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Volume 16, numéro 1, autumn 1986

URI : [https://id.erudit.org/iderudit/acad16\\_1art02](https://id.erudit.org/iderudit/acad16_1art02)

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Éditeur(s)

The Department of History of the University of New Brunswick

ISSN

0044-5851 (imprimé)

1712-7432 (numérique)

[Découvrir la revue](#)

Citer cet article

Marquis, G. (1986). "A Machine of Oppression Under the Guise of the Law": The Saint John Police Establishment. *Acadiensis*, 16(1), 58–77.

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## “A Machine of Oppression Under the Guise of the Law”:

### The Saint John Police Establishment, 1860-1890

THE COERCIVE ROLE OF THE POLICE and the lower courts has received considerable attention. In the 1970s revisionist criminal justice history focused almost exclusively on the police as “domestic missionaries” enforcing an “urban discipline” upon the working class. To various degrees, social control interpretations saw moral reform or “law and order” as exogenous ideologies imposed upon the masses by the middle class. American and British historians also examined the historic police role in breaking strikes and harassing trade unions.<sup>1</sup> These studies bequeathed a valuable contribution, namely the thesis that police reform “aimed at reshaping popular culture as much as preventing crime”.<sup>2</sup> One of the few Canadian articles on the development of municipal police adopts this theme, suggesting that the 19th-century Toronto police department was an instrument of middle-class hegemony or moral reform.<sup>3</sup>

In recent years historians have begun to examine the less-documented legitimization function of the police and courts, recognizing that the law has an ideological function. Legitimation, which should not be confused with the liberal theories of consensus that dominate official police histories, is the process by which capitalist institutions win support or at least acquiescence from the masses.<sup>4</sup> Without losing sight of the basic inequities of the justice system, historians, particularly in the Canadian case where police have enjoyed a degree of relative

I would like to thank Janice Marquis for her research assistance.

- 1 R. Storch, “The Policeman as Domestic Missionary: Urban Discipline and Domestic Culture in Northern England, 1850-1880”, *Journal of Social History*, IX, 4 (Summer 1976), pp. 481-509; Robert Liebman and Michael Polen, “Perspectives on Policing in Nineteenth-Century America”, *Social Science History*, II, 3 (Spring 1978), pp. 346-60.
- 2 John Field, “Police, Power and Community in a Provincial Town: Portsmouth, 1815-1875”, in Victor Bailey, ed., *Policing and Punishment in Nineteenth-Century Britain* (New Brunswick, N.J., 1981), p. 50.
- 3 Nicholas Rogers, “Serving Toronto the Good: The Development of the City Police Force, 1834-1884”, in Victor Russell, ed., *Forging a Consensus: Historical Essays on Toronto* (Toronto, 1984), pp. 135-6.
- 4 Eric Monkkenon, *Police in Urban America, 1860-1920* (New York, 1981); Michael Brogden, *The Police: Autonomy and Consent* (Toronto, 1982); Sidney Harring, *Policing a Class Society: The Experience of American Cities, 1860-1915* (New Brunswick, N.J., 1983); Michael Ignatieff, “State, Civil Society and Total Institutions: A Critique of Recent Social Histories of Punishment”, in David Sugarman, ed., *Legality, Ideology and the State* (Toronto, 1983), pp. 183-211.

popularity, should be sensitive to the question of legitimization. To do otherwise would be to offer a one-sided view of legal order and urban government. Recent studies of the Toronto, Halifax and Hamilton police courts have displayed an awareness of the popular legitimacy of the law that has been generally ignored in social history.<sup>5</sup>

The present study examines the role and image of two important 19th-century institutions of criminal justice in Saint John, the police department and stipendiary magistrate's court, commonly referred to as the "police establishment". As in other Canadian cities, the close association of the lower judiciary and police blurred the distinctions between the judicial and law enforcement branches of the justice system. The focus here is on police-community relations, specifically such themes as resistance to the police, the policing of strikes, liquor licence law enforcement, the police service role, and the image of the police court. The intention is not to dismiss class-conflict interpretations of the justice system, but to broaden our understanding of the role of the 19th-century police establishment. It is suggested that the effectiveness of the police establishment depended largely on the tacit consent of the working class. This is not to denigrate popular hostility towards police or to characterize the working class as a faceless mass ordered by elite-controlled institutions. On the contrary, in order to gain a certain degree of acceptance the police adopted a flexible attitude towards working-class leisure activities and, together with the police court, fulfilled a number of community obligations.

The Saint John police force was formally established in 1849 in the wake of a decade of sectarian violence, criticism of local magistrates and experimentation with seasonal police, citizens' patrols and nightwatchmen. The police establishment was financed by the common council but supervised by a government-appointed permanent stipendiary magistrate, who also supplanted the mayor and aldermen in conducting the police court. In 1856 the magistrate's police duties were curtailed by a statute creating the office of chief of police, also an appointee of the provincial cabinet. The provincial government's role in Saint John was unique; other communities retained or established local control of their police. Although the civic corporation was denied direct control of the department until the early 20th century, the chief developed a working relationship with the common council's police committee and the rank and file thought of themselves as civic employees.<sup>6</sup>

5 Paul Craven, "Law and Ideology: The Toronto Police Court, 1850-1880", in David Flaherty, ed., *Essays in the History of Canadian Law, Volume II* (Toronto, 1982), pp. 249-307, Michael Katz, M.J. Doucet and M.J. Stern, *The Social Organization of Early Industrial Capitalism* (Cambridge, 1982), pp. 201-41, Judith Fingard, "Jailbirds in Mid-Victorian Halifax", in P.B. Waite, Sandra Oxner and Thomas Barnes, eds., *Law in a Colonial Society: The Nova Scotia Experience* (Toronto, 1984), pp. 103-23.

6 T.W. Acheson, *Saint John: The Making of a Colonial Urban Community* (Toronto, 1985), pp. 214-29; G. Marquis, "The Police Force in Saint John, New Brunswick, 1860-1890", M.A. thesis, University of New Brunswick, 1982, pp. 24-33.

