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Index

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Editorial

Provenance 2004

In the foreword to the first issue of *Provenance*, the journal of Public Record Office Victoria (PROV), the then Director and Keeper of Public Records, Ross Gibbs, outlined an ambitious future for the journal. His vision was for a journal that would 'publish research in the field of archives, history and records management' and that would 'promote deeper understanding and analysis of the records within our vast state archives'.

The first two issues of *Provenance*, published in print form during 2003 – an important anniversary year for PROV – realised that vision. They contained two articles on the history of PROV and of archives in the State of Victoria written from research based largely on the public records held by PROV.

As the new Director, I have brought my own vision to the journal. Drawing on my experience leading PROV's Victorian Electronic Records Strategy, we have embraced the future development of the journal as an online publication, freely available on the Internet. While the look and feel of a limited-run print journal has its own appeal, the decision to publish online offers the prospect of far wider access to the archives of the State of Victoria, through a global medium. The articles contained in this third issue of the journal will provide information, education, and entertainment in a way that complements our growing suite of online resources and access pathways to the PROV holdings in general.

PROV's online publications are candidates for inclusion in PANDORA, Australia's Web Archive, operated by the National Library of Australia in collaboration with State Library of Victoria and other bodies. Although PROV will maintain online access to *Provenance* indefinitely, preservation of *Provenance* in PANDORA will ensure its accessibility via the web far beyond the time and extent that a usual print publication would be accessible.

In this, our first online issue of *Provenance*, we present three articles. All deal with some aspect of the social pressures associated with the law or judicial processes. Each article looks at changes in social attitudes over time, and the three authors have made ample use of PROV's extensive archival holdings. The articles are sensitive to the original stories being told by our collection but also read beyond these to make current and relevant connections.

Andrew Brown-May and Simon Cooke's article 'Death, Decency and the Dead-House: The City Morgue in Colonial Melbourne' looks at the role and placement of the City Morgue in Melbourne. It explores not only the factors that determined where the Morgue should be, but the social attitudes towards the Morgue and to death itself. The article provides understanding of the place of death and the dead in nineteenth-century Victorian society, and the origins of a professional public institution that removed death from the realm of public spectacle. For the many researchers who use inquest deposition files at PROV in their research, this article offers great insight into the institutions and individuals involved in the tasks of post mortem and inquest.

Rick Clapton's article 'Keeping Order: Motor-Car Regulation and the Defeat of Victoria's 1905 Motor-Car Bill' centres on the attempts by the Victorian government to regulate and licence motor-car driving in the early twentieth century. Clapton explores the tensions between wealthy owners and drivers of cars and the usually working-class police who needed to regulate driving and prosecute drivers, using legislation not designed for the purpose. The article shows us a society in which driving and owning a motor-car had not yet become accessible to people from all strata of society.

Heather Holst 'Home Truths: Stories from the Nineteenth-Century Castlemaine Police Courts' looks at home and family as revealed through court records of Fryerstown, Castlemaine and Chewton from the 1860s to the 1890s. Holst has focused on case records in Courts of Petty Sessions to explore social attitudes, values and the ways of life of late nineteenth-century rural Victorians. This approach illustrates that we can read the stories of the case records as they are presented and extrapolate from them.

I would like to thank the Editorial Board members for their contribution to this, our first online issue, as well as the Public Programs team at PROV for putting it together. I hope you enjoy reading this issue and all the issues to come.

Justine Heazlewood
Director and Keeper of Public Records

Refereed articles

Home Truths

Stories from the Nineteenth-Century Castlemaine Police Courts

Heather Holst

'Home Truths: Stories from the Nineteenth-Century Castlemaine Police Courts', *Provenance: The Journal of Public Record Office Victoria*, issue no. 3, 2004. ISSN 1832-2522.

This article has been peer reviewed.

Heather Holst lives in Castlemaine and became interested in the subject of 'home' through working in services for the homeless for 15 years. Her paper 'Home Truths' is part of a larger PhD project at the University of Melbourne on making a home in the Castlemaine district.

Abstract

This paper uses the records of the Castlemaine, Chewton and Fryerstown police courts from 1860 to the 1890s in order to examine the ways that people sought to make themselves a home after the main goldrushes had finished in the district. 'Home' is taken to mean a place that offers security, comfort and a sense of belonging – more than simply a house. The paper briefly considers the ways that the courts worked both for and against the various interests of claimants and then looks in more depth at some of the family law cases that came before the court. These cases reveal that the struggle to make a home was often carried on even within the four walls of a house.

When Europeans and Chinese came to the Castlemaine district in the 1850s in great numbers to look for gold, many of them also came to look for a home. The idea of settling in central Victoria may not have been uppermost in their minds, and of course many came with quite the opposite intention of making a fortune with which to return to their real home; however, it was not easy to return home on the old terms after such an experience. Some who did return found that they preferred the new settlement, after all. Others stayed for a short period around Castlemaine and then followed a better opportunity in some other district. Others again built permanent homes and stayed for the rest of their lives. How did this complicated, multifarious project of making a new home unfold?

The registers of the district police courts of Castlemaine, Chewton and Fryerstown[1] offer one way of recovering stories of making a home. Through the cases before the police court (otherwise known as the Court of Petty Sessions), it is possible to see the legal framework which underpinned the success of some people in making their home in the district, as well as the exclusion of others. The registers convey a strong picture of those who operated at the margins of success and respectability, with the court acting as a kind of sorting machine, apportioning guilt, innocence and consequence to the men, women and children who stood before it. To appear in the police court as a defendant on one of the more serious charges was to cross the boundaries of acceptable behaviour and, usefully for the historian, to have the clerk carefully record it in the register and the newspaper make it the next day's news. I have examined the police court registers of Castlemaine, Chewton and Fryerstown from 1860 until the mid-1890s as a way of better understanding the period of settlement after the centre of the goldrushes had moved away from the district.

The court could exclude in very direct and disastrous ways: imprisonment for vagrancy, removal of a neglected child from home and parents, eviction from property, denial of a deserted wife's claim for financial maintenance, denial of access to land or employment on the basis of race. They could also exclude in more insidious and less absolute ways, such as the dismissal of cases brought by some residents – cases others had no difficulty in winning when they brought the same type of complaint. Even in the more trivial charges that many residents occasionally faced, such as failing to register a dog or being overdue in the payment of an account, which do not in themselves indicate much of the social position of the respondents, the registers reveal layers of detail about nineteenth-century lives. For example, that there were Chinese men among the list of debtors to a particular European storekeeper shows that this storekeeper allowed credit to the group so despised by many Europeans. This may then raise questions about the conventional understandings of the separateness of the Chinese population in the goldmining towns.

Success and inclusion when acted out through the police courts were quite subtle. Those who had the law on their side tended to appear less often in the courts and, when they did, it was more likely to be as complainants or administrators of law. As just one example, it is possible to read on one page the long lists of Council rate debtors – men and women who were having difficulty paying the tax that entitled them to occupy their homes – and on another that Ernest Leviny of Buda, one of the largest property owners in the district, made a successful case for the reduction of the amount that his twelve residential and commercial properties would be rated. Charles Tolstrup, who served for periods as Town Clerk as well as Justice of the Peace in the same Castlemaine Court of Petty Sessions that heard his application, made an even more financially successful appeal that day and had to pay only half of the original £70 rate on his block of offices.[2]

The court records are a useful indicator of relative influence and success, while the outcomes recorded in the registers also form part of that process of building or losing power. The advantageous position of wealthy settlers such as Tolstrup and Leviny, or the already existing disadvantage of others, influenced the court's consideration of their cases. At the same time, the position of those appearing before the court was further consolidated – to their advantage or disadvantage – by the way their cases fared in court. Perhaps those who most gained social position through the local police courts were the men who served on the Bench as Justices of the Peace. As Shapely has argued in his analysis of the committees of charitable institutions in nineteenth-century Manchester, the performance of such a role accrued more 'individual social capital' to those already in a position to be eligible for the part.[3]

Although it is certainly possible to see some people falling unequivocally into the category of 'winner' or 'loser' in their dealings with the police courts, more often the situations were blurred. For instance, defendants, even in quite serious cases, often also used the court to prosecute their own cases against other people. A good example of this complex arrangement can be seen in the court appearances of Ann Ah What (or Awot or Ah Wat or A Wat) who was sent to prison on three occasions as the keeper of a brothel. She nevertheless used the same court to charge Hock Fon with assault, William Clough with illegal detention of goods, Elizabeth Scantlebury with injury to property, and her husband, James Ah What, for failure to provide maintenance.[4] Similarly, many of the Chinese men who had been treated so harshly by the administration of the Chinese Residence License and, at least in one district police court, by the vagrancy legislation, used the courts to recover debts and prosecute both Europeans and Chinese who assaulted them.

Even well after the turmoil of the goldrushes, nineteenth-century residents of the district came before the police courts at a quite astonishing rate, charging or answering a great range of matters, from debt collection and licence applications, through offensive language, maintenance, child neglect, lunacy, vagrancy and drunkenness, to assault, rape and murder. The police court was apparently viewed as an accessible means of settling a grievance as well as a place you were very likely to have to answer to at some stage. For our period the courts were busiest in the early 1860s when the population was high but also less established. The attempt to exclude the Chinese through the enforcement of the Chinese Residence License also created a huge spike in the number of cases; for example, the Fryerstown court heard 1,139 cases in 1860 compared to 341 in 1863 after this legislation was repealed. As Fryerstown lost population and became more settled, the cases fell so that there were 142 cases in 1870 and only 14 in 1890. However, the decline in court cases was much larger than the decline in the number of residents, indicating that the terms under which people lived also became more stable.

The police court played a particularly active role in the regulation of behaviour between husbands and wives. Cases of wife and child desertion and domestic assault can tell us a great deal about the effort of making a successful home and of the centrality/marginality of men in domestic life. In many respects, the cases that women brought against their husbands were also about defending the material wealth and social standing necessary for maintaining a home. Women were very often present in the police court to defend cases brought against them that could radically alter their material circumstances and social status. Frequently these were charges of being drunk and disorderly, of assaulting another woman, or of using obscene or offensive language.

The two main charges brought by wives against their husbands – assault and maintenance – were brought before the court in approximately equal numbers and often the two would appear together or in quick succession. In the great majority of cases, women brought a charge but then did not follow up with an appearance in court – a pattern which remains a feature of domestic violence court cases today.[5] The other most common matter which women brought to court was to seek an order for maintenance of illegitimate children. This type of case was very similar to maintenance claims by a wife after desertion, in that both sought some security of income in order to live independently of the man and still be able to provide for the children. There were very few cases of divorce, although many women who sought maintenance lived in permanent separation from their husbands. There was also a very small number of cases of women seeking protection of earnings from a husband after separation. There were hardly any cases of sexual assault, and, when they did occur, they tended to be prosecuted by the police rather than the victim and were often 'carnal knowledge' cases of sexual contact with an under-age girl.[6] All these matters could cause disruption in the home. Assault and abuse within the home destroyed the sense of home as a place of comfort and security, while the breakdown of a marriage could lead to the outright loss of the roof over one's head.

