site of homosexual activities, and the police and at least some reformers (and readers of C.S. Clark's 1898 survey) were aware of this and alarmed by it. On the other hand, the absence of reference to homosexual activities in the construction of the obscene suggests that not everyone in the governing class was aware of or alarmed by it. It was probably understood to be mainly a decadent European problem.

Canadians had begun to prosecute over literary texts, but they had not yet had much success, unlike the Americans and the British. In chapter three I described the beginnings of the discipline of English literature in Canada, which in its American development provided judges in cases like the American *Ulysses* decision to articulate - or at least to conceive - of a definition of obscenity that could distinguish between art and literature. Cheap theatre being the main issue in Canada, and considerations of artistic merit not being noted in that context, the pressure was not yet on to develop such a definition in the Canadian

context. It was not yet understood to be necessary or possible to separate the moral from the aesthetic, to ask "what is art?"²¹⁰

210. See Gurstein, *supra* note 8 at 131; Hunter et al., *supra* note 1 at 138.

Chapter Five: *St. Clair*¹

This chapter brings together the themes and observations from preceding chapters in an analysis of the trial of Rev. Robert B. St. Clair on a charge of circulating obscenities in Toronto in 1912, after his publication of a fairly explicit description of a burlesque performance, called *The Darlings of Paris*, that played at the Star Theatre. In this chapter, I analyze the portrayals in the contemporary media of St. Clair, his crime, related events and their repercussions. This case demonstrates that the conceptions of obscenity and indecency that operated in Toronto at the time were beginning to be contested among members of the moral reform movement and other members of the middle and upper classes - often Anglican or Presbyterian - who would not have described themselves as moral or social reformers but who liked to think of themselves as "right-minded" and of Toronto as a "clean," "decent" or indeed "good" city. These people assumed that they knew immorality, indecency and obscenity when they saw it, but these notions were starting to be more problematic than they seemed. During the year or so after St. Clair's arrest, Toronto society grappled with the issues it raised - including theatre regulation, the morality of those who frequented the cheap theatres and the place of the clergy in setting moral standards. Although the furor died down, fault-lines had appeared or deepened among the different factions I discuss here: the police, the most vocal members of the clergy, women's temperance and reform organizations, influential men in Toronto politics, the bar, the bench and editors of certain periodicals. The close textual analysis I employ reveals that these dividing lines had material, ideological, social, aesthetic, political, philosophical and religious bases. Among other things, the peculiar turn of events associated with this obscenity case demonstrates that even at what may have seemed to have been the near-height of the influence of the Protestant churches (especially the Methodists and Anglicans) on Toronto society, their hold was slipping, and they turned to secular forces to buttress their credibility. The fault lines that formed resulted from unacknowledged disagreement about the borders of decency and who got to determine them.

The events leading up to St. Clair's arrest

Before the narrative begins, it is necessary to describe briefly the different perspectives that the different newspapers brought to bear on the events of their time. While the newspapers were not direct organs of political parties, they did tend to have strong leanings on politics and cultural events, and they reflected different dispositions among their mainly middle- and upper-class readers.² The *Toronto Daily Star*, for example, described itself in *The Canadian Newspaper Directory* (a guidebook for potential advertisers) as "independent-liberal." As will become apparent, it tended to be sceptical about the extent of the threat posed to public morals by the theatres. The *Toronto Globe* was more avowedly Liberal during this period and was edited by James A. Macdonald, a Presbyterian colleague of John Shearer who had left the pulpit to pursue his interest in publishing. He believed that the interests of religion could be served through less obviously religious channels and had moved from the (Presbyterian) *Westminster* to the *Globe* in 1903 to further this end. Consistent with the Presbyterian tradition of philosophical inquiry and rigorous debate, Macdonald's newspaper was the most dispassionate of the newspapers and provided a forum for competing views. The third major paper I rely on, the *Toronto World* described itself as "independent-conservative," although Brian Beaven identifies it as more definitely partisan. The *World* was the paper most enamoured of the stage as a whole and most interested in theatrical events and personalities. It tended to downplay events that cast doubt on the respectability of the theatre, not by mocking the doubters or arguing against them but by ignoring them. The last of the major papers I use is the *Evening Telegram*, which called itself independent. The *Telegram* was particularly locally focused and was the paper most

1. *R. v. St. Clair* (1913), 21 C.C.C. 350, 4 O.W.N. 856 (Ont. C.A.) [hereinafter cited to C.C.C.]. The court file for this case is missing from the Archives of Ontario, but the minute books exist: Archives of Ontario, York County Judges' Criminal Court minute books, 1890-1912, RG 22-5869, file 59-12 [Archives of Ontario is hereinafter abbreviated AO].

2. Brian P.N. Beaven, "Partisanship, Patronage, and the Press in Ontario, 1880-1914: Myths and Realities" (1983) 64 *Can. Hist'l Rev.* 317.

willing to get its fingers dirty by turning over the stones under which the seedier side of Toronto's culture lived. It took a dim view of immorality of all kinds and supported reformers' efforts. All of these papers resolutely targeted a middle- and upper-class readership, and none spoke for or addressed themselves to the working man or woman.³ The newspapers' different perspectives coloured their reportage of the St. Clair affair.

In chapter three I described Fred Stair's Star Theatre and its history of encounters with the law as it took burlesque entertainment to Toronto's working men. In 1911, John Coburn, an aggressive, fairly young Methodist minister, backed up by S.D. Chown and John G. Shearer, instigated a prosecution against the Star that resulted in a small fine of \$10. This case and the relatively unsuccessful prosecutions of Britnell and Skill and King that had also taken place during those few years contributed to the unease that existed within the Protestant churches by this time, and among reformers like Shearer, in particular, about what was happening on the burlesque stage and their ability to control it.

Nonetheless, Fred Stair had no reason to think that the *Darlings of Paris* would cause the furor it did. Anticipating the troupe's arrival, the *Toronto World* was enthusiastic in its praise, supplying pictures of the female stars and pointing out how such beauty as the "entrancing bathing scene" would relieve theatregoers from the troubles of their everyday lives.⁴ The *World* described the show as two burlettas with an ollo "sandwiched" between them. It called the show "a scream from start to finish." This slangy description⁵ was probably designed to appear to a readership that considered itself worldly and cosmopolitan. The *World* also ran an article a few days later decrying the prejudices of those who condemned shows like the *Darlings of Paris*, in houses like the Star Theatre, but who did not bat an eyelash at similar fare playing in higher class theatres.⁶

Unlike the *World*, the *Toronto Daily Star* described the *Darlings of Paris* somewhat condescendingly as "two burlettas in which there is rapid action, much music, and more mirth. The chorus sings and looks better than the average, and the costumes and scenery are bright."⁷ How the show came to the attention of R.B. St. Clair we cannot know - perhaps it was the allusion to Paris that drew his attention - but somehow trouble began.

R.B. St. Clair is an obscure figure. He apparently arrived in Ontario from New York in about 1901 and became naturalized.⁸ He moved to Toronto around 1911, with his wife and pre-teenaged daughter, from near Shelburne, Ontario, after about a year or so there as a member of a largely German-speaking congregation of the United Brethren Association of the Congregational Church.⁹ St. Clair was not ordained but justified his use of the title "reverend" by reference to Congregationalist United Brethren usage: apparently he had become entitled to the title when he was called to minister to a congregation in Port Elgin, Ontario - a post he seems never to have taken up.¹⁰ He used this title when he moved to Toronto to found the interdenominational Toronto Vigilance Association, a small organization committed to the elimination of white slavery and social evil. On its letterhead it claimed as honorary presidents all of Toronto's clergy, but few seem to have actively patronized it. The Vigilance Association operated mainly on subscriptions, and St. Clair, its secretary, was the only person to draw any sort of salary from it. St. Clair

3. These descriptions of political affiliations come from *The Canadian Newspaper Directory*, 7th ed. (Montreal: A. McKim, Limited, 1911). The circulations of these papers were stated to be: *Star*, 69,503; *Globe*, 55,796; *World*, 37,937; and *Telegram*, 52,182. The avowedly conservative *Mail & Empire* had a circulation of 44,364. *Saturday Night* described itself as a "society" paper and did not give a political persuasion or its circulation. The fringe weekly *Jack Canuck* did not appear at all. See also Beaven, *supra* note 2.

4. "'Darlings of Paris' at Star This Week" *Toronto World* (25 February 1912) 6; "The Darlings of Paris" *Toronto World* (26 February 1912) 8; "At the Star" *Toronto World* (27 February 1912) 3.

5. This usage of "sandwich" was probably quite new, at least in print. The *Oxford English Dictionary* dates this usage of "sandwich" to 1861. It dates the first appearance of "scream" used this way to 1888 in the *Boston Herald*.

6. "Theatregoers are Prejudiced" *Toronto World* (3 March 1912) 13 [hereinafter "Theatregoers"].

7. "The Star Theatre" *Toronto Daily Star* (27 February 1912) 9.

8. "More Hot Criticism from R.B. St. Clair" *Toronto Daily Star* (3 July 1912) 8.

also sold a book called *War on the White Slave Trade* on behalf of the Vigilance Association.¹¹ St. Clair could not have received much institutional support from the Congregationalist churches in Toronto because they were a small and declining population and never very cohesive anyway.

As Steven Maynard observes, one of the goals of the Vigilance Association was to “aid in preventing boys being led astray by moral perverts.”¹² Due to the location of its offices, near the working-class living and amusement districts, its members were well-positioned to observe the goings-on of boys hanging around near the nearby theatres, and it was convenient for a person like R.B. St. Clair to attend the theatre to see what he could see.¹²

Accordingly, on Monday 26 February 1912, St. Clair attended *The Darlings of Paris* at the Star Theatre. He found it objectionable. The same night, P.C. Thompson, a censorship officer with the Toronto morality squad also attended. He ordered a few changes. The next day, St. Clair called Rev. John Shearer with his concerns. Shearer called Staff Inspector Kennedy of the Toronto police. Kennedy was an enthusiastic prosecutor of moral offences and had cooperated with Shearer in the past. They visited the theatre together that night. The next day, Wednesday, Shearer called Kennedy and told him what he thought of the show. Kennedy told him that he feared it would be difficult to get a conviction under the *Criminal Code* but that he had cut out a number of things that Thompson had missed. Also that day, Rev. Donald McGregor, associate secretary of the Social Reform Department of the Presbyterian Church, went to see the performance, at Shearer's request. Kennedy sent P.C. Bloodworth, who reported that nothing that had been cut out had been included in that night's performance.

On Thursday 29 February, St. Clair went back again. He found the show fairly mild, twelve cuts having been made since the Monday performance. But he heard that on Saturday nights the cut bits were usually restored. He attended, accompanied by William Marlette, a lay member of the Vigilance Association, and discovered that the performance was even worse than on Monday afternoon. He told the police, who did not then arrest anyone in connection with the play.¹³

St. Clair was not idle. He drew up a report on the performance and presented it at a Vigilance Association meeting on 13 March. The *Toronto Daily Star* and the *Evening Telegram* reported on this meeting. The *Telegram* presented St. Clair as a known figure on the Toronto moral reform scene. The *Star*, on the other hand, seemed to be introducing St. Clair to its readership, noting his pastoral connection with Shelburne, Ontario and describing the funding of the Vigilance Association and St. Clair himself - he alone drew a

9. Examination for Discovery of St. Clair, *St. Clair v. Stair et al.*, AO, RG 22-5800, York County Action File #1315, 1912, TB 271A, A-42, B-4, S-2, C-10; “Rev. R.B. St. Clair Again in the Limelight in Toronto” *Toronto Daily Star* (14 March 1912) 1, 18 [“Limelight”]. St. Clair appears on the roles of the Maple Grove Evangelical Church, near Shelburne, for the 1910-11 year, and a note suggests that he joined that congregation in December 1910. The church records do not indicate that he was involved in pastoral duties, but the records are not extensive: United Church Archives, Maple Grove Evangelical Church, Series 1, TR-1, 77.693L, LCM-249, FN 2583 [United Church Archives is hereinafter abbreviated to UCA]. St. Clair's lawyer, however, did describe him as having been a pastor in various churches in Ontario for several years before these events: “Counsel for R.B. St. Clair Criticizes Police Court” *Toronto Daily Star* (8 June 1912) 5 [hereinafter “Counsel Criticizes”]. The Congregational United Brethren were such a small church that I have been unable to locate secondary literature that sheds light on their pastoral practices. As the United Brethren had been a branch of Methodism, I would expect that they did rely on lay pastors. Congregationalism during the period was starting to appoint people for short terms. See above, chapter two, page 27 *et seq.*

10. In his examination for discovery in *St. Clair v. Stair et al.*, *ibid.*, St. Clair provided this justification for his use of the title. The records of the United Church in Port Elgin do not mention St. Clair's call, but they are sparse: UCA, Hamilton Conference, Bruce Presbytery, Port Elgin, Ontario, Quarterly Conference Minutes, 1868-1967, Accession #77.047L, Box 2-2.

11. Ernest Bell, ed., *Fighting the Traffic in Young Girls or War on the White Slave Trade* (Toronto: A. Sims, Publisher, c1911). John McLaren calls this book “one of the propaganda compendiums spawned by the [white slavery] scare in the United States”: “White Slavers: The Reform of Canada's Prostitution Laws and Patterns of Enforcement, 1900-1920” (1987) 8 *Crim. J. Hist.* 53 at 75 [hereinafter “White Slavers”]. This book and others like it contained a mixture of reports from lawyers' or social workers' files, excerpts of apparently scientific studies and factual or fictitious anecdotes to “give the whole package an air of unimpeachable credibility”: *ibid.* at 66.

salary from the organization, which ran on donations.¹⁴

The report that St. Clair read to the Vigilance Association is approximately two typewritten pages long. It contains excerpts of dialog and descriptions of actions that occurred on the stage, together with the audience's reaction and his editorial comments. The performance had two main parts, the larger called "Murphy's Troubles," and the shorter, subsequent part called "The Steel Trust Trial." This is St. Clair's report, complete with his own punctuation and capitalization:

"Having received many complaints re the 'Star' Theatre, I paid a visit to it this afternoon (Feb. 26), at 2.15 o'clock. 'The Darlings of Paris' Burlesque Company was giving the performance. Sixteen girls in abbreviated dress formed the 'chorus,' possibly eight other 'actors and actresses,' including 'the leading lady,' Gladys Sears, 24 in all, was the total number of the troupe. This show was advertised as 'More Parisian Than Paris' and 'Spice With a Splash!' They certainly lived up to the announcement.

"It will take too much time to relate the entire number of improper sayings and actions of these 'Darlings of Paris.' A few must suffice.

"The theatre was well filled, considering the afternoon. Young boys of 8, 10, 12 and 15 years of age were in the gallery, unaccompanied by parents or guardians.

"The first objectionable dialogue I noted was between 'Mr. Murphy' and his 'son.' Mr. Murphy told of meeting a young lady at Clarence Square and Spadina Ave., on the Sunday evening, with whom he had spent the greater portion of the night. He said that he knew that she was a woman because she had two legs, one on each corner. 'On each corner of the Square?' interrogated his son. 'No, on each corner of her er er, well on each corner!' he replied. 'How do YOU know that she had two legs?' enquired the son. 'None of your damn business!' hastily rejoined the father. He then told how he had spent many dollars on her. She ate several quarts of oysters, drank a number of bottles of White Seal champagne, and 'enjoyed' herself generally. 'Did she LOOSEN UP, then?' asked the sporty son. 'No,' replied the father, in disgust. 'She kept her clothes on!' (This made the crowd howl with delight.)

"A little later, the son introduces 'a lady friend,' and his father was anxious to have her how her legs. She did this with a vaudeville flourish. The old man tried to look up her legs (she had a long skirt on), and in order to facilitate matters he asked her to give another flourish. She declined, and he exclaimed, 'Oh, don't be so damn stingy!'"

"She next appeared in brown tights, and after 'sporting' with her for a while, he sent in for 'clothing.' A piece of very thing-[sic] veiling about one foot square was brought out, and the 'father' said: 'That won't cover her er,' and he looked at her buttock. The crowd howled again.

"One girl danced and paid especial attention to the men in one of the boxes, calling the men, 'Kid' and 'Kiddo,' and singing 'Come on along, come on along' to the tune of a certain pop-

12. Steven Maynard, "'Horrible Temptations': Sex, Men, and Working-Class Male Youth in Urban Ontario, 1890-1935" (1997) 78 Can. Hist'l Rev. 191 at 229; advertisement for the Toronto Vigilance Committee, contained in Attorney General's correspondence, Letter from R.B. St. Clair inquiring about admission of minors to theatres in Toronto, AO, RG 4-32, file 1912, No. 583 [hereinafter Vigilance Committee Correspondence].

13. St. Clair recounts these events in the his bulletin which, until it was lost, was on file at the Archives of Ontario, as follows: "Investigation file of the OPP concerning an immoral performance at the Star Theatre in Toronto, 1912," AO, RG 23, Series E-18, Box 1, File 19, Ontario Provincial Police, Criminal Investigation, Records and Reports, 1910-15 [hereinafter St. Clair, "Bulletin"]. I obtained a copy of this document from Steven Maynard, to whom I am very grateful.

14. "Limelight," *supra* note 9.

ular air. Another girl sang, telling how that when she arrived in town she had only one gown, and was short of cash. She got in with a fast set of young men, with the result that she was wearing silks, satins, diamonds, etc. Her refrain started, 'Do you remember when I first came to town? Look at me NOW!'

"A young man told the story, in song, of a certain young lady who went in bathing, and her bathing clothes split. He implored her to stand in water up to her neck. The refrain was something like this: 'When she began to wriggle, I began to giggle, as a lobster caught her there.' ('There' slurred so as to sound like 'hair.') Miss Gladys Sears, who stood near the singer, would endeavor to look at the rear of her skirt, exclaiming, as she did, 'My dress split?'

"A girl said that she wanted to see 'two little devils,' and was told to 'go to Hell!'

"Mr. Murphy was stating that a certain soubrette was his daughter, and a young man who entertained the opinion that another man he had met coming out of Murphy's house, and with whom he had held a short conversation, was Mr. Murphy, contradicted him. 'Don't I know my own daughter?' demanded Murphy. Mrs. Murphy came to his rescue, testifying that he was the father of her child. 'My what a GOOD MEMORY you must have,' rejoined Murphy.

"An extremely disgusting rag-time dance was given. The whole company took part in this, but a young man and a soubrette who appeared to be the leading ones in that particular dance, went away beyond the limits of the law. They clung closely to each other, he with one hand on each of her buttocks, and in a most sensuous manner, imitating the act of copulation, danced about the stage to the tune of some rag-time, modified couched-couchee, air. This nauseating performance was received with great acclaim.

"Mr. Murphy rendered himself still further objectionable by the insinuating remarks he made to members of the orchestra.

"The word 'damn' was used ten times during the performance of the afternoon. Young boys certainly heard and saw edifying things.

"A court scene brought the 'show' to a close. His Honour Judge Winchester, Judge Riddell, Crown Attorney Corley and Mr. Robinette were represented by characters on the stage. A sissified policeman was called Archibald. The actions of this 'officer' showed him to be of the class, or at least pretending to be, who give themselves over to acts of sexual perversion, and known, generally, as 'sissies,' 'fairies,' and by other more offensive, but at the same time, more accurately-descriptive names. The deeds of this class far exceed, in grossness, the actions of the inhabitants of Sodom and Gomorrah, and are as bad as anything ever attempted in the bathing places of ancient Rome. In this day when the rays of the sun of true religion are beaming upon our path in all their meridian splendour, these deeds are to be regarded as WORSE than in the former times. The men of Sodom, Gomorrah, Ninevah and Rome will rise up in judgment against a generation sinning in the face of the brightest, purest light the world has ever known!

"It appeared from the statement made by one of the 'attorneys' that a certain Miss Steel Trust had been giving a dinner to a number of her friends and that some indecent dancing in the nude occurred during the banquet. Proceedings had accordingly been instituted, and the case was on the court calendar for the special time that I was privileged (?) to be present. A female detective (Miss Lydia Pinkham) gave her evidence. She managed to get in. 'Yes,' said Winchester, 'the great thing is in getting IN.' 'Well,' continued the detective, 'I looked through a key-hole and saw a woman dancing on the table and she had NOTHING on!' 'Oh, that's noth-

ing,' said Winchester. The 'attorneys' objected to Winchester's statement that it was 'nothing,' He cracked each over the head and said, 'What do you object to a good thing like that for?' The Judge had an ardent desire to look through the key-holes himself.

"A French dancer next appeared. She was told to give her 'act' as at the dance the night before. She removed her robe and stood before the audience clad only in FLESHING tights. 'Take them ALL off, Frenchy!' shouted Winchester. This caused a sensation. Miss Steel Trust was next introduced. Mr. Robinette explained that he had not yet looked at HER EVIDENCE, 'I have saved that for the Judge,' he said. 'How good of you,' said Winchester. 'Her evidence,' they both kept saying, and the crowd took it in the way they intended. 'She has a SPECIALTY,' said Robinette. 'Oh, all the girls have one of those,' answered Winchester. 'Well, her's,' said Mr. Robinette, 'is a CIRCLE ONE.' 'Show it to the Judge,' leered Winchester. As Miss Steel Trust came in, the judges and attorneys seemed unduly excited, and became so hot, that they had to fan themselves vigorously with large palm-leaf fans. A thermometer on the wall then attracted our attention. The mercury went up, up to 120 degrees, the top of the thermometer, over which was inscribed the words 'Oh, Joy!' Winchester jumped up on top of the court bench and placing both hands in his loose trousers pockets, began to work them up and down in a most suggestive manner. He wanted the young lady's gown taken up to his room. Everything lent color to a most indecent scene and was thus interpreted by the delighted audience. Miss Steel Trust gave her evidence, as did another soubrette, and the usual smutty talk and insinuations obtained. The whole affair wound up with a free-for-all dancing finale.

"If we are to have A BETTER TORONTO, a mere warning should not be given these theatrical people. Arrests should be made. If a conviction cannot be obtained for that sensuous dance, then it is time to close up the law courts. THE LICENSE OF SUCH A THEATRE SHOULD BE REVOKED. If the Chief of Police's name is at the bottom of a license for such a training-school of immorality, it should be there no longer. Let the license be revoked, the proprietor punished. TORONTO HAS NO ROOM FOR SUCH A SHOW, and the man seated next to me said that 'The Darlings of Paris' was mild to some of the shows they have in the Star.

"The objectionable postcards sold between the acts should likewise be investigated by the police.

"I defy any person to find a worse show in any place east of the Mississippi River. It is the limit. That is, to my mind, but my seat-mate told me that there are even worse. And in the same TORONTO theatre!"¹⁵

The Darlings of Paris thus pulled many strings. It contained much lewd and some profane dialog. It mocked the legal system - and the performance St. Clair saw mocked particular Toronto personalities by name. It depicted a member of the judiciary masturbating. It laughed at fun-loving young women who relished their sexuality and would happily dispense sexual favours for fine food and drink or luxuries like silks and diamonds. It mocked the ideal of virtuous motherhood. The "Steel Trust Trial" may have alluded to certain events that took place in London in 1908 after the Canadian actress Maud Allan sparked a "Salome craze" with her "Dance of Salome," derived from Oscar Wilde's *Salome*. Elaine Showalter notes, "the dance was reputed to have led to public immorality; a society hostess had invited leading ladies of the Court to 'a "Maud Allan" dinner dance, which would be undecorated by the presence of any man, and at which the guests were bidden to appear in Salome costumes.'"¹⁶ Wilde's *Salome* challenged gender conventions, and some saw Maud Allan's dance as feminist and subversive. *The Darlings of Paris* thus

15. St. Clair, "Bulletin," *supra* note 13. The full text of the bulletin appears in Appendix I to this thesis.

16. Elaine Showalter, *Sexual Anarchy: Gender and Culture at the Fin de Siècle* (New York: Viking Penguin, 1990) at 161-62. See also above, chapter three, page 60, *supra* note 137.

played with this set of social transgressions as well.

St. Clair's description reveals a sense of the homosexual man as a "type" of person. As noted in chapter four, this represented a new way of considering sex acts between males, which until the end of the nineteenth century were thought of only as illicit acts. It is not clear how widely shared this understanding was in early twentieth-century Toronto, but it was probably not universal and in any case the concept of homosexuality seems to have been linked to decadent Europe, including England. Also, despite the fact that this skit mocked the police as a whole and this depiction of Archibald must therefore have been intended to mock him and homosexual men, St. Clair's tone suggests that he thought this character in some way promoted homosexual acts.¹⁷ Both the *Star* and the *Telegram*, recounting St. Clair's address to the Vigilance Association, considered most of his report unfit to print. Both did pick up on the paragraph about homosexuality, in which his outrage pulled him completely away from his narration of the performance, but they gave his comments a heterosexual slant (it may be that St. Clair did so too in additional commentary). St. Clair was quoted as calling the theatre "a licensed brothel, inciting people to commit lustful deeds - things that would be disgraceful in the palmy days of Rome." The *Telegram* continued (but the *Star* did not), "It puts the people of Sodom and Gomorrah to shame to have such things openly, brazenly and shamelessly carried on here."¹⁸ Both papers emphasized the presence of young boys "sitting there amidst the crowd of vile men in an atmosphere heavy with smoke, seeing those women go through that nauseating performance." Both papers thus performed their own discursive balancing acts, the *Telegram* leaning farther toward candour than the *Star*. They alluded to places associated with homosexuality, flagging concern about the morals of boys, but ultimately drawing back from repeating St. Clair's explicit linkage of the Star Theatre with homosexual practices. As is evident from the report itself, St. Clair's main target was heterosexual immorality, so the papers did not misrepresent him by stressing this dimension of the show, but their decision to use a discursive register associated with homosexuality in order to talk about heterosexual immorality is symptomatic of the discursive unclarity around homosexuality I have noted in other chapters.