Between 1860 and 1890 Saint John, one of the great urban centres of British North America, experienced a relative decline in economic power and a stagnation of population. At Confederation the city was at the height of its power, dependent largely upon commerce, shipbuilding and the timber trade, and although not an industrial centre, was experiencing economic diversification. With the annexation of the suburb of Portland in 1889 the regional metropolis contained more than 40,000 people, although the old city of Saint John had actually declined in number by several thousand since 1871.<sup>7</sup> In this period the police department was supervised by John R. Marshall, a Methodist and former blacksmith identified with the Liberal "Smashers" of the 1850s. Until the creation of greater Saint John, Marshall's force remained between 25 and 30 men, most of whom were the sons of New Brunswick farmers. Recruits from the country, or "bushmen", were preferred over locals who were thought to have too many familial, fraternal and sectarian ties with the community.<sup>8</sup> The appointment of the police chief and stipendiary magistrate by the provincial cabinet, the preference in hiring rural New Brunswickers, and the inability of police to vote in municipal and provincial elections until 1891, marked the extent to which the desire to remove police from local and popular influences had affected Saint John.<sup>9</sup>

Appointed to reorganize police administration in 1862, John Marshall set about improving the somewhat casual policies of his predecessor by instituting the first daily charge book and submitting monthly and annual reports to the city chamberlain and common council. As a result of the chief's increasing disenchantment with moral reform Marshall's reports became less tempered by evangelical zeal. Arrest patterns, he noted, did not record all police activities. In 1863, for example, the force escorted home half as many intoxicated persons as it arrested for public drunkenness; in 1866 police suppressed 1,100 disturbances in private dwellings. In subsequent years these and other activities went unrecorded.<sup>10</sup>

Arrest statistics, however, do provide a rough indication of the department's concerns. As Table One illustrates, arrest totals peaked in the early 1860s and again in 1874 and 1877-78. The average policeman made 50 arrests in 1870, 40 in 1880 and 30 in 1890. As was typical of late 19th-century North American urban police statistics, public-order offences — drunkenness and disturbing the

7 *Census of New Brunswick*, 1861; *Census of Canada*, 1871-91; C.M. Wallace, "Saint John, N.B., 1800-1900", *Urban History Review*, 1 (1975), pp. 18-9; Robert H. Babcock, "Economic Development in Portland (Me.) and Saint John (N.B.) During the Age of Iron and Steam, 1850-1914", *American Review of Canadian Studies*, IX, 1 (Spring 1979), pp. 3-37.

8 The force in 1871 still included several Irish-born Protestants: Marquis, "The Police Force in Saint John", pp. 45-50; "Reports of the Chief of Police", *Reports and Accounts of the Corporation of Saint John*, 1863-1890.

9 "An Act in Further Amendment to the Police Establishment in the City of Saint John", *New Brunswick Acts*, 1891, ch. LVII.

10 "Police Chief's Reports", 1863-66.

Table One  
Total Arrests and Arrests by Selected Categories,  
Saint John, 1863-1889

Year	Total Arrests (N)	Proportion of Total Arrests by Selected Categories %				
		Assault	Drunkenness	Disorderly Conduct	Property Crime	Vagrancy
1863	2503	11.8	30.3	9.4	8.2	3.4
1864	2256	12.9	32.9	11.4	7.2	4.4
1865	2034	12.6	43.5	3.8	7.6	4.0
1866	2459	11.1	46.1	3.1	5.8	6.7
1867	1978	-	-	-	-	-
1868	1763	-	-	-	-	-
1869	1345	-	-	-	-	-
1870	1402	12.2	63.2	2.2	6.0	2.6
1871	1512	15.0	51.6	13.2	5.2	1.0
1872	1819	16.0	54.0	5.0	3.6	0.4
1873	1891	14.4	49.0	13.4	4.2	1.6
1874	2145	12.1	58.6	2.9	4.1	0.3
1875	1304	17.3	48.0	14.2	4.4	0.7
1876	1440	15.8	49.5	12.8	9.4	1.9
1877	2092	10.6	59.7	15.4	3.	1.3
1878	1972	8.3	73.4	3.2	4.6	7.8
1879	1232	11.0	50.3	12.7	7.6	9.4
1880	1053	11.0	45.6	11.6	8.2	14.0
1881	1224	12.1	56.5	1.5	6.9	10.1
1882	1414	10.1	47.3	11.0	3.5	10.4
1883	1272	20.7	51.0	14.0	5.4	12.0
1884	-	-	-	-	-	-
1885	1030	15.7	44.4	12.5	7.1	16.0
1886	977	11.0	47.2	10.8	6.1	15.0
1887	889	13.0	7.1	4.2	6.5	0.1
1888	865	11.3	39.3	10.1	4.2	1.7
1889	1187	8.0	62.3	16.4	3.6	1.1

Source: Compiled from Police Chief's Reports, 1863-89. Figures for 1877 represent the last seven months of the year only. Property crime includes larceny, robbery, burglary, forgery, counterfeiting and breaking windows.

peace — constituted on average 60 per cent of arrests. Both the police court and force dealt primarily with misdemeanor activity that involved problems of public order and urban regulation more than crime. Assault charges usually formed ten to 15 per cent of arrests, offences against property five to 10 per cent. The marked decline in arrests during the 1880s was related in part to the increasing use of the court summons for minor offences and by-law infractions.<sup>11</sup>

In Victorian Saint John ethnic and sectarian tensions, if not dominating social relations, had the potential to fragment the working class. The county magistracy, civic politicians and the police were almost exclusively Protestant, while Roman Catholics were a disproportionately high percentage of those arrested, fined and jailed. Although the population included a sizeable component of Protestant Irish, the lower ranks of the labouring class were predominantly Irish Catholic.<sup>12</sup> The ranks of the police and other civic departments included many members of the Loyal Orange Association, the Protestant fraternal society that dominated the province's associational activities. Rowdiness by the "bhoys" or Irish labourers was more than a police court stereotype: until the early 1870s those born in Ireland were twice as likely as natives to fall into the clutches of the police. In the early 1860s, one-quarter of the population consisted of Irish immigrants. In 1863, not accounting for transients, sailors and residents of Portland and surrounding parishes, the police arrested the equivalent of one-quarter of the Irish-born population of the city. How much of this was due to nativism or prejudice is unclear. In the early 1860s a substantial percentage of the city's young and middle-aged men, groups most likely to come into conflict with police, had been born in Ireland.<sup>13</sup>

As both Protestant and Catholic journalists noted in their discussions of criminality, petty offenders were typically working-class Catholics of Irish descent. In the period 1878-85, the only years in which Marshall published the religions of the arrested, Catholics, one-third of the population, contributed two-thirds of arrests.<sup>14</sup> Irish Catholics remained a sizeable minority, estimated in 1883 by the *Weekly Freeman*, a Catholic organ, to form two-thirds of the

11 "Police Chief's Reports", 1863-89; Monkkonen, *Police in Urban America*, pp. 65-85; Katz *et al.*, *The Social Organization of Early Industrial Capitalism*, p. 207; Rogers, "Serving Toronto the Good", p. 132. The patterns of police court charges for the period August 1849 to the end of 1851 are generally similar to those of later arrest records: see Police Court Record, 1849-1852, Saint John Regional Public Library. This is the only surviving 19th-century police court register for the city.

12 Acheson, *Saint John*, p. 233. Throughout the period the single largest ethnic group in the "Loyalist" city were those of Irish descent.

13 "Police Chief's Reports, 1863-73. A high representation of Irish Catholics was also evident in contemporary Toronto and Hamilton police records: see Katz, *Social Organization*, p. 210 and Rogers, "Serving Toronto the Good", p. 134. Scott See has argued that nativism was an important force in colonial New Brunswick: "The Orange Order and Social Violence in Mid-Nineteenth Century Saint John", *Acadiensis*, XIII, 1 (Autumn 1983), pp. 68-92.