Especially before the mid-1870s, women could expect a reasonable chance of success with their assault charges against their husbands. On the few occasions when a woman did go ahead with prosecution, the court would frequently assist by ordering the assailant to be 'bound to the peace' with a surety of a sum of money in case he breached the order. The courts were also prepared to gaol husbands on occasion. James McKenna was sentenced to fourteen days in gaol for an assault on his wife Susan in 1867.[7] Edwin Mitchell was sent to the lock-up for three days for threatening to take the lives of his wife and child in 1874.[8] Watson was sent to gaol in 1871 after breaching an order to bind to the peace.[9]

However, in a time of harsh penalties for breaking the law, the fines and gaol terms for domestic assaults were very low in comparison to typical punishments for assaults outside the home. For example, William Williams was found to have broken panes of window glass with a gun and was ordered to keep the peace for three months 'towards all Her Majesty's subjects, especially his wife', yet this evidently very violent intimidation attracted only a surety of £25.[10] Richard Williams was bound to the peace with a surety of £50 in 1871 for an assault against his wife Jane at Fryerstown.[11] By comparison, in the Supreme Court session at Castlemaine in April 1863, Judge Stawell sentenced Joe George to twelve months hard labour for an assault, and in the July 1869 session Judge Williams sentenced Patrick Murphy to two years hard labour for wounding with intent to do grievous bodily harm.[12] With cases of assault by a husband against his wife, the law concerned itself with trying to prevent future assaults rather than offering a means of redress for the assault that had already occurred.

Perhaps a more effective sanction against an abusive husband can be seen in the case of Charles and Jemmima Glass. Glass was the prominent publisher and bookseller in Market Square, Castlemaine, whom local historians would recognise as the publisher of town directories in the 1860s. Glass was bound to the peace with a surety of £50 by the Castlemaine police court in 1877 for assaulting his wife Jemmima.[13] On this occasion, Jemmima Glass had another very real lever, her husband's social standing, with which to counter his violence. This course of action was not without consequence: there was a great risk that by placing her private affairs in the public realm Jemmima would forfeit her own social standing, but she must have calculated that it was a risk worth taking. Jemmima Glass was one of a small number of women who went beyond the usual assault and maintenance charges when she successfully sought an order for protection of her property against any claim of her husband's.[14] There was a provision of the 1861 Divorce and Matrimonial Causes Act that allowed a deserted wife to make application to have any money or property acquired since the desertion protected against any claim by her husband or his creditors. If granted, this protection was as strong as if the couple had been granted a judicial separation.[15] There were only seven women who brought such cases in the Castlemaine district, but all were successful.[16]

When Mary Hazlett brought a case against her husband Samuel for threatening to take her life, she did not fare so well. Samuel Hazlett was a publican and storekeeper in Fryerstown, with a social prominence comparable to Charles Glass and considerable status at risk with such a charge. Mary Hazlett did not follow through with a court appearance so the case was dismissed.[17] She may have been too intimidated (by her husband, by the court formalities or by the publicity) to proceed, she may have decided her best chance was to put up with the situation, or she may have forgiven Samuel his actions – we cannot know from this distance. Within two years of this incident, Hazlett was appointed Justice of the Peace for the Fryerstown court and became one of the arbiters of such cases.

Just how disastrously it could all go wrong for a woman and her children unable to get help with a violent husband is illustrated by the case of Margaret Watkins. In January 1880 Margaret charged her husband Henry with assault, but, as she did not appear in court for the hearing, her case was dismissed.[18] Nearly eight years before Margaret had twice made assault charges against Henry, but did not attend court on either occasion to have these heard.[19] Henry and Margaret had married in 1870 and from 1871 children had been born two years apart in a pattern common to those times.[20] Margaret already had a daughter from a previous marriage, so the couple had five young children in their care by 1880.[21] Three months after the 1880 incident, Margaret was brought to the Fryerstown court to defend an assault charge laid by Annie Myers. Myers' case against Margaret Watkins was dismissed.[22] Ann Myers was very frequently in court, mainly in Chewton although sometimes in Fryerstown, and usually as drunk and disorderly with a smattering of cases against other women for obscene language or assault.[23] Five days after this incident, Margaret was charged by the police with stealing a clock and two iron bedsteads but this charge was converted during the hearing to the vagrancy charge of 'having no visible legal means of support'. For this she was sentenced to six months in gaol and on the same day her five children, Mary Ann, Margaret, Henry, Harriet and Sarah were removed into the care of the Department of Neglected Children.[24] The Watkins home was comprehensively broken up by this sequence of events.

Other women who brought assault and maintenance charges against their husbands achieved more mixed results in their struggle for physical and financial security. Elizabeth Stevenson took her husband Charles to court in Castlemaine in 1867 for maintenance and had an order made in her favour for 35***s*** to be paid to her quarterly for twelve months. The court also ordered that two of their children remain in Elizabeth's care. Although the court acted on her behalf, 35***s*** quarterly was nowhere near enough money to live on, and the determination meant that Elizabeth lost the care of three of her five children. She followed up this appearance three weeks later with a summons against Charles to 'show cause why a distress warrant should not be issued', meaning that he had not paid her the money ordered by the court. The warrant was issued against Charles, but he then brought Elizabeth to court in 1868 on a charge of having set fire to goods, a charge which was dismissed. In 1869 Elizabeth was back in court seeking maintenance but had her case dismissed. Four months later an assault charge was brought against Charles, who was consequently fined and 'bound to the peace'. They were back in court in 1873 with Elizabeth again seeking maintenance for herself and their five children.[25] The Stevensons' prolonged legal conflict was far from unusual. For a woman to survive a violent marriage without losing custody of the children and all respectability meant a sequence of court appearances to gain some independence interspersed with periods of attempting to live with her husband.

The mid-1870s marked the end of the most active period for women bringing maintenance and assault cases against their husbands. It is difficult to say why this should have happened at that time, but perhaps part of the explanation lies in a falling away of court sympathy for women making maintenance claims. A report from the *Mount Alexander Mail* in 1876 catches the new tone and may help to explain why women were no longer as inclined to seek court support for their marital problems.

> Elizabeth Anderson v Alexander Anderson ... Mrs Anderson complained of hard treatment, and of being turned out of her house without receiving adequate means for her support. She had £4 in the Saving's [sic] Bank. The defendant became very irate during the case, attempting to conduct it himself. The Bench thought it a sad thing for the differences between man and wife being brought before the court. The husband offered to take back his wife, but she did not feel inclined to come again under his tyranny. The Bench directed her to return to her home.[26]

Nevertheless, many women throughout the period 1860 to the mid-1890s managed to make quite an effective break from an abusive husband and went on with life as if widowed. Twomey has written that this was the goal of women making claims for maintenance in the 1850s and 1860s, although it was not generally how the police court Benches understood their welfare to be best served. The men hearing the cases believed that women required the protection offered by a responsible man or, if this was not possible, by the State, rather than independence.[27] The court records indicate, however, that many women kept stores and hotels, let out rooms to lodgers, paid house rates in their own right and had sole custody of children. Other women were paid for various types of employment such as domestic labour, school teaching and nursing or earned money boarding children for the Department of Neglected Children. Most of these women would have been earning their own independent living.

The manner in which a woman could use the court in her bid for independence from a violent husband is well illustrated by Ellen Ellis. She had sought maintenance from her husband, James, in June 1865 and they had settled out of court.[28] She brought him back to court to face an assault charge in December 1867, which was also settled.[29] A few months later the police charged James with obscene language and he was fined 10 ***s*** ; they charged him again in May 1868 with threatening behaviour, for which he was fined 20***s***.[30] It is not clear who James was being aggressive towards in these cases, as the police brought the prosecutions, but it is very likely to have been his wife. Ellen did not appear in court when she charged James to be bound to the peace in June 1868,[31] but it was later that month that she succeeded in a protection of earnings order. [32] Ellen continued to use the court to help her as she made her own way financially. She sought payment from Patrick Doyle for board and lodging in December 1868 and later charged him with assault and damages, although neither appeared in court on either occasion. [33] She also used the court to charge Richard Williams with assault and damages, winning the case and being awarded £2 damages and costs.[34] Phillip Miller took her to court for unpaid wages in May 1869 and Ellen was ordered to pay him the outstanding amount of £1.5.1.[35] She apparently established herself as a liquor seller, although without a license, as she was before the court to have her liquor confiscated in March 1869.[36] At this stage Ellen had at least two children, Mary Jane born in 1865 and William born in 1867.[37] She would be granted the license for the New London Hotel in July 1869 without anyone lodging an objection.[38] After this, Ellen Ellis no longer appeared in the court registers.

These family law cases that came before the nineteenth-century police courts of the Castlemaine district give an indication of the complexity of the struggle facing many people, particularly women, trying to make their home in the colony. While the difficulties facing new settlers have more often been framed in terms of land, the police court records tell us something of the social and human factors that account for the differing degrees of success, security and sense of belonging found in the colonial population.

Endnotes

[1] Public Record Office Victoria, VPRS 1446, Chewton Court of Petty Sessions: 12.4.1865 to 21.11.1872; 8.1.1879 to 24.12.1890; 28.7.1893 to 1915; Maintenance Register and Gold Buyers Register. VPRS 1455, Fryers Creek/Fryerstown Court of Petty Sessions: 15.11.1858 to 19.1.1862; 20.7.1863 to 13.12.1890. VPRS 365, Castlemaine Court of Petty Sessions: 3.11.1862 to 31.8.1865 (v.1); 2.9.1865 to 3.6.1867 (v.2); 4.6.1867 to 24.8.1868 (v.3); 24.8.1868 to 27.5.1870 (v.4); 28.5.1870 to 8.12.1871 (v.5); 14.5.1872 to 3.2.1874 (v.6); 6.2.1874 to 28.12.1875 (v.7); 4.1.1876 to 29.3.1878 (v.8); 2.4.1878 to 12.10.1880 (v.9); 15.10.1880 to 17.7 1883 (v.10); 20.7.1883 to 28.5.1886 (v.11) and 1.6.1886 to 30.5.1888 (v.12). Despite each case having only a minimal entry in the register, the diversity of cases, the recurrence of names and the ability to follow a sequence of events allow stories to emerge, at times quite dramatically. It is more difficult to follow Chinese cases as the usual problem of erratic spelling of names is considerably amplified in the translation of Chinese names into English. It is also possible to cross-check the register entries with local newspaper reports, prison records and registers of births, deaths and marriages to fill in the story.

[2] VPRS 365, Castlemaine, 28.3.1876.

[3] P Shapely, 'Charity, status and leadership: charitable image and the Manchester Man', *Journal of Social History*, vol. 32, 1998, pp. 157-69.

[4] VPRS 365, Castlemaine: 28.2.1871: police charged Ann Ah Wah with being the occupier of a house frequented by idle and disorderly persons – 3 months' prison; 18.7.1871: police charged Ann Ah What as the keeper of a house frequented by persons having no lawful means of support – sentenced to 6 months' prison; 19.1.1872: Ann Ah Wat charged William Clough with illegal detention of goods – goods to be given up to her; 17.5.1872: Ann Ah What charged Elizabeth Scantlebury with injury to property – case dismissed; 16.5.1873: Ann Ah Wat charged James Ah Wat with deserting his three children – not served; 20.3.1874: Ann Ah What charged Hock Fon with unlawful assault – no appearance, struck out; 16.10.1874: Ann Ah What charged with keeping a house frequented by prostitutes – 3 months' prison. James Ah What and Ann Coogan had married in 1860, and produced four children, William, James, Alexander (who died as an infant) and Theresa by 1872. They had another child at The Loddon in 1875, Annie May, so presumably reconciled after the maintenance charge (*Pioneer index. Victoria 1836-1888: Index to births, deaths and marriages in Victoria*).