St. Clair incorporated his report into a "Special Bulletin" of the Vigilance Association, printed about a thousand copies, dated 1 May, and sent some to the ministerial "honourary presidents" of the Vigilance Association. According to the court reports, he gave another copy to a brother of the Salvation Army who sympathized with his work, and he left two other copies with an elderly man in the office of a small, erratically published local paper called *Jack Canuck*, which in 1911 supported St. Clair's efforts to shut down the houses of ill-fame around St. Patrick's Square.¹⁹ One of these bulletins was for the editor, James R. Rogers, and one was for the elderly man himself. Another copy of the bulletin reached the editor of the *Toronto World*, but it is not clear that St. Clair sent it to him, as he received it anonymously.²⁰ A few other people may also have been sent it by St. Clair.²¹

Having been led, in April, by a solicitor in the Ontario Attorney General's office to believe that the Police Commissioners were not empowered to bar children from theatres, St. Clair and the rest of a deputation from the Vigilance Association met with the Board of Police Commissioners on 21 May to urge them to

17. St. Clair's sense that the "sissified policeman" somehow promoted homosexuality probably arises from the absence of a specific critique of the figure on the stage. The "Archibald" character must have been a figure of fun, not of utter moral evil. As well, the characterization suggests that some of Toronto's crusading policemen, who were at that time busy keeping their eyes and ears open for homosexual activity in working-class Toronto, had the same secret proclivities. A critique of police hypocrisy runs through the sketch as a whole.

18. "Show 'Hell Upon Earth,'" *Evening Telegram* (14 March 1912) 17. See also St. Clair's reference to "a boy of 14 who had been led to secret vice as a result of these burlesque performances": "Morals of the Burlesque" *Evening Telegram* (14 March 1912) 24.

19. "Child Guides to Vice" *Jack Canuck* (11 November 1911) 9; "Rev. R.B. St. Clair Versus Chief Inspector Archibald" *Jack Canuck* (11 November 1911) 13.

20. St. Clair, *supra* note 1 at 378; "Taking Fire for Police, Silenced by Judge" *Evening Telegram* (21 September 1912) 21 ["Taking Fire"].

21. See John Coburn, *I Kept My Powder Dry* (Toronto: Ryerson Press, 1950) at 118.

take action against the Star Theatre.²² In the course of their presentation, St. Clair gave copies of his bulletin to the Board members: Mayor Geary, Police Magistrate Denison and Judge Winchester of the County Court of York. These were perused. Apparently Winchester did not take kindly to the depiction of himself in St. Clair's report.²³ Perhaps partly - but certainly not wholly - for this reason, shortly thereafter a search warrant and a warrant for St. Clair's arrest were issued. St. Clair turned himself in. He was fingerprinted and photographed and spent a long afternoon in the cells. Because Crown Attorney Corley insisted, St. Clair retained a lawyer before his release, on \$2000 bail, posted by a friend.²⁴ On 23 May, St. Clair was charged with publishing immoral literature and remanded for a week. The morality squad announced that it did not intend to prosecute the theatre because its officers were satisfied that their censorship efforts were having the desired effect.²⁵

Two days later, *Saturday Night* attacked the Vigilance Association, moral reform movements generally and St. Clair, in terms that drew attention to his lack of Toronto roots:

Who the Rev. Mr. St. Clair is the writer cannot say. He may be the brother of Little Eva for all one knows. He is understood to be attached to no recognized conventicle in this city. Perhaps it is the fact that he is minus a congregation to preach to, has made him so busy with our morals. It would appear, however, from his discourses, that have crept into print, that he, in the comparatively brief period that has elapsed since he blew into town, has discovered more vice, or the appearance thereof, than ordinary worldly individuals who have lived here forty years have noted. Seriously speaking, are not our many "reform" organizations likely to trample on each other's feet. It is to be feared they will provoke dissension by infringing on each other's territory. The police department itself does not want their assistance. It gets altogether too much outside advice now. The apparition of such sensationalists as Rev. Mr. St. Clair helps however, to give the outside world the impression that Canada, and this city especially, is populated by cranks and ninnies, and people of depraved and vicious lives. As a matter of fact, Canadians are all right - or would be if some of the sex-haunted "reformers" would depart from our shores.²⁶

This paragraph is too dense to unpack completely. It evidences prejudice against outsiders and against those who wish to improve the morals of Canadians. It claims solidarity with all other right-thinking, well-established, "worldly" citizens of Toronto, who, it claims, feel similarly about the efforts to improve their morals, especially those that come from foreigners.

These various journalistic reports on the arrival of the *Darlings of Paris* in Toronto and on the Vigilance Committee and St. Clair point to certain divisions that made themselves more apparent as time passed: the strained relationship between the Vigilance Association and the clergy St. Clair claimed to represent; the different attitudes to popular entertainment and moral reform held by the different newspapers and their

22. See Vigilance Committee Correspondence, *supra* note 12. The members of the Vigilance Association who took responsibility for censorship called themselves the Vigilance Committee. See "Vigilance Committee Has New Fields of Endeavor" *Toronto Daily Star* (9 May 1912) 11; "Urge Exclusion of Children at Theatres" *Toronto Globe* (22 May 1912) 9; "Vigilance Officer Placed Under Arrest" *Toronto Globe* (23 May 1912) 8; "Police Cannot Keep Children From Theatres" *Toronto Globe* (19 June 1912) 9.

23. Winchester did not deny that he objected to seeing his name in such a context and ordered St. Clair's arrest, but he said he revoked the order so someone else had ultimately been responsible for the arrest. Apparently Police Inspector David Archibald was annoyed by the attention, but Corley and Robinette did not care at all. No opinion was forthcoming from Riddell. See "Harsh Fate of Purifier of the Public Morals" *Evening Telegram* (23 May 1912) 21 [hereinafter "Harsh Fate"]; "Arrest of Rev. St. Clair," *Evening Telegram*, 25 May 1912) 14; "Rev. Mr. St. Clair to a Jury: His Own Bail Accepted," *Evening Telegram*, 7 June 1912) 19 [hereinafter "Rev. Mr. St. Clair to a Jury"]; "Taking Fire," *supra* note 20; St. Clair, "Bulletin," *supra* note 13.

24. "Vigilance Officer Placed Under Arrest," *supra* note 22.

25. "Vigilance Officer Remanded for Week" *Toronto Globe* (24 May 1912) 8 [hereinafter "Vigilance Officer Remanded"].

26. "Front Page" *Saturday Night* (25 May 1912) 1. Little Eva is the angelic little girl in *Uncle Tom's Cabin*.

readerships; the tensions surrounding policing; the problems in prosecuting the Star Theatre's proprietor; and the existence of a gap between the thinking of "ordinary worldly individuals" and that of "sex-haunted 'reformers,'" especially Americans recently arrived in town.

Summer 1912

Moral reform elements of Toronto were outraged by St. Clair's arrest and by his treatment at the hands of the police. Certain prestigious names joined together to support St. Clair: the prominent Methodist minister Dr. T.A. Moore, John Coburn, John Shearer, the lawyer William E. Raney, K.C. and city controller J.O. McCarthy. Coburn noted that they agreed that even if action against St. Clair had been justified, he should have received a summons and not been subjected to the humiliation of arrest and detention in a cell.²⁷

The *Telegram's* report on St. Clair's arrest was kind to him, saying of the bulletin only that it contained a description of what St. Clair had seen at the Star Theatre²⁸ and suggesting that the police might have been motivated by Winchester's ire at having his name mentioned in such a context. The *World* was also sympathetic to St. Clair,²⁹ unlike the *Star*, which alone claimed that the morality department of the police department received numerous complaints about St. Clair's bulletin before arresting him - in fact it seems unlikely that more than six or eight people other than the police even saw the bulletin,³⁰ although, as noted, Vigilance Association members heard St. Clair read from it at their meeting in mid-March. The *Globe's* report was brief and businesslike, but it was organized around a fall narrative: St. Clair was before the Police Commissioners, and then he was behind bars.³¹ The *Globe* paid considerable attention to the reasons given by the police for refusing to take action against the theatre.³² None of the newspaper reports printed any excerpts from the bulletin or even indicated that their writers might have read them. Probably they had not. The logic of the debate that eventually characterized St. Clair's trial was apparent already: the decency or indecency of the bulletin would not be much debated, and the indecency of the show was a given among moral reformers, the bench and the editorial staff at the *Telegram* and *Globe*. St. Clair's motivation and tact in circulating the bulletin would be all-important.

The *Toronto Globe* published Fred Stair's defence and attack on St. Clair of 29 May 1912. Stair emphasized that "chorus girls" made a good wage - presumably he meant to emphasize that they were not prostitutes. His two most important allegations, however, were that there were no boys in the audience and that Constable Bloodworth had seen the show on the final Saturday night and declared nothing to be amiss. If St. Clair had misrepresented these two facts, reasoned Stair, one could safely assume that he had also misrepresented everything else. Stair's object, he said, was to bring to Toronto "a clean, bright and catchy performance with beautiful costumes and scenery and elaborate light effects."³³ Stair apparently felt that such aesthetic attractiveness would be redemptive. He appears, in this, to have been trying to tap into the prevalent rhetoric of cleanliness and godliness.³⁴ He was unsuccessful in this regard. In St. Clair's

27. Coburn, *supra* note 21 at 118. The Methodists were particularly agitated about the affront to St. Clair's civil rights, although they did not specifically use that expression. They believed St. Clair's photograph and measurements had been deposited in the "rogues' gallery" before he had been convicted. Dr. T. Albert Moore, the Methodist Church's General Secretary, wrote to the Department of Justice objecting to this procedure and demanding that the *Criminal Code* be changed so that no photographs or measurements could be taken until after conviction. In response, Moore was assured that the information would be kept in a closed file unless and until St. Clair was convicted and if he was not, it would be discarded. The police and the Department of Justice did not want to lose the right to photograph and measure persons upon arrest. See National Archives of Canada, "Methodist Church - Criminal Code amendment: That accused persons should not be measured and photographed until convicted" RG 13, Series A-2, vol. 2360, file 1137/1912.

28. "Harsh Fate," *supra* note 23.

29. "Minister Held on Serious Charge" *Toronto World* (23 May 1912) 1.

30. "Rev. R.B. St. Clair is Placed Under Arrest," *Toronto Daily Star*, 22 May 1912) 1.

31. "Vigilance Officer Placed Under Arrest," *supra* note 22.

32. "Vigilance Officer Remanded," *supra* note 25.

33. "Replies to Rev. R.B. St. Clair" *Toronto Globe* (29 May 1912) 9.

34. See Mariana Valverde, *The Age of Light, Soap and Water* (Toronto: McClelland & Stewart, 1991) at 34-43.

response the next day, he said his witnesses would substantiate the truth of his "confidential report" on the theatre, and he pronounced himself pleased to learn that "soubrettes" earned \$1000 to \$1300 per year, exclusive of expenses.³⁵

St. Clair's committal hearing on 7 June 1912 before Magistrate Denison was one battle in the simmering war between moral reformers and the police described in chapter three.³⁶ Denison's hasty, "intuitive" approach to the law and his disdain for legal "technicalities" were notorious.³⁷ On Inspector Kennedy's evidence, Denison concluded that the true purpose of the bulletin was to attract donations to support St. Clair. Denison accepted the implausible propositions that Kennedy had never received any assistance from St. Clair regarding the suppression of brothels and that St. Clair had never made any complaints against the theatre. He was also apparently willing to accept that the performance was not as bad as St. Clair made out.³⁸

The Anglican William E. Raney, K.C., St. Clair's counsel and future Attorney General of Ontario, leapt to the attack.³⁹ He said that the proceedings in Police Court had been a contest over who could most flout St. Clair. He pointed out that St. Clair and Kennedy had seen the show on different days. He accused Denison of not providing St. Clair with British justice.

St. Clair himself attacked the proceedings against him when he next appeared at a meeting of the Vigilance Association. Solidly behind him, the *Telegram* began its report by quoting him:

"We are engaged in what we believe to be a holy warfare. Though we may meet with temporary incarceration we shall not quail, for we are indeed in apostolic succession in such a case. Reform is not always welcome. The reverse is often true. Many there are who have been turned from the city gates where they came to advance a reform unwelcome to the powers that be."⁴⁰

St. Clair pointed to the absurdity of various statements of the police. On one hand they said that when St. Clair told them where Toronto's brothels were, he was providing them with no useful information because they already knew of the brothels. On the other hand they insisted that they did not have a policy of tolerating prostitution. In fact, as St. Clair himself stated⁴¹ and as the statistics evidence,⁴² the police had acted on his information.

St. Clair's arrest and committal for trial generated outrage among the WCTU, the Local Council of Women, the Congregationalist press and other moral reform elements of Toronto, all of whom assumed the correctness of his representations,⁴³ even though it is unlikely that any of them had seen the bulletin or had very much idea what was in it. Various ministers in Toronto gave sermons criticizing the prosecution of St.

35. "Mr. St. Clair Replies" *Toronto Globe* (31 May 1912) 8. St. Clair probably approved of living wages for women generally, although how he felt about the wages in this particular occupation is hard to know. One of the Vigilance Association's goals was to provide better pay for "girl employees in stores, factories and offices": Vigilance Committee Correspondence, *supra* note 12.

36. See page 61.

37. See Gene H. Homel, "Denison's Law: Criminal Justice and the Police Court in Toronto, 1877-1921" in R.C. Macleod, *Lawful Authority: Readings in the History of Criminal Justice in Canada* (Toronto: Copp Clark Pitman, 1988) 167 at 169-70.

38. "St. Clair Goes to Jury, Is Let Out on Easy Bail" *Toronto Daily Star* (7 June 1912) 10; "'Vigilance' Secretary to be Tried by Jury" *Toronto Globe* (8 June 1912) 9; "Rev. Mr. St. Clair to a Jury," *supra* note 23.

39. See "Counsel Criticizes," *supra* note 9. Raney was a Liberal and an Anglican - probably evangelical - and something of a moral reformer in his own right.

40. "Mr. St. Clair Tells of Cells" *Evening Telegram* (13 June 1912) 13. This passage was also quoted by the *World*: "Says Police Officials are Untrue to Trust" *Toronto World* (13 June 1912) 1.

41. See e.g. "Harsh Fate," *supra* note 23.

42. See Carolyn Strange, *Toronto's Girl Problem: The Perils and Pleasures of the City, 1880-1930* (Toronto: University of Toronto Press, 1995) at 147.

Clair and particularly the fact that he was treated as a common criminal - evidently the clergy deserved greater respect from the criminal justice system.⁴⁴

Undoubtedly *the* galvanizing issue in the *St. Clair* case was whether St. Clair had actually seen boys under fifteen in the theatre. The discourse reveals an anxiety about the activities of unsupervised boys that might have struck earlier generations as perplexing. E. Anthony Rotundo describes a vibrant boys' culture in the northern United States in the mid-nineteenth century, in which boys roamed and brawled, largely free from direct adult supervision. The boys Rotundo studies, however, were white members of the middle class and therefore not associated with vice. Although their mothers did not actually supervise them, the boys had to answer to their mothers (and, when father came home, to him) for their conduct, and living in smaller centres meant that word of their activities might be conveyed to their mothers by neighbours. In other words, they did experience supervision. Toronto's moral reformers, however, had no faith that the working class monitored its children to any degree. As well, the American boys Rotundo studies were working out social conventions and developing friendships that would prepare them for later stages of their lives as independent, striving, masculine members of society.⁴⁵ By contrast, Toronto's boys in the burlesque theatres were understood to be schooling themselves in vice. Burlesque theatre was considered a particularly bad influence on the morals of young men, because it was thought that it directed their malleable inclinations toward male sexual promiscuity, which fuelled the survival of prostitution, considered the main social problem of the day, and led to the "secret vice" - masturbation - which ruined the moral and physical fibre of youth.⁴⁶ Building a strong Canada was thought to require the curbing of the unrestrained sexual proclivities of young men.

Paradoxically, however, as I have noted, St. Clair and the Vigilance Association also knew that the Star Theatre was a key meeting place for boys and men in search of same-sex sexual encounters in Toronto. For the price of admission, some boys agreed to provide sexual services inside the darkened theatre. Other sexual encounters took place in the alleys and parks of working-class Toronto around the theatre. Homosexual activities attracted a tremendous amount of surveillance from the police between 1911 and 1914. It is clear, therefore, that the Star Theatre was a locus of discourses about youth and heterosexual moral corruption. It is equally clear that for St. Clair, the Vigilance Association and the police, the Star Theatre was also associated with homosexual activities. What is less clear is how much other moral reformers and other segments of Toronto society knew about the latter group of activities or how they felt about them. Given the English and American attitudes to Oscar Wilde and Havelock Ellis, and given St. Clair's outrage and the enthusiasm of the police campaign against homosexuality, it is impossible to believe that respectable people would simply have taken these activities in stride if they had believed they were really happening. St. Clair's arrest was not, however, followed by any clear reference to these kinds of activities. The reason seems to be a combination of a belief that St. Clair was likely exaggerating and such things did not really happen here, and a reticent refusal to discuss a practice that constituted such an affront to the private sphere and gender norms. A certain number of men also seem to have laughed at those who took homosexual practices so seriously or laughed simply at the figure of the effeminate, "sissified" homosexual. This laughter might indicate disdain, fear or acceptance: it is hard to say for sure.

Among the newspapers who responded to St. Clair's experiences, only *Saturday Night* censured St. Clair for being like "a man who hears another tell a smutty story and goes and repeats it to the next man he meets with the covering clause, 'That man Smith is a vile fellow, he told me the toughest yarn I ever listened to."

43. See e.g. "Editorial Notes" *Canadian Congregationalist* (18 July 1912) 1; "The Sikh Problem: Views of Women" *Toronto Globe* (29 May 1912) 3; "'Glad They Arrested Me,' Says Rev. R.B. St. Clair" *Toronto Globe* (13 June 1912) 4; "Women Score Police Methods" *Toronto World* (13 June 1912) 1; "Women Backing Up Rev. R.B. St. Clair" *Toronto Daily Star* (13 June 1912) 3.

44. See e.g. "Police Methods in the St. Clair Case Smack of Russia" *Toronto Daily Star* (10 June 1912) 2.

45. See E. Anthony Rotundo, *American Manhood: Transformations in Masculinity from the Revolution to the Modern Era* (New York: BasicBooks, 1993) at 31-55.

46. Valverde, *supra* note 34 at 77; Michael Bliss, "'Pure Books on Avoided Subjects': Pre-Freudian Sexual Ideas in Canada" in Michiel Horn & Ronald Sabourin, *Studies in Canadian Social History* (Toronto: McClelland & Stewart, 1974).

I'll tell it to you, but understand, I absolutely disapprove of smutty stories.'" *Saturday Night* indicated its discomfort with the sexual hygiene movement:

It is time that the country was purged of these sexmongers who spoil innocent minds with their foul imaginings. It has grown to be an organized business all over this continent and does more harm than the evils it professes to cure. The new towns of the Canadian west have been particularly infested with agitators whose minds are obsessed with sexual questions and who purvey indecencies under the disguise of cant. A few months ago, *Saturday Night* had the satisfaction of knowing that in the City of Brandon, Manitoba, a series of lectures by a reverend sexologist had been cancelled as a result of the protests which have repeatedly appeared in these columns against this kind of gentry.⁴⁷

The views of the police, who must have deeply resented St. Clair's criticism, were not well represented in the press. The *Star* devoted considerably more space than did the *Telegram* to various defences of the force.⁴⁸ Aside from the *Star*, the papers were basically critical. The *Globe* quoted Sgt. David McKinney as asserting that the police had been keeping a "keen eye" on the theatre.⁴⁹

St. Clair's Trial

St. Clair was charged under s. 207 of the *Criminal Code* with circulating immoral literature.⁵⁰ It said:

207. Every one is guilty of an indictable offence and liable to two years' imprisonment who knowingly, without lawful justification or excuse,-

(a) manufactures, or sells, or exposes for sale or to public view, or distributes or circulates, or causes to be distributed or circulated, any obscene book, or other printed, typewritten or otherwise written matter, or any picture, photograph, model or other object tending to corrupt morals; or,

(b) publicly exhibits any disgusting object or any indecent show....

2. No one shall be convicted of any offence in this section mentioned if he proves that the public good was served by the acts alleged to have been done, and that there was no excess in the acts beyond what the public good required.

3. It shall be a question for the court or judge whether the occasion of the manufacture, sale, exposing for sale, publishing, or exhibition is such as might be for the public good, and whether there is evidence of excess beyond what the public good required in the manner, extent or circumstances in, to or under which the manufacture, sale, exposing for sale, publishing or exhibition is made; but it shall be a question for the jury whether there is or is not such excess.

4. The motives of the manufacturer, seller, exposor, publisher or exhibitor shall in all cases be irrelevant.

47. "Front Page" *Saturday Night* (22 June 1912) 1. No identifying details were given for the "reverend sexologist."

48. "Toronto Tolerates No Ill-Fame Houses" *Toronto Daily Star* (10 July 1912) 15; "Unfair Criticisms of Toronto Police Warmly Resented" *Toronto Daily Star* (13 July 1912) 23; "Gives Toronto a Clean Bill" *Evening Telegram* (10 July 1912) 24.

49. "Vigilance Officer Remanded," *supra* note 25.

50. R.S.C. 1906, c. 146.

The trial was a sensation and was prominently featured in all the newspapers.⁵¹ St. Clair did not take the stand. The reports of the trial in the *Star*, *Telegram* and *World* contain long excerpts of testimony but almost no coherent description of the case for the Crown. The *Star*, for example, placed with its article sketches of J.R. Rogers, editor of *Jack Canuck*, and W.F. Maclean, M.P., editor of the *World*, but did not indicate why these people were in the courtroom - both were Crown witnesses who testified to the circular's publication. The main Crown witness was Inspector Kennedy. The essence of the Crown's case, set out coherently only in the *Globe*, was to rebut the defence of justification by insinuating (plausibly though no judge ever found this) that publication to more than just the clergy of Toronto was intended and that the reason for printing 1000 pamphlets was that St. Clair was hoping to exploit the incident to drum up support for the Vigilance Association and, indirectly, himself. Much of the Crown's evidence may have come out on cross-examination, though.

The case was tried in the County Court Judges' Criminal Court by Judge Denton, who held a rare qualification: an LL.B. from the University of Toronto. Coburn, in his memoirs, described Denton as "a very worthy citizen and a good judge."⁵² Most of the trial was occupied with defence witnesses. Identity, publication and the obscenity of the circular were admitted - the rationale for the last admission being that since the performance was obscene, the report of it must also necessarily be obscene. To show that the public good was served by circulation of the pamphlet, Raney attempted to argue that it was necessary to get the public's attention in the face of the police censors' utter ineptitude at doing their job, their practice of systematically ignoring complaints about the Star Theatre and their general policy of toleration of the more vicious members of society. Raney had to show as well that the circular was not excessive. And finally, he wanted to show that the prosecution was in bad faith and had been begun because the police wanted to make an example of one of the people who was showing how incompetent they were.

Judge Denton allowed Raney to put the police officers who had censored the *Darlings of Paris* on the stand and asked them about their censorship practices. They testified that they looked on the *Star* as one of Toronto's liveliest theatres, that they did not think the *Darlings of Paris* was indecent, that they did not keep records of what they had ordered cut, that they did not customarily go back to see that what they had ordered cut had been eliminated, and that censorship was largely a matter of personal taste.⁵³ The *Toronto World*, in particular, seems to have relished the evidence of the police officers' lax approach to censorship: while the *World* valued a clean stage, it also enjoyed a good show such as the one that occurred in Denton's courtroom.