14 "Police Chief's Reports", 1878-85.

poorer classes. In explanation of the high incidence of Catholics in arrest records, the *Freeman* offered the widely-held Victorian theory that the legal system discriminated against immigrants and the poor: "In every city and town in the world the greater part, indeed very nearly all of those arrested belong to the labouring classes, and to the poorest and most unfortunate of those classes".<sup>15</sup>

By the Confederation era, the police had been accepted by the bulk of the population as a necessary, if somewhat bothersome, civic service. Resistance to the police, not uncommon at mid-century, gradually declined with the increasing domestication of the urban population. The limited size of the force meant that police patrols consisted largely of "showing the flag" in the city's several wards.<sup>16</sup> The police and inhabitants of poor neighbourhoods gradually reached an accommodation, the result being that constables reacted to only the most obvious examples of public disorder. In 1860 patrolmen carried cutlasses and cavalry pistols in addition to their batons, exhibiting a warlike appearance that intimidated some residents and amused others. As a veteran police sergeant recalled of the 1850s, "the masses of the people had different ideas concerning individual liberty and a considerable portion of the community were inclined to look upon the policeman as a common foe".<sup>17</sup> In the 1860s, following the example of unarmed English constabularies, the department abandoned its heavy arms as a good will gesture, but resistance and ridicule on the beat continued. Confrontations ranged from non-cooperation and insults to stone-throwing and the rescue of persons in custody. In 1864 beleaguered guardians of the peace were authorized by law to demand assistance from bystanders during street altercations.<sup>18</sup>

The unofficial use of violence was an integral part of the beat system; although the press called for more gentlemanly behaviour, summary justice continued to be dispensed in back streets and alleys. Most middle-class commentators had little sympathy for the less-than-respectable victims of police strong-arm tactics. Yet the bourgeois press universally condemned individual officers who engaged in the "unmanly" act of persecuting children, and delighted in lampooning officious or cowardly policemen. In 1874, for example, the *Daily News* noted with approval that "bonfires blazed in various parts of town" following the dismissal of an unpopular constable.<sup>19</sup>

15 *Weekly Freeman*, 3 February 1883. In its early years the *Freeman* was edited by Timothy Warren Anglin: see William M. Baker, *Timothy Warren Anglin, 1822-96: Irish Catholic Canadian* (Toronto, 1977).

16 *Daily News* (Saint John), 19 May 1874. For police divisions and deployment circa 1860, see Saint John Common Council Correspondence and Draft Minutes, 3/11, 30 July 1856, Provincial Archives of New Brunswick [PANB].

17 Scrapbook C58, p. 222, New Brunswick Museum Archives [NBM]; *Morning Freeman*, 30 March 1860; *Saint John Globe*, 14 December 1901.

18 *Morning Freeman*, 2 August 1864; *Daily News*, 29 April 1872, 19 May 1874, 17 August 1875.

19 *Daily News*, 7 August 1874.

A series of assaults on police finally convinced Marshall to rearm the force with revolvers in 1872. Of greater assistance to men on the beat were a series of lock-ups, crude neighbourhood holding cells designed to deter disturbers of the peace. In 1880, when the department opened a lock-up in the troublesome Lower Cove waterfront area, constables no longer had to drag belligerent disturbers of the peace several blocks to the police station. A decade later "street rows" involving police were a rarity and the police court had experienced a noticeable decrease in assault charges. In 1890 Marshall's successor instructed his men to sheathe their batons in the English fashion rather than brandish them as clubs as was the American practice. The city, for a variety of reasons, had been pacified. Perhaps more important than the police presence, as Chief Marshall recognized, were the broader pressures of socialization. Standards of public order had changed gradually yet dramatically since mid-century; to a certain extent, the lower working class had adjusted to the concept of respectability.<sup>20</sup>

The use of police against trade unions was not widespread in Saint John in the period 1860-90, primarily because there were few large-scale struggles between capital and labour. Although skilled trades had begun to organize at mid-century, these were still the formative years of local labour. Strikes by shipwrights, raftsmen, navvies, riggers, millmen and stonemasons were usually brief and non-violent. Workers' associations were neither sufficiently large nor disciplined enough to engage in protracted strikes. An exception was the Labourers' Benevolent Association, formed by longshoremen who worked under the direction of stevedores. For years the Labourers' bell, still a Saint John landmark, rang out the hours of work along the waterfront. Despite the liberalization of criminal law in the early 1870s to accommodate trade unionism, employers, journalists, judges and most civic politicians remained unconvinced of the right of organized workers to prevent or dissuade non-union men from working. For the commercial elite and those who derived profits from the movement of timber and goods through the port, the role of police during strikes by the ship labourers was abundantly clear: keeping the peace on the waterfront, the hub of the city's economy, translated into preventing work stoppages.<sup>21</sup>

A related police service provided to employers was the rounding up of sailors who had reneged on contracted duties. As Judith Fingard details in *Jack in Port*,

20 "Police Chief's Reports", 1863-66, 1880-89; *Daily News*, 27 December 1871, 19 October 1872; *Daily Sun*, 20 July 1880, 28 December 1884, 29 August 1890; Henry B. Young, "History of the Saint John Police Force" (typescript, 1949), pp. 4-5, NBM.

21 Richard Rice, "A History of Organized Labour in Saint John, 1813-1890", M.A. thesis, University of New Brunswick, 1968; *New Dominion and True Humourist Extra*, 1 June 1875; *Daily News*, 14 June 1870, 23 October 1871, 10 July 1872, 27 March 1874, 18 November 1875, 15 February 1877; *Morning Freeman*, 27 November 1868; Canada, *Report of the Royal Commission on the Relations of Labour and Capital, New Brunswick Evidence* (Ottawa, 1889), pp. 209-10.



shipping interests faced a formidable alliance of rebellious merchant seamen and sailors' boarding house keepers or crimps, who often enticed or assisted crewmen in leaving their vessels for the promise of more lucrative employment. The merchants and shipowners of Saint John, unlike those of Quebec, never developed a water or harbour police, and thus the city force was expected to assist captains in tracking down stray crewmen.<sup>22</sup> Some sailors were persuaded by police to return to their ships, others had to be forced. Between 1863 and 1889, in an average year one out of every 50 persons arrested was a mariner charged with desertion or refusing duty. Disputes between masters and seamen, including demands for back wages, were settled by the police magistrate. To minimize the influence of crimps, the magistrate often remanded deserters to jail pending the departure of their vessels. The mid-century police court register indicates that about one-tenth of the roughly 2,300 cases before the stipendiary magistrate in the period from August 1849 to the end of 1851, a considerable proportion, involved disputes between seamen and employers. The vast majority of these charges were laid by captains and mates against crewmen.<sup>23</sup> In Fingard's analysis the stipendiary magistrate, an important arbiter of sailors' labour disputes, particularly after 1873 changes in the law, generally favoured employers.<sup>24</sup>