[5] Agencies funded under the Supported Accommodation Assistance Program (SAAP) to work with women leaving violent relationships report this failure to follow through with an initial complaint as a feature for women considering legal redress. Women leave on average seven times before finally ending a violent relationship (conversations with domestic violence agency workers).

[6] Cases came to the police court to establish if there was sufficient evidence for the accused to be committed to stand trial in the Supreme Court.

[7] VPRS 1455, Fryerstown, 11.11.1867.

[8] VPRS 1455, Fryerstown, 13.3.1874.

[9] VPRS 1446, Chewton, 2.3.1871.

[10] VPRS 1455, Fryerstown, 6.7.1868.

[11] VPRS 1455, Fryerstown, 24.4.1871.

[12] VPRS 78, Unit 4, Criminal Record Book of Prothonotary, 27.4.1863 and VPRS 78, Unit 6, Criminal Record Book, 14.2.1870.

[13] VPRS 365, Castlemaine, 19.6.1877.

[14] VPRS 365, Castlemaine, 20.1.1882.

[15] VR No. CXXV, An Act to amend the Law relating to Divorce and Matrimonial Causes, 3 July 1861, section VII.

[16] Elizabeth Barnes v Joseph Barnes, Fryerstown 20.11.1865; Ellen Ellis v James Henry Ellis, Fryerstown 29.6.1868; Sarah Roberts v James Roberts, Fryerstown 18.1.1879; Sarah Marks v Barras Marks, Castlemaine 29.1.1878; Rose Whittaker v Thomas Whittaker, Castlemaine 7.1.1879; Jemmima Glass v Charles Edward Glass, Castlemaine 20.1.1882; Bridget Platt v Samuel Platt, Castlemaine 6.1.1888.

[17] VPRS 1455, Fryerstown, 30.4.1881.

[18] VPRS 1455, Fryerstown, 10.1.1880.

[19] VPRS 365, Castlemaine, 30.4.1872 and 11.10.1872.

[20] P Grimshaw & C Fahey, 'Family and community in nineteenth-century Castlemaine', in P Grimshaw, C McConville & E McEwen (eds), *Families in Colonial Australia*, Allen & Unwin, Sydney, 1985.

[21] *Index to births, deaths and marriages*, record nos. 3476, 7831, 8077, 1077 and 2701.

[22] VPRS 1455, Fryerstown, 10.4.1880.

[23] Myers and her husband ran the Live and Let Live Hotel on Golden Point Road, Chewton. Just over a month later, Ann was sentenced to a month in gaol in default of a £5 fine for using insulting behaviour in a public place, so she and Margaret may well have met again in prison (VPRS 1455, Fryerstown, 15.6.1880).

[24] VPRS 1455, Fryerstown, 15.4.1880 and *Mount Alexander Mail*, 19 April 1880.

[25] VPRS 365, Castlemaine, 4.12.1867, 24.12.1867, 28.5.1868, 9.2.1869 and 31.10.1873.

[26] *Mount Alexander Mail*, 29 April 1876.

[27] C Twomey, *Deserted and destitute: motherhood, wife desertion and colonial welfare*, Australian Scholarly Press, Kew, Vic., 2002, p. 149.

[28] VPRS 1455, Fryerstown, 12.6.1865.

[29] VPRS 1455, Fryerstown, 23.12.1867.

[30] VPRS 1455, Fryerstown, 24.2.1868 and 11.5.1868.

[31] VPRS 1455, Fryerstown, 8.6.1868.

[32] VPRS 1455, Fryerstown, 29.6.1868.

[33] VPRS 1455, Fryerstown, 21.12.1868 and 26.4.1869.

[34] VPRS 1455, Fryerstown, 31.5.1869.

[35] VPRS 1455, Fryerstown, 10.5.1869.

[36] VPRS 1455, Fryerstown, 22.2.1869 and 1.3.1869.

[37] *Index to births, deaths and marriages*, nos. 8532 and 8210.

[38] VPRS 1455, Fryerstown, 26.7.1869.

Keeping Order

Motor-Car Regulation and the Defeat of Victoria's 1905 Motor-Car Bill

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Abstract

At the turn of the twentieth century some upper-class Victorians became motorists; consequently, for the first time ever, regulation and policing intersected with this class of society. By 1905 so many concerns had been raised about compromised public order and safety that the Victorian State Government attempted to implement a Motor Car Bill based on its English predecessor (1903). Wealthy motorists possessed power and influence, however, which contributed to the postponement of legislation until 1910. Additionally, parliamentarians were drawn from the same social class as motorists, and, in creating regulation, they were potentially regulating their peers, colleagues and friends. The private motor-car also brought with it new issues of civil liberty and responsibility. Finding a balance between the two continued to be a problem, as private transport gradually became affordable for middle- and working-class people, and both the number of regulations and the power of the motoring lobby increased.

Introduction

On Friday, 31 August 1901, Jack Proctor, the General Manager of Dunlop Pneumatic Tyre Co. (Australasia), drove the company's promotional car along Flemington Road , accompanied by Harry James, Dunlop's Advertising Manager.[1] Their destination was the Flemington Showgrounds where the new machine, no doubt, would be a great attraction for Melburnians. Near the racecourse, horses were crossing Epsom Road; in response, Proctor slowed the car to an estimated eight miles per hour (mph), but did not stop. Windsor, a restive and skittish colt, bolted and Proctor desperately, almost aggressively, executed evasive manoeuvres; but the two-and-one-half-horsepower De Dion motor-car was slow to respond. Windsor charged the car, crashed into the vehicle's step and sustained a broken leg. As a result the animal was destroyed.

Samuel Bloomfield, Windsor's owner, sued Dunlop Pneumatic Tyre Co. for damages to the amount of £499 – a large sum of money at the beginning of the twentieth century.[2] In April 1902, Chief Justice John Madden of Victoria's Supreme Court admitted ignorance – like most Victorians – regarding motor-cars, and requested that the managers give a demonstration on William Street outside the court building. Both ardent motorists, Proctor and James believed that the superior braking, steering and acceleration qualities of the automobile would illustrate that Proctor had done everything expected of a 'reasonable gentleman', and consequently that Dunlop Pneumatic Tyre Co. would succeed in this 'media-charged' civil liability suit.

Judge Madden observed the braking distance, the speed and handling capabilities of the new machine; as a result of Proctor's showcased driving performance he ruled in favour of the plaintiff. Bloomfield was awarded £250 in damages. Madden ruled that 'it was plain that the car had travelled at a very rapid speed. The persons driving the car knew they could stop it at any moment, and that it had frightened horses before; yet they did not stop when they saw that the colt was alarmed'.[3] The motor-car should have proceeded only after the horses had cleared the thoroughfare.

As this example shows, upper-class and wealthy Victorians who became motorists at the turn of the twentieth century exposed themselves, for the first time ever, to regulation and the police. But unlike Proctor and James, many were able to use their political influence with the authorities; their ability to defend themselves in court also helped to stave off conviction. At this period, most motorists were drawn from the same social class as the parliamentarians who were mandated to create new motor-vehicle legislation. In this article I will explore the intersection between 'automobilism'[4] and motoring laws and regulations in Victoria between 1900 and 1905, with emphasis on the unsuccessful Motor-Car Bill of 1905. In particular, I shall examine the conflict that resulted between motorists, authorities and other road-users as Melbourne, like other motoring cities, moved towards a highly regulated traffic system.

English Road Laws

Road laws at the beginning of the twentieth century were obfuscated by the myriad of statutes which could be applied to public road spaces and the vehicles that drove on them. In addition to the Locomotives on Highways statutes 1861, 1865 and 1878, Imperial authorities could also rely on the Highways Act 1835, the Hackney and Carriages Act 1843, Vagrancy Laws of 1744, and several others.[5] England first brought regulation to bear on motorised transport in 1861, under the *Imperial Locomotives on Highways Act 1861* – amended 1865 and designed to deal with steam-driven agricultural and industrial traction engines travelling on highways – in which the notorious 'Red Flag' clause stipulated that a person with a red flag must proceed the vehicle at a distance of sixty yards. The original legislation limited steam engines to 12 tons and speeds of 10 mph; the amendments further restricted speeds to 4 mph on rural roads and 2 mph in towns and cities. Further, the steam locomotive was to be operated by a minimum of three people: one to drive the machine, another carrying a red flag to warn horse traffic, a third to assist drivers of horse-drawn vehicles; and a fourth if there were waggons.[6] The law was again amended in 1878 and granted local councils the option of using the 'Red Flag' as well as reducing its leading distance to a more manageable twenty yards, but few councils chose to abolish it.[7]

In 1896 the Imperial statute was further amended to recognise that locomotives were starting to be used for personal transportation. The Locomotives on Highways Act divided vehicles into two categories: light locomotive or carriages, and those exceeding three tons. Light locomotives were restricted to a speed limit of 14 mph, were to carry a bell, and not emit any visible smoke. Local councils could create by-laws restricting vehicles on bridges to prevent damage, and the Local Government Board 'may prohibit or restrict the use of locomotives' if it deemed them a danger to the public along crowded streets.[8]

The 1896 Act did not repeal other statutes that could also be used to control road space; most statutes that controlled street behaviour effectively controlled working-class street behaviour. On 18 April 1903, for example, the Imperial Hackney and Carriage Act 1843 was utilised in the case of Henry George Allendale when he appeared before Magistrate Mr Curtis Bennett in Marylebone for 'furiously' driving an omnibus. Authorities had previously warned drivers of London Road Car Co., and the rival company London General Omnibus Co., about racing between the suburbs of Kilburn and Fulham. Police set up a special task force after public complaints were received regarding the racing and 'furious' driving. The police constable who testified at the trial stated that Allendale, when overtaking the other bus, was driving 'at least ten mph'.[9] Because this was Allendale's second offence he was sentenced to one-month's hard labour.[10] On 27 April 1903, General Laurie, during parliamentary debates, questioned the Under Secretary to the Home Office, asking if he was aware of Allendale's sentence, and wanted to know if similar proceedings were being taken against motor-cars. Although he repeated the question, the Home Secretary offered no answer.[11] As a bus driver, Allendale was part of the proletariat, unlike most motorists drawn from the upper-classes; he was probably unable to legally defend himself in court, so his deviance was made a public example – thus the severity of his sentence. In 1903, average urban road speeds were approximately 6 to 8 mph; therefore, by exceeding the relative speed limit by a significant margin, Allendale was found to be endangering not only other road-users, but also the passengers on his omnibus.[12]

The Imperial legislation of 1896 became the fundamental statute that formed the basis for subsequent motor-car legislation; however, enforcing speed limits remained problematic. While ostensibly introduced for safety reasons, speed was complicated to measure, often requiring two constables; expensive timepieces were legally required, and professional engineers had to be employed to measure the 220 (1/8 mile) or 440 (1/4 mile) yards.[13] Moreover, policing speed limits exacerbated class conflict between wealthy motorists and working-class constables; as a result, these were difficult, if not impossible, to enforce and prosecute during the early years of motoring because the motorists were able to exploit their privilege and access to legal resources. As a result, the 1896 legislation was again revised: Section 4, sub-section 1 now read

> that a driver of a light locomotive when used on a highway, shall not drive at any speed greater than is reasonable and proper having regard to the traffic on the highway, or so as to endanger the life or limb of any person, or to the common danger of passengers.[14]