Denton did not, however, let Raney get into more general allegations that the police tolerated vice or, particularly, houses of ill-fame.⁵⁴ He would not let Raney show that St. Clair had assisted the police or that relations between the police and the Vigilance Association were strained. He would not let Raney ask any of the prominent Toronto ministers he called whether they thought the circular was in the public good. They were only allowed to give evidence going to the accuracy of the bulletin. Rev. Shearer, who had

51. "Mr. Raney Threatens to Show Up Police" *Toronto Globe* (23 September 1912) 9 [hereinafter "Mr. Raney Threatens"]; "Left His Defence to Toronto Ministers" *Toronto Globe* (24 September 1912) 9; "R.B. St. Clair Guilty: Says He Will Appeal" *Toronto Globe* (27 September 1912) 9 [hereinafter "R.B. St. Clair Guilty"]; "Taking Fire," *supra* note 20; "Police Once Owned the Star, Sold it on a Mortgage," *Evening Telegram* (23 September 1912) 13, 16 [hereinafter "Police Once Owned the Star"]; "The St. Clair Case is Over" *Evening Telegram* (24 September 1912) 26; "Will Mr. St. Clair Go to Jail? Pamphlet Obscene, Says Court" *Evening Telegram* (26 September 1912) 17, 29 [hereinafter "Will Mr. St. Clair Go to Jail?"]; "Police Accused of Tolerating Vice Traffic" *Toronto World* (23 September 1912) 7; "Matter of Taste Says Play Censor" *Toronto World* (24 September 1912) 12 [hereinafter "Matter of Taste"]; "Rev. R.B. St. Clair on Trial before Judge Denton" *Toronto Daily Star* (21 September 1912) 1; "Would Head Mob to Burn Theatre, Says Clergyman" *Toronto Daily Star* (23 September 1912) 1, 5 ["Would Head Mob"]; "Evidence Complete in St. Clair Case" *Toronto Daily Star* (24 September 1912) 7; "St. Clair Convicted, But Sentence is Suspended" *Toronto Daily Star* (26 September 1912) 1, 18.

52. Coburn, *supra* note 21 at 119; LSUC, Series 21-01, Past Members' Records, Member Record Cards, "James Herbert Denton," File 5034.

53. "Would Head Mob," *supra* note 51; *R. v. St. Clair*, *supra* note 1; "Matter of Taste," *supra* note 51.

54. "Mr. Raney Threatens," *supra* note 51.

accompanied St. Clair to the show, pronounced it "vilely suggestive, ... indecent and demoralizing" and an inspiration to the patronage of prostitutes.⁵⁵ Rev. Donald McGregor verified St. Clair's report. Rev. J. Bennett Anderson, treasurer of the Anglican diocesan missionaries, said that St. Clair's report was mild compared to some that reached his desk and that in St. Clair's position he might have used even stronger language. In saying this, he was probably referring to the explicitness of the descriptions and St. Clair's vilification of the show. Rev. John Coburn, who had not seen the show, testified about the outcome of the proceedings he had taken in Police Court the year before and the nominal fine the theatre had received. All Denton would take from this evidence, however, was that it was possible to prosecute the Star Theatre - and not that a consequential penalty would be unlikely to accompany a conviction.

R.H. Greer, a conservative, an Anglican and one of the Crown attorneys, gained useful admissions from some of the ministerial witnesses. Shearer admitted to some surprise at St. Clair's allegation that there had been 1000 houses of ill-fame in Toronto a year before. He said he did not think Toronto was any worse morally than any other city the same size. Shearer, McGregor and Rev. T. Albert Moore testified that they thought St. Clair's tactics were effective but admitted that they would not have used such language. They would not have been so explicit. Through McGregor and Father L. Minehan, Greer managed to insinuate that the churches were jealous of the theatre's attractiveness to their clientele. He also gained from Minehan the admission that St. Clair had not received permission to name all of Toronto's clergy as honorary presidents on the Vigilance Association's letterhead. Shearer as well distanced himself from St. Clair by stating that he had nothing to do with the Vigilance Association. Greer gained from him the admission that he knew little of St. Clair's origins or how he made his living.

Denton had refused to permit evidence that the police were maliciously prosecuting St. Clair. He found the circular to be a fair and accurate report of the *Darlings of Paris* but held that justification had not been made out because the public good had not been served by the circulation of the document itself, even if the St. Clair's trial had generated a salutary amount of uproar. Moreover, the justification provision of the *Criminal Code* demanded that, even if the occasion of publication was one in which the public good might be served, the accused's actions could not go beyond what the public good required. Denton held that even if the performance of *The Darlings of Paris* had constituted an occasion upon which the public good might have been served, St. Clair's bulletin was excessive, because there was no evidence the police would have refused to permit St. Clair to lodge an information against the Star Theatre, just as Coburn had done a year or so before. It was entirely improper for him to have circulated the bulletin. Said Denton, "'it is not only obscene, but a filthy thing.'"⁵⁶ Denton did, however, call the "so-called censorship" by the police "inefficient" and castigate them for treating St. Clair badly.⁵⁷ Despite any sympathy he may have felt toward St. Clair, Denton convicted him.⁵⁸

Denton's judgment began by finding the bulletin obscene. He observed at the outset "[n]o one who reads the pamphlet can reasonably hold any other opinion as to its obscenity." Raney, however, seems to have argued that the text could not be regarded as obscene because of its limited circulation. His argument sounds like a qualified privilege defence, as there was (and is) to a charge of defamation. It also underlines the difference between the circumstances of distribution in *Hicklin* and those in *St. Clair*: Raney was arguing that these circumstances were important.⁵⁹ "I cannot follow that argument," said Denton.⁶⁰ He continued:

55. "Police Once Owned the Star," *supra* note 51.

56. "St. Clair Convicted," *supra* note 51.

57. (1912), 24 O.W.R. 265 at 267 (Co. Ct.).

58. Coburn says St. Clair refused to post a bond that included a condition of abstaining from similar activities in the future and therefore received a fine of \$25 or ten days in jail, which he neither paid nor served: *supra* note 21 at 119. The court minute books say only that St. Clair posted a bond of \$200 to appear for sentencing when called upon. On October 3, 1912, he was called upon to attend when the order granting a reserved case for the Court of Appeal was granted. There is no record of a sentence being imposed.

Then as to the circulation, it must be borne in mind that the test of obscenity as laid down by Lord Cockburn in *Reg. v. Hicklin* ... is "whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall." The pamphlet in question was addressed to the clergymen, but there was no evidence that it was sent to them as a body, if that would have made any difference and in my opinion it would not. There was evidence that by the accused it was placed in the hands of four persons, none of whom were clergymen, and only one of whom was associated with him in his work.⁶¹

Unlike the situation in *R. v. Beaver*,⁶² where the judges turned to dictionaries to define obscenity, Denton seemed confident that the *Hicklin*⁶³ test met his exegetical needs. Yet the hands in which this pamphlet fell - editors of newspapers and elderly men - were hardly the hands that Lord Cockburn would have considered to be connected to the most vulnerable and corruptible minds. Of course some of the 1000 pamphlets might have gone beyond those hands, but Denton did not inquire too closely into the issue. Essentially he seems to have been confident that he knew obscenity when he saw it, and he does not seem to have felt that the circumstances of distribution of obscene matter were material. He was equally certain that *The Darlings of Paris* was indecent, immoral and obscene, but he was guarded about accepting the moral standards of the clergy who saw the performance, expressing awareness that standards in theatrical entertainments were different during the English puritan Commonwealth than during the Restoration.⁶⁴

The reticent sensibility is clear in Denton's judgment. He used the language of pollution to describe the bulletin, seeming to refer not just to the morals of the individual but to the public realm.⁶⁵ When he turned to the defence of serving the public good, he remarked that the defence was there because of "scientific, medical, or religious works, which though containing matters obscene should nevertheless be permitted for the public good"⁶⁶. Denton was evidently not a whole-hearted believer in exposing all secrets to the unrelenting light of day. Condemning the explicitness of St. Clair's description, Denton went on to say:

Supposing this show was indecent, and I think beyond question that it was, and you want to describe it to other people. You can describe the play in your own way, denouncing it in the strongest language without going into details and using language so obscene and filthy as appears in this document. Had Mr. St. Clair confined himself to that, had he published his pamphlet denouncing the show in as strong language as he could use, no exception could have been taken to it, so long as it was not obscene, but no person reading this document circulated by St. Clair can come to any other conclusion than that it is not only obscene, and has a tendency to corrupt morals, but it is a positively filthy thing which ought not to be allowed to fall into the hands of anyone.⁶⁷

He added that if Dr. Moore had put the pamphlet, as Denton erroneously thought he had suggested he would have, into the hands of "lady teachers" of the city, he would have found himself in prison.⁶⁸

59. My understanding of Raney's argument, which is not clearly set out in the judgment, is supported by the way the case was argued by the Crown on appeal. One of the points of the stated case was whether the bulletin was obscene matter tending to corrupt public morals. The lawyer who argued the Crown's case on appeal, supporting Denton's judgment, said he had not read the pamphlet. This would have been an untenable position for him, if the obscenity of the pamphlet, on its face, had actually been in issue, but not if the defence actually pertained only to circulation. In any case, Raney dropped that argument very quickly in the appellate courtroom: see *R. v. St. Clair*, *supra* note 1 at 358, per Hodgins J.A.

60. *St. Clair*, *supra* note 57 at 265-66.

61. *Ibid.* at 266.

62. *R. v. Beaver* (1905), 9 O.L.R. 418, 9 C.C.C. 415 (C.A.).

63. *R. v. Hicklin* (1868) L.R. 3 Q.B. 360.

64. *St. Clair*, *supra* note 57 at 267.

65. *Ibid.* at 266.

66. *Ibid.* at 267.

67. *Ibid.* at 268-69.

Although the bulletin does contain suggestive descriptions, Denton's indignation and the terms of his judgment indicate that he considered there to be definite boundaries to the public realm in which "indecent" (the word used to describe the suggestive show) and "obscenity" (the word used to describe the explicit bulletin) would not be tolerated.

The trial thus revealed that the courts would to a certain extent protect the police force from being taken to task over their lack of enthusiasm in prosecuting vice. It also demonstrated that although the Court had no doubt that the show was obscene, it would not turn a blind eye to the activities of reformers it considered overzealous. The newspaper reportage shows the media's fascination with the spectacle with which it had been presented and to a large extent its disdain for the police. The *Toronto Globe*, with its business-like tone and its care to present the Crown's case as well as the defence, appears to have adopted the position that although the show was indecent, St. Clair's actions were also worthy of censure.

The Aftermath of St. Clair's Trial

Raney immediately launched an appeal, and Judge Denton stated a case for the Court of Appeal.⁶⁹ A *Toronto Globe* writer asked Inspector Kennedy if, given Judge Denton's remarks about the character of the *Darlings of Paris*, a prosecution would be forthcoming. Kennedy was non-committal.⁷⁰

St. Clair's conviction was not well received. The *Globe*, *Telegram* and *Star* covered the various churches' responses; the *World* did not. Rev. T.T. Shields of Jarvis St. Baptist Church preached a sermon blasting Inspector Kennedy.⁷¹ The *Globe* quoted him as saying of the Star Theatre,

To describe it as a school of debauchery is as mild a delineation of its character as could possibly be consistent with the truth. An open cesspool in front of the City Hall would be less injurious to the public health than that place of so-called entertainment is to the moral health of those who frequent it. I know whereof I speak. I have attended a theatre only once in my life and that was the place.⁷²

The *Star*, unlike some of the other papers, made it clear that it was indeed *The Darlings of Paris* that Shields had seen. He declared that there was no morality department in the city of Toronto and read the case as retaliation for St. Clair's moral reform efforts. The *Telegram* spelled out this logic more explicitly than did the *Star*, but the *Globe* downplayed this dimension of the sermon. Shields's remarks again demonstrate the common usage of the metaphor of pollution in this context. Shields's proud assertion that he had never visited the theatre except once and, indeed, the tone of urgency in St. Clair's pamphlet suggest a habit of distance being kept between the clergy and the theatre.

Rev. W.E. Pescott addressed Bathurst St. Church in a similar tone, and the *Star* noted that Pescott received for it "a chorus of 'hear hears,' ... the first time in many years in Bathurst Street Church."⁷³ Rev. Andrew

68. *Ibid.* at 269.

69. "Will Mr. St. Clair Go to Jail?" *supra* note 51.

70. "R.B. St. Clair Guilty," *supra* note 51.

71. "Theatre Worse than Open Cesspool" *Toronto Globe* (30 September 1912) 8 ["Cesspool"]; "Clergymen Condemn Way Police Censors Do Work" *Toronto Daily Star* (30 September 1912) 15 [hereinafter "Clergymen Condemn"]; "Hot Shot from Ministers" *Evening Telegram* (30 September 1912) 13. Thomas Todhunter Shields was at this time making a name for himself as an outspoken member of the Baptist community, but he had not yet embarked upon the campaigns against secularism in universities and all forms of entertainment that would eventually alienate nearly everyone: see e.g. Mark Parent, "The Irony of Fundamentalism: T.T. Shields and the Person of Christ" in David T. Priestley, ed., *Memory and Hope: Strands of Canadian Baptist History* (Waterloo, ON: Wilfrid Laurier University Press, 1996) 183; and David R. Elliott, "Three Faces of Baptist Fundamentalism in Canada: Aberhart, Maxwell, and Shields" in Priestley, *ibid.*, 171.

72. "Cesspool," *ibid.*

73. "Clergymen Condemn," *supra* note 71.

Imrie, who noted that he had never before attacked the theatres, pronounced *The Darlings of Paris* "vicious, devillish and pernicious" in his sermon at Indian Road Baptist Church.⁷⁴ The Methodist Ministerial Association expressed sympathy with St. Clair and a lack of confidence in police methods.⁷⁵ The WCTU similarly denounced the police for persecuting St. Clair.⁷⁶ The editors of the Methodist *Christian Guardian* marvelled that the police were "willing to tolerate indecency in theatres but not in pamphlets issued by clergymen."⁷⁷

The police were not supposed to respond to the attacks made upon them but apparently could not resist denying Shields's allegations. The *Telegram* and *Globe* published Kennedy's response: that any investigation into the department that was called for would be just fine with him. He implied that the clergy were exaggerating and that their standards were unrealistic.⁷⁸ The *Star* published Shields's follow-up, contrasting Kennedy's mild assessment of the *Darlings of Paris*, given under oath, to Denton's stark findings of fact. Shields pronounced Kennedy utterly unfit for his position.⁷⁹

As all four papers recounted, St. Clair went back to the Vigilance Association, vowing, at its annual meeting, to take "like a man" any punishment imposed on him by Judge Denton and to continue the fight for the advancement of purity on a wide range of fronts.⁸⁰ However, the cohesiveness of the Vigilance Association was starting to fail. Its new president was unsure about committing himself for a whole year.⁸¹ Only eighteen or nineteen people were present.⁸² St. Clair read from a 1907 police report on prostitution in which it was stated that houses of ill-fame were being constrained to places where their presence was not obnoxious. All the papers picked up on St. Clair's objection to the notion that Toronto's poor were less entitled than its wealthier residents to live in neighbourhoods free from such establishments, although the *World* emphasized this remark less than did the other three newspapers. It is at this point that one begins to sense that the *Star* viewed St. Clair as a source as much of entertainment as of news.

The *Star* and *Telegram* published portions of Raney's argument for a stated case for the Court of Appeal.⁸³ About two weeks later, the Crown announced that it would, after all, prosecute the Star Theatre. For unspecified reasons the police refused to initiate proceedings, so the Crown preferred an indictment before Judge Denton. It was another two months before proceedings against Fred Stair began.⁸⁴

In early October a movement began stirring to drum up public feeling to regulate or close the Star Theatre.⁸⁵ A group of prominent laymen, ministers and businessmen arranged a mass meeting to protest lax theatre censorship by the police. The members of the committee appointed to take charge of the proceedings included James Ryrie, a jeweller; W.E. Raney; Rev. T.T. Shields; Congregationalist Rev. Byron Stauffer; Rev. John Coburn; Controller J.O. McCarthy; and Father L. Minehan (who attended the *Darlings of Paris* with St. Clair and testified in his defence⁸⁶). St. Clair distanced himself from these

74. *Ibid.*

75. "Denounce Police Censorship and Want Theatre Closed" *Evening Telegram* (30 September 1912) 13. See also UCA, Minutes of Annual Meeting, General Board, Department of Temperance, Prohibition and Moral Reform of the Methodist Church, 26 & 27 September 1912, at 10.

76. "Toronto Police Are Criticized" *Toronto World* (27 September 1912) 1.

77. "Toronto's Theatrical Performances" *Christian Guardian* (2 October 1912) 6, 7.

78. "Police Are Tongue-Tied" *Evening Telegram* (1 October 1912) 27; "Staff Inspector Defends Department" *Toronto Globe* (1 October 1912) 8.

79. "Rev. T.T. Shields Again Attacks Kennedy" *Toronto Daily Star* (2 October 1912) 2.

80. "Police Have Lost Respect of Community" - R.B. St. Clair" *Toronto Daily Star* (2 October 1912) 5 [hereinafter "Police Have Lost Respect"]; "St. Clair Will Not Flinch" *Evening Telegram* (2 October 1912) 27 [hereinafter "Will Not Flinch"]; "Would Serve Term in Interests of Cause" *Toronto Globe* (2 October 1912) 8 [hereinafter "Would Serve Term"]; "Police Have Lost Confidence of People Says R.B. St. Clair" *Toronto World* (2 October 1912) 2.

81. "Police Have Lost Respect," *ibid.*; "Would Serve Term," *ibid.*

82. "Will Not Flinch," *supra* note 80; "Would Serve Term," *ibid.*

83. "Court of Appeal to Decide Did St. Clair Serve Public Good?" *Evening Telegram* (3 October 1912) 17; "St. Clair's Basis of Appeal" *Evening Telegram* (3 October 1912) 24; "Court of Appeal Asked to Decide St. Clair Case" *Toronto Daily Star* (3 October 1912) 3.

developments. He did not attend or take any role in organizing this meeting or any of the subsequent ones.⁸⁷ The initial stirrings of this movement were front page news in the *Globe*.⁸⁸

A meeting was called for 1 November in Massey Hall. Several resolutions were anticipated: that the character of plays at the Star Theatre improve or the theatre go out of business; that a new method of censorship be adopted; and that the Board of Police Commissioners be expanded. Some members of the organizing group advocated demanding an investigation of the Toronto police department by a High Court judge.⁸⁹ Before the meeting was held, the *Globe* forecast that legislation to increase the size of the Police Board would be introduced at the next session of the legislature.⁹⁰ The mayor and Board of Control began to contemplate how to take censorship out of the hands of the police, who no longer wanted to be responsible for it.⁹¹

The *Star* coverage raised the problem that there might be different ideas of what constituted indecency, and it exhibited awareness of the potential for embarrassment associated with excessive stringency.⁹² The *Star* ran an editorial about the importance of the appointment, adopting a theme that echoed the debates in the House of Commons described in chapter four. The editor called censorship a hard job and said no one could please everyone on the question of stage morals. However, art and indecency were distinguishable, according to the *Star*, to a man of culture and common sense. The job of censor was a serious one, and the censor needed to have real power. There was no excuse for filth in the theatres.⁹³

The Massey Hall meeting on 1 November was extremely well attended, by 5000 people, according to the *Telegram*. This meeting and the "Committee of Forty" prominent business and professional men and ministers that it spawned demonstrate just how seriously Toronto's "big men" took the issue of obscenity in theatres. The very fact that it was men, and not merely clergy either, who were involved signifies a break with the generally feminine moral and social reform movement.⁹⁴ The church press approved of this. In October, 1910, the *Presbyterian* had called for censorship by a public board composed of representatives of this class of men: not police officers or ministers but of "men of education, character and standing in the community whose verdict would command respect."⁹⁵

The masculine, largely non-clerical composition of the Committee of Forty is also interesting from the standpoint of the content of gender norms in the early twentieth century. Rotundo has observed, in the

84. It is not clear why the police refused to prosecute the theatre. Most likely they did not think a conviction would follow, as they do not seem to have felt the Star Theatre constituted the moral hazard that reformers saw in it. It was two months before proceedings against Stair and Pearce began in earnest. It was mid-December before Stair was indicted or a grand jury returned a true bill. See "Star Theatre to be Indicted by the Crown Attorney" *Toronto Daily Star* (14 October 1912) 1; "Theatre Case Is Not Yet Dead Att.-Gen. Says Prosecute" *Evening Telegram* (14 October 1912) 13; "May Indict Star Theatre" *Toronto Globe* (15 October 1912) 9; "F.W. Stair Indicted" *Evening Telegram* (10 December 1912) 10; "Indictment Follows Charges of St. Clair" *Toronto Globe* (11 December 1912) 9; "Bill Against Mr. Stair" *Toronto Globe* (13 December 1912) 9; *R. v. Stair and Pearce*, AO, York County General Sessions minute books, RG 22-94; York County General Sessions indictment case files RG 22-5871, files 178-12 and 192-12. The case was then put over to the Criminal Assizes and delayed another month. The *Star* postulated that the reason was that R.H. Greer, then the Sessions prosecutor, would have been embarrassed to prosecute Stair after prosecuting St. Clair: "Stair Case Transferred to Criminal Assizes" *Toronto Daily Star* (17 December 1912) 11. See also "Stair Case Over to Next Assizes" *Toronto Globe* (17 December 1912) 8. This case is discussed at length below.

85. "Hot Social War in City" *Evening Telegram* (4 October 1912) 30; "To Take Up the Case of R.B. St. Clair" *Toronto Globe* (1 October 1912) 1 [hereinafter "Take Up the Case"]; "Hold Mass Meeting Friday, November 1" *Toronto Globe* (18 October 1912) 9 [hereinafter "Hold Mass Meeting"].

86. Whether Minehan was Anglican or Roman Catholic is not evident from the newspapers, but I believe he was likely Catholic, especially since he was always called "Father." In general, the newspapers identified the congregations with which each minister was associated, which leads me to suspect that Minehan was retired or involved exclusively in moral reform work. If he had been Anglican, it seems likely that at least one of the Toronto papers would have said so.

87. See his examination for discovery in *St. Clair v. Stair et al.*, *supra* note 9.

88. "Take Up the Case," *supra* note 85.

89. "Hold Mass Meeting," *supra* note 85.

90. "Change Make-Up of Police Board" *Toronto Globe* (23 October 1912) 9.

American context, that as masculinity came to be associated with strenuous assertiveness (often, though not necessarily, of a physical kind), ministers came to be seen as somewhat effeminate, and they espoused the idea of muscular Christianity to combat these associations. The flipside of this association is that businessmen and lawyers who were so inclined could purify their wealth and power by engaging in reform movements.⁹⁶ St. Clair's Vigilance Association was small and weak, directed by a newcomer and made up of women as well as men: it was a womanly society at risk of failing in its worthwhile objects. The Massey Hall meeting and the Committee of Forty seem to represent an effort of Toronto's men to shore up a faltering movement and, undoubtedly, acquire "moral capital" for themselves in the process.⁹⁷

At the Massey Hall meeting, St. Clair was enthusiastically supported *in absentia*. James Ryrie chaired the meeting. In his keynote address he adopted a familiar metaphor, comparing the Star Theatre to an open cesspool. He implied that City Hall was influenced by illegitimate politicking and secret societies. Rev. Stauffer called the *St. Clair* case a miscarriage of justice and said it was a short step for the police from blindness in the face of vice to participation in it. He said that men who trafficked in vice were treated with "superlative gentleness" by the authorities. Dr. W.A. Young took another tack. He said that the City should not have to bear the cost, in taxes, of vice, which he understood to mean the cost of maintaining and caring for the "feeble-minded," epileptic, crippled and paralyzed. He pointed to the "starvation wages" that many worked for, the "unattractiveness and poverty of home" and the opportunity to earn a large, easy income through immoral trades. Chief of Police Grasett was condemned for neglecting his duties, and a demand was made for a thorough investigation of tolerance of vice by the police department. The standards of the police were alleged to be at variance with the moral standards of the community, and the police were said to be neglecting to enforce the *Criminal Code*. As well, a resolution was passed that the Board of Police Commissioners should be enlarged by two. The two would serve, unpaid, for a term of three years, and they would not hold any other municipal office. A "Committee of Forty" prominent men of the city was struck, which included Ryrie, Minehan, Raney, McCarthy, Shields and Coburn. Inspector Kennedy attended the meeting but did not speak. The meeting did not resolve how censorship ought to be conducted, apparently because the Board of Control was already addressing that issue.⁹⁸

The *Star* and the *Telegram* placed the description of what actually happened at the Massey Hall meeting well into the paper, and made the responses to its resolutions front page news. The assumption may have been that everyone who was anyone had attended. In any case, the new mayor, H.C. Hocken, opposed the proposed enlargement of the Board of Police Commissioners. It was pointed out to him that before he had become mayor he had been in favour of this (he had been mayor about two months). He said yes, but he had since spoken to other former mayors, and they all assured him that the Board could become a "political" machine if it were enlarged.⁹⁹

91. "Board's Good-Bye to Mayor" *Evening Telegram* (17 October 1912) 13; "Board Will Censor Plays" *Evening Telegram* (31 October 1912) 10; "Board of Censors to Watch the Plays at the Theatres" *Toronto Daily Star* (17 October 1912) 19 [hereinafter "To Watch the Plays"].

92. "To Watch the Plays," *ibid.*

93. "Problem of Play Censorship Now Up to the Controllers" *Toronto Daily Star* (19 October 1912) 4.

94. Nancy Christie and Michael Gauvreau, *A Full-Orbed Christianity: The Protestant Churches and Social Welfare in Canada, 1900-1940* (Montreal: McGill-Queen's University Press, 1996) at 108-30.

95. "What Can Be Done with the Theatre?" (13 October 1910) *Presbyterian* 387 at 387-88. That this attitude was not unique to Toronto is evident in the fact that in April 1912, an informal contingent of this type of people, with two police officers joining them, was put together in Ottawa to see a play featuring the devil, *The Soul Kiss*, but the group found the play enjoyable and inoffensive to public taste and morals: "Police to See the Soul Kiss" *Ottawa Evening Citizen* (29 April 1910) 1; "Police Didn't Stop the Play" *Ottawa Evening Citizen* (30 April 1910) 2.