Strike activity in the era of labour assertiveness, 1870-77, although resulting in a number of arrests and contributing to the expansion of the police department, produced no serious clashes between police and workers. The LBA was striving not only for control of the labour market but also for respectability; thus its Irish leadership, described by the *Daily News* as "ignorant and reckless men", urged restraint in dealing with "rebels" or non-union workers.<sup>25</sup> Three brief strikes in 1870 over the employment of "rebels" prompted a response on the part of the authorities that would become familiar: the assignment of policemen and special constables to wharves and ships and the arrest of several LBA men for fighting or assault.<sup>26</sup> Shipping and lumbering interests were further alarmed in 1874 when the new Millmens' Protective Union, an attempt to organize all county sawmill workers on industrial lines, sought to force a collective agreement upon employers. Sawmills were the area's most important industrial enterprises, employing hundreds of hands and providing business for shipowners, stevedores and commission agents. Millowners, dismayed at the lack of police protection against crowds of men and boys who gathered to persuade or intimidate workers into joining their cause, joined leading lumbermen

22 Judith Fingard, *Jack in Port: Sailortowns of Eastern Canada* (Toronto, 1982), pp. 140-93, 220-32.

23 "Police Chief's Reports", 1863-89; Police Court Record, 1849-52. This did not include assault charges laid by masters and crew members.

24 Fingard, *Jack in Port*, p. 188.

25 *Daily News*, 6 November 1874.

26 *Daily News*, 13-15 June, 3 August 1870.

and the Board of Trade in forming a Lumber Exchange. When the ship labourers began their annual campaign for workplace control and higher wages, employers discussed the possibility of hiring a special protective force. In his address to a grand jury Chief Justice W.J. Ritchie warned that "The owners of property, interfered with, will protect themselves".<sup>27</sup>

The size of the police force was increased as a direct result of the Labourers' Benevolent Association's 1875 strike, described by Richard Rice as the crucial New Brunswick labour struggle of the century.<sup>28</sup> At its peak the union claimed to represent nearly 1,500 workers but was weakened by the seasonal nature of its special work, the loading of deals. Events leading to the actual strike — fighting, intimidation and a serious attack upon a prominent shipowner — inspired the municipal authorities to hire special constables and take the unprecedented step of calling out a detachment of militia. The common council allowed the chief to hire three additional constables. Following grumbling among the rank and file that they were paid less than both strikers and "specials", the council awarded a departmental wage increase. The LBA won the support of the riggers but failed in its attempt to stage a general strike.<sup>29</sup> In the opinion of a prominent member of the Lumber Exchange, police protection of rebel workers was important, but "the battle with the workingman" was waged primarily with money, not force.<sup>30</sup>

Although no longer monopolizing the waterfront labour force after 1875, the LBA remained sufficiently strong to prevent the use of donkey engines in loading cargoes until the mid-1880s. In 1884 police protected "outsiders" working on a steamer whose captain had refused to contract with the union and the police eventually arrested three union men for assault. In the face of considerable popular sympathy for the ship labourers, the dispute was mediated in the stipendiary magistrate's chambers. Counsel for the union, which traditionally enjoyed the support of the *Freeman*, a journal attached to Irish causes, including that of Irish labour, was Robert J. Ritchie, Liberal solicitor-general, prominent Roman Catholic and future police magistrate. The struggles of the longshoremen, in which class and sectarian factors intertwined, were in many ways typical of 19th-century New Brunswick social conflict.<sup>31</sup>

The use of police during strikes in the 1870s and early 1880s reflected the fact

27 1871 Manuscript Census, Saint John County; *Daily News*, 17-24 March, 24-27 April, May 1874; *Morning Freeman*, 30 April, 7 May 1874.

28 Rice, "A History of Organized Labour in Saint John", p. 71. The most violent LBA strike occurred two years later: *Daily News*, 15 February 1877.

29 Rice, "A History of Organized Labour in Saint John", p. 77; *Morning Freeman*, 27 April - 4 May 1875; *Daily News*, 2, 30 April, 5-14 May 1875.

30 *Morning Freeman*, 8 May 1875. On this occasion Chief Justice Ritchie, in his address to the circuit court's grand jury, adopted a less hostile view of strikes, questioning the wisdom of deploying special constables and militia in the face of what amounted to a peaceful withdrawal of services: *Daily News*, 12 May 1875.

31 *Daily News*, 4 May 1881, 28 April 1883; *Daily Sun*, 18 March, 24-25 April 1884. By the early 1880s the LBA was called the Ship Labourers' Association.

that the LBA was at the height of its power. Its membership depleted by economic downswings, outmigration and the disruptive tactics of independent stevedores, the union eventually split into rival factions. By 1890, the founding year of the local Trades and Labour Council, the vanguard of Saint John unionism was wracked by internal feuds. These disputes, together with the steamship companies' strategy of bringing in outsiders to load vessels in the 1890s, meant that police vigilance on the waterfront did not abate. The labour struggles of the period did indicate that the police force served as an important guarantor of "free labour" in the commercial city. The less visible but no less important activity of securing stray sailors was a second example of police serving employers' interests. Similarly, the stipendiary magistrate's court remained an important forum for disputes between masters and crewmen.<sup>32</sup>

It was in dealing with leisure activity, such as the use of liquor, that the police most often came into contact — and conflict — with the working class. Indeed the single most important function of urban police was the monitoring of plebeian community life. The Saint John case, however, is an example of police failure to achieve uniform enforcement of liquor licensing laws in working-class neighbourhoods. The reasons for this were complex, but an important factor was police sensitivity to public opinion, which opposed stringent liquor law regulation. The narrow defeat of the Canada Temperance Act in an 1882 referendum indicated that a good portion of the community rejected prohibition and was satisfied with the licence system. Despite cyclical peaks in temperance strength, embodied in the election of temperance mayors, aldermen and councillors, the people of Saint John did not agree on police policy towards illegal dealers let alone the licensed trade.<sup>33</sup>

Historians have alluded to the 19th-century tavern as an important working-class institution, yet the place of drinking in this culture has yet to be firmly resolved. Some have noted the active role of artisans and skilled workers in temperance societies, and others have viewed liquor-licensing questions as central to working-class politics.<sup>34</sup> The wave of 1960s and 1970s historiography on 19th-century reform movements viewed temperance as part of a middle-class

32 *Daily Sun*, 19 April 1887; Rice, "A History of Organized Labour in Saint John", p. 21; Saint John Trades and Labour Council, *History of Saint John Labour Unions* (Saint John, 1929); Elizabeth W. McGahan, *The Port of Saint John: From Confederation to Nationalization, 1867-1927* (Saint John, 1982), pp. 180-7; Ian McKay, "Strikes in the Maritimes, 1901-1914", *Acadiensis*, XIII, 1 (Autumn 1983), pp. 3-46.

33 *Daily Sun*, 28 January 1882; *Weekly Freeman*, 2 August 1882.