In the 1903 British Motor Car Act, this clause, in response to Supreme Court appeals,[15] was expanded further:

> If any person drives a motor car on a public highway recklessly or negligently, or at any speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the highway, and to the amount of traffic which actually is at the time, or which might reasonably be expected to be, on the highway, that person shall be guilty of an offence under this Act.[16]

Public pressure in England surrounding the automobile's speed and compromised road safety forced parliamentarians to introduce and implement the 1903 Motor Car Bill. Introduced into the House of Lords by Lord Balfour of Burleigh, the Secretary of State for Scotland, on 7 July 1903, Parliament sat long hours to push the Bill through before the summer break.[17] The new motor-car legislation, in addition to Section 1, which allowed justices to prosecute many different types of traffic infringements such as negligent or reckless driving, or driving at a speed considered dangerous to the public, implemented additional stipulations: motorists were to be licensed and a minimum of seventeen years old; car registration was made mandatory; a car now required a prominent number plate; speeds limits were fixed at 20 mph in the country and 10 in the city; and the maximum penalty was set at £10 for a first offence, £20 for a second and £50 for the third, and even possible gaol terms. It also became an offence not to produce a licence when requested by a constable. Finally, in response to concerns raised during the parliamentary debates, it was agreed that the new legislation would be effective for three years, after which a Royal Commission would be conducted.[18]

British parliamentarians had attempted to shore up concerns about public safety by maintaining the discretionary element common to earlier road and traffic legislation. This discretionary clause allowed constables to throw a wide net over the dangers of increased road speeds. Many motorists defended themselves in court, but were convicted, which reveals the legislation's validity, though there were of course stories of constables being bribed or 'browbeaten', motorists giving false information, and 'gentlemen' in court accusing constables of insolence and impertinence.[19] Overall, however, though aspects of the legislation remained problematic (as revealed in the 1906 Royal Commission of Motor Cars), England experienced considerable success in prosecuting delinquent motorists under this Act.[20] Australia inherited England's legal institutions;[21] and so, notwithstanding an initial setback in 1905, Victoria adopted the legislation, almost verbatim, in 1909.

Early Motoring in Victoria

Although by the turn of the twentieth century Victoria had formulated its own laws to regulate roadways and the vehicles that used them, England had offered a precedent. Importantly, Victoria's Traction Engine Act of 1900 did not apply to motor-cars.[22] The State Government was unable to enact specific motor-car legislation until 1909, in part because motorists were drawn from the same social class as politicians, though attempts were made in 1905, as we shall see. During the first decade of the new century, Victorian police and authorities relied almost exclusively on the 1890 and 1891 Police Offences Act to control street spaces; discretionary charges were brought to bear on a variety of offences and vehicles – horse-drawn, bicycles and self-propelled. In finding for Bloomfield's compensation, Judge Madden followed the 1890 Act, which stated that one must not ride or drive 'furiously' or 'negligently' on any public street.[23]

The Victorian Police Offences Act 1890 was widely used to control road traffic before the State's 1909 Motor Car Act; however, it was primarily geared toward roadways as a public space. Most of the Act's legal stipulations were directed at a citizen's activities on the street and preservation of the road surface, while few regulations governed the movement of traffic. For example:

> no person shall dispose of garbage, night soil, or carry excrement in the roadway; or drag anything which would cause damage to the street; one shall not burn anything or leave flammable materials in the road; and passageways and walkways should be clear of offensive materials.[24]

Sections of the statute directed at movement were for relative speeds which exceeded the pace of Melbourne's cable trams. Legal preciseness made these laws difficult to enforce, prosecute and convict; hence authorities favoured the discretionary 'furious' and 'negligent' charges, often when working-class drivers' actions resulted in chaos, traffic tie-ups or a collision.[25] When public safety was compromised and lives put at risk because a road-user failed to give the right-of-way, as Jack Proctor did in Bloomfield v. Dunlop Pneumatic Tyre Co., the driver could be convicted of 'negligent' driving.

'Negligent' driving applied to situations where a loss, injury or damage was predicted, potentially imminent or sustained. Paul Williams, in his examination of Victorian statutes, defined it as the 'omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do'.[26] This definition underscores the discretionary element of the law, indicating that Proctor's actions were not 'reasonable' because a 'prudent' man would have waited for the road to clear before proceeding. Because types of vehicles were not specified in the Act, moreover, all movable forms of transportation were able to be policed for 'furious' or 'negligent' behaviour. This allowed bicycles and motor-vehicles – for a time – to be controlled with existing legislation. Discretionary, all-encompassing laws were effective for controlling the working classes because few possessed the resources to challenge the charge; and, initially, this legislation was also effective in controlling the motor-vehicles of the more affluent and powerful. However, as the number of motorised vehicles grew, speeds increased and crashes became more frequent, Melburnians demanded change.

Although motorists attracted media attention, traditional modes of transport continued to cause problems too. Throughout 1903, 1904 and into 1905, motoring infractions featured in newspaper stories, but other forms of road transport were also responsible for creating disturbances and injuring or killing road-users. On 22 October 1904 at approximately 9:20 pm, a man was struck by the poles protruding from a timber jinker[27] when he crossed the street in Richmond. Mr Seymour, a witness, saw the prostrate, unconscious man and called out for the three men aboard to stop; one shouted back, 'Let him lay there.' Seymour estimated the speed of the jinker at 12 mph, but could describe neither the jinker nor the men.[28] The driver of the jinker escaped. In September 1903, police summoned a fire cart for 'furious' driving, shouting, being a disturbance and creating a hazard at the intersection of Collins and Elizabeth streets.[29] Robert Hodges, a cyclist, was charged with negligent riding in Prahran Court on 23 February 1904 after he collided with Edgar Thomas and injured him.[30] Also in February, Mary Ann Ridley was killed in Carlton in a vehicle collision at the intersections of Elgin and Lygon Streets when she was thrown from the light cart in which she was riding.[31] In the same newspaper article, Margaret Hartnett was killed when she fell out of a hackney cab at the corner of Spencer and La Trobe streets. Even city employees were not immune from road crashes. On Barwise Street in North Melbourne in early 1904, Jeremiah Sullivan irresponsibly rode a dray-horse – bareback and fitted with blinders – near the railway, which took fright when a train passed. The horse crashed into a waggon destined for the Ascot races carrying eight passengers. The driver, George Dempster, sustained injuries to his back and ribs when the waggon overturned, which forced him to be absent from work for four weeks.[32] As he possessed the financial means, he launched a civil suit against the city on 12 August 1904. The judge ruled that Sullivan had failed to exercise sufficient care, and stated that his action was negligent; he granted Dempster £72 compensation for injuries and work absence.[33] Because of Dempster's success, other passengers also filed claims, but the judge ruled against the plaintiffs Joseph and Abraham Davis for one of three possible reasons or a combination thereof: 1) the claim was too high; 2) neither had been injured; 3) or sustained loss.[34] Lastly, on 9 March 1905, thirteen-year-old Ethel Donnison was killed by a tram near the intersection of Lonsdale and Elizabeth Streets when she moved out of the path of an oncoming cyclist; she inadvertently slipped on the tracks and was run down.[35]

This snapshot of early-twentieth-century road mayhem reminds us that streets were already dangerous places, even without the advent of the motor-car. To some extent, the novelty and greater speed of the new machine only exacerbated existing issues of road safety.

Up until the 1880s, traditional modes of transport rarely exceeded a walking pace. Then, in the fifty years to 1930, with the arrival of bicycles, cable trams and motor-cars, urban road speeds increased fourfold. With these new transport modes came new definitions of 'speeding', as the benefits of faster travelling were realised (see Figure 1). Thus the tension between public safety and the individual motorist's enjoyment of reduced travel times and the opportunity to cover greater distances existed at the outset, and complicated the creation of restrictive regulations.

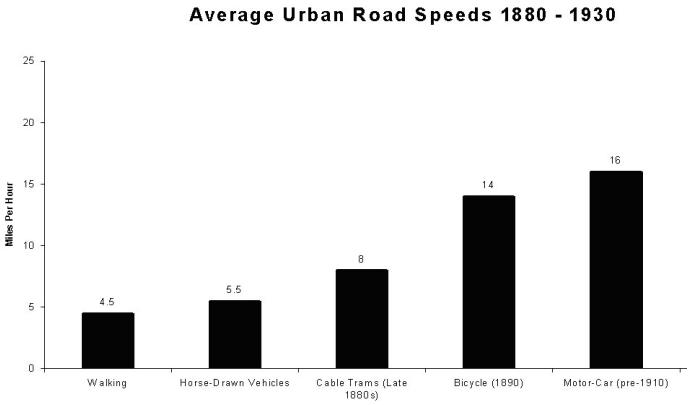

Figure 1: Urban Road Speeds 1880-1925
(see source details under Endnotes).

More than that, however, the motor-car at the turn of the twentieth century possessed potential speeds hitherto achieved only by large railway locomotives. But unlike trains, motor-cars were not limited to tracks or controlled by schedules,[36] and their safe operation involved thousands of decisions by hundreds of drivers with a wide range of skills.[37] Inevitably, other road-users were 'put out' as the aggressive new arrival forced them to share the road.

Motoring injuries and deaths also made the news because frustrated authorities realised the growing inability of the police to control the 'horseless carriage'. On 5 May 1904, Arthur Gaj became Melbourne's first motoring fatality; on St Kilda Road the wheel of his speeding motor-tricycle caught in the tram track and 'shook his nerve', throwing him from the machine. One eyewitness estimated that Gaj was travelling between 24 and 25 mph. The police also recognised their inability to exercise effective control. 'They simply smile at us as they rattle by', said the constable, 'and we cannot catch them'. Constable James Tonkin stated during the Coroner's inquest, 'I say that 25 miles an hour is altogether too fast to travel. A driver can be summoned [sic] for furious driving. It is very difficult to stop a motor car.' In his report the Coroner recommended that motor-car regulations be put in place, 'in the interests, not only of the public, but of the motorists themselves'.[38] A hit-and-run crash between a yellow motor-car and a cyclist in 1906 brought renewed calls for accountability and the police were again accused of incompetence.[39] Police, as front-line workers, were unable to maintain public safety because of the motor-car's potential speed, and the legal unaccountability of some drivers.

Prior to 1905, motor-cars in Victoria numbered less than a few hundred,[40] but although motoring was in its pioneering years, its impact and predicted benefits were receiving ample press. In response to British parliamentary debates and the draft of their Motor Car Bill, Melbourne was 'abuzz' with the new technology. In London, as reported in the Melbourne *Argus* in April 1903, Henry Norman predicted that rural people's living domicile would expand from twelve miles to thirty, that decreased numbers of horses' hooves would allow roads to be in better 'nick' and that London would no longer have to export 5000 tons of manure daily. In the same newspaper, the London Car Road Company estimated the replacement of 5000 horses with 500 motor-buses.[41] A May 1903 report from New York, also in the *Argus*, described the benefits of motor-omnibuses built by the London General Omnibus Company: the buses generated their own heat and light, carried thirty-two passengers on two levels and achieved speeds of 12 mph.[42] In Paris, France, also in May 1903, the automobile club conducted tests, comparing the horse and the motor-car; the test evaluated speed, braking and manoeuvrability – 'and the motor vehicle out performed the horse at every turn'.[43] Some readers believed it was only a matter of time before personal motor-cars were a real possibility.