96. E. Anthony Rotundo, *American Manhood: Transformations in Masculinity from the Revolution to the Modern Era* (New York: BasicBooks, 1993) at 172.

97. I am thinking of Mariana Valverde's "Moral Capital" (1994) 9:1 C.J.L.S. 213. John McLaren has described the significant role of men, especially clergy, in anti-prostitution movements during this period - see "White Slavers," *supra* note 11.

98. "Reorganize Police Force Demand of Mass Meeting" *Evening Telegram* (2 November 1912) 30. See also "Great Gathering in Massey Hall Condemns Police, Demands a Change" *Toronto Daily Star* (2 November 1912) 6, 9.

Chief Grasett also responded to the resolutions passed at the meeting. He said he accepted full responsibility for the police department, that he welcomed an investigation and that he favoured enlarging the Board of Commissioners, as that would bring it closer to municipal life, although it might also increase the political influence on the police force and impair its efficiency.¹⁰⁰ Grasett also took the opportunity to protest that the police did not “tolerate” vice, that they tried to suppress it and that the use of the word “tolerate” in the 1907 report (as in, “houses of ill fame are not tolerated in areas where their presence would be obnoxious”) was ill-chosen. He protested that the Crown Attorneys had given St. Clair and his friends “every opportunity” to lodge an indictment. The police had not done so themselves because they did not think the charges would stick. Again, the coverage by the *Star* emphasized that censorship was a difficult business.¹⁰¹

The *Telegram* gave Col. Denison a forum to defend the conduct of the police. He pointed out that the Star Theatre had been prosecuted in the past and he asserted that St. Clair’s conviction proved that the police were correct in prosecuting him. Apparently speaking from the conclusions he reached at St. Clair’s committal hearing, Denison made the outrageous allegation that St. Clair had circulated his bulletin among elderly ladies who had “sent money to this stranger over whose accounts the police [were] not aware of there being any proper or systematic audit.” Denison said he would welcome an inquiry into the police department, which was entirely free of graft and corruption.¹⁰²

St. Clair responded publicly in a letter to the *Telegram*. He denied that he had an opportunity to lodge an information against the Star. He correctly pointed out that contrary to Denison’s assertions, Judge Denton had held that the bulletin was accurate and the play was obscene. He said that no elderly ladies had received the bulletin and that every cent the Vigilance Association received was spent exactly as described in the annual report. He said the Vigilance Association could be thanked for the accolades Toronto had recently received from the other chiefs of police of North America.¹⁰³

St. Clair’s appeal was heard in late November 1912. St. Clair attended, accompanied by Rev. Coburn. Judgment was reserved. J.R. Cartwright argued the case for the Crown. The divergent views of the newspapers again influenced their coverage. Their competing perspectives signal the divisiveness of the case among right-minded members of society. The *Telegram* gave more space to Raney; the *Globe* gave more space to Cartwright. Cartwright argued that if it was necessary to communicate the conditions in Toronto’s theatres, St. Clair could have addressed the Ministerial Association or some like body. There was no justification for sending the bulletin to four of its recipients. The judges made their views felt in oral argument. Justices Magee and Garrow seem to have been undecided about the appropriate verdict. Mr. Justice Richard Meredith was emphatically of the view that the document was inexcusably obscene and that St. Clair should have prosecuted the theatre through proper, legal means. Mr. Justice Hodgins (sitting in one of his first cases since leaving private practice) said that St. Clair had taken a heroic remedy but had broken the law: was he prepared to suffer for his convictions? Mr. Justice Maclaren, who eventually became the sole voice of dissent, said St. Clair had been compelled, by police inaction, to do what he did.

The questions on the stated case were very broad and did not differ much from the grounds of a late

99. “Mayor Opposed to Five Members Upon the Police Board” *Toronto Daily Star* (2 November 1912) 1; “Call in High Court Judge, Probe Police Department” *Evening Telegram* (2 November 1912) 29; “Chief Constable Would Welcome an Inquiry” *Toronto Globe* (4 November 1912) 9 [hereinafter “Welcome an Inquiry”].

100. The Orange Order had influenced the Toronto police in the mid-nineteenth century. See Helen Boritch, “Conflict, Compromise and Administrative Convenience: The Police Organization in Nineteenth-Century Toronto” (1988) 3 *Can. J. L. & Soc’y* 141 at 143-55, 158-59. The Orange Order was still an active force. Mayor Hocken, for example, was made an honorary member in November 1912: “L.O.L. Gets Portrait of Orange Founder” *Toronto Globe* (27 November 1912) 9.

101. “‘I Accept Full Responsibility’ - Chief Grasett” *Toronto Daily Star* (2 November 1912) 1; “Welcome an Inquiry,” *supra* note 99.

102. “Colonel is Not Flustered” *Evening Telegram* (2 November 1912) 29.

103. “St. Clair is Surprised” *Evening Telegram* (4 November 1912) 22; “Welcome an Inquiry,” *supra* note 99.

twentieth-century appeal.¹⁰⁴ Nonetheless, the Court of Appeal argument seems to have proceeded at a high level of abstraction, with little or nothing in the way of description of either the pamphlet or the performance. In what was probably Raney's most explicit remark, quoted only by the *Telegram* (the same newspaper that had repeated St. Clair's similar comments earlier), Raney said that it was better to contaminate "our minds ... with these Sodomite things" than that "our boys should go to the theatre." Whether Raney was referring specifically to homosexual practices or more generally to extremes of sexual immorality is hard to say, but his remark resonates with St. Clair's earlier allusions to homosexuality. On the whole, the argument in the case closely observed the practices of reticence, as the participants sought to avoid exposing themselves and each other to the bulletin. They relied on the trial judge's description of the bulletin as a "filthy thing." In fact, the Crown prosecutor, Cartwright, said he had not read St. Clair's report, and Justices Maclaren and Meredith both remarked that they hoped they would not have to read it either - even though one of the questions on the stated case was whether the bulletin was in fact obscene, "having regard to the form in which it was proved to have been circulated."¹⁰⁵

The Normal School Incident

Aside from the two days' press his appeal received, St. Clair almost entirely dropped out of sight after his conviction. He made an address in the Sunday school facilities of a Methodist church about the laxity he had observed in the police efforts to eliminate prostitution.¹⁰⁶ He responded to the more outrageous allegations made about him by Col. Denison after the Massey Hall meeting.¹⁰⁷ He received a small amount of publicity when he launched a \$50,000 libel suit against Stair and *Jack Canuck*, a suit which continued to be reported intermittently well into 1913, as it metamorphosed into a conspiracy suit.¹⁰⁸ The movement to prosecute and then close the Star Theatre and censor theatres in general had been taken over by other, more prominent Toronto men. But one event brought St. Clair briefly back into the public spotlight and, I suspect, resulted in his social ostracism. It is the Normal School incident, a small crisis that highlighted the inconsistencies in the frequently articulated assumption that well-regulated minds might disagree on the obscenity or indecency of some things, but ultimately everyone agreed on fundamentals.

What happened was this. Not only had Fred Stair been charged with putting up an immoral show at the Star Theatre, but he had also been charged with displaying an obscene picture, apparently a playbill advertising an upcoming show. Stair alleged that it was supposed to be covered with brown paper but that it had become uncovered by agents unknown. A picture of an inadequately clad woman was revealed. This was deemed obscene, and charges were laid.¹⁰⁹ Col. Denison committed Stair to trial on a charge of

104. The questions were as follows (see *St. Clair*, *supra* note 1 at 351):

1. Was the bulletin in question obscene printed matter tending to corrupt morals, within the meaning of sec. 207, sub-sec. 1(a), of the Code, having regard to the form in which it was proved to have been circulated by the accused?
2. Was there evidence upon which I could reasonably find, as I did find, that the public good was not served by the printing and circulating of the bulletin in question, assuming that the occasion of the printing and circulating were such as might be for the public good?
3. Was there evidence upon which I could reasonably find, as I did find, that, assuming the public good was served by the printing and circulating of the bulletin in question, there was excess beyond what the public good required in the manner, extent, or circumstances in, to, or under which the printing and circulating was done?
4. Was the evidence tendered by the accused and rejected by me improperly rejected?
5. If question 4 is answered in the affirmative, was any substantial wrong or miscarriage of justice occasioned at the trial by such rejection?
6. Should the conviction stand?

105. See "Appeal Judges Freely Comment in St. Clair Case" *Toronto Daily Star* (26 November 1912) 1 [hereinafter "Appeal Judges Freely Comment"]; 12; "St. Clair Used Carbolic Acid, not a Perfume" *Toronto Daily Star* (27 November 1912) 4; "'I Would Have Acquitted,' Says Mr. Justice Garrow" *Evening Telegram* (26 November 1912) 15; "Judges Comment on St. Clair Bulletin" *Toronto Globe* (27 November 1912) 9.

106. "Rev. Mr. St. Clair Cuts Loose and Gives House Numbers" *Evening Telegram* (25 October 1912) 21.

107. "St. Clair is Surprised," *supra* note 103.

exposing an improper picture.

Coincidentally, St. Clair was addressing the Vigilance Association, whose numbers were continuing to decline, around the same time. Commenting on the charges against Stair, St. Clair piously remarked that he hoped to see fair play for Stair. He also reported that he had seen worse displays than the poster in a recent trip to the Normal School to see what young people were learning. He and his companion came upon a mixed group of seventeen- to nineteen-year-olds engrossed in sketching a replica of the Venus de Milo. The Normal School also had replicas of many other classical statues, many of which were nude or semi-nude figures. St. Clair objected to the fact that boys and girls sat together poring over these figures, and he particularly objected to the thought of their studying, together, the nude male figures in the statuary. St. Clair remarked that he would rather have his daughter see Stair's picture than the statues in the Normal School.¹¹⁰

St. Clair's remarks touched off a maelstrom, which was reported mainly in the *Star* and *World*. Few supported his position; comments ranged from a polite distancing of the speaker from any association with St. Clair to stinging abuse for him and everyone remotely like him. Members of the Vigilance Association were kindest, with one member saying he agreed with St. Clair, several others refraining from commenting and some pointing out that they had very little to do with the Vigilance Association as a rule. The *Toronto World* seemed to find St. Clair's comments somewhat amusing,¹¹¹ but the *Star* editors obviously found them utterly hilarious and revealed for the first time more reservations than the *World* about St. Clair. The *Star*'s story was front page news, under the headline "Discovery by Mr. St. Clair Rather Late."¹¹² The subtitles gave the utterly unconcerned responses of spokesmen for prominent churches. The principal of the Ontario Art College was quoted as saying of St. Clair, "[h]e doubtless was doing useful work in

108. Despite supporting St. Clair in his earlier attacks on prostitution (see *supra* note 19), when St. Clair attacked the Star Theatre, *Jack Canuck* turned on him. It ran several articles highly unflattering to St. Clair, suggesting among other things that he was insincere in his campaign against the Star Theatre and was interested only in selling Bell's book on the white slave trade. St. Clair launched a libel suit, claiming \$50,000 in damages. *Jack Canuck* then stepped up its attempts to discredit and abuse St. Clair by sending a woman or women to him with the intention of entrapping him in a compromising situation, by hiring a detective agency to tail him, and by arranging to have threatening telephone calls made to him. St. Clair enlarged his claim, alleging that Rogers, Stair and others had entered into a conspiracy to destroy his reputation. Despite rebukes by the court in interim proceedings for contempt, *Jack Canuck* continued its tirades against St. Clair in several issues around the end of 1912 and beginning of 1913. The *Star* mentioned this case on its front page but did not set out exactly what St. Clair was alleging had been happening to him. The *Telegram* buried the information in a small column deep in the paper, as if allegations of conspiracy would probably reflect badly on St. Clair and this was undesirable. Possibly this campaign arose because the Jack Canuck Publishing Company rented its quarters from Fred Stair, but there were probably other financial dealings between Rogers and Stair as well. The legal proceedings in this case were hard-fought, even vicious, with a multiplicity of applications and appeals from these applications. See *St. Clair v. Stair et al.*, *supra* note 9; *St. Clair v. Stair* (1913), 4 O.W.N. 645, 23 O.W.R. 740; *St. Clair v. Stair* (1913), 4 O.W.N. 731, 23 O.W.R. 930; *St. Clair v. Stair* (1913), 4 O.W.N. 808, 24 O.W.R. 45; *St. Clair v. Stair* (1913), 4 O.W.N. 1141, 24 O.W.R. 450; *St. Clair v. Stair* (1913), 4 O.W.N. 1437, 24 O.W.R. 707; *St. Clair v. Stair* (1913), 4 O.W.N. 1486, 24 O.W.R. 764; *St. Clair v. Stair* (1913), 4 O.W.N. 1562, 24 O.W.R. 985; *St. Clair v. Stair* (1913), 5 O.W.N. 28, 25 O.W.R. 40; *St. Clair v. Stair* (1913), 5 O.W.N. 28, 25 O.W.R. 40; *St. Clair v. Stair* (1913), 5 O.W.N. 269, 25 O.W.R. 949; "Get After Jack Canuck" *Evening Telegram* (23 November 1912) 31; "Many Writs Issued by R.B. St. Clair" *Toronto Daily Star* (27 December 1912) 1; "'Conspiracy,' Says St. Clair" *Evening Telegram* (27 December 1912) 9; "Our \$50,000 Libel Suit" *Jack Canuck* (28 December 1912) 17; "Mr. Stair Beards the Lion" *Evening Telegram* (4 January 1913) 8; "St. Clair Wants Editor Forced to Make a Reply" *Toronto Daily Star* (8 January 1913) 7; "Is There Change in Front?" *Evening Telegram* (8 January 1913) 17; "Wants Editor to Answer" *Toronto Globe* (9 January 1913) 9; "Good Faith Was Not Proven" *Evening Telegram* (30 January 1913) 13; "Wished Speak for Himself" *Evening Telegram* (3 February 1913) 10; "Motion to Commit Editor" *Evening Telegram* (8 February 1913) 27; "Both Guilty of Contempt" *Evening Telegram* (10 February 1913) 9.

After the Stair trial, the *Telegram* and *World* gave St. Clair an opportunity to rehabilitate his reputation by publishing a letter from him in which he described what had been happening to him: "Put Behind Bars Like Thug" *Evening Telegram* (13 January 1913) 6 [hereinafter "Put Behind Bars"]; "St. Clair Was a Spectator" *Evening Telegram* (7 February 1913) 29; "Another Judge for Second Stair Case" *Toronto World* (14 January 1913) 1, 9 [hereinafter "Another Judge"].

The court file ends in mid-March, when default judgment was entered in St. Clair's favour. See also "Judgment for R.B. St. Clair" *Evening Telegram* (15 March 1913) 29.

attacking vulgarity in the theatres, but it is absurd to attack the great works of classic art on that score.” Someone, described as a “prominent moral reformer,” said “I saw those statues thirty years ago when a lad ... but did not see anything objectionable in them. Perhaps it was because they were shown to me in the right way, by the proper people.” A *Star* writer had gone to the Normal School himself. He saw three statues at the foot of the stairs, none of which apparently displayed private parts. “One [was] labeled ‘Euterpe,’ another ‘Urania,’ and the other ‘Take the Stair to the Right.’” The students, reported the writer, were serious and taken up in their work. They were supervised.

Mayor Hocken commented on the difficulty of appointing censors, claiming that even the angel Gabriel would be seen by St. Clair as inadequate to the task. Controller McCarthy, a member of the Committee of Forty, called St. Clair’s comments “poppycock.”¹¹³ The *Star* cheerfully reported on a resignation from the Vigilance Association a few days later.¹¹⁴

As one would expect, *Saturday Night* also ridiculed St. Clair’s remarks. Complete with wild inaccuracies, here is what it said:

R.B. St. Clair, self-appointed censor of morals, has now discovered that the Provincial Art Gallery, Toronto, possesses a Venus de Melos [sic] without a shirtwaist and an Aphrodite without trousers or skirt. “On the second floor,” said St. Clair, spouting before a handful of people who are evidently all tarred with the same stick, “I saw various so-called works of art, the details of which I cannot describe to a promiscuous audience.” And he had looked upon copies of the world’s greatest art! It is full time that St. Clair was introduced to a convenient subcellar and bottled up.¹¹⁵

With the Normal School incident, St. Clair demonstrated that he lacked the cultural competence to recognize art or to see the Normal School as it was supposed to be seen.¹¹⁶

Another possible dimension of St. Clair’s misstep was that he seems to have assumed that all representations of human bodies were necessarily corrupting. As set out in chapter four, Canada’s sexual hygiene movement in Canada would have disagreed vehemently with this view and had doubts about St. Clair’s claim to belong in moral reform circles.

As well, as I described in chapters three and four, Lord Cockburn in *Hicklin* assumed that obscene material was immediately recognizable to anyone and although it had a certain place in the hands of highly cultivated men of means, it was morally corrosive to the impressionable young, especially women, and to

109. This case was traversed from court to court for many months, and Stair was eventually acquitted after being tried without a jury in the York County Court before Judge Morgan on 2 and 3 June 1913. He was defended by Herb Lennox and prosecuted by R.H. Greer. See AO, Minutes of York General Sessions, RG 22-94; General Sessions case file RG 22-5871, 187-12; York Criminal Assize Clerks’ Indictment Reports, RG 22-391; York County case file RG 22-5870, 119-13. See also *R. v. Stair* (1913), 24 O.W.R. 689; “Theatre Owner Sent for Trial” *Toronto Daily Star* (28 November 1912) 1.

110. “St. Clair is No Longer Rev.” *Evening Telegram* (5 December 1912) 26 [hereinafter “No Longer Rev.”]; “Discovery by Mr. St. Clair Rather Late” *Toronto Daily Star* (4 December 1912) 1 [hereinafter “Rather Late”]; “St. Clair Shocked in Normal School” *Toronto World* (4 December 1912) 1 [hereinafter “St. Clair Shocked”]; “Resigns from Office in the St. Clair Association” *Toronto Daily Star* (5 December 1912) 20 [hereinafter “Resigns from Office”].

111. “St. Clair Shocked,” *supra* note 110.

112. “Rather Late,” *supra* note 110.

113. “More Publicity in the Control of Police Force” *Toronto Daily Star* (4 December 1912) 5 [hereinafter “More Publicity”]; “Commission of Five Favoured” *Toronto World* (5 December 1912) 3 [hereinafter “Commission of Five”].

114. “Resigns from Office,” *supra* note 110.

115. “Front Page” *Saturday Night* (14 December 1912) 1.

116. As I describe elsewhere, this is the competence that obscenity law came increasingly to rely on in the twentieth century. See Ian Hunter, David Saunders & Dugald Williamson, *On Pornography: Literature, Sexuality and Obscenity Law* (Houndsmills, England: MacMillan Press, 1993) at 138.

the working classes. At the Normal school, the would-be teachers who were sketching the nude statue were in the process of acquiring the training that would make them more highly cultivated and allow them to appreciate, both artistically and morally, classical art, including nudes. (It is not clear that they were acquiring the sophistication to use pornography, but they were taking themselves out of the class that was in need of monitoring and regulation.) Another possible explanation for St. Clair's reaction is that he was suspicious of the idea that the bourgeois mind could or should be schooled to handle suggestive material, to subjugate arousal to the impression made on the mind by great art - the impression of the nobility of God's creation of the human form, for instance. St. Clair may, democratically, have assumed that if a representation would be harmful to a member of the working class, it would be equally harmful to a young teacher in the Normal School.

Alternatively, his error may have been gender based. Under the prevalent norms of criticism in Ontario, art and morality were linked (although it could not substitute for religion¹¹⁷), and training in it formed a necessary part of a sound education. This type of education was common for young men, but St. Clair may have been shocked by the idea that it was appropriate for young women, who, according to reticent sensibilities, were supposed to remain ignorant of the details of male anatomy until their wedding night. The outcry against St. Clair's remarks suggests that Torontonians disagreed with his assumption that young women should not or could not acquire the cultural competence to assess such art.

The argument about gender seems incomplete, however. St. Clair was not simply concerned that obscenity be channelled to its proper, male users. What he spoke of was the suggestiveness, the indecency of the scene, the possibility that improper sexual thoughts were coursing through the minds of the apparently serious students. To him, the Normal School was a potential school of vice. But being a newcomer to Toronto, he misread the cultural significance of the Normal School, and his error was compounded by the implicit comparison to his previous, notorious target, the Star Theatre. The Normal School was an essential component of the public school system in Ontario, a system that had been built from nothing over the past fifty years and of which most upper- and middle-class Ontarians were proud. The students in it were acquiring a cultural competence that was assumed to be essential to any educated person, and upon their educations the educations of others would rest. Liking it to the Star Theatre was something akin to blaspheming.

So far, this analysis makes it sound like the *Hicklin* test was readily applicable in the Toronto context: the Star Theatre was a place where the impressionable would be schooled in vice, and it had to be monitored; the Normal School was a place that taught a necessary cultural competency, and it did not. Toronto in 1912 was not England in 1868, however. St. Clair's comments did cause some people to think like Lord Cockburn, to consider the circumstances of exposure to material and to remark on the necessity of being exposed to classical nudes by the proper people, who would properly point out the high moral qualities in the nude human form. The other, more vehement (and democratic) response, however, was to insist that this was *art*.

Most of St. Clair's critics all but ignored the forum in which the Venus de Milo and the male nudes were presented and reasoned that because it was a work of art, it was morally edifying, not corrupting. This view represented a departure from the *Hicklin* way of thinking, which had it that a thing could be corrupting if displayed in the wrong context.¹¹⁸ It also demonstrates the understanding that art and morality were inextricable, an understanding that was already being undermined elsewhere in the Anglo-American legal

117. Rev. E.H. Gray reminded the Presbyterian Ministerial Association of this: "Should We Condemn Art?" *Evening Telegram* (9 December 1912) 19.

118. These observations are consistent with evidence given at the trial of Fred Stair in 1895 on the charge of exposing to public view an obscene picture, a playbill: see *R. v. F.W. Stair*, AO, York Criminal Assizes case file RG 22-392-0-8643, Box 259. In that case, Rev. William Galbraith testified, "In my opinion the theatre has generally an evil influence. I regard the nude statues at the Normal School as works of art. The tendency of them would be bad if publicly exhibited throughout the streets."

world where "literature" was being prosecuted for being obscene. Canadian taste, however, did not run to that kind of reading material, so the problem had not yet made itself felt. At that point, art and morality were considered firmly linked, and it was assumed that any educated person could recognize art and appreciate its morally edifying qualities. The legitimacy of the censorship campaigns of the WCTU, NCW, Methodist Church and other reform bodies depended on this assumption. St. Clair had been accepted, more or less, as a right-minded member of reform society. His assertions threatened to cast doubt on the right-mindedness of all other reformers. As I have pointed out, there had already been points of difficulty, where people had to admit that there was disagreement about the integrity of the field of indecency, and sexual hygiene tracts and the strong presence of women in public life were changing the face of the decent. St. Clair jeopardized the necessary certainty about the nature of the obscene by showing that moral reformers might not all have taste - he had to go.

Although St. Clair's removal from the public spotlight was probably prompted to some extent by the stigma of a criminal conviction and the outrageous behaviour of the forces behind *Jack Canuck*,¹¹⁹ the vociferous criticism of him that followed his off-hand remarks to the Vigilance Association was a major blow to his credibility. He had revealed himself to be unable to tell the difference between art and obscenity, a distinction that was assumed to be based on simple common sense. Comments in the newspapers emphasized St. Clair's American origins and his dropping of the title Reverend.¹²⁰ The religious press - even the *Canadian Congregationalist* - declined to comment on the Normal School incident. Through the fall of 1912, the Congregational Union of Canada moved toward permitting only ordained ministers with certain literary attainments to have ministerial standing in the Union, and it passed this resolution at its annual meeting in the spring of 1913.¹²¹

With the Normal School incident, then, St. Clair both demonstrated the instability of the idea of indecency and made a gaff with serious consequences for his public acceptability among not only moral reformers but also politicians and the newspaper writers. These different groups had different degrees of comfort with St. Clair's bulletin (possibly because they had different ideas of what was in it), but they were united in their disagreement with his assessment of the pedagogical practices of the Normal School, and they repudiated his simplistic, uncultured approach to obscenity.

Law Reform Movements

Efforts at law reform toward the end of 1912 and the beginning of 1913 revealed divisions among prosecutors, the concerned men of the city known as the Committee of Forty, and the Board of Police Commissioners. Late in December 1912, Controller McCarthy, a member of the Committee of Forty, proposed changes in the criminal law that would have placed almost the entire burden of keeping a show "clean" on the actor, rather than the proprietor of the building or the manager of the company. McCarthy said that once on stage, laugh-seeking, unprincipled actors often did unexpected things. Crown Attorneys Corley and Greer agreed that the proposals were unlikely to improve the situation, but for different reasons. Corley thought the present section was more comprehensive; Greer thought the amendments would be too rigid and hard to enforce.¹²²

At the Massey Hall meeting of 1 November, Toronto's upstanding men had resolved to call for better censorship and an increase in the size of the Police Board.¹²³ These proposals were bandied about by the

119. See *supra* note 108.

120. St. Clair told the Vigilance Association that the practice of the Congregationalists' United Brethren was to require a minister of that denomination to drop the title "reverend" after an absence of more than two years from active work: "No Longer Rev.," "Rather Late" and "St. Clair Shocked," all *supra* note 110.