34 Lawrence T. McDonnell, "'You Are Too Sentimental': Problems and Suggestions For a New Labor History", *Journal of Social History*, XVII, 4 (Summer 1984), pp. 633-6; Bryan Palmer, *Working-Class Experience: The Rise and Reconstitution of Canadian Labour, 1800-1980* (Toronto, 1983), pp. 85, 110-1; Peter DeLottinville, "Joe Beef of Montreal: Working Class Culture and the Tavern, 1869-1889", *Labour/le Travailleur*, 8/9 (1981-82), pp. 9-40; Gregory Kealey, "Orangemen and the Corporation: The Politics of Class During the Union of the Canadas", in Russell, *Forging a Consensus*, p. 47.

strategy to control undisciplined workers. Although employers were aware of the disciplinary potential of temperance, the 19th-century Saint John movement, in the revisionist analysis of T.W. Acheson, "cannot be easily attributed to a single social group or motivation".<sup>35</sup> In a broad sense temperance and prohibition were part of Victorian social reform, but they received uneven support from the elite or middle class of the port city. The divisive issue, as Acheson points out, was the question of legal coercion.

In mid-Victorian Saint John the tavern, ranging from small operations in widows' parlours to more prosperous hostelries, was a fact of city life. The diary of the young barrister Isaac Allen Jack suggests that in the early 1870s taverns were not the exclusive realm of the workingman, nor were hotels patronized solely by the middle class.<sup>36</sup> In practice, however, few patrons of respectable hotel bars concerned the police; it was the working class that suffered the ill effects of alcohol and arrest. Police powers in supervising legal and illegal liquor sales, limited in the 1860s, were gradually extended as a result of pressure from groups such as the Evangelical Alliance, a ministerial association, and the liquor trade itself. Between 1860 and 1890 the saloon business, the licensing of which was one of the mayor's important prerogatives, was consolidated from more than 250 establishments into less than 50.<sup>37</sup> Statutory and administrative restrictions of the retail trade increased police responsibilities, influenced working-class leisure activities and changed the face of neighbourhoods. The 1861 law banning Sunday sales, the 1878 amendment prohibiting liquor in grocery stores and the 1883 curtailment of Saturday night tavern hours were measures clearly aimed at the segment of the population working a six-day week. Hotel keepers, publicans, "victuallers", bootleggers and customers, however, continued to ignore provisions of the licensing laws throughout the 1870s and 1880s.<sup>38</sup>

Saint John police were skeptical towards the theory that moral reform could be wrought through coercive legislation. As a result, the department confined itself to picking up helpless and disorderly "drunks" and prosecuting the most blatant abusers of the liquor laws. Marshall's early reports reflected the optimism of an evangelical reformer genuinely disturbed at the social consequences of rum dens in the lower end of the city. In 1864-65 he was convinced that "the vicious classes" could be reformed through expanded police powers and a tougher licensing policy to govern working-class drinking. Frustrated by

35 Acheson, *Saint John*, pp. 138-9. See also J.K. Chapman, "The Mid-Nineteenth Century Temperance Movement in New Brunswick and Maine", *Canadian Historical Review*, XXV, 1 (March 1954), pp. 43-60.

36 I.A. Jack Diary, 1870-71, NBM.

37 *Reports and Accounts of the Corporation of Saint John, 1860-90*.

38 "An Act to Regulate the Sale of Spiritous Liquors in the City and County of Saint John", *New Brunswick Acts, 1861*; *Morning Freeman*, 29 October 1878; *Daily Sun*, 4 September 1883; Canada, Royal Commission on the Liquor Traffic, *Minutes of Evidence*, I (Ottawa, 1893), p. 489.

the courts' legal protection of liquor dealers, Marshall stated that the principle of "liberty of subject" so prized in British law would have to be ignored as the "honest and labourious classes" were threatened by the lazy and immoral. By the mid-1870s the chief, whose appointment had been welcomed by temperance supporters, had adopted a somewhat cynical attitude towards many expectations of moral reformers. Enforcing the liquor law, he believed, "like the law relating to murder or theft...does not prevent greater offence".<sup>39</sup> Other police spokesmen, although sympathetic with temperance principles, shared the opinion that liquor laws, particularly the Canada Temperance Act which would have introduced local prohibition, were doomed to fail if they lacked community support.<sup>40</sup>

As the police authorities were to discover, public opinion and the law itself constituted formidable barriers to police action against taverns, dance halls and private dwellings suspected of violating liquor regulations. Journalists were worried that the chief's initial enthusiasm would lead to police "despotism" and "espionage" against legitimate businesses and law-abiding citizens. They also took umbrage at Marshall's blanket criticisms of the tavern business, which contributed substantial amounts to civic coffers.<sup>41</sup> In 1864 the right of police to enter suspected premises was seriously impeded after a dance hall operator successfully prosecuted the police chief for forcible entry and trespass. Prominent barrister David S. Kerr, involved that year in a number of cases that questioned police powers, described Marshall's force as "an arbitrary and despotic power" which together with the police court inflicted "oppression and cruelty upon the poor and unfortunate".<sup>42</sup> Through Kerr's instigation, two of stipendiary magistrate Humphrey T. Gilbert's decisions, one involving a publican, the second a woman convicted of vagrancy, were reversed by higher courts. In the case of the dance hall, the Supreme Court, finding the premises "utterly disgraceful" on moral grounds, awarded the proprietor token damages of one penny.<sup>43</sup>

The political power and spirited legal defence of Saint John liquor dealers and saloon-owners continued to frustrate the police chief and stipendiary magistrate, who were subjected to criticism from temperance interests. The readiness of prestigious barristers to represent publicans and liquor dealers also contributed to anti-lawyer feeling among temperance advocates.<sup>44</sup> In 1871 the legislature

39 "Police Chief's Reports", 1864-66; *Daily News*, 8 October 1877.

40 Marshall never lost his interest in the problem of juvenile delinquency and continually called for a provincial reformatory. *Daily News*, 8 October 1877; *Daily Sun*, 8 February 1882; Royal Commission on the Liquor Traffic, *Evidence*, I, p. 483.

41 *Telegraph*, (Saint John), 30 January 1860; *Morning Freeman*, 14 June 1864; *True Humourist*, 29 April 1865; *Morning News*, 4 December 1866.

42 *Morning Freeman*, 12 November 1864, 24 January 1865.

43 *Morning Freeman*, 24 January 1865; "Harvey vs. Marshall", in John C. Allen, ed., *New Brunswick Reports*, VI (1864-65) (Toronto, 1879), pp. 292-6.