Yet not all media reports were positive. Many traditional road-users experienced the inconvenience of the transition and loss of autonomy. Letters to the editor of local newspapers, witness accounts in reported court cases, traffic professionals' recommendations, and letters to public authorities exerted pressure for more comprehensive motor-vehicle regulations during the first decade of the century. On 22 January 1904, for example, a letter to the *Argus* lobbied for regulations of motor-vehicles, as they were scaring horses. At a minimum, the author wrote, the law should require motorists to give an audible warning, or signal their approach, as horses were often startled by a passing motor-car.[44]

A letter of 10 November 1904 stated that narrow farm roads should be closed to motor-cars: ' protection ', the author stated; 'even the quietest of farm horses fail to grow accustomed to the puffing and trumpet-blasting road monster that now claims full right of the road'.[45] Russell Grimwade, a pioneering Melbourne motorist, recounted an early motoring story of a car travelling on the main road from Mordialloc to Frankston which honked to warn cricketers playing on the roadway; the driver honked again to alert an approaching jinker with a family aboard. Startled, the father yanked the reins, causing a child to fall off and consequently the child's leg was run over. A doctor riding in the motor-car took the child into a nearby tent to examine it, amidst great hostility. He and the other motorists made a hasty retreat, however, when a livid elderly woman 'stormed off' to get a butcher knife with the intent of attacking the motor-car's tyres.[46]

Not surprisingly, the prospect of increased regulation for motorists met with formal and organised resistance. Also on the letters page of the *Argus* of 22 January 1904 was correspondence from Harry James (Advertising Manager, Dunlop Pneumatic Tyre Co.), founder and acting Honourable Secretary of the ACV (Automobile Club of Victoria), who stated that motor-cars were easier to handle at higher speeds, and this was precisely why the 1903 British Motor Car Act set the speed limit at 20 mph. He continued, that some motorists see horses as 'stupid uncontrollable beasts that ought to know better than go rearing up and prancing about the road at the sight of any unfamiliar object', and concluded by stating that the new club's purpose was to conform to, and obey traffic regulations and to assist drivers of 'fractious horses'.[47] The letter not only reflected a conflict between traditional and modern road-users; its tone indicated that motoring gentlemen felt themselves perfectly capable both of policing themselves and coming to the assistance of those relying on obstreperous animals. No doubt James was also expressing his ill feelings after losing the civil suit in 1902.

On 20 February 1904, the ACV made its inaugural run, with thirty motor-cars and several motor-cycles taking the drive. Motoring, as a recreational pursuit of the affluent in the early part of the twentieth century, attracted some of Melbourne's most prominent figures. Present for the day's gala event were Sir Samuel Gillott, Chief Secretary of the State parliament and former Melbourne mayor; several Melbourne city councillors; the city's town clerk, John Clayton and surveyor, AC Mountain; St Kilda's mayor, John H Pittard, JP and town clerk, John N Browne; and several other prominent citizens.[48] Chief Justice John Madden was the ACV's first president, and in 1904 became the Lieutenant-Governor of Victoria.[49] This relationship between Melbourne motorists and Victoria's politicians continued: in August 1905, during the Motor Car Bill debates, the ACV wrote to Thomas O'Callaghan, Chief Commissioner of Police, informing him of the intended route of their promotional ride, in order that 'members of the State Parliament' could have 'an opportunity of witnessing the facility with which motor cars can be driven & controlled'. The event 'passed off quietly'.[50] Ironically, it was Sir Samuel Gillott who spearheaded Victoria 's 1905 Motor-Car Bill.

The Motor-Car Bill of 1905

By June 1904 the Melbourne Council of the Municipal Association had met in an attempt to regulate the speed of both motor-cars and motor-cycles. Each member had a copy of the 1903 Imperial Motor Car Act. The ACV offered to provide counsel to the Municipal Association, and Councillor WH Allard (Brighton) suggested that proceedings should not commence until this was done. Allard stated further that Brighton Council had set speed limits of 10 mph, with 5 mph over crossings; also, with some motoring experience he did not hesitate to say that a motor-car was much easier to handle at 25 mph than a horse at 10 mph. He felt that safety would be ensured if speed limits were set at 15 mph, with 5 mph over crossings and 30 mph on streets away from general traffic. Councillor George L Skinner (Prahran) stated, 'our primary duty is to protect the public'. Consequently, a sub-committee was set up to draft a uniform set of regulations.[51] In August the sub-committee reported that the Imperial legislation should be adopted, with the following changes: councils should not be responsible for putting up warning signs; the minimum age for an automobile or motor-cycle licence should be seventeen; the maximum speed limit should be twenty-five miles per hour; and motor-cars should be required to stop when horses were present to maintain public order. Although councils were responsible for the road itself, legislation would have to be executed at the State level, as local councils were not responsible for regulating traffic.[52]

Constable (to Motorist who has exceeded the speed limit). "AND I HAVE MY DOUBTS ABOUT THIS BEING YOUR FIRST OFFENCE. YOUR FACE SEEMS FAMILIAR TO ME."

Illustration 1: Constable (to Motorist who has exceeded the speed limit). 'And I have my doubts about this being your first offence. Your face seems familiar to me'. Source : A-J Doran (ed.), *The Punch cartoon album: 150 years of classic cartoons*, Grafton, London, 1990, p. 36 (c. 1905).

In January 1905, motor-car legislation moved to the forefront of the Municipal Council's agenda. In addition to the sub-committee's recommendations, increased public pressure from council constituents and letters to the press further motivated the authorities to draft and implement new regulations. In response to an obstinate State Parliament, Melbourne's town clerk, John Clayton, on 7 January 1905, requested JC Stewart, the City Solicitor, to submit legal advice; he also requested information about present statutes that could make the registration of motor-cars and the licensing of drivers mandatory, and called for the English Motor Car Act to be examined. Stewart replied and recommended that a statute similar to the English Motor Car Act be put into place; again, this required implementation at the State level.[53] An article in the *Argus* on 6 January 1905 reported that Chief Commissioner O'Callaghan had consulted with Sir Samuel Gillott, whose office was responsible for the police, concerning the high speeds of motor-vehicles and the loss of autonomy many other road-users felt. O'Callaghan reminded the Chief Secretary that the existing regulations had been put in place to deal with street traffic travelling at half the speed of motor-vehicles. He also noted that, in the beginning, motor-cars were so few that constables could easily recognise the driver; however, these vehicles now numbered in the hundreds, and '... many of them [were] indistinguishable one from another in the fleeting glimpse that is usually afforded the policeman and the drivers are frequently muffled up with coats, goggles, masks, and caps of a uniform pattern'. Identifying numbers were at the forefront of requests because of the unaccountability of some rogue drivers; this also had the potential of shoring up relations between the motoring fraternity and the wider community by demonstrating that only a few 'rotten apples' existed among the motorists.[54]

Speed limits presented a more complicated problem because many motorists saw this as an infringement of their civil liberties and felt that the individual should be left to judge the 'common danger' of the road. In towns and cities they might drive only a few miles an hour, but on the open road they wanted to be free to travel at much higher speeds.[55] Speed limits, they argued, would only serve to create criminals out of ordinary motorists; rather, motorists wanted to police their own driving.[56] In the latter part of January 1905, a memo to the Lord Mayor of Melbourne from the ACV—as the motoring body of Victoria—requested that the Municipal Council consult with them.[57] Four days later—possibly because of a non-response—a public letter to the Lord Mayor from the ACV stated that motor-cars were here to stay—but that regulations were considered to be premature.[58]

Between January and July 1905, before Sir Samuel Gillott introduced the Motor Car Bill into State Parliament, motor-cars continued to make news. In February 1905, Dunlop Pneumatic Tyre Co. showcased motoring by running the first Dunlop Reliability Race between Melbourne and Sydney; 16 of the 23 motor-cars finished the four-day event, and nine had perfect scores. An additional non-stop return run to Ballarat decided the winners.[59] On 7 April 1905, E Norton Grimwade attracted considerable interest when he appeared in the District Court for 'furious' driving. Driving his motor-car along St Kilda Road, he passed a tram and proceeded to his home in Central Melbourne, unaware of any public safety breach. Young Constable Thomas Weibye (No. 5065)—26 years old and two years a constable—gave pursuit on his bicycle and, catching up to Grimwade, demanded his name and address.[60] When Grimwade refused to divulge this information, Weibye followed him to Flinders Lane where he ascertained the necessary details. Several people on the tram corroborated Constable Weibye's story, estimating the car's speed at 20 mph; each witness used the cable tram's speed as the relative measurement of safety. James Grant, gripman in the employ of the Tramway Company said: 'I saw a motor-car go past the tram I was on in St. Kilda Road opposite the Barracks. It was going twice as fast as the tram.' Charles H Edwards, conductor on the same tram, provided supporting evidence. Appearing for the defendant, Harley Tarrant, a motoring authority, prominent Melbourne entrepreneur and owner of the Tarrant Motor and Engineering Company, stated that Grimwade's car was incapable of 20 mph owing to a malfunction; despite this, Grimwade was found guilty and charged 10/- and £2-16-0 costs.[61] Public safety itself was in fact a secondary concern: it was the breach of public order that provided the impetus for legal action.

In April 1905, a report in the automobile section of *Melbourne Punch* stated that lorries and fast-moving drays were refusing to yield to motor-cars, and that motorists were being unjustly prosecuted because they were forced to drive on the wrong side of the road to pass. Phaeton, the author, wrote: 'Motorists should seize every opportunity of drawing the attention of the police to their duties in this connection, and in time a better state of things is sure to prevail.'[62] On 9 May 1905, a sensational story from London reported a charge of manslaughter against a chauffeur who had run down and killed a child. The *Daily Mail* offered a reward of £100 for the capture of the 'hit and run' driver. This reward was discreetly withdrawn, however, when it was discovered that the Italian chauffeur, Cornalbas, was employed by Hildebrand Harmsworth, the younger brother of Lord Alfred Harmsworth—the proprietor of the *Daily Mail*.[63] Melbourne motorists were spurred into action to ensure that regulation in Victoria remained fair. Premier Bent felt unable to ignore Melbourne's motoring problem any longer; in May 1905 he announced the State Government's intention to purchase a motor-car for police in an attempt to control speeding motorists and alleviate some of the bias towards motoring.[64] In July 1905, Sir Samuel Gillott, as Chief Secretary, introduced the Motor-Car Bill into State Parliament.

Issues of class pervaded Victoria's Motor-Car Debates. Alfred S Bailes, member for Sandhurst (Bendigo), questioned whether, if a man should be rich enough to own a £1000 motor-car, he should be allowed to do as he liked? James A Boyd, member for Melbourne, stated that the Chief Secretary believed that every motor-car was 'worse than a bomb out of a Japanese Gun', and argued: 'Surely the fact that the vehicle belonged to the man, and that if any damage was done he would suffer, would be a sufficient deterrent'.[65] Boyd's assertion supported the idea that civil liability would suffice in cases where a loss was sustained, as in Bloomfield v. Dunlop Pneumatic Tyre Co. However, legal recourse was far beyond the means of most working-class road-users. Legal costs paid by Dunlop Pneumatic Tyre Co. were approximately £250 – at a time when most 'blue-collar' workers earned only a few pounds a week.[66]

Moreover, the possibility of police constables demanding a motoring gentleman's licence sparked significant debate. David Gaunson, the representative of Public Officers, discussed at some length the potential increase in police powers. What if the motorist had forgotten his licence? How long would he have to produce the licence? Members of parliament agreed that only constables in uniform would have the power to request licences and registration. Speed limits were the last major issue, and the Chief Secretary was willing to allow higher speeds in Victoria than those set in Britain because of significantly lower population densities and greater area, especially in the country. Yet, the speed limits in Britain had been generous when set at two to three times the rate of traditional modes of transport. William H Irvine, member for Lowan, summarised the feelings of those who believed regulations were a necessity when he stated that 'motor cars should not be allowed to monopolise the roads'.[67] Irvine's words also affirmed that motor-traffic had to be successfully integrated with other forms of road transportation.