121. UCA, Congregational Union of Canada, Minutes of Seventh Annual Meeting, 4-9 June 1913 at 431-33.

122. "Should Change be Made in Law Against Immoral Shows?" *Toronto Daily Star* (21 December 1912) 5; "Crown Attorneys Differ" *Evening Telegram* (17 December 1912) 15.

aldermen of Toronto and the Board of Control for several months.¹²⁴ There was much debate, particularly regarding the size of the Police Board, with the current members of the Board warning that making it larger would increase its susceptibility to being influenced by "politics" - including "foreign" elements - and non-Board members asserting that the reverse would happen.¹²⁵ Some of the concern seems to have been about the impact of "secret societies," such as the Orangemen, which had historically influenced the Toronto police.¹²⁶ But part of it also seems to have related to "foreign" moral reformers - perhaps St. Clair or the more extreme American sex reformers - who would not understand or properly assess Toronto society. Ultimately, despite the very widespread support for the movement, the Board remained as it was.¹²⁷

In developments reported mainly by the *Telegram* and *Globe*, the question of who would appoint a theatrical censor passed back and forth between the Police Commissioners and the Board of Control, and eventually the Police Commissioners agreed to do it.¹²⁸ They appointed William Banks, an editor at the *Toronto Globe*, who initially took on the responsibility on a part-time basis and after two months abandoned the *Globe* to work full-time for a salary of \$1800 per annum, with two assistants.¹²⁹ Shortly after Banks first took the job, *Jack Canuck*, in an "open letter," said this:

Dear Old William,- We note with pleasure that you have at last been given a job which fits you like the paper on the wall. If anybody can make the theatres of Toronto as "pure as the beautiful snow," you are the man.

But do not forget, dear William, that it takes all sort of people to make a world, and that men no more all think alike than politicians vote alike. In your years of service on the *Globe* newspaper you have been brought into touch with the shady side of politics. As you helped to rush [*sic*] off the barnacles from the ship of state in days gone by, so brush away the evils that cluster on the bottom of the theatrical ship in Toronto. And the good *Globe*, which worked so hard with you for that purpose, will, no doubt, back you up now.

The snows of many winters have whitened your hair, William, old friend, and, in your voyage through life you have no doubt found that mankind is neither all good nor all bad, any more than all the saints are in the audience.

Remember that many manly men and pure-minded women work for a living on the stage; be not prejudiced against them because of their calling, which, perhaps, in its way, has done as much for education as any trade. Remember that man needs amusement even as a plant needs water and sunshine. Pluck out the weeds in the garden, William, but be careful that you pluck out no flower at the same time.

123. See above, page 125.

124. "To Increase Police Board," *Evening Telegram* (4 December 1912) 15; "More Publicity" and "Commission of Five," both *supra* note 113.

125. "More Members for Police Board" *Toronto World* (21 December 1912) 10; "Abolish Three Committees Council Decides on Merger" *Evening Telegram* (21 December 1912) 28; "Keep Politics Out of It" *Evening Telegram* (30 January 1913) 25.

126. See Boritch, *supra* note 100.

127. Regarding the composition and role of the Toronto Police Commissioners Col. George Denison in his memoirs says, "As Police Magistrate I have always been a member of the Board of Police Commissioners; and the Board, which consists of the County Court Judge, the mayor and myself, has had the absolute control of the organization and management of the force"; G.T. Denison, *Recollections of a Police Magistrate* (Toronto: Musson Book Company, 1920) at 31.

128. "To Increase Police Board," *supra* note 124; "Women Police Suggested" *Evening Telegram* (11 December 1912) 24.

129. "Wm. Banks, Theatre Censor" *Evening Telegram* (26 December 1912) 20; "No Theatre Censor as Yet" *Evening Telegram* (8 January 1913) 8; "Col. Denison to Preside Over Police Board" *Toronto Globe* (8 January 1913) 8; "Junior Officers Are Dissatisfied" *Toronto Daily Star* (5 March 1913) 2; "Police Board Surprises" *Evening Telegram* (5 March 1913) 12; "Mr. Banks, Sen., Named Theatrical Censor" *Toronto Globe* (5 March 1913) 9.

Remember that the stage, in these days, is a great educator, and that all men do not desire to learn the same lessons. Whatever will make for brightness, for inspiration, and the driving away for a season of dull care, so long as it comes not in the guise of deadly sin, should not be expunged.

Let the players "hold the mirror up to nature," William, but don't forget that nature works in many forms. The Almighty moves in a mysterious way, sometimes, His wonders to perform. Many a good lesson has been taught on the stage, and what has driven it home to the heart of some man has been scoffed at by another.

Remember, too, William, that inasmuch as all men and women do not dwell in the same quarter of the city, neither do they all desire the same kind of amusement. What will tickle the fancy of one will send another to sleep. The music of the Salvation Army would grate on the feelings of those who go to Massey Hall to hear the Symphony Opera, but who will say that those who hear the Salvation Army do not enjoy the lusty thumps which they see the big drum get?

And, in conclusion, William, don't forget what your poet, Bobbie Burns, would have done were he censor of the theatres of Toronto. Would he have the songs sung to long meter? Not all the time. Would he have the bonnie forms of the ladies draped till their charms were hidden? You know he wouldn't, William. Would he have the racy joke left out because it might offend Holy Willie? Hoot, mon!

Take Bobbie Burns as your guide, William, and ye'll no gang far astray. A happy New Year, William, and may ye prosper in your censoring is the hearty wish o' yours truly,

JACK CANUCK¹³⁰

Note the sardonic note, the tone almost of warning, the reference to the entitlement of the working man to attend theatres that amuse him, the novel idea that theatres can be educational and particularly the relativist notion that what is considered art by some may rightly be considered otherwise by others. *Jack Canuck*, despite its claim to be all for making theatres "pure," trumpeted, in moderate, agreeable tones, its scepticism of extreme reformist impulses. The doubt was out in the open that all properly made up minds would agree on what was decent.

It seems, therefore, that just as the certainty that there was a stable notion of what was indecent and obscene was beginning its twentieth-century decline, the decision was made to appoint a publicly paid official as a censor. In other words, the community's own informal systems of control - not just censorship but taste - were threatened by a variety of forces, including the burlesque stage itself. Economic considerations were encouraging people like Stair to transgress the standards moral reformers were trying to maintain. It was time for the state to intervene. One aspect of the declining ability of community forces to control what occurred in the public realm of the theatre was the declining confidence that the clergy were the appropriate people to set the moral standards of society. This occurred even as members of the clergy led the charge against indecent theatrical performances.¹³¹ Not only was a public official appointed as a stage censor, but the stage purity campaign was taken over by the city's most prominent citizens - men who decided that the morality of the stage was too important to be left to the radical churchmen and staked their own credibility upon it. Even *Jack Canuck* appears to have approved cautiously of members of this group acting as the moral guardians of Toronto.

130. "Open Letter to Wm. Banks, Theatre Censor" *Jack Canuck* (11 January 1913) 10.

131. For example, the Moral and Social Reform Council of Canada weighed in too, regarding foreign plays coming into Canada: "Censorship by Plays" *Evening Telegram* (18 December 1912) 6.

The Stair Trial

After a brief foray in December 1912 in the court of General Sessions of the Peace, the case against Fred Stair and Daniel Pearce was, in January 1913, transferred to the Court of Criminal Assizes.¹³² The case, a press sensation, proceeded before Mr. Justice Middleton. The Crown prosecutor was Edmund Meredith, K.C., brother of the Richard Meredith who had heard St. Clair's appeal (and Sir William Meredith, who had since become Chief Justice of the Court of Appeal). Herb Lennox, K.C., M.P.P., appeared for Stair and J.W. Curry, K.C., for Pearce. Raney was present but St. Clair was not. Shearer was the main Crown witness, and his testimony opened with his sighting of boys in the theatre.

In the Stair trial, unlike the St. Clair one, it was necessary to describe the show. It was described as a variety show with a vaudeville and a court scene. The vaudeville performance was the one-act play "Murphy's Troubles." Recall that St. Clair's pamphlet set out that at one point, a father told his son that he had met a woman the night before. There was some dialog about how the father knew it was a woman he had met. The answer pertained to her legs, "one on each corner," and there was some bantering about what corner was in question. Although Middleton's benchbooks reveal that the same answer was given in court, the newspapers did not find it fit to print: clearly this was one place where St. Clair's pamphlet traversed the boundaries of decency.¹³³ As well, when the woman in the show refused to show off her legs and was told not to be "so damn stingy," some of the newspapers would not print the word "damn." The evidence was that "damn" was used throughout the *Darlings of Paris*. Shearer also described a dance, presumably the same modified "couchee-couchee" dance to which St. Clair had objected. Shearer said the dancers stood far too close together. He then went on to describe certain aspects of the courtroom scene, described earlier. Shearer had not heard any names used on the night he attended, so the naming of Archibald, Winchester, Riddell, Corley and Robinette did not go into evidence through him. Shearer mentioned a "sissified" policeman but seems to have said nothing more about the subject. He does not seem to have described the judge standing on his desk masturbating; perhaps this had been removed by the time he saw the show.

Lennox's cross-examination of Shearer was designed to show that Shearer held puritanical views. He was asked his opinion on theatres, dancing, horse racing, smoking, co-ed swimming and other things. To all of these questions Shearer hedged and said that he did not disapprove of them "as such," but he was forced to admit that he did not involve himself in them and did not exactly approve of them either. Middleton carefully prevented Shearer from giving an opinion on whether the performance was immoral or on whether double meanings were intended. Lennox clearly played the man of the world. Lennox's questions had an air that was by turns seductive and leering, which undoubtedly made Shearer extremely uncomfortable. To the great delight of the crowd in the courtroom, Lennox's cross-examination of Shearer on his description of the dance consisted of getting Shearer to demonstrate it. "I'm the lady," said Lennox, as he invited Shearer to put his arms around him. Shearer participated only briefly. Recall that in St. Clair's version of events, the man in this particular dance put his hand on the woman's buttocks and they danced around "in a most sensuous manner, imitating the act of copulation."¹³⁴ Undoubtedly Shearer deeply disliked having to perform the dance with Lennox. It seems doubtful that a judge today would allow such treatment of a witness. The *Star* enthusiastically recounted the details of Shearer's treatment by Lennox, thus again demonstrating its lack of the *Globe's* and *Telegram's* sense that these matters were of the utmost seriousness. It is a small detail, but Lennox's behaviour suggests that even the reformers' concern about homosexual acts may have been mocked in some circles.

Other Crown witnesses included Rev. Donald MacGregor, whose testimony and experience on the stand were similar to Shearer's, and William Marlette, of the Vigilance Association. Marlette alluded to St.

132. *R. v. Stair; R. v. Pearce*, AO, York Criminal Assize Clerks' Indictments Reports RG 22-391; Criminal Assizes case files RG 22-392-0-8991, Box 270 and RG 22-392-0-8992, Box 270. See also *supra* note 84.

133. Benchbooks of Middleton, High Court of Justice, AO, RG 22-472-1-6, December 1912 - April 1913.

134. St. Clair, "Bulletin," *supra* note 13.

Clair's bulletin, apparently under cross-examination, but, like the judges in St. Clair's appeal, neither Meredith nor Middleton wanted it admitted. Apparently it was, and Middleton referred to it on one occasion as "that wretched pamphlet." One other Crown witness was Inspector Kennedy. He apparently gave a similar description of the dance.

One of the women who had danced in the ragtime rag, Phyllis Foster, was called to testify to how far apart the dancers were. She testified that she would have kicked her partner if she had been standing as near him as Shearer said she had been. Unfortunately for the defence, she apparently giggled through much of her testimony, which probably weakened its impact. Her testimony was backed up by her mother, who apparently accompanied her on the burlesque circuit, and by others who had seen the show, including P.C. Bloodworth, a police censor. At one point in Bloodworth's testimony he mentioned a "cissified policeman" and when asked what he meant by that term answered "[o]ne of those willie fellows." Asked to clarify further, according to the *Telegram*, "[t]he witness then gave a remarkably funny imitation of just what was meant by a Willie fellow. The performance was so laughable that it was some few minutes before the faces of those in the court resumed their normal appearance." The *Telegram* declined to describe Bloodworth's actions, but the assumption seems to have been that at least a large segment of its readership would already know. The comic "sissified" policeman (the spelling varies continually in the newspaper reports) apparently appealed not just to the patrons of the *Darlings of Paris* but also to the players and audience in the courtroom and to the *Telegram*'s readership. The figure of the effeminate homosexual was one with which a broad swath of Toronto society was by this time familiar, and not everyone seems to have been as alarmed by it as was St. Clair.

Crown Attorney Meredith, in direct examination, did not ask Shearer who had accompanied him to the Star Theatre. Lennox, however, made sure that information came out under cross-examination. Association with St. Clair was, evidently, to be avoided if possible. It had been anticipated that he would be a witness for the Crown. Apparently he had expected to be called by the Crown to testify at the General Sessions in December. When the case was put over to the Criminal Assizes in January, the Crown lawyers first issued a subpoena but then told him he would not be called upon to testify after all. Feeling that it would be better to have a "neutral" witness, they told him to ignore their early subpoena. The defence then sent court officers to locate St. Clair, but he could not be found. Throughout the trial, the defence referred to him as "the man who cannot be found" and cast aspersions on his character. Middleton said it might be better that St. Clair had not appeared because he would be biased. Raney could not get in touch with St. Clair but attended at court, perhaps out of interest and perhaps to account as best he could for St. Clair's absence.

The *Star*'s coverage of the trial reveals that the cross-examination of persons like Shearer and MacGregor was considered highly entertaining. A great deal of space was devoted to it, and one gets the sense that the *Star* considered Shearer's description of the dance to have been effectively rebutted by Foster and the others who backed her up. The *World* seemed less sure of which case was stronger, but it gave a great deal of space to the defence evidence and to the addresses to the jury given by Lennox and Curry, which appear to have centered on the theme that R.B. St. Clair's evil mind was the root of all trouble. The *World* was also the least reticent about giving detailed descriptions of the testimony that described the content of the *Darlings of Paris*. The *Telegram* and the *Globe* seem to have preferred the Crown's case: although Shearer and some of the other Crown witnesses looked severe at some points and silly at others, they were inherently believable and they confirmed the common view of the Star Theatre. The *Telegram* provided fairly even-handed coverage but downplayed the extent to which the credibility of the Crown's ministerial witnesses was undercut by Lennox's cross-examinations. St. Clair remained much more popular with the *Telegram* than with the *Globe*. The *Globe* made much of St. Clair's absence from town, calling him a "crusader" and referring to the eagerness with which his "enemies" awaited his cross-examination. The *Telegram*, on the other hand, paid attention to St. Clair's reasons for not appearing, canvassing not only Raney's hypotheses but also those of Rev. Coburn.

As noted, Mr. Justice Middleton permitted Stair's lawyer, Lennox, to make a fool of Rev. Shearer by

involving him in a dance. He also permitted Pearce's lawyer, Curry, to "[engage] Rev. Mr. McGregor in a debate over their respective claims to bucolic upbringings and rigid old-time Presbyterian associations." In addressing the jury he advised them that they were the sole judges of whether the performance was immoral, indecent or obscene. He adverted to the possibility that Dr. Shearer might have been too sensitive.¹³⁵

Middleton's response to Shearer and his evidence is consistent with his background. Middleton was fairly young for a judge, having been appointed to the Bench only in 1910 at the age of fifty-one. He was born Anglican but had married a Presbyterian and attended the firmly established St. Andrew's Presbyterian church in Toronto. He seems to have opposed church union and continued to attend St. Andrew's after it stayed out of the United Church in 1925. Middleton probably falls into the class of people that Brian Fraser describes as having mutely, with their pocketbooks and their feet, resisted the efforts of Shearer and others to reform the working class.¹³⁶ With this background, one would expect him to consider himself a right-minded, Christian member of society, but not a reformer.

However, when the jury brought in its verdict - not guilty with a caveat that those who censor plays must attend better to their duties in the future - Middleton was outraged. He said he could not understand how even on the defendants' own evidence *The Darlings of Paris* could be otherwise than obscene. Evidently he doubted the legitimacy of the clergy's claim to set Toronto's moral standards, but the *Darlings of Paris* was not a hard case in his eyes. Anyone with a modicum of decency could have seen that it was terribly obscene. After the judge's outburst, Lennox asked that the other case against Stair (regarding obscene pictures) be put over to the next assizes on the grounds that Stair would be unable to get a fair hearing before Middleton. The judge granted this request though displaying "some show of indignation" at the characterization of himself as biased - he responded that he hoped it would be possible to get "a jury more competent to act as moral censors" as well. Middleton condemned the play, despite the jury's verdict, and said the Department of Justice had been brought into disrepute. Middleton seems to have shared the moral reformers' view of the indecency of the play, despite his lack of agreement with their claim to be appropriate censors.¹³⁷

What did the jury think? There are some suggestions. After deliberating for some hours and apparently being divided, the jury came back in and asked if it could bring in a verdict of not guilty with a rider censuring those whose job it was to censor the theatres. Middleton initially told them that they could not, but they could find Stair and Pearce guilty and make a recommendation of mercy. Lennox and Curry

135. These articles described the proceedings and evidence in the Stair trial: "Dances in Court with Lawyer to Show How Wrong it Was" *Evening Telegram* (10 January 1913) 15; "Expect St. Clair to Return" *Evening Telegram* (10 January 1913) 15; "Dr. Shearer and Others" *Evening Telegram* (11 January 1913) 12; "Dancer in the Witness Box" *Evening Telegram* (11 January 1913) 14; "May Drop the Prosecution" *Evening Telegram* (11 January 1913) 33; "Put Behind Bars," *supra* note 108; "Want Mr. St. Clair as Crown Witness" *Toronto Globe* (10 January 1913) 7; "Are Likely to Drop Case Against Stair" *Toronto Globe* (11 January 1913) 8; "Stair Not Guilty but Show Condemned" *Toronto Globe* (13 January 1913) 1 [hereinafter "Stair Not Guilty"]; "Clergyman and Lawyer Tried to Imitate a Dance" *Toronto Daily Star* (10 January 1913) 1, 19; "Stair's Name was Not Struck Off" *Toronto Daily Star* (11 January 1913) 1, 18; "Objects to Ordinary Waltz" *Toronto Daily Star* (11 January 1913) 7; "Says Mr. St. Clair Will Come Back to the City" *Toronto Daily Star* (11 January 1913) 18; "Jury Acquitted Stair but Censured his Show" *Toronto Daily Star* (13 January 1913) 4 [hereinafter "Jury Acquitted Stair"]; "Star Defence Revives the St. Clair Case" *Toronto World* (12 January 1913) 1; "Ragtime Rag Wasn't So Bad, Says Actress" *Toronto World* (12 January 1913) 5.

136. See John D. Arnup, *Middleton: The Beloved Judge* (Toronto: McClelland & Stewart, 1988) at 160-61. Regarding the attitude of members of strong Toronto and Montreal Presbyterian congregations to moral reform efforts and union, see chapter two, page 30, page 34 and page 35 *et seq.*

137. These articles describe the verdict and Middleton's response: "Judge Disgusted at Verdict in Darlings of Paris Case" *Evening Telegram* (13 January 1913) 6; "Wants Different Judge So Second Case Goes Over" *Evening Telegram* (14 January 1913) 24; "Stair Not Guilty," *ibid.*; "Judge and Counsel in a Lively Tilt" *Toronto Globe* (14 January 1913) 1; "Jury Acquitted Stair," *ibid.*; "Stair May Have a Change of Venue" *Toronto Daily Star* (14 January 1913) 7 [hereinafter "Change of Venue"]; "Star Managers Not Guilty" *Toronto World* (13 January 1913) 1, 2; "Another Judge," *supra* note 108. See also *R. v. Stair*, *supra* note 109.

objected, so Middleton recalled the jury and retracted that statement. Accordingly, the jury attached this rider:

It is with exceeding great difficulty that we bring in a verdict of not guilty, but the jurors wish the citizens to know that they feel that the proprietors and those in charge of show houses cannot be too strongly censured for allowing such plays as this, suggesting anything that is immoral, indecent or obscene.

The rider is so strongly worded that it suggests that the jury - or at least some of them - had no doubt the performance was obscene but felt that for some other reason, convictions could not be entered. Middleton postulated that they frequented the Star Theatre. Possibly some jurors thought the performance offended good taste but was not criminal. Another reason, which appears from some interviews with jurors and overheard conversation that the *Telegram* reported on, is that the jury thought it was unfair to convict Pearce (and by extension Stair) when he had complied with all of the requests of the police censors. With respect to Stair, throughout the trial, the defence argued that his name should not even appear on the indictment because he had not been in the country when the *Darlings of Paris* went up and could not therefore be responsible for it. Middleton appears to have thought he was likely covered by the *Criminal Code* provisions (s. 208), and Lennox apparently dropped this objection when he asked the jury for an acquittal. But according to the *Telegram*, the jury may nonetheless have been impressed with this argument. Perhaps also there was a suspicion that the show's vulgarity was really the fault of the actors or of the manager (who was probably American and who could not be found to testify). Another possibility is that the well-connected Herb Lennox stacked the jury by adding two intractable jurors who refused to convict. In his memoir, John Coburn attributes the verdict to this cause.¹³⁸

The newspaper reports of the *Stair* case evidence a good deal of enjoyment of the events, especially of the prospect of very straight-laced people like Shearer being made to look foolish. They also, however, demonstrate a certain restraint. Distances are described but positions of hands and sexual gestures are not. If Shearer described the police officer in the court scene as anything but "sissified," the newspapers did not say so, and given the opportunity to describe what such a person was like, the *Telegram* edged away, taking refuge in what many people, at least, already knew about the figure of the effeminate homosexual. The practices of reticence - the tasteful protection of the public sphere from indecency - are evident. However, the *Stair* trial underlines the discomfort that many, including Middleton and the writers for the *Toronto Daily Star*, felt with allowing a person like Shearer or St. Clair to set moral standards for Toronto.

After the Stair Trial

All of the newspapers were astounded by the verdict. Apparently at the instigation of John Coburn, John Shearer and W.E. Raney, the *Globe's* editor, the Presbyterian James A. Macdonald, ran a scathing response featuring the jury's verdict in a separate box with the heading "The Jury's Paradox."¹³⁹ Police Chief Grasett responded to the verdict in the *Star* by tactfully avoiding the expression "I told you so."¹⁴⁰ Toronto's Ministerial Association condemned the verdict, commended Middleton for his comments, called for revocation of the licence and pronounced its support for the Committee of Forty.¹⁴¹

138. "Jurymen Don't Like to Talk on Verdict in Stair Case" *Evening Telegram* (13 January 1913) 13; "Stair Not Guilty," *supra* note 135; "Change of Venue," *ibid.*; "These Are Jurymen Who Freed Stair" *Toronto World* (13 January 1913) 14 [hereinafter "These Are Jurymen"]; Coburn, *supra* note 21 at 123-24. L.W. Conolly accepts that stacking the jury was a practice of Lennox's: "The Man in the Green Goggles: Clergymen and Theatre Censorship (Toronto, 1912-13)" (1980) 23 *Theatre Hist. in Can.* 111 at 112.

139. "Stair Not Guilty," *supra* note 135. In Coburn's memoirs, *ibid.* at 127, he claimed that he, Shearer and Raney had inspired the positioning and tone of the article.

140. "These Are Jurymen," *supra* note 138.

141. "Another Judge," *supra* note 108.

Around the time of the Stair trial, there was much controversy about whether or not the police had the power to revoke the Star Theatre's licence. There was a history of local by-laws and provincial legislation providing for the licensing and censorship of such things as travelling shows, circuses and, more recently, cinematographs.¹⁴² Section 583 of the *Municipal Act*, R.S.O. 1903, c. 19, as amended up until December 1912,¹⁴³ stated:

583. By-laws may be passed by the councils of the municipalities or Boards of Commissioners of Police and for the purposes of this section respectively mentioned, that is to say:

By the councils of townships, towns and villages and of cities having less than 100,000 inhabitants, and by the Board of Commissioners or Police in cities having 100,000 inhabitants or more:-

10. For preventing or regulating and licensing exhibitions held or kept for hire or profit, theatres, music halls, bowling alleys, moving picture shows where vaudeville performances are introduced and other places of amusement and for prohibiting the location of any of such places of amusement, or a particular class of the same, on any street or section of street to be named in the by-law.

The Police Commissioners held the opinion that their power to prevent or regulate and license did not include the power to revoke licences once they were granted. Around 8 January 1913, Mayor Hocken put forward the novel idea that if there was no power to revoke licences, greater control could be maintained over theatres by granting licences for three-month terms.¹⁴⁴ However, on 7 January, before Stair's case even went to trial, the Police Commissioners snubbed moral reformers and resolved to renew the Star Theatre's licence for another year. In response to questioning by the *Telegram*, Chief Grasett said the prevailing legal opinion was that without new provincial legislation (not expected for another two months), a theatre licence could not be revoked once it had been granted.¹⁴⁵ "So there," he seemed to say.