44 *True Humourist*, 18 May, 1, 8 June 1867.

granted police easier access to taverns in order to enforce more stringent regulations and shorter hours of business, but hotels and saloons avoided police scrutiny through the use of back and side doors. Sunday drinking, theoretically eradicated in 1861, continued.<sup>45</sup>

By the late 1870s, moral reform groups demanding more effective control of the liquor traffic included the Young Men's Christian Association, the Evangelical Alliance, the Women's Christian Temperance Union and the Temperance Reform Club. Similar groups, including temperance fraternal lodges, flourished in Portland, Carleton and surrounding parishes. In the Saint John case, because of the interplay of religion, ethnicity and class and the militancy of Protestant evangelicals, it is tempting to view resistance to liquor regulations as a largely Catholic phenomenon. The Catholic working- and lower-middle classes, however, were far from homogeneous. Encouraged by an often-puritanical clergy, many Irish Catholics looked with disdain upon co-religionists in the liquor business. Roman Catholic organizations, such as the Saint Aloysius and parish Total Abstinence societies, stressed moral suasion rather than legal coercion, but agreed that eradication of the liquor traffic would end much of the work of police and the stipendiary magistrate.<sup>46</sup>

Throughout the 1880s, moral reformers divided their time between organizing ill-fated Canada Temperance Act campaigns and pressuring police to clean up the "dance halls, gin hovels and dens of perdition" of Sheffield Street. This area, traditionally associated with garrison and waterfront life, had been described in 1862 as "the headquarters of the vilest and most infamous men and women in our City".<sup>47</sup> Although the families of resident tradesmen and labourers who were cultivating respectability may have shared much of the bourgeoisie's disdain for this boisterous neighbourhood, it was a favourite resort of visiting farmers, sailors and lumber workers. Its dance halls, many of which were adjacent to taverns, were reputed to be the haunt of "common prostitutes and the disorderly classes". In 1884 city authorities decided not to license the halls as licensing would provide the legal recognition and protection accorded to taverns.<sup>48</sup> It was not until 1891 that the common council, urged on by the WCTU and the Evangelical Alliance, backed a new police chief in closing the Sheffield Street dance halls as disorderly houses.<sup>49</sup>

45 "An Act in Addition to an Act to Regulate the Sale of Spiritous Liquor in the City and County of Saint John", *New Brunswick Acts, 1871*, ch. 17; *Morning Freeman*, 20 February 1872; *Daily Sun*, 4 September 1883, 2 June 1885.

46 *Daily News*, 20, 21 November 1877, 18 March 1878; *Daily Sun*, 2 November 1880. The Temperance Reform Club, formed in the mid-1870s but rejuvenated by American evangelist and temperance lecturer D. Banks MacKenzie following the Great Fire, is worthy of detailed study. It enrolled large numbers of women and mechanics and became an important force in civic politics.

47 *Telegraph*, 19 December 1862; *Daily News*, 11 May 1882.

48 *Weekly Freeman*, 19 April 1884; Saint John Common Council Minutes, 28 March 1884, NBM.

49 *Daily Sun*, 2, 7 April 1891; Ernest Styles, "The Evangelical Alliance: The Story of Forty Years"

The fact that police exercised a great amount of discretion in liquor law enforcement prompted middle-class critics, particularly those in the temperance camp, to suspect the existence of an "understanding" between the men on the beat and the men and women who dispensed alcohol. In 1863 the common council, in an attempt to professionalize the force, had removed an important incentive for police by ending the custom of awarding prosecuting officers one-half of liquor conviction fines.<sup>50</sup> In 1872 the *News* theorized that as policemen competed with one another "in taking up the biggest numbers of drunks" in order to please the chief, it was therefore in the interest of the department to tolerate illegal sales.<sup>51</sup> Policemen actively sought tips for small services performed for businessmen and other residents; this practice, it was feared, extended to accepting free liquor. George Day of the *New Dominion* speculated that half of the department had "come to the city to loaf and drink, and enjoy themselves in houses of prostitution, at public expense".<sup>52</sup> The most common dereliction of police duty was drunkenness, and it was tempting to suggest that the force had close ties with the disreputable parts of the city.<sup>53</sup>

As later investigations disclosed, many of these suspicions were valid. Men on the beat formed important and at times ambiguous relationships with tavern workers, restaurateurs, boarding-house keepers, dance hall doormen, teamsters, coachmen and even those on the underside of working-class life. This was precisely why mid-century Toronto police reformers, in the words of Gregory Kealey, had attempted to distance police from "the plebeian milieu of which the earlier policeman had been an integral part".<sup>54</sup> When temperance reformers and evangelical spokesmen accused the police of collusion with rum sellers, they were commenting not only on possible corruption but also on the average policeman's strong identification with working-class community life. There were practical benefits for police in associating with the disreputable. Cartmen and hackmen, for example, helped transport the intoxicated to the lock-up. In 1890 it was revealed that an unlicensed shop in Sheffield Street had provided shelter, liquor and gifts to men on the beat in exchange for warnings about liquor raids in the area. Although taverns operated on the boundaries of the law and were often suspected of buying stolen property and aiding deserting seamen, they were also important sources of information. Most police manhunts, for example, began with a tour of the haunts of the lower end of the city.<sup>55</sup>

(typescript, 1926), p. 7, Saint John Regional Public Library.

50 Saint John Common Council Minutes, 17 June 1863.

51 *Daily News*, 30 July 1872.

52 *New Dominion*, 16 August 1873.

53 "Police Chief's Reports", 1863; *New Dominion*, 17 July 1875; *Morning Freeman*, 22 March 1870; *Daily News*, 26 June 1876, 3 December 1877, 2 September 1880.

54 Kealey, "Orangemen and the Corporation", p. 74.

55 *Daily News*, 28 March 1870; *Morning Freeman*, 15 August 1878; *Daily Sun*, 2 September, 19

In Saint John police reform and discipline never succeeded in isolating the men on the force from community influences. The police were not "segregated from the mainstream of working-class life" as Nicholas Rogers has suggested of the mid-Victorian Toronto force.<sup>56</sup> Saint John policemen were well-known residents of the ward who were often called from their dinner tables or beds to aid neighbours. They rented, bought and sold property, married into local families, joined athletic clubs, went to church and took part in fraternal orders such as the Orange Lodge. Their struggles for promotion, higher wages, benefits and better working conditions paralleled those of other civic workers. Thus the personnel of one of the most important agencies of social discipline occupied a somewhat ambiguous position in the class structure.<sup>57</sup>

In Saint John, as in other North American cities, the police department, largely by default, was expected to provide a number of public services not related to crime fighting. In his 1864 report Marshall suggested that the mediative and service role of the police was crucial in the work of the department: "The faithful performance of police duty, does not, in my opinion, consist in making arrests and bringing people to Court: was such the case, we might have added largely to the number. As much good, if not more, is often accompanied by quiet advice and watchfulness".<sup>58</sup> Before the growth of civic bureaucracies and modern welfare agencies, urban police performed a limited social service role as part of their miscellaneous duties. The American historian Eric Monkkonen has suggested that the welfare function was in part an attempt by police to control the "dangerous class" of petty criminals, transients and vagrants. Research on the early 20th-century Toronto police has revealed that its Morality Office functioned as a family complaints bureau, providing legal aid and domestic "adjustments", including the collection of support payments for deserted wives.<sup>59</sup> In Saint John the service orientation of the police, if less developed, was important. Patrolmen extinguished nocturnal fires and sounded the alarm for larger blazes. The police chief removed lost children from the unpleasant confines of the station to his own home. Women went to the chief to complain that spouses were violent or squandering wages needed for family necessities on gambling and drink. Parents pleaded with police to remove their

December 1890.