Motoring lobby groups proved resourceful and powerful, and in the winter of 1905, when parliament was putting the final touches to the Motor-Car Bill, 47 year-old Thomas Hall, an irondress working at Messrs J and T Muir's iron foundry, became the first motor-car fatality.[68] On 24 August, while crossing the intersection of Nicholson and Gertrude Streets in Fitzroy, Hall was struck by a southbound automobile driven by Macpherson Robertson. His body was picked up and driven to the hospital in Robertson's vehicle – a common occurrence during the early years of motoring – but he was declared dead upon arrival.[69] The Motor-Car Bill failed before its third reading and was shelved.[70]

Motoring interest groups had exerted a great deal of political pressure on State politicians, and consequently the 1905 Motor-Car Bill was thrown out. The ACV's annual report for the 1905-6 seasons stated: 'In many respects the provisions as originally presented, were of a somewhat drastic character. ... It is to be hoped that at no very distant date rational legislation will be introduced to bring all parts of the State under one set of motor laws'.[71] The issue at stake was one of civil liberties: motorists disputed the requirement to be licensed, being forced to display number plates on their motor-cars, and having to adhere to 'somewhat' arbitrary speed limits. Russell Grimwade, in his draft account of early motoring, described the events:

> Also, well remembered is the resentment a few years earlier of the few car owners of that day to the proposal of the State Government that motor cars be registered and forced to carry an identifying number. Those hardy pioneers resented with great vehemence the suggestion that their poor little machines be put under police supervision and made to carry a conspicuous number whilst private horse-drawn carriages were free of such labels, and who was to examine, as was suggested, the competency of the would be drivers to handle a car?[72]

Upper-class motorists were appalled at the idea that they would be under the supervision of working-class police constables. They also argued that it was unfair to have, essentially, one law for the motorist and another for users of traditional modes of transport.[73] Only hackney cabs and commercial vehicles required number plates, and these were driven by working-class people – usually men. They also pointed out that the number of motor-cars was small, most drivers behaved responsibly, and the discretionary application of the Police Offences Act had been effective in controlling existing problems. For example, in August 1905, during the Motor-Car Bill debates, James A Boyd, member for Melbourne, stated: 'there were reports in the newspapers showing that convictions had been obtained during the last few days against motor drivers for furious driving. That showed that the existing law was sufficient to regulate the speed of motor cars as in the case of all other classes of vehicle'.[74] In 1905, Victoria was as yet unprepared for this transition to increased powers for police and accountability of wealthy and influential motorists.

Conclusions

A cartoon in the *Australian Bulletin*, 6 July 1905, entitled 'Keeping Order' (Illustration 2) encapsulated the problem of motor-cars on Melbourne's streets. It underscored the loss of autonomy many road-users felt when faced with a fast-moving motor-car, but also argued that a police motor-car was not the solution, and would only exacerbate issues of compromised road safety and order. Today motorists – by and large – conform, obey and fulfil the many regulations and obligations that are part of owning and driving a motor-vehicle, but at the outset of the twentieth century licensing, number plates and speed limits were seen as huge infringements of motorists' liberties – especially when these were not required for private carriages.

In 1908 Sir Alexander Peacock successfully passed the Motor-Car Bill into law. However, the Victorian Motor-Car Act 1909, which became effective in 1910, omitted a fixed speed limit, which was one of the stipulations that allowed the Bill to become law. The legislation did allow local councils and shires to set speed limits, and many of them did.[75]

Even though motorists became the most regulated group in Western society between 1905 and 1950, they have remained a powerful lobby group. But despite all the regulations and penalties, effective measures have not been found to eliminate speeding[76] or to reduce the relative number of collisions.[77] And ironically, pedestrians may be the road-user group most in need of regulation, policing and education – in Melbourne, as in other motorised cities.[78] Although we have come a long way since Sir Samuel Gillott's myopic statement that 'a pedestrian has just as much right to walk in the middle of the road as he has to walk on the footpath',[79] it seems we still have a long way to go to eliminate 'furious' and 'negligent' driving.

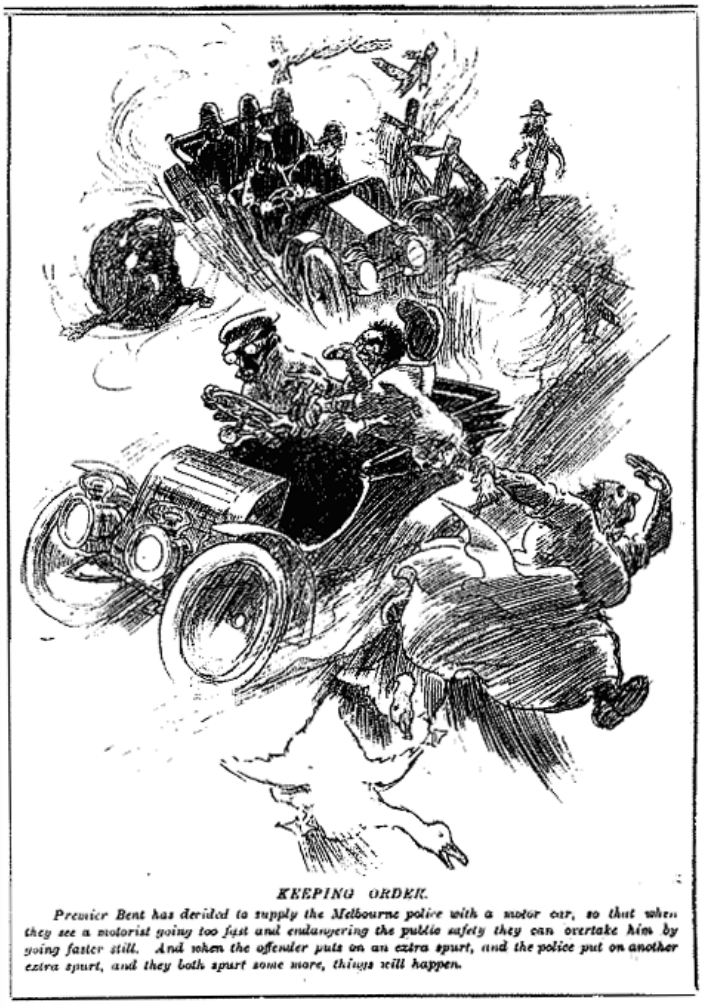

Illustration 2: Keeping Order. Premier Bent has decided to supply the Melbourne police with a motor car, so that when they see a motorist going too fast and endangering the public safety they can overtake him by going faster still. And when the offender puts on an extra spurt, and the police put on another extra spurt, and they both spurt some more, things will happen. Source : 'Keeping order', Australian Bulletin, 6 July 1905, p. 12.

Endnotes

Figure 1: Urban Road Speeds 1880-1925. Source: JD Keating, *Mind the curve!: a history of cable trams*, Transit Australia Publishing, Sydney, 1996, p. 106; JW Knott, 'Road traffic accidents in New South Wales, 1881-1991', *Australian Economic History Review*, vol. 34, no. 2, 1994, p. 84; C McShane & J Tarr, 'The decline of the urban horses in American cities', *The Journal of Transport History*, series 3, vol. 24, no. 2, 2003, p. 179; I Manning, *Beyond walking distance: the gains from speed in Australian urban Travel*, Urban Research Unit, Australian National University, distributed by Australian National University Press, Canberra, 1984, p. 20. As Manning indicates, it is difficult to substantiate average speeds for motor-cars as their speeds were dependent on driver preference: some drove conservatively while others accepted risk and put their 'foot down'. Thus, the averages are deduced from a wide range of primary documents.1. The author would like to thank David Philips and Andy Brown-May for reading drafts of this paper and providing insightful and valuable feedback, which vastly improved the final product. Gratitude and appreciation are extended also to Public Record Office Victoria and its online journal, *Provenance*, who have amiably and courteously allowed this article to be reproduced by the Royal Automobile Club of Victoria.

[2] *The Victorian Government Gazette*, vol. CXII, Government Printer, Melbourne, 1900, p. 4231 (Costs – Special scale – 'Rules of the Supreme Court 1900' – Order LXV, r. 29 – Appendix N. – Discretion of Judge to allow costs on ordinary scale). The suit was for £499 because any amount under £500 could make a claim for court costs and fees, which were approximately £70, or six months salary for a working-class person.

[3] 'Racehorse v. Motor-Car: Novel Lawsuit: Bloomfield v. Dunlop Tire Co.: £250 Damages and Costs', *The Australian Cyclist and Motor Car World*, 1 May 1902, pp. 1-2; *Bloomfield v. The Dunlop Pneumatic Tyre Co. Ltd.* (1902) 8 *"The Argus" Law Reports* 103; *Bloomfield v. The Dunlop Tyre Company Limited* (1902-3) 28 *Victorian Law Reports* 74; 'Motor-car accident: £250 damages awarded', *Argus*, 24 April 1902, p. 7; 'Motor-car accident: £250 damages awarded', *Age*, 24 April 1902, p. 6. Some historians have claimed that Bloomfield v. Dunlop Pneumatic Tyre Co. was charged under the notorious 'Red Flag Law' (see below), but Victoria's Traction Engines on Highways Act (1900) specifically states in Section 2: 'and shall not apply to motors used on tram or rail lines or motor cars or cycles'. Recounting the story almost fifty years later, Jack Proctor too believed he had been charged for breaching the 'Red Flag'. See 'Foundation members honored: stories of early motoring days: "Mr. W.J. Proctor and the Red Flag"', *The Radiator*, 18 June 1947, p. 3, in the Grimwade Collection, 3rd Acc., Series 13, Item 13/13 – 15/2, Box 9, University of Melbourne Archives.

[4] 'Automobilism' is defined as the motorists' belief that they have the unfettered right to use the roadway and police their own driving behaviour: see G Davison & S Yelland, *Car wars: how the car won our hearts and conquered our cities*, Allen & Unwin, Crows Nest, NSW, 2004, p. 117. This attitude, at the turn of the twenty-first century, manifests itself in behaviours such as aggressive driving or 'Road Rage'; conducting a multitude of distracting and dangerous activities while driving, for example reading and sending text messages on a mobile phone; and speeding. Blatantly dangerous driving behaviours are not new, of course; they began when 'men' sat behind the wheel of the first self-propelled agricultural and industrial machines.

[5] SE Davies, 'Vagrancy and the Victorians: the social construction of the vagrant in Melbourne, 1880-1907', PhD thesis, University of Melbourne, 1990, p. 122; *An Act for regulating Hackney and Stage Carriages in and near London 1843* (C. 86) (UK).