A week after the Stair verdict, the grand jury, in its report, commented critically on the verdict, the rider and the renewal of the licence. The sitting judge concurred.¹⁴⁶ The Committee of Forty was also outraged about the licence renewal and sent a delegation to the Board of Police Commissioners. While distancing their Committee from St. Clair's Vigilance Association, Rev. Shields and James Ryrie demanded that the licence be revoked. The Commissioners said they lacked the power. They pointed out to former mayor Joseph Oliver, who lectured them as well, that he had, as mayor, favoured keeping the Star Theatre open; Oliver said he believed that it should be regulated more closely. Charles O'Donnell, spokesman for the International Alliance of Theatrical Stage Employees, argued against the closure of the theatre on behalf of the many workmen who would lose their jobs. He said it was unfair for the Committee of Forty to attempt to close the workingman's place of amusement while leaving open the more expensive theatres where similar things happened. The *Star* picked up only that he objected to the closure of the workingman's place

142. See e.g. *Consolidated Municipal Act*, R.S.O. 1903, c. 19, s. 549(1), regarding indecent or demoralizing posters, writings or other pictures; *The Travelling Shows Act New*, S.O. 1911, c. 63; *The Theatres and Cinematographs Act*, S.O. 1911, c. 73, and *Theatres and Cinematographs Amendment Act*, S.O. 1912, c. 54; City of Toronto, By-law No. 50, licensing dramatic performances and exhibitions (20 August 1840); City of Toronto, By-law No. 207, amending 1840 by-law (4 August 1853); City of Toronto, By-law No. 477, requiring certain licences for theatrical productions (26 October 1868); City of Toronto, By-law No. 781, amending 1868 by-law (12 March 1877); City of Toronto, By-law No. 4309, *License Prices* (22 February 1904).

143. See *Consolidated Municipal Act*, R.S.O. 1903, c. 19, s. 583, as amended by S.O. 1908, c. 48, s. 15 and S.O. 1911, c. 57, s. 12.

144. "Theatre Licenses" *Toronto Daily Star* (8 January 1913) 7; "Three Month Licenses?" *Evening Telegram* (8 January 1913) 15.

145. "Star License is Renewed and Can't be Revoked" *Evening Telegram* (14 January 1913) 13; "City Can Revoke Licenses" *Evening Telegram* (18 January 1913) 32; "Effective Check on Play Houses" *Toronto World* (19 January 1913) 2.

of amusement, and it buried this observation toward the end of the article. The *Globe* treated his remarks in a similarly offhand way, and the *Telegram* all but ignored O'Donnell, except to identify him as a spokesperson for the Stair interests. Clearly what the working men themselves thought were their interests would have little impact on moral reformers, city politicians or the newspapers.

After all the demands, Denison told the committee that Stair had been given his licence and it was not going to be revoked, particularly since the jury had let Stair go. He made it clear that he would not listen to any more impertinent lectures.¹⁴⁷

Soon afterward, changes to the *Municipal Act* were proposed and passed in the legislature, which explicitly gave the police commissioners the power to revoke theatre licences.¹⁴⁸ Nevertheless, there was still debate over whether it would be possible, even under the new legislation, to revoke a licence. Although it is unclear why, the police evidently still did not want to revoke the Star Theatre's licence.¹⁴⁹ William Banks was the official censor and Rev. John Coburn, representing the Committee of Forty, took over the unofficial post of moral reformer in charge of monitoring theatres, especially the Star.¹⁵⁰

St. Clair's Appeal

In a decision handed down 26 February 1913, the Court of Appeal refused St. Clair's appeal. Mr. Justice Richard Meredith wrote for himself and Mr. Justice Garrow. Justices Magee and Hodgins concurred with him in the result and Mr. Justice Maclaren was the sole voice of dissent. Two judges's rhetorical strategies demonstrate a kind of crisis about how to speak of a matter that clearly appalled them. Malcolm Dean's description of the *Darlings of Paris* as "mildly suggestive"¹⁵¹ should not dull the late twentieth-century reader's sensitivity to how repulsive the *Darlings*, and even more so, St. Clair's bulletin, were, not just to moral reformers but to the judges and lawyers who had to deal with them. The matters were so bad that no one on the Court of Appeal even mentioned the name of the production.

The first question in the case Judge Denton stated for the Court of Appeal said, "[w]as the bulletin obscene printed matter tending to corrupt morals, within the meaning of s. 207, sub-sec. 1(a) of the Code, having regard to the form in which it was proved to have been circulated by the accused?" This point was not addressed at any length, but it seems that Raney attempted to make an argument, consistent with the rule in *Hicklin*, that the circumstances of distribution of the obscene matter were key to the legal outcome. There is an echo of a qualified privilege argument here. Raney was not fundamentally challenging the obscenity

146. "Call Theatres Plague Spots and Score the Police Department" *Evening Telegram* (21 January 1913) 21. Included in their remarks to Mr. Justice Middleton were these comments:

The Bills we had to deal with were few. The first case we dealt with, viz., the Star Theatre, the City Morality Department submitted evidence which we considered conclusive, and thus reported a true Bill. In our judgment, we cannot [sic] allow this case to pass without expressing our amazement at the findings of the 'Petty Jury', which in itself is a self-contradiction [sic] as they said in their findings as follows: 'The Jurors wish the Citizens to know that they feel that the proprietors and those in charge of Show Houses cannot be too strongly censored for allowing such plays as this, - suggesting anything that is immoral, indecent or obscene.['] Their verdict in the face of the above, especially with the History attached to this public resort, may be considered very illogical and extraordinary. This verdict might be excused but the civic authorities of the Good City of Toronto cannot. The Police Department are either incompetent or utterly indifferent to the morals of the young men of Toronto; if not, why license an indecent, obscene or questionable show?

The grand jury's report is contained within the case file on *R. v. Stair and Pearce*, *supra* note 132.

147. "Want to See Commissioners" *Evening Telegram* (22 January 1913) 25; "Clergymen Want to Argue Star Case" *Toronto Globe* (22 January 1913) 9; "Plain Talk to Police Board for Licensing Star Theatre" *Evening Telegram* (5 February 1913) 8; "Police Board Points to Theatre Censor" *Toronto Globe* (5 February 1913) 9; "Police Commissioners Will Not Revoke Star Licence" *Toronto Daily Star* (5 February 1913) 7.

148. See "Police May Revoke Theatre Licenses?" *Toronto Daily Star* (7 February 1913) 2; *Municipal Institutions Act*, S.O. 1913, c. 43, s. 420(3).

149. "Can They Close Theatre?" *Evening Telegram* (17 February 1913) 22.

of the pamphlet's text. This argument and the general question of the pamphlet's obscenity were not addressed at any length. Hodgins's judgment makes it clear that Rancey dropped this line of defence at the outset of his argument.¹⁵² Any necessity for the judges to read the pamphlet, therefore, disappeared as the case passed to the question of justification. The judges' dislike of the material is consistent with the newspapers' coverage of events throughout, being an attempt to say and know as much as is necessary to make matters comprehensible but no more.

The first judgment in the reported case, and the only one that appeared in the *Ontario Weekly Notes*, was Richard Meredith's, with which Garrow concurred. At sixty-five, Meredith was one of the older members of the Bench that heard St. Clair's appeal. He came from an established, Conservative, Anglican legal family in London, Ontario, which included his brothers William Ralph Meredith, who had been appointed Chief Justice of the Court of Appeal by the time the appellate verdict in St. Clair came down; Edmund Meredith, who prosecuted Fred Stair; and Thomas Graves Meredith, a London solicitor. Most of the brothers had practised law together at one time or other.¹⁵³

Meredith's judgment demonstrates what can only be called outrage. It seems to represent a singular moment in his judicial career. Although his judgments often took a somewhat colloquial tone, none of them were anything like this one - ordinarily he reviewed evidence, made generous reference to cases and statutes and occasionally punctuated moments of indignation with rhetorical questions and other small flourishes. But these other judgments were nothing like his decision in *St. Clair*. In *St. Clair*, Meredith's syntax careered dramatically along, pulling no punches along the way. He referred to the Bible, relied on clichés and common sayings, and invoked the language of cleanliness and godliness. His judgment seems more prophetic than legal. His assessment of the defence of justification began with the biblical-sounding words "[n]either a good nor a bad motive can alter the character of the act, in such a case as this. If unlawful, a good motive will not make it lawful, nor if lawful, will a bad motive make it unlawful..."¹⁵⁴ He would have preferred the use of ordinary legal methods, a speedy trial and a speedy conviction "all done," in commonplace New Testament idiom, "almost without letting the one hand know that which the other hand had accomplished."¹⁵⁵ Meredith assured his readers that "the arm of the law was long and strong enough to deal effectually with immoral theatrical performances..."¹⁵⁶ and that "[i]t cannot be in the real interests of any one that a mountain should be made of a molehill of indecency, when that molehill could and should have been crushed under one foot."¹⁵⁷

He also said, embarking on his assessment of the defence of justification, "[s]o, too, the truth or falsity of the publication cannot change the character of the words used; it can neither turn decent words into indecent words, nor foul into fair."¹⁵⁸ Again, I think this sounds like King James Version argumentation, but the ear is also drawn to the allusion to *Macbeth*: "Fair is foul, and foul is fair, / Hover through the fog and filthy air."¹⁵⁹ This line sets the stage for the rest of the play, in which foul and fair are strangely mixed

150. "Keep Close Watch on Star Theatre" *Toronto Daily Star* (22 February 1913) 3; "Are Watching the Theatre" *Evening Telegram* (22 February 1913) 31; "Two Star Performances Were Vastly Different" *Toronto Globe* (22 February 1913) 8; "Rev. John Coburn Gets Assistant Pastor" *Toronto Daily Star* (15 April 1913) 8. Shortly thereafter Coburn attracted a fair amount of ridicule, described particularly by the *Star* but touched on by the *Toronto Globe*, for attending a performance at the *Star* wearing a fake mustache and heavy green goggles: "Citizens' Committee Rather Reticent About Coburn's Burlesque Disguise" *Toronto Daily Star* (1 April 1913) 1; "Rev. John Coburn Went to Burlesque Show in Disguise" *Toronto Daily Star* (1 April 1913) 4; "Clergyman at Star Wearing a Disguise" *Toronto Globe* (1 April 1913) 8. L.W. Conolly discusses this incident and the inevitable conflict between the unofficial and official censor, which broke a few months later over Legrand Howland's *Deborah*, a play about the right of all women to be mothers, married or not: *supra* note 138, and *infra*, note 190 and accompanying text.

151. See Malcolm Dean, *Censored! Only in Canada: The History of Film Censorship - the Scandal Off the Screen* (Toronto: Virgo Press, 1981) at 7.

152. *St. Clair*, *supra* note 1 at 358.

153. Law Society of Upper Canada Archives [hereinafter LSUC], "Richard Martin Meredith," Ontario Bar Biographical Research Project Database 1990- [hereinafter OBBRP]; "William Ralph Meredith," OBBRP; "Thomas Graves Meredith," OBBRP; LSUC, Series 21-01, Past Members' Records, Member Record Cards, "Edmund Allen Meredith," File 5879.

(particularly difficult to sort out is whether the witches' prophecies are for good or evil - and like Scotland, Toronto was in trouble when these matters became confused). The main issue in *St. Clair* was whether St. Clair's circular was foul or fair. As with the witches' prophecies, the issue was how to understand it. And as an audience tends to do with the witches' prophecies, Meredith came to the conclusion that the world would have been better off without St. Clair's circular.

The typically moral reformist language of cleanliness is combined, in Meredith's judgment, with the idea that obscenity is a kind of poison and with the reticent sensibility's desire to prevent the private sphere from exposure to material that would coarsen it. The language of pollution is ubiquitous and recalls the comparisons Rev. Shields and James Ryrie drew between the Star Theatre and an open cesspool in front of City Hall. Soon after the *Macbeth* allusion, Meredith called the pamphlet an "invasion" of decency. He said "[n]o one has any sort of right to offend another's sense of decency and clean mind by placing in his hands, or bringing into his home, such a publication."¹⁶⁰ Later he described the bulletin as "'unprintable' filth" and said St. Clair could have adopted other tactics "without contaminating pen or tongue with the condensed disgusting details."¹⁶¹ Meredith said the ministers to whom St. Clair addressed his circular would have been more effectively aroused to a sense of duty by "clean and wholesome words."¹⁶² Meredith combined the language of medicine and healing with old sayings like "an ounce of prevention is worth a pound of cure":

An ounce of ordinary every-day legal methods ... is far more effectual than a ton of hysterics. If the performance were as bad as the learned trial Judge ... declares it to have been, an ounce of ordinary methods ought to have, and doubtless would have, resulted in a speedy Police Court trial and a speedy conviction and imprisonment for the offenders, the surest of cures for such offences, and the surest of preventives also....¹⁶³

The legal system was a dispenser of health, potions for preventing and curing diseases of the body politic. Elsewhere Meredith referred to the play's immorality as a "nauseous subject" permeating the atmosphere of the locality. All of these linguistic habits were characteristic of the moral reform discourse of the time and of the approach to obscenity that understood it as an invasion of the private lives of individuals.

Meredith found that the defence should fail because St. Clair had failed to establish that all the

154. *St. Clair*, *supra* note 1 at 352-53. This passage seems to me to echo Leviticus 5: 2-3, which establish that a person who unintentionally touches anything ritually unclean is unclean and guilty upon realizing what he has done. There is also an echo of Acts 11: 1-10, in which the apostle Peter has a vision of being three times invited, by a heavenly voice, to eat some creatures that have descended from heaven; Peter refuses all three times, saying that he will not eat anything unclean: the voice tells him that what God has cleansed is no longer to be considered unholy. The parable, of course, is about refusing to minister to the Gentiles; Peter next describes being shown that he must abandon the prejudice he demonstrates in his response to the heavenly voice. Even though the message of this passage is the opposite of the message in Meredith's judgment, the point is that the language has a biblical echo and cadence. Finally, contrast Meredith's logic to that in the statement "it is not what goes into a person's mouth that makes him ritually unclean; rather, it is what comes out of his mouth that makes him unclean" (Mathew 15: 11; Mark 7: 15). Jesus implies that if the person's mind is clean, eating unclean food will not make him unclean. If the person's mind is unclean, one infers, eating ritually clean food will not make him clean. The logical structure seems to be similar to Meredith's.

155. *St. Clair*, *supra* note 1 at 355. See Mathew 6:3.

156. *Ibid.* at 356.

157. *Ibid.* at 355.

158. *Ibid.* at 353.

159. William Shakespeare, *The Tragedy of Macbeth*, in G.B. Evans, ed., *The Riverside Shakespeare* (Boston: Houghton Mifflin Company, 1974) 1312 at l.i.11-12.

160. *St. Clair*, *supra* note 1 at 353. There is an echo here too of the etiquette manuals like Emily Post's that were in circulation in the late nineteenth century and are still with us. These manuals had a mixed effect on the discourses of reticence, both opening up the private sphere to public view and defending behaviour that protected people's private feelings.

161. *Ibid.* at 354.

162. *Ibid.* at 355.

circumstances that he depended on did in fact exist - Meredith refused to believe that prosecution was not an option. There was also excess: "[t]he defendant's contention that the persons to whom the publication was sent could not be aroused to a sense of their duty without a descent to the obscene is very uncomplimentary to them, and is inconceivable to me"¹⁶⁴ The legal findings are there, but the judgment seems - through the structure of its argument, the pace of its syntax, and the use of clichés, biblical and literary allusions and the language of moral reform - to have been designed to resonate for more than a legal audience. In the highly charged political context of the St. Clair trial, in which the verdict had been regarded with dismay, this agenda would make sense.

Where Meredith was moved to grand rhetorical flourish by the case, Mr. Justice James Magee, a military man who had been born in England of Irish descent and raised in London, Ontario,¹⁶⁵ was almost silenced by it. He answered the questions put in the stated case in short, contorted answers of only a few sentences. Some of these answers amounted to restatements of the question. His judgment differed sharply from the next, by Mr. Justice Hodgins. Hodgins was the newest appointee to the Bench, a younger judge of fifty-eight. He held a B.A. from the high Anglican Trinity College in the University of Toronto, had practised with the Toronto Board of Education and had been a Bencher of the Law Society of Upper Canada from 1910 to 1912. He probably sympathized with moral reformers, as a few years later he sat on the two Royal Commissions on venereal disease and feeble-mindedness, and he drafted legislation regarding venereal disease.¹⁶⁶

Hodgins seems to have had less difficulty than Meredith or Magee in turning his mind to the matters before him. He and the dissenting judge, Mr. Justice McLaren, identified the Star Theatre; Meredith and Magee did not. As well, Hodgins, among other things, had evidently read the bulletin. He remarked:

It is to be remembered that this bulletin is admittedly obscene. The bulletin is worse than that admission indicates. It contains obscenity that not only oversteps the law but goes beyond the performance it describes. Where the latter was suggestive, the bulletin is literal and descriptive, and there is no escape from its bald recital of vice.¹⁶⁷

Hodgins was the only judge to give some sense of what was so terribly disturbing about the pamphlet, why it was in fact worse than the show itself: "[t]he bulletin itself goes far beyond the law; and in its language and make-up, the use of capital letters to emphasise the obscene inferences from suggestive remarks, and its descriptions of the incidents of the night, it is most objectionable."¹⁶⁸

Hodgins's judgment was coherent and relied on legal syntax and diction, not the language of moral reform. He began by establishing that the obscenity of the bulletin was not in question and setting out the applicable provisions of the *Criminal Code*. It was a question of law whether the occasion of such publishing was such as might be for the public good and whether there was evidence of excess beyond what the public good required in the manner, extent or circumstances of the publishing. Motive was irrelevant. Unlike Meredith, Hodgins then went through the evidence and set out the facts surrounding St. Clair's publication of the bulletin, including the various visits to the theatre by St. Clair, Shearer, Kennedy, other police constables and three other young men who had given evidence. Hodgins determined that the matters deserved prosecution and that, given the inaction of the police, "the occasion was one on which the public good might have been served."¹⁶⁹ Like Meredith, however, he found, that the conditions were not

163. *Ibid.* at 355.

164. *Ibid.* at 355.

165. LSUC, "James Magee," OBBRP.

166. LSUC, "Frank Egerton Hodgins," OBBRP. I am grateful to John McLaren for the information about Hodgins's later activities regarding venereal disease and feeble-mindedness.

167. *St. Clair*, *supra* note 1 at 364.

168. *Ibid.* at 367.

169. *Ibid.*

so extreme as to require the publication of this bulletin. He thought St. Clair and Kennedy were on very friendly terms, and there was no evidence that Kennedy was out of step with the rest of the police force. The question of whether there was evidence of excess therefore had to be resolved against St. Clair.¹⁷⁰ Hodgins quoted from J.R. Rogers and several ministers who gave evidence, that none of them would have used St. Clair's explicit language. He both acknowledged and brushed over divisions between the Bench and moral reformers by remarking that "it is some satisfaction to find that those clergymen who are identified with movements to stamp out vice in this city agree with me to the extent I have pointed out."¹⁷¹ He substantiated his reasoning by reference to previous case law, including *Hicklin*, *Beaver* and *Britnell*, and concluded his judgment with proposed amendments to strengthen the *Criminal Code* and to give the Police Commissioners the power to revoke theatre licences.¹⁷² Hodgins may have seen the problem, in part, as a failure of the existing legislation.

The dissenting judge, Mr. Justice John James Maclaren, was seventy at the time of this case. He was by far the most educated member of the Bench that heard St. Clair's case and had a distinguish record of academic involvements and achievements. He was also a lifelong member of the Methodist church and its legal advisor for many years.¹⁷³ Notable for its contrast to that of the Anglican Richard Meredith, Maclaren's reasoning is consistent with the Methodist traditions of suspicion of secular pastimes and of a greater sense of the duty of individuals to take responsibility for the morality of others, a sense that was perhaps cultivated through familiarity with the Methodist class meeting.

At the hearing of the appeal, Maclaren remarked that he hoped he would not have to read St. Clair's pamphlet. Nonetheless he, like Hodgins, had evidently done so.¹⁷⁴ He passed over it quickly, noting briefly that it, or perhaps the *Darlings of Paris* (the wording is ambiguous), was "foul, filthy, and disgusting."¹⁷⁵ He clearly thought the rest of the Bench had missed the point on the justification argument. He ridiculed the evidence of the police censors, saying of one:

[One of the Star Theatre's police censors,] who had been censoring it for three years, attended three performances there during the week in question. When asked if he had ever seen any performances there which were indecent, he answered "I don't think I have;" said that he had never heard any dialogue that had appeared to him indecent; and when asked if he had ever seen an indecent dance, said "I can't say I ever did." He had cut out things that were "a little out of place." It was "just a matter of taste." He says that he cut out "a little thing here or there - improved it like." When asked if he had complained of it that week, he replied, "I didn't think I had very much kick about it personally." Asked if he thought the bulletin indecent, he said, "Nobody but a scoundrel would have written such a thing."¹⁷⁶

It is readily apparent from Maclaren's transcription of the police testimony in the case that the police, including Kennedy and the Chief of Police, did not think that what happened on the stage at the Star

170. *Ibid.*

171. *Ibid.* at 368.

172. *Ibid.* at 369-72.

173. Maclaren held a B.A. from the Methodist Victoria College and also held the degrees M.A., LL.B., LL.D., B.C.L. and D.C.L., all or most of which he appears to have earned. His mother was Scottish but he spent much of his life in the Montreal area, where he also graduated from the Military School of Montreal. He practised law in Quebec and Ontario and was Q.C. in both, and he published several standard legal texts. He was Vice-Chancellor of Victoria University for many years and a member of the Senate and an honorary member of the law faculty at the University of Toronto. He was also a Trustee of Upper Canada College for many years. Maclaren was heavily involved in Methodist Sunday School work at the national and international levels. He was a leader in the prohibition movement and acted as counsel in some of the important federalism cases that arose from that movement. See LSUC, "John James Maclaren," OBBRP and *Minutes of Convocation*, vol. 17, p. 414, in biographical file on Maclaren.

174. See *supra* note 105 and accompanying text.

175. *St. Clair*, *supra* note 1 at 373.

176. *St. Clair*, *supra* note 1 at 375-76.

Theatre was indecent. They clearly had a different idea of what constituted indecency from that shared by moral reformers and the judiciary.

Maclaren paid close attention to the nature of the recipients of the bulletin. Most were sympathizers with St. Clair's work and had an interest in these matters. Giving the pamphlet to the only one who was not did not constitute an offence because giving one pamphlet did not come within the meaning of "circulate" or "distribute." Like Hodgins, Maclaren did apply the *Hicklin* test, but his interpretation of it would have been more recognizable to Lord Cockburn than that of any other judge in any other Canadian case. In effect, he understood and accepted Raney's first, abandoned argument. Maclaren observed that he had not found a single case "where distribution to a select class of interested adults as here, not liable to be corrupted, was held to be an offence," and he felt that the law should not be stretched to cover such cases. He remarked, "[o]ne cannot infer that the minds of the clergymen, or the three or four elderly business men, were open to immoral influences; and they were the only persons into whose hands this bulletin was shewn to have actually fallen or was intended to or would be likely to fall." He felt similarly about the Police Commissioners.¹⁷⁷ In Maclaren's reading of the statute (which demonstrates an awareness that it represented an effort to codify the law in *Hicklin*), the private channels of distribution exempted the matter from attracting criminal liability.

Bernard Jackson has pointed out that a judgment has more than one audience.¹⁷⁸ The parties and their lawyers will read it; the judge's colleagues on the bench will read it; academics and students in law schools will read it; practising lawyers will read it; friends, relatives and associates of the judges and lawyers may read it; and the public may read it. As I have observed, Meredith's judgment had a number of features that did not characterize those of his colleagues. While these rhetorical features undoubtedly reflected his outrage most of all, they also seem likely to have been designed to package the ruling to make it familiar and acceptable to an audience that had been extremely displeased about the trial verdict. The other judges must also have been aware that there could be a public response to their work.

Having throughout the year taken the stance that despite the questionability of the show, St. Clair had been wrong in publishing his bulletin, the *Globe* welcomed Meredith's judgment and printed this report:

ST. CLAIR RIGHTLY CONVICTED

Court of Appeal so Finds, Mr. Justice Maclaren Dissenting

Chief Justice¹⁷⁹ R.M. Meredith of the Court of Appeal, in commenting on the verdict of Judge Denton, said that there was no manner of doubt that Mr. R.B. St. Clair was rightfully convicted on a charge of distributing obscene circulars dealing with a performance at the Star Theatre. Continuing, he said that no one has any sort of a right to offend another's clean mind by placing in his hands and [sic] bringing into his home such a publication. He could not understand how by these means public feeling might be aroused, and thought it would have been better to have prosecuted through the proper channels and give [sic] the offenders a chance to defend themselves. Mr. Justice Maclaren dissented from the judgment, while Mr. Justice Hodgins, in concurring with the majority, viewed the matter in a different manner.¹⁸⁰

Meredith's "cleanliness" language evidently appealed to the writers at the *Globe*, and of course he had come to the right result as far as the *Globe* was concerned. Hodgins's judgment, although more legally coherent, was mentioned only in passing, and all of Maclaren's scathing commentary about the immorality

177. *Ibid.* at 379.