56 Rogers, "Serving Toronto the Good", p. 129.

57 Marquis, "The Police Force in Saint John", pp. 51, 60-9. The police rank and file later developed important links with the Trades and Labour Council. When a police union met opposition from civic politicians in 1918, organized labour led a successful campaign in recalling two hostile officials see, Christopher Armstrong and H.V.Nelles, "The Great Fight For Clean Government", *Urban History Review*, 2 (1976), pp. 50-66.

58 "Police Chief's Reports", 1864.

59 Monkkonen, *Police in Urban America*, p. 150. The author's doctoral dissertation on the early 20th century Toronto police department will contain a chapter on "police social service", including policewomen, the provision of shelter and the handling of domestic complaints.



sons and daughters from evil company in taverns and dance halls.<sup>60</sup>

An overlooked welfare service of 19th-century police departments was the provision of shelter for transients or "waifs", who were usually adult males. The police station was the last resort of indigents seeking respite from the elements or more permanent quarters in the county jail or alms house. "Protectionists" generally went to the station on their own initiative; if incapacitated they were taken by police or residents. This practice, which continued in many Canadian cities until the middle of the 20th century, was common in North American urban centres where underdeveloped charity and welfare systems placed burdens on police bureaucracies. The station also gave emergency shelter to the mentally-ill and the injured. Between 1883 and 1890 the city provided a part-time police surgeon to tend to injured and ill policemen and prisoners, a helpful service given the condition of many lock-up inmates.<sup>61</sup> Taking in waifs was partly genuine charity and partly a strategy facilitating police monitoring of tramps who were traditionally associated with crime. As with other relief activities, it was most important during the winter months and seasonal lulls that characterized Canada's labour market.<sup>62</sup>

Although sometimes discharged by the police chief, transients were usually paraded with the daily crowd of prisoners before the stipendiary magistrate, admonished, and urged to seek employment or leave the city. In many cases the poor frankly demanded long-term incarceration or admission to the Alms House for the interperate months. Men and women who habitually asked to sleep on the police station floor were soon jailed as vagrants.<sup>63</sup> The significance of station shelter for both police and the homeless becomes apparent when the number of waifs is compared to the number of vagrancy arrests. During the economically-depressed 1870s, which witnessed significant outmigration and transiency, all the more complicated by the disastrous Great Fire of 1877 which levelled most of Saint John, the police harboured 1,792 waifs and laid 640 charges for vagrancy and an additional 165 charges for "lurking". The provision of police station shelter was a flexible if primitive strategy for supervising the transient poor.<sup>64</sup>

The characteristics of the police court as portrayed in the middle-class press

60 "Police Chief's Reports", 1864; *Daily Sun*, 8 February 1882, 2, 20 April 1886.

61 *Weekly Freeman*, 6 July 1883; Saint John Common Council Minutes, 15 October, 13 November 1890.

62 Monkkenon, *The Police in Urban America*, pp. 86-128. For the urban poor, see Judith Fingard, "The Winter's Tale: Contours of Poverty in British North America, 1815-1860", *Historical Papers/Communications historiques* (1974), pp. 65-94.

63 "Report of the Commissioners Appointed to Enquire into the Management of Several Public Institutions Receiving Provincial Aid", *New Brunswick Assembly Journal*, 1857, Appendix, p. 138; *News*, 24 April, 24 June 1863, 16 May 1864, 19 November 1875, 22 February 1877; *Daily Sun*, 2 June 1884.

64 "Police Chief's Reports", 1863-89.

were a mixture of pathos, humour and immorality. As Paul Craven has suggested in the case of the Toronto police court, press coverage was biased and had an ideological function, portraying most offenders and spectators as members of the disreputable classes, and such coverage therefore has to be handled with care.<sup>65</sup> In 1870 George Day described the Saint John police court audience as “unwashed Milesians, with close cropped heads and expressionless faces, with the occasional sprinkling of Africans, forming a group whose photo would not do discredit to a first-class rogues’ gallery”. Similarly, “Monday Morning at the Old Police Court”, the frontispiece of an 1879 temperance volume, depicts a stern judge and police, batons in hand, menacing a group of derelicts. The gallery includes curious newsboys and caricatures of Irishmen.<sup>66</sup> Although the press considered police court spectators vulgar, the tribunal itself was held up as “the mirror of city life”, a mirror that was of interest to more than middle-class moralizers.<sup>67</sup> The stipendiary magistrate conducted what some historians have referred to as a “people’s court”, an object of community curiosity and an institution resorted to by the working class with surprising frequency.<sup>68</sup>

Police court reporters resorted to a variety of stock characters and familiar images in their columns. Racial characteristics were important — for example, reports always noted “coloured” plaintiffs and defendants and made attempts to print testimony in Irish, Scots and Black dialect. Physical and personality irregularities were freely commented upon. A second theme, religious imagery, offers an insight into the public perception of the court. Much of this was facetious, but the portrayal of offenders as sinners at “the pew” or “penitential bench” confessing to the father-like judge was not out of place given the commentary of the magistrate. Humphrey T. Gilbert, a barrister who served as police magistrate until 1882, often spoke in religious terms, lecturing offenders as to their Christian duties. Sitting magistrates, senior aldermen who occasionally substituted for the stipendiary magistrate, resorted to similar language. Gilbert explained in 1882 that he viewed nine-tenths of the petty offenders in his court not as criminals but as children who needed firm guidance and occasional punishment.<sup>69</sup>

The magistrate’s discretionary powers allowed for a paternalist style of justice that often gave petty offenders the benefit of the doubt. Generally, those arrested for the first time for public drunkenness were released after a night in the lock-up. Such was the case of the elderly Hiram Walker in 1860:

65 Craven, “Law and Ideology”, pp. 249-52.

66 *New Dominion*, 22 October 1870; Ishmail, *The Temperance Question Pro and Con from a Rational Standpoint in Connection with the Permissive Bill of 1878* (Saint John, 1879).

67 *Daily Sun*, 4 February 1882.

68 Fingard, “Jailbirds in Mid-Victorian Halifax”, pp. 101-2; Katz *et al.*, *Social Organization of Early Industrial Capitalism*, pp. 225-8, 234.

69 *Morning Freeman*, 31 January 1860, 10 March 1860; *Daily News*, 2 May 1876; *Daily Sun*, 23 July 1875, 28 January 1882; *Daily Telegraph*, 9 February 1882.