[6] *An Act for regulating the Use of Locomotives on Turnpike and other Roads, and the Tolls to be levied on such Locomotives and on the Waggons and Carriages drawn or propelled by the same 1861* (C. 70) (UK); 1865 (C. 83) (*An Act for further regulating the Use of Locomotives on Turnpike and other Roads for agricultural and other Purposes*).

[7] Driver and Vehicle Licensing Agency, *History of motoring and licensing in Britain: the early years*, 28 January 2003, <http://www.dvla.gov.uk/histm_l/earlyday.htm>, viewed 14 June 2004.

[8] *An Act to amend the Law with respect to the Use of Locomotives on Highways 1896* (Ch. 36) (UK).

[9] 'Re: Furious driving – Henry George Allendale', *London Times*, 18 April 1903, p. 5.

[10] *Hackney and Carriage Act 1843* (UK), s. xxviii; *Parliamentary debates* (UK), 4th ser., vol. 121, 27 April 1903, p. 467.

[11] ibid., p. 470.

[12] In fact, bicycles and motor-cars were increasing urban road speeds to almost 15 mph, but it would be some years before urbanites adjusted.

[13] For a discussion of English motor-cars and policing, see C Emsley, '"Mother, what did policemen do when there weren't any motors?": the law, the police and the regulation of motor traffic in England, 1900-1939', *Historical Journal*, vol. 36, no. 2, 1993, p. 368. In Victoria, after the 1909 Motor Car Act became law, police also found it difficult to prosecute speeding motorists in court: see PROV, VA 724 Victorian Police, VPRS 807/P000 Inward Correspondence, Unit 412, File H11125 (Memo: Re: remarks made by magistrates on the police method of timing motor cars, 19 November 1910); VPRS 807/P000, Unit 388 (Memo: Re application of Constable Rose 4297 for a stopwatch for timing fast driven motor cars, February 1910).

[14] *Mayhew v. Sutton* (1901) 71 LJR 46.

[15] *Smith v. Boon* (1901) 49 WR 480; 84 LT 593; 'Smith v. Boon', *London Times*, 4 May 1901; *Mayhew v. Sutton* (1901) (UK).

[16] *An Act to amend the Locomotives on Highways Act 1903* (C. 36) (UK) s. 1 (1).

[17] 'Motor cars: Imperial legislation – London July 8', *Argus*, 9 July 1903, p. 5; Emsley, p. 365; *Motor Car Bill Debates*, vol. 127, Government Printer, London, 1903, p. 1007.

[18] *Debates*, vol. 127, p. 519.

[19] Emsley, p. 368.

[20] *Report of the British Royal Commission on Motor Cars*, vol. XLVIII, *Command Papers 3080*, Government Printer, London, 1906, p. 25.

[21] D Philips, 'Law', in G Davison, JW McCarty & A McLeary (eds), *Australians 1888*, Fairfax, Syme & Welson Associates, Broadway, NSW, 1987, p. 370.

[22] *An Act to regulate the Traffic of Traction Engines 1900* (Act No. 1693), s.2. See also note 3 above.

[23] *An Act to consolidate the Law relating to the Management of Towns and other Populous Places and for the Suppression of various Offences: Police Offences Act 1890* (Act No. 1126), s.5 (xvii).

[24] loc. cit.

[25] Cf. *British Royal Commission on Motor Cars*, p. 47. Recommendation II – abolition of the 20 mph speed limit – resulted from its minimal use, and most offences carried the discretionary charge of Section 1 in the 1903 Imperial Motor Car Act.

[26] P Williams & H G Joseph, *The Police Offences Acts including The Police Offence Act 1890, The Police Offences Act 1891, The Police Offences Act 1907, The Animals Protection Act 1890, The Lotteries Gaming and Betting Act 1906 together with The Street Betting Suppression Act 1896, The Sports Betting Suppression Act 1901, The Public Meetings Act 1906*, Charles F. Maxwell (G. Partridge & Co.), Melbourne, 1908, p. 75.

[27] P Cuffley, *Buggies and horse-drawn vehicles in Australia*, Five Mile Press, Fitzroy, Vic., 1988; J Badger, *Australian horse-drawn vehicles*, Rigby, Adelaide, 1977. A jinker is a horse-drawn waggon designed to transport logs, poles or other timber. The timber is suspended under a high frame with chains, rather than loaded onto a waggon deck. A common jinker was a two-wheeled cart capable of carrying two or three people.

[28] VPRS 807/P0, Unit 204, File 8287 (Report of Sergeant FP Meagher 4850 of Negligent Driving, 22 October 1904).

[29] 'Police and firemen: "furious driving and violent outcry"', *Argus*, 24 September 1903, p. 5.

[30] 'A careless cyclist', *Argus*, 23 February 1904, p. 7.

[31] 'Casualties and fatalities', *Argus*, 20 February 1904, p. 19.

[32] VPRS 3181/P0 Town Clerk's Files, Series I, Unit 514, File 660 (Claim of Cole & Morris, 19 February 1904); VPRS 3181/P0, Unit 514, File 2859 (Letter from the City Solicitor to Town Clerk; Re: Cole & Morris, 19 February 1904).

[33] 'Re: Crash of Jeremiah Sullivan – city employee', *Age*, 12 August 1904 (in VPRS 3181/P0, Unit 514).

[34] 'Re: Crash of Jeremiah Sullivan – city employee', *Age*, 15 October 1904 (in VPRS 3181/P0, Unit 514; VPRS 3181/P0, Unit 514, File 996 (overturning of a cab in Macaulay Road said to have been caused by negligence of Council's employee, 22 August 1904).

[35] VPRS 24/P0 Inquest Deposition Files, Unit 786, File 1905/282 (Coroner's inquest into death of Ethel Donnison, 9 March 1905); 'Child killed in Elizabeth Street: knocked down by tram', *Argus*, 10 March 1905, p. 6.

[36] For the impact of the railway on understandings of speed, time and space see W Schivelbusch, *The railway journey: the industrialization of time and space in the 19th century*, Berg, Leamington Spa, 1986.

[37] JB Jacobs, *Drunk driving: an American dilemma*, University of Chicago Press, Chicago, 1989, pp. 15-26 *passim*.

[38] 'High speed motoring: the St. Kilda-Road fatality', *Age*, 6 May 1904 (in VPRS 3181/P0, Unit 74; VPRS 24/P0, Unit 775, File 1904/435, Coroner's Inquest Arthur Gaj, 10 May 1904. Discrepancy exists concerning Arthur Gaj's surname in the Coroner's report.

[39] 'Motor car speed in the city: Mr. Adams's condition serious: the yellow car not found', *Age*, 15 December 1906 (in VPRS 3181/P0, Unit 75).

[40] S Priestley, *The crown of the road: the story of the RACV*, Macmillan, South Melbourne, 1983), pp. 1-23 *passim*.

[41] 'The coming of the motor: a remarkable forecast', *Argus*, 11 April 1903, p. 5; 'The motor in London: superseding horses – London, April 10', *Argus*, 11 April 1903, p. 18.

[42] 'New motor omnibuses: New York, April 2', *Argus*, 9 May 1903, p. 5.

[43] 'Automobile v. Horse (Daily Mail) Paris, May 12', *Argus*, 20 June 1903, p. 4.

[44] 'Motor car traffic', *Argus*, 22 January 1904, p. 7 (letter to the editor).

[45] 'The motor car scare', *Argus*, 10 November 1904, p. 10 (letter to the editor).

[46] R Grimwade, 'Early Motoring in Victoria', draft typescript, c. 1944, Grimwade Collection, 3rd Acc., Series 13, Item 13/1-13/2, Box 8, University of Melbourne Archives, p. 4.

[47] 'Motor car traffic', *Argus*, 22 January 1904, p. 7 (letter to the editor).

[48] 'Motoring', *Argus*, 20 February 1904, 18.

[49] Priestley, p. 9.

[50] VPRS 807/P0, Unit 269, File X7281 (letter dated 22 August 1905).

[51] 'Motor-car regulations: proposed regulations', *Argus*, 15 June 1904, p. 4.

[52] 'Motor cars and cycles: legislative regulation suggested', *Argus*, 10 August 1904, p. 5.

[53] VPRS 3181/P0, Unit 514 (Statement of Costs; Re: Motor Cars – from City Solicitor to Town Clerk, 6 January 1905).

[54] 'Motor traffic: necessity for regulation', *Argus*, 6 January 1905, p. 5.

[55] 'Control of motor traffic', *Argus*, 16 April 1907 (letter to the editor; in VPRS 3181/P0, Unit 76).

[56] For a view of 'automobilism' from South Australia in 1915, see FA Munsey, 'The South Australian motor: the speed limit', *Munsey's Magazine*, 1 June 1915 (in VPRS 807/P0, Unit 556, File S7443).

[57] Royal Automobile Club of Victoria Archive, Memo: Re. Motor Regulations to Melbourne's Lord Mayor signed by Harry James – Acting Honorary Secretary, 21 January 1905.

[58] 'Motor car traffic: request to Lord Mayor', *Argus*, 25 January 1905, p. 9.

[59] 'Motoring: Dunlop Reliability Race', *Argus*, 22 February 1905, p. 5.

[60] *Victorian Police Gazette*, J. Kemp, Government Printer, Melbourne, 1905, p. 24.

[61] R Haldane, *The people's force: a history of the Victoria Police*, Melbourne University Press, Carlton, Vic., 1986, p. 135; 'A motor driver fined', *Argus*, 7 April 1905, p. 6. Tarrant's Garage had a waiting room for chauffeurs with a billiard table where they could amuse themselves while their owner's car was being repaired.

[62] 'Motor notes', *Melbourne Punch*, 26 April 1905, p. 526.

[63] 'A chauffeur's arrest: remarkable case London, May 9', *Argus* 10 May 1905, p. 7.

[64] 'Motor notes', *Melbourne Punch*, 11 May 1905, p. 630.

[65] *Parliamentary debates* (Legislative Council and Legislative Assembly, Vic.), Session 1905, vol. 110, p. 1295.

[66] 'Foundation members honored', p. 3; VPRS 807/P0, Unit 2, File 5973 (monthly summary of salaries and wages: Western District, 23 June 1909); Haldane, p. 134.

[67] *Parliamentary debates* (Vic.), Session 1905, vol. 110, p. 1305.

[68] Arthur Gaj was the first motoring fatality in 2904, whereas Thomas Hall, struck and killed by a motor-car, was arguably the first motor-car fatality in the city. In January 1905, Samuel Payne of Kew was killed at the intersection of Albert and Evelyn Streets in East Melbourne when his bicycle struck the rear portion of a motor-car driven by FH Hutchings, but the Coroner blamed Payne for the collision; therefore, it is questionable if this can be labelled the first motor-vehicle fatality. See VPRS 24/P0, Unit 784, File 1905/27 (Coroner's Inquest in the Death of Samuel Payne, 4 January 1905); 'Motor-car collision: a cyclist killed', *Argus*, 5 January 1905, p. 5.

[69] VPRS 24/P0, Unit 793, File 1905/992 (Coronor's Inquest into Death of T.J. Hall, 24 August 1905); 'Motor car fatality: man knocked down and killed', *Argus*, 25 August 1905, p. 5; 'Motor-car fatality: coroner's inquest opened', *Argus*, 28 August 1905, p. 6.

[70] The impetus for the Motor Car Bill was not crashes and deaths caused by the motor-car because the streets and roadways, with their traditional modes of transport, were dangerous places already. Rather, it was the potentially exorbitant speeds of motor vehicles and the loss of autonomy this caused other road users.