178. Bernard Jackson, *Law, Fact and Narrative Coherence* (Merseyside, U.K.: Deborah Charles Publications, 1988).

179. Since the appeal, the courts had been rearranged and Richard Meredith had become Chief Justice of the Court of Common Pleas. His brother William Ralph Meredith had become Chief Justice of the Court of Appeal.

180. "St. Clair Rightly Convicted" *Toronto Globe* (27 February 1913) 9.

of the show and the laxity of the censorship was omitted. This report of the judgment was undoubtedly intended to appeal to a wide, non-legal, right-thinking audience, and it probably also attempted to rally the divided moral reform opinion - to get them to agree to close ranks against St. Clair in defending Canada's right to determine matters affecting its own morality, without interference from American busy-bodies.

The coverage by the *Star* was more even-handed. Meredith was quoted at length, and his play with the expression "an ounce of prevention is worth a pound of cure" was duly provided, as was his remark that the arm of the law was long enough and strong enough to do the job. Attention was also given to Maclaren's observation that circulation had been restricted to people who were, presumably, proof against corruption. A remark of Hodgins, that it was necessary to use common sense as well as zeal, concluded the column. The *Star* acknowledged Maclaren's statements about the inadequacy of the police, but presented as unproblematic the view that ordinary legal methods would have resulted in the prosecution and conviction of the *Star Theatre*.¹⁸¹ The *Star* had always seen the St. Clair affair as a tempest in a teapot. It had and been sceptical about the moral corrosiveness of the *Darlings of Paris* and had expressed doubts about the practice of censorship. As seen by the *Star*, the moral of the St. Clair tale was apparently that it was inadvisable to hold extreme views or to take the law into your own hands: the police censors should be left to do their jobs, and enthusiastic ministers should keep their opinions to themselves.

In two articles, the *Telegram* took a different approach to the outcome. The first article attempted to make sense of Mr. Justice Hodgins's judgment, and in particular his remark that he would have liked evidence as to whether the policy of the Police Commissioners was so deliberate and unalterable that no appeal would have caused them to act. The *Telegram* made it clear that Hodgins's view was not that St. Clair's bulletin was untrue but that it was too literal and too graphic. This article also quoted Meredith's "ounce of prevention" line and summarized Maclaren's judgment very briefly. The second article in the *Telegram* was a detailed summary of Mr. Justice Maclaren's dissent with long excerpts from the judgment.¹⁸² The *Telegram*'s sympathy for St. Clair and its disgust at the police and the performance had been evident throughout and continued to show in its treatment of the appeal judgments.

The sense one gets from all of the papers is that St. Clair's conviction was old news, because he had already been adjudged properly convicted in the public eye. Some closure was obtained though: for somewhat different reasons, the *Globe*'s and the *Star*'s followings were assured they had been correct all along; and the *Telegram*'s readers were to be convinced by Hodgins's close reasoning regarding excess and mollified by Maclaren's assessment of the police.

St. Clair seems never to have been punished after his unsuccessful appeal.¹⁸³

The Aftermath

The St. Clair affair resulted in some uncertainty about who would set the moral standards for the Toronto stage. It was clear that the police had a different idea about what was obscene and indecent from that held by the reformers, the concerned men of the Committee of Forty and even the Bench. As Rev. Coburn's tactical decision to get the backing of the Committee of Forty shows, ministers were no longer sure they commanded enough respect to carry the day. Doubt had been expressed in various places in the legal proceedings about the appropriateness of letting a person like Shearer determine what should be playing on Toronto's stages. The *Star* and *Jack Canuck* had observed that censorship was a difficult business. Nonetheless, it seems that the optimistic Coburn was so confident that Toronto's most respectable men

181. "Judges Say St. Clair Was Not Justified" *Toronto Daily Star* (26 February 1913) 3.

182. "Hits Police Commissioners" *Evening Telegram* (26 February 1913) 25; "Judge Maclaren's Dissent" *Evening Telegram* (27 February 1913) 12; "St. Clair Sentence Delayed" *Evening Telegram* (10 March 1913) 16.

183. See "St. Clair Sentence Delayed" *Telegram* (4 March 1913) 16; "St. Clair Sentence Delayed," *ibid.* (10 March 1913); "[Illegible] in St. Clair Appeal" *Evening Telegram* (12 March 1913) 11; Coburn, *supra* note 21 at 119.

possessed appropriate moral standards (the secular being imbued with the sacred) that he sought out an alliance with secular men who were finally taking up their responsibility for reforming the Kingdom. And Coburn was far from alone in espousing this tactic. The Congregational Church of Canada's acceptance of the same principle is evident in an entry in its minutes of its annual meeting of June 1913: having heard a presentation by Coburn on immoral plays, the Union voiced its "sympathy with the various organizations which have represented all good people in endeavoring to prevent indecent plays and pictures" and insisted on the importance of having public authorities scrutinize these and other public amusements.¹⁸⁴

Nevertheless, despite the alliance of secular and religious forces in the Committee of Forty, Coburn's status as Toronto's chief theatrical censor received a significant blow from another case that arose only a few months after the decision on St. Clair's appeal was released: that concerning Legrand Howland's problem-play *Deborah*, as it was performed at the higher class Princess Theatre on Tuesday, 20 May 1913. The play was a new one and had never been performed before. According to the Crown, the play immorally "justified the right of every woman married or single to fulfil her destiny and become a mother." After watching the play on 20 May 1913 and treating that performance as a rehearsal, William Banks ordered some cuts and the play proceeded on the subsequent two nights. But John Coburn had a summons issued against the manager and actors, and they were tried, convicted and fined by Magistrate Denison on Friday, 23 May. The star, Carlotta Nillson, had received many curtain calls for her performance and accused Coburn and his colleagues of being incapable of comprehending the show.

Judge Morson, however, heard and allowed their appeal. A special performance of the uncensored version was performed for his benefit. In his judgment he lamented the lack of guidance in the case law (except for *McAuliffe*) on the meaning of indecency in plays. He continued:

It is left, therefore, to the individual opinion of whoever has to decide the question, without anything to guide that opinion beyond the common knowledge of what immorality means. In dealing with the subject, as applied to a play, I think useful assistance can be found by reference to wellknown and standard dramas, operas and works, through many of which there is unquestionably a vein of what some might call immorality, and upon which notwithstanding, in all countries of the world the seal of approval has been placed by all classes, including Crowned heads and by all educated and cultured people, and which have never been judicially declared or looked upon as immoral, and condemned as such. We are therefore entitled to assume that they are not immoral and they should therefore be proper standards by which to judge this and other plays.¹⁸⁵

The nature of morality, as understood by Judge Morson, was not the same as that understood by John Coburn. Morson would probably have agreed with Sir Charles Tupper's earlier remark in the House of Commons that even though a thing was indecent it could still in some circumstances be morally improving.¹⁸⁶ Morson's analysis was not that the artistic merit of a performance or a novel should provide a defence to the charge of indecency: this argument does not appear to have been made in Canada during this period. Morson simply doubted *Deborah*'s immorality. That the relativism that Gauvreau recognizes was creeping into the culture seems apparent.¹⁸⁷

Morson's judgment did anticipate these later developments though. It is not a large step from the negative finding that a play cannot be immoral if many other people have not objected to it to the positive finding that other people's approval means it has artistic merit and therefore is probably not obscene. The next step from there is a detachment of morality from aesthetics, which happened in Canada, as well as elsewhere in

184. *Supra* note 121.

185. *R. v. Day et al.* (6 June 1913), Ont. Div. Ct., contained in AO, case files of the Attorney General of Ontario, RG 4-32, File 1913, #834, at 2.

186. See above, page 91.

187. See above, page 36.

the Anglo-American legal world. Morson also judged that a play should not be analyzed for its individual passages but by its purpose, how the whole treated the subject matter. The practice of looking at individual passages, he said, was "too frequently done by those not sufficiently educated to appreciate the drama at its true value." The approach Morson impugned had characterized the testimony in the Stair trial and all the other previous Canadian cases. Again, Morson's approach paved the way for later conceptions of obscene material and for the judge to take the role not of defender of morals but of literary critic, as Judge Woolsey was in the *Ulysses* decision in the United States in 1934.¹⁸⁸

Morson's reasons merely anticipated those of others though. Ultimately he found that the play was not immoral because it demonstrated the importance of motherhood in the prevention of "race suicide" among the poor because of their poverty and among the rich because of its inconvenience. In its censored form, no doctor advised Deborah that every woman had a right to be a mother, regardless of her circumstances, so Morson allowed the appeal.¹⁸⁹

Morson concluded his judgment by remarking that he held William Banks in high esteem. He chastised Denison mildly for failing to abide by Banks's view, as Banks was, after all, an appointee of the Police Board. He said he had great respect for the Committee of Forty and their motives, but he did not think they should be able to constitute themselves as official censors. It was inappropriate to convict the players and the manager when they were performing the play in the way that the official censor had advised them to do. Thus did Morson deal a mortal blow to the qualifications of Coburn and others like him as theatre censors. *Deborah* reopened for a week in June and recouped some of its losses. The claim of the clergyman and their lay allies to speak authoritatively about public morality was further weakened.¹⁹⁰

Conclusion

The St. Clair affair and its aftermath demonstrates the lurking uncertainty about the nature of immorality, indecency and obscenity that Toronto's moral reformers and most of its judiciary were unwilling to acknowledge existed, despite their evident differences from the police and its censors and even from each other. The Stair trial in particular demonstrated the problematic nature of the obscene, not just because of the verdict, which so surprised Middleton and others, but because of Herb Lennox's willingness to break down the skits and dances into composite parts and question the obscenity of the whole on the basis of its parts. He asked, implicitly, how one could assess each single movement, and he transgressed the conventions of the courtroom, including those protecting the practices of reticence. His performance demonstrated that obscenity and indecency were not as solid as they appeared.

The views of the police are difficult to be sure of, as they were not well represented in the newspapers. The more junior officers like P.C. Bloodworth clearly did not see the activities on the stage at the Star Theatre as obscene. They thought the shows were lively. More senior police officers like Kennedy and Archibald likely took a somewhat dimmer view of these activities, but they also seem to have been unwilling to see the theatre prosecuted. It may be that the theatre somehow cooperated with their surveillance of homosexual activities. They may have thought the theatre was the least harmful of the many activities in which working-class men could have been involved. As well, probably part of their resistance to take action against the Star was simply a desire not to be pushed around by moral reformers like St. Clair and Coburn.

Most members of the middle and upper classes assumed that obscenity could be recognized on sight by a

188. See Paul Vanderham, "Lifting the Ban on *Ulysses*: The Well-Intentioned Lies of the Woolsey Decision" (1994) 27:4 Mosaic 179.

189. Morson was criticized for judging the censored version of the play rather than the uncensored one in which the doctor did so advise *Deborah*, but that does not concern us here.

190. Conolly, *supra* note 138, describes the *Deborah* affair at length. See also Dean, *supra* note 151 at 8-10.

properly educated person, but Lord Cockburn's confidence that obscenity law was only designed to target the lower classes did not resonate in moral reform Toronto where the particular problem was the burlesque stage but where all stages were to some extent suspect.

Robert B. St. Clair caused a major uproar when he was arrested for circulating his bulletin. Initially he was supported. Likely few people ever actually saw the bulletin, so few fully imagined or appreciated just why it was so offensive. They gave St. Clair the benefit of the doubt and came down hard on the police for treating him badly. Once the trial verdict was pronounced, however, his days as a respected member of Toronto society were numbered. Denton's opinion of the verdict was clear. Perhaps rumour spread about the explicitness of St. Clair's representations. In any case, when he went to the Normal School he demonstrated a deplorable inability to perceive either art or the cultural significance of the Normal School as a forum for the edification - not the corruption - of young people. He showed that he considered the knowledge of the human body always to be dangerous. His demonstrated lack of common sense threatened to jeopardize moral reformers' legitimacy as censors not only of theatres but of various kinds of reading materials that entered Canada. St. Clair was from then on represented as extreme and his conviction as justified, even by the *Telegram*, which however continued to emphasize the deplorable conduct of the police.

St. Clair's ire about homosexual activities occurring on stage and, by association, around the Star Theatre might have been shared by other moral reformers, had they come to know about it. In court, though, both in St. Clair's trial and in Stair's, this angle on the case was downplayed and even mocked. Probably there are a couple of reasons for this response. On one hand, the figure of the homosexual constituted a dire threat to the normative content of gender roles and therefore had to be treated with the utmost care and reticence. If St. Clair had described actual sexual encounters in the Star Theatre, the newspapers and commentators would likely have fallen all over themselves with their circumlocutions about unspeakable acts. On the other hand, Toronto was a secure, sexually conservative society without a great sense that gender norms, particularly of masculinity, were seriously under attack - that was a problem for Europe and sometimes the United States. In this context, few seemed to find the figure of the "sissified policeman" to be anything but funny. Although Torontonians would undoubtedly have been very upset at the idea that male youth in their city were adopting Oscar Wilde's manner of living, they do not seem to have understood the figure of the policeman in the *Darlings of Paris* to have increased the likelihood of that eventuality because the policeman denigrated homosexuality rather than promoted it.

This chapter shows that those committed to some form of moral reform of the Toronto stage were not entirely a unified force. They initially stood behind St. Clair, despite his status as an outsider in Toronto society. The *Toronto Globe*, however, from early on took issue with St. Clair's chosen means of dealing with the problem and exhibited a certain condescension towards him, probably because he was an American newcomer to Toronto and a man lacking significant means of support. Throughout, the *Globe* made a point of presenting both sides of the story. The *Telegram* was more supportive toward St. Clair, viewing the stage as a dangerously corrosive element of society and police censorship efforts as completely incompetent. The *Telegram* tended to bury deep within its reports that discredited St. Clair.

The *Star* seemed initially to have an open mind toward St. Clair, but ultimately it decided that he was worthy mainly of derision for his lack of Torontonians or even Canadian roots, his lack of entitlement to use the title "Reverend," his lack of means and his lack of taste. The *Star*, the most liberal of the papers, does not seem to have opposed theatre censorship as such - certainly it never went so far as to actually say so outright - but it became increasingly sceptical of the fitness of the clergy to do the job. *Saturday Night* expressed similar views, and *Jack Canuck* embarked on a campaign to abuse and discredit St. Clair, possibly motivated in part by a financial connection between Fred Stair and the editor, James Rogers. The *World* on the whole was the most ambiguous. It did not take a strong stand on St. Clair personally and was interested in the theatre as a source of entertainment but did not have any particular desire for suggestive shows. The *Congregationalist* and the *Christian Guardian* voiced support for St. Clair initially but fell

silent later on and mostly kept their distance.

On the whole, the newspapers indicate that the various Toronto churches, the women's groups and the newspapers' right-minded readership initially supported St. Clair, but this support waned after the first judge went against him. Voices in the media increasingly depicted him as an uncredentialed, uncultured, powerless, foreign zealot trying to make money off the white slavery campaign. When St. Clair made his statements about the Normal School, he demonstrated that he lacked the education or taste to assess obscenity, and attention to him diminished. He drifted out of view, and his campaign - still judged important - was taken over by Rev. John Coburn and the Committee of Forty, a group with a largely lay membership which understood itself to be representative of the mainstream in right-thinking Torontonians, whose views had become more weighty as the clergy's had become less so.

The very existence of the Committee of Forty may seem remarkable to the late twentieth-century reader. A group of men gathered together and pronounced themselves fit judges of what should not be shown on the stage. They were taken seriously, and for a time they rivalled the official censor. John McLaren has observed that these committees were common at this time, especially in the United States, and he suggests that they may have been progressivism's answer to representative democracy's insufficient sensitivity to moral issues.¹⁹¹ The Committee of Forty underscores the tremendous confidence of the governing class that they knew what was best for Toronto. The clergy were feeling their influence over society to be slipping - and in large part this was because their success in imbuing the secular with the sacred had elevated the status of the secular realm. They had made it evident that men might serve God through many different walks of life, and the Committee of Forty were doing just that. They were also fulfilling the demands of masculinity in taking over a worthy cause from the weak, effeminate Vigilance Association.

The hegemony of the Committee of Forty and their class may also make us think about what the outcry might be like if analogous events happened today: one of the loudest arguments (if not the loudest) would be the libertarian assertion that censorship of anything is an unmitigated evil and leads to all kinds of civil and political repression. This argument was nonexistent in the discourse around obscenity 86 years ago. There were mutterings that working-class men deserved theatres that appealed to them, but nothing seriously resembling the liberal attack on censorship with which we are familiar. The reasons for this seem to lie in the paternalism of a society, understood as an organic whole, in which some were called upon to take moral responsibility for others; the churches had been disciplining their members for years and saw it as their duty to continue. With the wider range of occupations in which a man could do God's work, this obligation extended to righteous laymen too. We should also not forget the suspicion of republicanism and American libertarian ideals: Canada was not a society in which all men were assertive individuals striving against one another. It was much more Tory than that.

With *Deborah*, however, the Committee of Forty quickly came up against the official censor, for whose appointment they had lobbied. Judge Morson slammed Coburn and his colleagues as having no entitlement to perform the task they had taken on. He also articulated a conception of obscenity that came close to separating moral from aesthetic concerns and in so doing anticipated a whole new, uncertain age.

¹⁹¹ Personal communication, December 1998.

Chapter Six: Conclusion

This thesis demonstrates the interrelationship of law and the culture in which it is embedded, the way that the patterns of religious culture in nineteenth-century Ontario society made themselves felt into the twentieth century and the tremendous divisiveness of obscenity and efforts to control it. The *St. Clair* affair and its aftermath, the furor over *Deborah*, show the interweaving of changing moral and discursive standards, class relations, geographies and sexualities. They show how individuals' backgrounds influenced them, and how they in turn influenced the movements of others in contested terrain. The confluence of events demonstrates that the censorship of the theatres and books of this period is productively understood as a kind of moral regulation, not just by state actors but also by the various churches and women's groups that took part in it.

As the twentieth century began, Toronto was a society highly influenced by the clergy in its midst. It is important to understand the histories of the major Protestant churches, because these illuminate both the intellectual climate of the times and the personal outlooks of many of the individuals involved in the *St. Clair* case. By 1905, the Methodist and Presbyterian churches had reached the apex of their power and influence and had the battles between idealist and fundamentalist factions that had divided American churches. Many clergy held an optimistic view of what the future held for both the Christian church and the country. This view combined an evangelical past with Christian philosophical idealism, and it seemed to have triumphed over the Darwinism and higher criticism that had challenged its supremacy in the late nineteenth century. The popular ecumenical view, that all Christian churches would come together into one, made doctrine seem unimportant compared to concerted social action to create the Kingdom of God in Canada and thus usher in the millennium before the Second Coming. All the Protestant churches had come to believe in an organic view of the state, which condoned the close association between church and government. The Methodists and Presbyterians, in particular, had a Canadian institutional history of taking direct responsibility for the souls of believers through their disciplinary structures, the class meeting and the Kirk Sessions.

In their optimism, the churches confidently sought to imbue the secular with the sacred, but in so doing they raised the status of the secular. The Methodists became tolerant of wealth, as long as it was used in appropriate ways, and they began to echo the Presbyterians in blaming the problems of the poor on moral failings. As well, around 1905, the theology schools became preoccupied with relativistic thinking. Dogma became an uncomfortable subject, as the debates concerning church union evidenced. The clergy in the pulpits found themselves preaching the evils of poverty and vice and the need for social reform to a distracted laity that was turning to other, more secular pursuits. Hard questions about the historical truthfulness of the Bible, for example, defied answers. The evangelical emphasis on a personal relationship with God became leavened with an emphasis on social reform that alienated many people.

The clergy, especially the Methodists, had been solidly behind the growth of public educational institutions in Ontario. In part, they wanted to train their own ministers, often demanding that they master some of the emerging social sciences as well as the more traditional components of a theological education, like Christian evidences. Urbane lay Methodists demanded a more rigorously intellectual experience when they went to church, and the churches suspected that the American theological schools would inculcate anti-British republicanism or lure young Canadian men to American pulpits. Congregationalists worried as well that the doctrinal achievements of some of the ministers coming out of institutions like Dwight Moody's Chicago institute were unsound. But the Canadian churches were also interested in public education for those who would not go into the ministry. Seeing the need to imbue the secular world with the principles of the sacred, they accepted that men (particularly men) might serve God through a variety of careers. One effect of this changing sensibility was that it elevated secular occupations and brought into question the notion that the clergy were the most fit people to set moral standards.

Under the influence of substantial immigration, especially from England, the percentage of the population that called itself Anglican had increased in the 1911 census, but the corresponding figures for Methodism and Presbyterianism had declined. While many members of the Anglican clergy and laity, often evangelical by persuasion, took up the cause of moral reform (though less the social gospel), on the whole Anglicans did not share the sense of the imperative toward social and moral reform that drove the Methodists and Presbyterians. Anglicans tended to look to the state to address society's ills and they seem to have accepted a more hierarchical vision of society, in which the poor simply were the way they were and there was not much point in trying to change them. Magistrate George T. Denison III, an imperialist who was tough on vice but sceptical about moral reform, seems to be an exemplar of this outlook. Presbyterianism, by comparison, was more divided than Anglicanism. It was composed not only of reformers like James Macdonald and the severe John Shearer but of people like Mr. Justice Middleton, a former Anglican. Large downtown congregations like his resisted the lure of church union and sat stonily while implored to get more involved in moral reform causes. Despite being appalled by the *Darlings of Paris*, Middleton permitted lawyer Herb Lennox to use the courtroom as a forum to mock the severely conservative Shearer. More consistently reformist in spirit were the Methodists, a church with avid reformers, like S.D. Chown and John Coburn, and quieter pillars of community-minded strength, like Mr. Justice John James MacLaren.

Although Methodists preached the doctrine of separate spheres, their acceptance of women taking significant roles in the church (including preaching) in the mid-nineteenth century was an important force in making somewhat permeable the boundary between the male public sphere and the female private sphere. Toward the end of the century Methodists promoted female suffrage and education but declined to permit women to take positions in the governing bodies of their organizations. Methodists thus accepted that there was a certain public dimension to the idea of femininity. As women increased their visibility by campaigning for temperance and other reformist causes, their actions probably did not seem as transgressive as they might have, in light of this history.

Toronto at the turn of the century had a lively print culture, largely because the public education campaigns of the previous century had rendered much of the population literate. This print culture was much influenced by the church newspapers and presses, such as the Methodist Book and Publishing House, as well as by the flourishing American presses which published the work of many Canadian writers. Critics were calling for the creation of a Canadian literature to match their nationalistic ambitions. Realist fiction by authors like Henry James and William Dean Howells was acquiring critical acclaim in limited circles, although most people preferred the older romantic, historical and melodramatic novelistic conventions. There was not a wide market for such writers as Balzac, Zola and Flaubert, whose books, in translation, were attracting attention elsewhere in the English-speaking world. When books by authors like these entered Canada, they probably most often circulated through the mail and out of back rooms, but they raised reformers' ire wherever they appeared, even on the shelves of respectable booksellers. Some titles by these authors were undoubtedly intercepted at the Canada-United States Border by Customs and postal officials motivated by the Woman's Christian Temperance Union, the National Council of Women, the Methodist Church and the American reformer Anthony Comstock. These organizations must have stemmed to some extent the tide of foreign publications into Canada, including not just French novels but American newspapers and magazines featuring lurid journalism. Generally speaking, between 1890 and 1910, the churches' influence and control over publishing, the prevalent taste for historical romance and melodrama, and censorship of new things kept Canadian literary taste fairly conservative. However, as part of a larger, post-millennialist, nationalistic campaign to elevate the morals of Canadians, and propagate Britishness, the Methodist and Presbyterian churches and the NCW and WCTU became alarmed during this time about the profusion of American books and magazines travelling north over the border and embarked on serious censorship campaigns. They had particular success with the post office and Customs and in lobbying the federal government to introduce and then improve the *Criminal Code* provisions on obscenity.

A major challenge to these practices was mounted by the theatres. Canada, unlike England, had no censor to screen every script before it appeared on the stage. The travelling American syndicates presented mainly American and sometimes English fare. As in fiction, the most popular form of entertainment was the melodrama, with its fast-paced plots, black and white characters and straightforwardly moral outcomes, which countered the traditional sense that the theatre was a place in which the soul was in mortal peril. The content of the earliest shows in Ontario seems to have been mainly regulated informally, by the taste of those who attended and the criticisms of those who (often) did not. Canadian public opinion probably succeeded in getting American theatrical syndicates to rethink any plans they may have had to send risky theatrical performances north of the border. However, in the last decade of the nineteenth century the theatre, especially the burlesque, began to attract the attention of the Methodist church and women's groups like the NCW and WCTU. Canada's first case under the obscenity provisions of the 1892 *Criminal Code* was on a theatrical production.