He pleaded very earnestly that he was employed to go to the country, and meant to go. While engaged in getting a load ready, his employer had given him some Irish Whiskey, and not being Irish himself, this proved too much for him, but upon his soul he would go back to the country straight away, and not come back for 3 months. The Magistrate, giving him some wholesome advice, let him go.<sup>70</sup>

Gilbert and his assistants occasionally gave recidivists the opportunity to "take the pledge" of total abstinence in the presence of a minister and a policeman. Similarly, fines were "allowed to stand" pending the good behaviour of the defendant. As Fingard has suggested of the Halifax police court, many cases involved "magisterial arbitrations rather than formal prosecutions".<sup>71</sup> Parties charged with minor assaults or abusive language, two infractions that took up much of the magistrate's time, were often admonished and instructed to pay court costs. The court's combination of strictness and benevolence continued under subsequent magistrates.<sup>72</sup>

The court was less benevolent to perpetual offenders or those charged with violent behaviour. As a deterrent to those who engaged in tippling or rowdyism on the Sabbath, the magistrate instituted an eight-dollar fine, a considerable amount for the average working person. Gilbert held illegal rumsellers, bawdy-house operators and the lower class of taverners in contempt, yet, particularly after David Kerr's legal counter-attack of 1864, he did not allow moral sensibilities to outweigh the rule of law. When the rights of property were involved, including those of the disreputable publicans, madams and dance hall operators, the court was far from arbitrary.

Conviction rates in the Saint John court doubtless shaped community attitudes towards the stipendiary and sitting magistrates and also influenced arrest patterns. The rate of convictions, based on newspaper accounts, an admittedly incomplete source, was 67 per cent in 1860, 77 per cent in 1870 and 74 per cent in 1880, somewhat less than that of the original stipendiary magistrate's court. From August 1849 until the end of 1851 Benjamin L. Peters fined or jailed nine-tenths of those who appeared before him, a reflection of the law-and-order mandate of the new police establishment. Most of those found guilty of misdemeanours were fined. Few were sent outright to gaol or penitentiary but a considerable number were committed in default of fine payment. It is unclear how strict the court was in the collection of fines. In nearby Portland, parties were often released on the understanding that they would pay at a later date.<sup>73</sup>

<sup>70</sup> *Morning Freeman*, 24 January 1860.

<sup>71</sup> Fingard, "Jailbirds", p. 101.

<sup>72</sup> Magistrate Robert J. Ritchie, "the newsboys' friend", appointed in 1889, was active in charity organizations and established a 'down and out' fund for less fortunate police court clients: *Telegraph Journal* (Saint John), 6 April 1932.

<sup>73</sup> Police Court Record, 1849-51; *Morning Freeman*, 1860, 1870; *Daily News*, 1880; *Daily Sun*, 15

Other than teetotallers who complained of magisterial laxity towards rum-sellers and businessmen who resented the enforcement of civic by-laws, the stipendiary magistrate had few vocal critics. David Kerr, ever vigilant against the usurpation of constitutional rights, in 1865 described the court as "an astonishment among a large and enlightened British community of the 19th century", claiming that hundreds had been "illegally seized, imprisoned and convicted".<sup>74</sup> The assembly-line nature of the court in Kerr's view had reduced justice to "a money-making trade in snatching convictions and imposing oppressive fines and penalties for small faults".<sup>75</sup> Kerr was anticipating what 20th-century legal critics would see as a situation open to abuse: the close association of police and magistrate, which encouraged the latter to act more as prosecutor than impartial judge. Magisterial transgression of the procedures and etiquette of higher courts seldom concerned middle-class commentators; the press, including the *Freeman* which was sensitive to the class and ethnic nature of justice, was more interested in the moral lessons of police court scenes. As a highly visible and somewhat flexible institution, the police court seemed to function best by ignoring the formalities deemed so essential by Kerr.<sup>76</sup> The court clearly had a punitive side — the imposition of fines upon the poor and friendless was a hardship that often led to imprisonment. But the magistrate's role as mediator and authority figure also responded to community needs. Binding an abusive husband to keep the peace towards his wife, for example, was hardly an imposition of bourgeois values.

For the average late-19th century urban dweller the police force and court were two of the most important institutions of the state. Longshoremen, sailors and millmen doubtless saw the police as agents of the commercial elite, but they were seldom quoted in the press. The class nature of policing and the lower courts cannot be denied; moreover, it was commented upon freely by contemporary journalists, lawyers and temperance advocates. The coercive, conservative and regulatory aspects of the police establishment and its heavy burdens upon the poor captured the attention of the *Freeman* and David Kerr, patriarch of the New Brunswick bar. Evangelical spokesmen and moral reformers, disturbed by the law's protection of the liquor traffic and punishment of its victims, resorted to a more radical critique of the police and courts. In their analysis, the police together with the courts, lawyers, civic politicians and legislators formed

January 1889. The average rate of conviction in the Portland police court, 1871-77, was 71 per cent: *Daily News*, 1872-1878.

74 *Morning Freeman*, 24 January 1865.

75 *Morning Freeman*, 12 November 1864.

76 Similar criticisms were made of the Toronto police court, where the stipendiary magistrate also served as police commissioner: Gene Homel, "Denison's Law: Criminal Justice and the Police Court in Toronto, 1877-1921", *Ontario History*, LXXIII, 3 (September 1981), pp. 171-84. Kerr's career is described in G. Marquis, "'A Hard Disciple of Blackstone': David S. Kerr, Q.C., 1809-1886", *University of New Brunswick Law Journal*, XXXV (1986), pp. 182-87.

an unholy alliance that encouraged the degradation of working people through rum. Much of this criticism was rhetorical, but it nonetheless placed the police establishment in a bad light. Thus to further their own immediate goals — the advancement of Irish Catholics in the case of the *Freeman*, Whig liberty in case of Kerr, and for temperance activists the defeat of the liquor traffic — bourgeois representatives adopted a class critique of the legal order.

Despite the acknowledged class biases of the administration of justice, both the police court and the police force enjoyed a measure of popular legitimacy. The police establishment had a broader mandate than keeping the peace and punishing law breakers; as an important state institution it combined coercion with a number of services, such as mediating disputes and sheltering transients.<sup>77</sup> The process of policing was a two-way, if uneven, street: the police had an impact upon the city, and neighbourhood feeling in turn shaped the police institution. Police reform was never as fully developed in Saint John as it was in Ontario's larger communities, where police administration was effectively removed from democratic control through the institution of commissions with a majority of appointed members. In Saint John the strong attachment of policemen to working-class community life continued to disturb middle-class critics. To credit the police with simply controlling the working class suggests a docile, defeated population and ignores the broader pressures of socialization. The theory that the police were agents of moral reform cannot be refuted by the Saint John example, but it can be subjected to reappraisal. The legal order involved ambiguities. David Kerr had described the police establishment as "a machine of oppression under the guise of law",<sup>78</sup> but as Humphrey Gilbert realized, a good dose of mercy and stern advice in the dispensation of "British justice" went a long way in fostering acceptance of the social order.<sup>79</sup>

<sup>77</sup> Haring, *Policing a Class Society*, pp. 16-7.

<sup>78</sup> *Morning Freeman*, 10 January 1865.

<sup>79</sup> For insights into the prerogative of mercy in English criminal justice see Douglas Hay, "Property, Authority and the Criminal Law", in D. Hay *et al.*, eds., *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (London, 1974), pp. 17-63.