The legitimacy of these censorship campaigns, however, must to some extent have been undermined by the results of the *Britnell* and *Skill and King* trials, which suggested that the reformers' efforts were not uniformly appreciated, their reach was unacceptably wide and their standards were not uniformly held. The police and some magistrates and higher courts seem to have quietly dissented from moral reformers' approaches to other topics, particularly prostitution, viewing them as naive or extreme. The working classes who bought the cheap fiction and attended the cheap playhouses to break the misery of their economically marginal lives were also undoubtedly out of step with the moral reform project. The churches' ability to set the moral tone of society was waning.

Canadian obscenity law had its roots in the English law of obscene libel, the *Obscene Publications Act* of 1857, and especially *R. v. Hicklin*. *Hicklin* assumed that obscenity was known and recognizable on sight. It was sexually graphic. This material did not pose problems if it was restricted to the upper-class men whose sensibilities were schooled to receive it, but it would have a degrading influence on the morals of the lower classes, particularly youth, who would not know how to manage the sexual impulses it stirred up. *Hicklin* therefore targeted obscene material if it was distributed to the masses through public exhibition in places like Holywell Street, London. However, it was not only sexually graphic material that was understood to constitute a moral problem. Also deeply objectionable was matter that threatened to expose the private sphere and the private feelings of individuals, such as novels that provided a critique of marriage or newspaper reports that described the details of shocking crimes. English legislators understood that parents and teachers would deal with these kinds of literature.

In 1892, the Canadian legislators who were debating the provisions of the first *Criminal Code* thought they were equally sure that they knew obscenity when they saw it. The debate therefore concerned making sure that art and medical treatises would not become the subjects of prosecution. Canadian legislators were not particularly concerned about intruding on individual rights. It was during an amendment process after the 1909 *Graf* case that A.B. Aylesworth drew the line at criminalizing mere possession of obscenity. One possible reason for the legislators' attitudes is that England's example, backed up by that of the United States, made this censorship seem benign. The optimistic, post-millennialist, nationalistic fervour of the time, taking place in a state conceived in paternalistic terms as a unified organism (rather than as a group of distinct individuals) likely also helped. The men in Parliament may also have understood themselves to be in the position of a beneficent father responding to a mother's demands on behalf of her children, as they responded to the demands to legislate regarding obscenity. (In the *St. Clair* case, even the liberal *Toronto Daily Star* never went as far as to question censorship *per se*.)

A review of the *Criminal Code* amendments, the reported Canadian case law on obscenity and the records of the higher courts of York County between 1892 and 1913 reveals an increasing concern with theatres and an increasing uncertainty about the nature of the obscene, indecent and immoral. The *Criminal Code* provisions on theatres expanded, in the face of developments on the theatrical scene and events in the courts. Fred Stair turned the Star Theatre into a commercial success. The inadequacy of the *Hicklin* test in

Canada began to be felt: Canadians were not sure that obscenity was harmless if restricted to upper-class male hands, or that parents, teachers and librarians would adequately censor their children's reading. Canadian courts did not read *Hicklin* in its limited sense but looked to it for an overarching description of obscenity, which it never did contain. Accordingly, the peculiar case of *Beaver* in 1903 inspired the judges to search the dictionary for definitions of the obscene. The *Beaver* Court decided that obscenity had to have a sexual content and could not simply be vulgar. *L'Heureux* took this a step farther and added that a depiction of a fight would not be obscene. *Hicklin* was supplemented. The Canadian legal definition of the obscene acquired a certain shape, and that shape was based on heterosexual sexual behaviour. Indecency and immorality became viewed as somewhat uncertain terms, so much so that they were not supposed to be included in the 1903 *Criminal Code* amendments, and one M.P. remarked that a thing might be morally improving, even if it happened to be indecent.

The harm posed to society by obscenity was understood in two different ways: in terms of its ability to induce young people, especially, to engage in sexual incontinence and in terms of its effect on the integrity of the private sphere and private lives, which were protected by the practices of reticence. In the United States, reticence was under significant attack on various fronts, but these were significantly muted in Canada. Lurid crime reporting, a type of yellow journalism, attracted some attention in Canada, but it was not as extreme as it was in the United States or England. Canada's sexual hygienists were less radical. Literary realism was less popular. Women's role in public life was less obvious and less aggressive than it was in the United States. For years, Methodism had been one of the forces that had made the public/private divide a permeable one. Although the young women who took work in factories and the women who appeared on Ontario's stages did further affect the stability of the private/public divide, the activities of middle-class women like Letitia Youmans of the WCTU were less radical than those of their counterparts elsewhere. The WCTU and NCW adopted a maternal feminist ideology, and the New Woman was not widely known in Canada. Canadian women's activities before World War I did undermine the practices of reticence, in that they placed women in the public sphere, but because Canadian women were less radical than their counterparts elsewhere, their effect on reticence was less dramatic. The sphere of the decent was therefore better preserved. Moral reformers' major concern was with the morals of the young.

The threat that objectionable literature and theatre posed to the morals of the young was that it would encourage sexual incontinence - masturbation, extramarital sexual activities or even marital excesses. These activities were all considered to constitute a grave peril to psychological and physiological health. The future of the Canadian "race," understood to be broadly British, would be jeopardized if its youth engaged in these practices. But the proscribed sexual activities were generally understood in heterosexual terms. *The Darlings of Paris* was typical of the type of shows that would dismay moral reformers: it made suggestive jokes, laughed at the police, "damned" this and that, and toyed with the figure of the young woman who would happily trade sex for diamonds and fine clothes.

The "sissified policeman" in the *Darlings* sent Rev. R.B. St. Clair into near hysteria in his ill-fated bulletin. For most of the period from 1892 to 1910, there does not seem to have been much concern with same-sex practices, and there seems to have been a certain vagueness about what these might even have been. In 1898, C.S. Clark mentioned that same-sex male sexual encounters were occurring in Toronto, but it does not seem that they attracted much attention from moral reformers or the police until around 1909. At that point, these people came to associate the Star Theatre with same-sex male sexual activities, particularly between men and youths. St. Clair and the Vigilance Association were concerned that the Star Theatre provided a forum for "moral perverts" to meet boys, and he seems to have thought the police officer's character promoted such activities. Others, however, did not respond the same way. Some of the vitriol heaped on St. Clair's pamphlet may have arisen from St. Clair's allusion to these sexual practices, but the evidence suggests that generally it was the explicit descriptions of what happened on stage that upset people. Most contemporary commentators do not seem to have been as upset about the idea of the homosexual as St. Clair was. Torontonians probably thought he was likely exaggerating and that the homosexual was a "decadent" English phenomenon that did not really happen there. They may also have

been adopting the practices of reticence in refusing to discuss something that constituted such an affront to the private sphere and gender norms. A certain number of men, like Herb Lennox, also seem to have laughed - perhaps in fear, or perhaps in disdain or acceptance - at the figure of the effeminate, "sissified" homosexual or at those who took him so seriously.

St. Clair's main offence was that his pamphlet constituted, in the words of Mr. Justice Hodgins, a "bald recital of vice." It left nothing to the imagination. The extent of St. Clair's flagrant transgression of the boundaries of decency can be seen by comparing his approach to those of the judges and lawyers who dealt with his case. Only Judge Denton identified the show. None of the judges quoted from the pamphlet to show what was objectionable about it. The appellate judges expressed a reticent distaste for the prospect of reading the pamphlet, but all likely did, as two explicitly describe it, and the outrage of the third can only be explained by reference to his familiarity with the content of the material that had brought St. Clair before him. The judges in *St. Clair* were more reticent than those on most of the other preceding Canadian obscenity cases. *Britnell* is the notable exception: in it, the judges protected the reputable bookseller by discreetly refusing to identify the texts at issue and even describing them as not "notoriously" obscene, even though they had both been the subject of prosecution and criticism elsewhere in the anglo-American legal world. *Britnell* was being acquitted and protected; St. Clair was being convicted, and the reader was being protected.

The *St. Clair* case demonstrates well the sense that *Hicklin's* emphasis on the means of distribution of obscene material did not apply. Raney seems to have tried to make the argument that because the bulletin had only circulated to a group of older men interested in St. Clair's work, he could not be convicted. Mr. Justice Maclaren was the only judge who apparently understood and saw merit in that argument. By the time of *St. Clair*, Lord Cockburn's notion that the *Obscene Publications Act* was not designed to apply to privately printed materials had drifted out of the Canadian legal consciousness, if indeed it had ever had much currency - and if it had, one would think it would have made it into the 1892 codification.

Mr. Justice Meredith's judgment demonstrates outrage at the offence against the integrity of the private home constituted by St. Clair's pamphlet. That such a thing could enter such a space and corrupt it clearly appalled the judge. The case, however, had been a controversial one that divided moral reformers and the *Telegram* against the courts, the police, the *Star* and the *Globe*, so St. Clair's conviction needed a sound justification. Attention to the language in Meredith's judgment suggests that he provided this justification by relying heavily on the language of social and moral reform: cleanliness metaphors, common sayings, biblical allusions and so forth.

The divisions in society caused by the *St. Clair* case were substantial, and one perspective that was not well represented by the newspapers was that of the police. The police refused to prosecute the theatre despite the send-up of themselves in the "Steel Trust" skit. Inspector Kennedy does not seem to have thought much of the *Darlings of Paris*, and he had been helped by St. Clair in the past. Constable Bloodworth, however, clearly did not think there was much the matter with the *Darlings* at all. It may be that the police thought the working class were better off in theatres than on the street. It may also have been that Fred Stair cooperated in some way with the campaign against homosexuality or simply more generally with police censorship activities.

The judges all clearly thought the *Darlings of Paris* was a scandalously indecent production. Denton said as much. Middleton exploded at the *Stair* jury after they delivered their verdict. The Court of Appeal judges in the *St. Clair* case said nothing kind about the show. But like the *Globe*, none of them thought St. Clair had been justified in writing his pamphlet. Most moral reformers, on the other hand, supported St. Clair, at least until he was convicted and in many cases even until the Normal School incident. Unlike the *Star* or the *Globe*, moral reformers did not tend to take issue with St. Clair's background - his origins or the fact that he was living off the avails of a tastelessly melodramatic, anti-white slave trade tract. They did not resent having a foreigner tell them how depraved they were. But the Normal School incident changed the

tones in which St. Clair's experiences were discussed. He demonstrated a shocking lack of cultural competence by failing to recognize the significance of the Normal School as a place where young souls were improved, not corrupted. Being a foreigner may have hurt him in this area. He may have been one of those uneducated American preachers of "indifferent theology" that some Congregationalists blamed, in part, for their decline.

St. Clair's larger misstep in the Normal School incident, though, was in failing to appreciate that under the prevalent aesthetic norm, art and morality were inextricable. Since it was known that the classical statues and the Venus de Milo were art, it was also known that they were therefore morally improving. Neither Toronto's prominent businessmen nor its moral reformers could tolerate a confusion about the nature of art. No censorship campaign - by moral reformers, by the Committee of Forty or by legislators themselves - could withstand instability in the nature of the obscene. St. Clair's ostracism resulted from the challenge his assertions about the nature of the obscene posed not just to the specific cause of theatre censorship but to obscenity regulation more broadly understood.

John Coburn's Committee of Forty was the effort by Toronto's righteous businessmen to take over a worthy campaign that had fallen from inadequate shoulders. A certain effeminacy was likely associated with the Vigilance Association and possibly with the clergy more generally; the antidote was the shore up the movement with masculine members of the laity and continue the crusade. But the Committee of Forty was successful in gaining a professional censor, William Banks, and it was not long before its own credibility suffered from a confrontation over the problem-play *Deborah*. Allowing the performers' appeal, Judge Morson observed that the Committee of Forty had no right to appoint themselves censors: William Banks was the censor, and it would not be right if a theatre manager could not rely on the word of the official censor about what would and would not be acceptable on the stage. Morson also described, more self-consciously than any other judge in this period, the changes that had taken place in the field of the obscene over the previous twenty years. He remarked:

Public opinion has changed very much in the last ten years with reference to plays, largely due to Ibsen and other distinguished writers and, as one of the witnesses for the Crown said, a play that was considered immoral ten years ago, is not now so considered. I am not unmindful of the importance and necessity of keeping the stage pure, and I hope I would be the first to condemn anything impure, but in the light of today when dealing with plays only, as I am doing in this case, I cannot see any difference between *Deborah* in its censored form and any of the other standard plays mentioned. Its purpose is a useful one, and if it teaches anything, it is that sin brings its own suffering, and *Deborah* is certainly made to suffer for 16 long years. True it is, that she ends by marriage, but this did not destroy her past suffering nor the lesson taught that sin is followed by much sorrow.¹

The nature of an immoral play was shifting. Morson and the audiences that gave Carlotta Nillson, *Deborah*, curtain call after curtain call found that the play could depict immorality without fundamentally being immoral. Morson justified this finding by the fact that *Deborah* did suffer for her actions. The next, small step would be to admire the work because it depicted a true moral dilemma, whatever the outcome. The step after that would be to say that the play could not be immoral because it was aesthetically good. The last step would be that even the obscene would become indistinguishable from art or justifiable because of its artistic merit. St. Clair's gaff about the Normal School raised the spectre of these eventualities, which threatened the legitimacy of his contemporaries' censorship efforts.

The *Deborah* affair demonstrates the continuities and changes in obscenity law and censorship practices between 1892 and 1913. *Deborah* showed at the Princess theatre: the self-appointed guardians of public

1. *R. v. Day et al.* (6 June 1913), Ont. Div. Ct., contained in AO, case files of the Attorney General of Ontario, RG 4-32, File 1913, #834, at 5-6.

taste and morals took on the taste of the middle and upper classes rather than the working class, and they lost, just as they did when they prosecuted *Britnell*. Their hold on the reins of public morality was slipping, and they were losing ground to a publicly appointed, professional figure. The clergy were being pushed out of their roles by the laity. In philosophy departments and certain journals the idea that all values are historically and culturally specific was being mooted. On the other hand, the idea that obscenity was a fixed quality that everyone with the appropriate cultural attainments could recognize on sight had taken some blows but was still fairly stable. When Mr. Justice Riddell, in *Graf* in 1909, called obscenity's uncertainty "notorious," he was exaggerating. No one who saw it had any doubts about the obscenity of St. Clair's pamphlet. The nature of the indecent was a less stable concept. English literature was developing as a discipline, however, and was about to start instilling a generation of readers with the idea that a text could be judged on the basis of its aesthetic qualities rather than on the moral characteristics of its author. These developments coupled with comments like Morson's in the *Deborah* case, were laying the ground to understand obscenity as an inherent property of a text. Both the culture and the law were changing and becoming less aggressive and certain about obscenity, indecency and immorality. Prosecution of obscenity cases likely tapered off very substantially after World War I, as it seems to have continued to be low on the priority lists of the police.² The crusade against obscenity in Toronto had come to an end.

2. See John P.S. McLaren, "'Now You See It, Now You Don't': The Historical Record and the Elusive Task of Defining the Obscene" in David Schneiderman, ed., *Freedom of Expression and the Charter* (Toronto: Carswell, 1991) 105 at 128-29.

Appendix I: St. Clair's Bulletin

ONTARIO PROVINCIAL
POLICE.

Toronto Vigilance Association SPECIAL BULLETIN

Phone Main 2476

Room 702, Temple Building, Bay and Richmond Sts.

(PRIVATE AND CONFIDENTIAL)

TORONTO, MAY 1st, 1912

Reverend and Dear Sir:—

In the interests of morality, to say nothing of our holy religion, we deem it advisable to bring to your attention the report of our Superintendent of the Department of Investigation, Rev. R. B. St. Clair, re the show presented by "The Darlings of Paris" Company at the "Star" burlesque theatre, Temperance Street, Toronto, week beginning February 26, 1912.

This will be far from pleasant reading, but it is, in our opinion, necessary that the clergy of this city should really know what is being presented on the stage of at least one theatre, frequented by the boys and men of the city of Toronto. Bear in mind that we all are more or less responsible for the licensing of this theatre and that we all share in the benefits (?) derived from the license money.

Not only was this "show" investigated by Mr. St. Clair on Monday afternoon, Feb. 26, 1912, but investigation was made by other interested reformers, at his request, during the week. On Tuesday evening, one of the most noted moral reformers in Canada was present, as was Staff-Inspector Kennedy. On Wednesday, the reverend associate of this noted reformer was at the "play." A conference was held that day at 5 p.m., and the Morality Department gave information to the effect that still further "cuts" were to be made in the "play." Mr. St. Clair, therefore, went on Thursday afternoon and found the "show" "fairly mild," twelve "cuts" in all having been made since the Monday performance. Frequent reports had been received that a return to the pre-censored show took place on Saturday nights, when the Morality Department was busy making raids and the burlesque company was planning to leave for the States by the midnight train. Accordingly, our Superintendent of the Department of Investigation, with a member of his department, attended the Saturday night performance, and found, generally speaking, with two exceptions, that the "show" was as bad as on Monday afternoon, and that in some particulars it was worse!

The revolting report of the PUBLIC performance follows:

"Having received many complaints re the 'Star' Theatre, I paid a visit to it this afternoon (Feb. 26), at 2.15 o'clock. 'The Darlings of Paris' Burlesque Company was giving the performance. Sixteen girls in abbreviated dress formed the 'chorus,' possibly eight other actors and actresses, including 'the leading lady,' Gladys Sears, 24 in all, was the total number of the troupe. This show was advertised as 'More Parisian Than Paris' and 'Spice With a Splash!' They certainly lived up to the announcement.

"It will take too much time to relate the entire number of improper sayings and actions of these 'Darlings of Paris.' A few must suffice.

"The theatre was well filled, considering the afternoon. Young boys of 8, 10, 12 and 15 years of age were in the gallery, unaccompanied by parents or guardians.

"The first objectionable dialogue I noted was between 'Mr. Murphy' and his 'son.' Mr. Murphy told of meeting a young lady at Clarence Square and Spadina Ave., on the Sunday evening, with whom he had spent the greater portion of the night. He said that he knew that she was a woman because she had two legs, one on each corner. 'On each corner of the Square?' interrogated his son. 'No, on each corner of her er er, well on each corner!' he replied. 'How do YOU know that she had two legs?' enquired the son. 'None of your damn business!' hastily rejoined the father. He then told how he had spent many dollars on her. She

ate several quarts of oysters, drank a number of bottles of White Seal champagne, and 'enjoyed' herself generally. 'Did she LOOSEN UP, then?' asked the sporty son. 'No,' replied the father, in disgust. 'She kept her clothes on!' (This made the crowd howl with delight.)

"A little later, the son introduces 'a lady friend,' and his father was anxious to have her show her legs. She did this with a vaudeville flourish. The old man tried to look up her legs (she had a long skirt on), and in order to facilitate matters he asked her to give another flourish. She declined, and he exclaimed, 'Oh, don't be so damn stingy!'"

"She next appeared in brown tights, and after 'sporting' with her for a while, he sent in for 'clothing.' A piece of very thin veiling about one foot square was brought out, and the 'father' said: 'That won't cover her er,' and he looked at her buttock. The crowd howled again.

"One girl danced and paid especial attention to the men in one of the boxes, calling the men, 'Kid' and 'Kiddo,' and singing 'Come on along, come on along' to the tune of a certain popular air. Another girl sang, telling how that when she arrived in town she had only one gown, and was short of cash. She got in with a fast set of young men, with the result that she was wearing silks, satins, diamonds, etc. Her refrain started, 'Do you remember when I first came to town? Look at me NOW!'"

"A young man told the story, in song, of a certain young lady who went in bathing, and her bathing clothes split. He implored her to stand in water up to her neck. The refrain was something like this: 'When she began to wriggle, I began to giggle, as a lobster caught her there.' ('There' slurred so as to sound like 'hair.') Miss Gladys Sears, who stood near the singer, would endeavor to look at the rear of her skirt, exclaiming, as she did, 'My dress split?'"

"A girl said that she wanted to see 'two little devils,' and was told to 'go to Hell!'"

"Mr. Murphy was stating that a certain soubrette was his daughter, and a young man who entertained the opinion that another man he had met coming out of Murphy's house, and with whom he had held a short conversation, was Mr. Murphy, contradicted him. 'Don't I know my own daughter?' demanded Murphy. Mrs. Murphy came to his rescue, testifying that he was the father of her child. (Mr. what a GOOD MEM-ORY you must have,' rejoined Murphy.)

"An extremely disgusting rag-time dance was given. The whole company took part in this, but a young man and a soubrette who appeared to be the leading ones in that particular dance, went away beyond the limits of the law. They clung closely to each other, he with one hand on each of her buttocks, and in a most sensuous manner, imitating the act of copulation, danced about the stage to the tune of some rag-time, modified couchee-couchee, air. This nauseating performance was received with great acclaim.

"Mr. Murphy rendered himself still further objectionable by the insinuating remarks he made to members of the orchestra.

"The word 'damn' was used ten times during the performance of the afternoon. Young boys certainly heard and saw edifying things.

"A court scene brought the 'show' to a close. His Honour, Judge Winchester, Judge Riddell, Crown Attorney Corley and Mr. Robinette were represented by characters on the stage. A sissyfied policeman was called Archibald. The action of this 'officer' showed him to be of the class, or at least pretending to be, who give themselves over to acts of sexual perversion, and known, generally, as 'sissies,' 'fairies,' and by other more offensive, but at the same time, more accurately-descriptive names. The deeds of this class far exceed, in grossness, the actions of the inhabitants of Sodom and Gomorrah, and are as bad as anything ever attempted in the bathing places of ancient Rome. In this day when the rays of the sun of true religion are beaming upon our path in all their meridian splendour, these deeds are to be regarded as WORSE than in the former times. The men of Sodom, Gomorrah, Ninevah and Rome will rise up in judgment against a generation sinning in the face of the brightest, purest light the world has ever known!"

"It appeared from the statement made by one of the 'attorneys' that a certain Miss Steel Trust had been giving a dinner to a number of her friends and that some indecent dancing in the nude occurred during the banquet. Proceedings had accordingly been instituted, and the case was on the court calendar for the special time that I was privileged (?) to be present. A female detective (Miss Lydia Pinkham) gave her evidence. She managed to get in. 'Yes,' said Winchester, 'the great thing is in getting IN.' 'Well,' continued the detective, 'I looked through a key-hole and I saw a woman dancing on the table and she had NOTHING

on!" "Oh, that's nothing," said Winchester. The 'attorneys' objected to Winchester's statement that it was 'nothing.' He cracked each over the head and said, 'What do you object to a good thing like that for?' The Judge had an ardent desire to look through the key-holes himself.

"A French dancer next appeared. She was told to give her 'act' as at the dance the night before. She removed her robe and stood before the audience clad only in FLESHING tights. 'Take them ALL off, Frenchy!' shouted Winchester. This caused a sensation. Miss Steel Trust was next introduced. Mr. Robinette explained that he had not yet looked at HER EVIDENCE, 'I have saved that for the Judge,' he said. 'How good of you,' said Winchester. 'Her evidence,' they both kept saying, and the crowd took it in the way they intended. 'She has a SPECIALTY,' said Robinette. 'Oh, all the girls have one of those,' answered Winchester. 'Well, her's,' said Mr. Robinette, 'is a CIRCLE ONE.' 'Show it to the Judge,' leered Winchester. As Miss Steel Trust came in, the judges and attorneys seemed unduly excited, and became so hot, that they had to fan themselves vigorously with large palm-leaf fans. A thermometer on the wall then attracted our attention. The mercury went up, up, up to 120 degrees, the top of the thermometer, over which was inscribed the words 'Oh, Joy!' Winchester jumped up on top of the court bench and placing both hands into his loose trousers pockets, began to work them up and down in a most suggestive manner. He wanted the young lady's gown taken up to his room. Everything lent color to a most indecent scene and was thus interpreted by the delighted audience. Miss Steel Trust gave her evidence, as did another soubrette, and the usual smutty talk and insinuations obtained. The whole affair wound up with a free-for-all dancing finale.

"If we are to have A BETTER TORONTO, a mere warning should not be given these theatrical people. Arrests should be made. If a conviction cannot be obtained for that sensuous dance, then it is time to close up the law courts. THE LICENSE OF SUCH A THEATRE SHOULD BE REVOKED. If the Chief of Police's name is at the bottom of a license for such a training-school for immorality, it should be there no longer. Let the license be revoked, the proprietor punished. TORONTO HAS NO ROOM FOR SUCH A SHOW, and the man seated next to me said that 'The Darlings of Paris' was mild to some of the shows they have in the Star.

"The objectionable postcards sold between the acts should likewise be investigated by the police.

"I defy any person to find a worse show in any place east of the Mississippi River. It is the limit. That is, to my mind, but my seat-mate told me that there are even worse. And in the same TORONTO theatre!"

This, Reverend Sir, is the report. If it is unprintable, as the press has truly declared, then what about the REAL PERFORMANCE, with all its offensive coloring, what about IT?

Surely you will do your utmost to aid us in ridding the city of this terrible place. Influence your leading laymen. Get some prominent business men from your congregation to visit the theatre and see the performance for themselves. Potent forces are working against us. This theatre has influential friends. Let VIRTUE, too, have her influential friends who shall DEMAND of the Board of Police Commissioners that this theatre be no longer licensed.

Signed on behalf of

THE TORONTO VIGILANCE ASSOCIATION,

REV. A. G. DONER, President.
DR. W. M. McFADDEN, Vice-President.
W. R. SHERK, Secretary.

(OVER)