[71] Royal Automobile Club of Victoria Archive, *Annual Report*, Automobile Club of Victoria, Melbourne, 1905.

[72] 'Early Motoring in Victoria', p. 2. For various reasons, Grimwade's statement might have been less 'cheeky' had it been written during the winter of 1905.

[73] Haldane, p. 132; D Wilson, 'On the beat: police work in Melbourne, 1853-1923', PhD thesis, Monash University, 2000, p. 180.

[74] *Parliamentary debates* (Vic.), Session 1905, vol. 111, p. 1346.

[75] Between 1910 and 1912, on account of court challenges and biased magistrates, a procedural change was introduced for the policing of speed limits: silver split-second stopwatches were purchased at £7.15.0 each; distances were measured by a surveyor; and two constables were required to do the timing. For council and shire speed limits see LL.B. E. Roy Burgess, *The rules, regulations, by-laws, &c. of Victoria 1922-1924*, The Law Book Company of Australasia Limited, Melbourne, 1925, pp. 268 & 286. For relative speeds see B Carroll, *Getting around town: a history of urban transport in Australia*, Cassell Australia, Stanmore, NSW, 1980, p. 94. See also JW Knott, 'Speed, modernity and the motor car: the making of the 1909 Motor Traffic Act in New South Wales', *Australian Historical Studies*, no. 103, 1994, pp. 2210-41 *passim; An Act to regulate the use of Motor Cars 1909* (Act No. 2237), s. 15; Haldane, p. 137.

[76] Jacobs, pp. 23-5; CD Robinson, 'Police and traffic law enforcement', in KL Milte & TA Weber (eds), *Police in Australia : Development, Functions, Procedures*, Butterworths, Sydney, 1977, pp. 338-40.

[77] Davison & Yelland, p. 62.

[78] A Brown-May, *Melbourne street life: the itinerary of our days*, Australian Scholarly Publishing, Kew, Vic., 1998, p. 62.

[79] *Parliamentary debates* (Vic.), Session 1905, vol. 110, p. 1148.

Death, Decency and the Dead-House

The City Morgue in Colonial Melbourne

Dr Andrew Brown-May and Dr Simon Cooke

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Abstract

The idea of a central morgue where dead bodies would be kept for identification and inquest was a new one in the urban culture of the British Empire of the mid-nineteenth century. Inquests up to that point took place in public houses, and bodies awaiting inquest were stored in outbuildings. A central morgue in Melbourne was first utilised in the 1850s and by the 1890s had become the main site of coronial inquests. The call for a morgue was partly a response to the desire of the government to identify its deceased members and label their deaths, and partly a requirement of the climate. Traditional practices, rooted in localism, were inefficient in a growing colonial society with hot summers. The surveillance of the dead was common in French and English societies, but was given particular emphasis in a town experiencing a gold-rush population boom. Changing ideas about what was acceptable in polite society also played a part. Identification, decency and health, therefore, provided varying motivation for this radical departure from local English practice. However, the morgue occupied an ambiguous place within the bureaucracy of the day. And like its Paris counterpart, it was sequestered, for a period at the end of the nineteenth century at least, as a lurid but nonetheless acceptable place of spectacle and macabre titillation.

On 5 March 1898, Melbourne's *Argus* newspaper ran a short item on a strange event that had taken place the previous day:

> Casual pedestrians along the North bank of the Yarra [River] yesterday afternoon could scarcely believe their ears when they heard the pop of champagne corks and the chorus 'For he's a Jolly Good Fellow' at the Morgue.

The paper explained that 'this somewhat incongruous hilarity' was occasioned by a gathering to present Coroners Candler and Morrison with portraits of themselves. The pictures were to be hung behind the Coroner's chair, on either side of a photograph of Richard Youl, City Coroner from 1853 till his death in 1897. Attending the event were city and district pathology staff as well as some prominent medical gentlemen. Presiding over the festivities was James Edward Neild, lecturer in forensic medicine at Melbourne University, and a regular at the morgue dissecting table. Speeches were made, and toasts drunk, we are told, with 'musical honours'. Clearly, the morgue was an institution that had a sense of its own past and identity. Medical men dominated the proceedings, but there were also a number of lawyers and police present.

Illustration 1: La Morgue (Journée de Juillet, 1830) in Firmin Maillard, *Recherches historiques et critiques sur La Morgue*, Paris, 1860.

Compare this gathering with the incident described in a letter dated 16 February 1855 – some 43 years earlier – from 'A Jury man' to the Colonial Secretary complaining about the conduct of an inquest in which he had taken part:

> an inquest was held on the body of a murdered woman, within seven yards of the Olive Branch public house, Latrobe Street East, and strange to say that the Jury had to sit in a narrow confined apartment where the awful spectacle [of the] deceased lay half naked at the feet of the Jury[] the possition occupied by the Jury became intolerable and discusting from the long investigation and heat of the day ... why was not the usual mood addopted namely to allow the Jury to sit in a room in the adjoining Public House and then view the body as usual, hopeing you will prevent in future a repetition of such an insulting method being recurred to, if the Coroner be void of christian or humane feelings he should respect those of his sworn Jury. [sic][2]

The contrast with the celebrations at the morgue is striking. First, there is no dedicated building for holding inquests: indeed, the 'Jury man' complains that even the 'usual mode' of holding inquests in hotels was not followed. Second, the inquest involves ordinary men (but not women) as jurors, who play an essential role in the decision-making process. Inquests had yet to become a predominantly medical event. Third, our 'Jury man' objects to having to look at the body because of 'christian or humane feelings'. We get a hint here of growing revulsion toward the corpse, and, although he does not mention it, his sense of unease was most likely heightened by the knowledge that the house where the inquest was held was, in fact, a brothel.[3]

Why then does the morgue appear during the nineteenth century and become the main site of coronial inquests within 50 years? How did Melbourne's morgue come to be positioned at the corner of Swanston and Flinders Streets – at Melbourne's prime southern gateway – if only for a short time? *La morgue* was of course a French institution *par excellence*: its origins can be traced back to the fourteenth century, where in the Châtelet prisons (called *basse-geôle*) the morgue was a place from where gaolers viewed prisoners. By the early eighteenth century the term had come to describe the place where bodies were dumped for identification. In 1804 the Paris morgue moved to its own building at the Quai du Marché on the Ile-de-la-Cité, and after the Haussmanisation of Paris a new morgue was built in 1864 on the Quai de l'Archevêché behind Nôtre Dame. The morgue's central location attracted as many passers-by as possible for the identification of bodies, and the institution was conveniently located near the police headquarters, judicial chambers, the medical faculty of the Sorbonne, and the river from which many bodies were dragged.[4]

A dedicated morgue building – albeit temporary and dilapidated – was located in Melbourne's wharf area and used from the late 1850s as a site for storing bodies as well as for inquests. It pre-dated both the rejuvenated Paris building (1864) as well as other comparable institutions such as New York City's first morgue, opened in 1866 on the grounds of Bellevue Hospital near the East River.[5]

Nineteenth-century arguments about the morgue are a sensitive indicator of new understandings of death and its place in urban culture.[6] Unlike cemeteries, morgues did not require large tracts of unused land, and could be placed anywhere in the city. Nor did morgues have any connection with religious practices, or have to accommodate the needs of the various denominations for their own sacred spaces. However, the morgue was a new institution, unlike the cemetery, and finding a place for it in an already allocated and overcrowded city presented a novel problem. Deciding where to put the recently deceased, and hence by what route the bodies would be taken through the city to get to the morgue, were issues created by the centralised accommodation of the dead. Like Allan Mitchell, who has written on the Paris morgue as a social institution in the nineteenth century,[7] we argue that an understanding of the institutional history of death is necessary to ground the study of attitudes to death more generally. The construction of morgues in the nineteenth century can therefore be understood as part of new ways of dealing with death throughout the West, and as indicative of new sensitivities about public displays of bodily functions. We further argue that the construction of the Melbourne morgue makes more sense when placed in the specific context of the colonial city.[8]

In the first section we examine the calls for a morgue and the novelty of such an institution in British urban culture. Once the decision was made that there should be a house for the dead, there ensued a long drawn-out discussion about where it should be. The process was complex, and did not ultimately produce a site. We deal with this at some length in Section 2 because the very indecision underlines our main point: that the morgue was a new problem, not yet well established in the minds of administrators. Section 3 examines the temporary location that was found for the morgue in the late 1850s and 1860s following the rejection of a favoured location in what now appears to us to be a very peculiar place – the intersection of two of the city's main streets. The difficulty of understanding why a morgue was proposed for such a site is compounded by the fact that it was finally located at this spot between 1871 and 1883, as detailed in Section 4. We then discuss in Section 5 the move away from this site, first to another temporary site, then to the place that would serve as a morgue from 1888 to 1951. In the final section we point to a transitional moment at the end of the nineteenth century when the demands of science and social sensibility over sensationalism and populism began to draw the curtains around the more lurid aspects of the morgue as public spectacle.

I

When Melbourne was planned *ab novo* in 1837, no particular provision was made for a morgue. By the 1850s, however, the city was undergoing a transformation. The discovery of gold in 1851 led to a huge influx of immigrants. Melbourne's population of around 23,000 in 1851 tripled in just three years – and the number of deaths also increased dramatically. The earliest references to the problem of accommodating the dead appear in the minutes of the Melbourne City Council (MCC) in June 1852. The Council drew attention to the need for a morgue owing to the growing problem of large numbers of unidentified corpses about the town, and was critical of 'the present odious system of depositing dead corpses ... in houses of public accommodation, while awaiting a Coroner's Inquest'.[9] Lieutenant-Governor La Trobe, who was effectively in control of the city, responded favourably to their request, and promised to place a sum on the estimates for the erection of a morgue. It is perhaps not insignificant that publicans had some influence in the City Council – Melbourne's first mayor had indeed been a member of the fraternity.[10]

From these earliest calls for a morgue, the debate was couched in terms of how death should be organised in an urban space. It is worth noting in this regard that the cause was first taken up by the city corporation. The offended sensibilities of the councillors were soon championed by Melbourne Coroner, William Byam Wilmot:

> In the present crowded state of the City, the danger attending the introduction of bodies perhaps in an advanced stage of decomposition into public houses for the purpose of an inquest must be obvious, and the disgraceful scene which took place on Sunday evening last when a corpse was hawked about the streets before any publican would admit it upon his premises, induces me to urge this matter upon His Excellency. There is great allowance to be made for some publicans in this matter, who have had premises licensed without the compliment of stabling and out offices prescribed by the law.[11]

It is not surprising that Wilmot, an MD from Edinburgh and a Member of the Royal College of Physicians, pointed to the risks of the present system for spreading disease, but he did so in the context of an attempt to ensure decency. Wilmot had been Coroner for Melbourne since 1841, and his inquest load had more than doubled in the rapidly growing city: from 97 in 1850 to 262 in 1853. In 1853 he clearly considered that a morgue had become necessary, though medical arguments were to have a remarkably small place in the debate over where to put the institution.

Calls for a morgue were not the only response to the city's crisis of accommodation for the dead. The 'hawking' of the body to which Wilmot referred also drew the attention of the *Argus*. Unlike Wilmot, the *Argus* thought the solution was to withhold licenses from, or at least fine, publicans who refused to take a body, to ensure that this situation did not occur in future. The *Argus* was certain that this power existed in England, but was unsure of the colonial situation. [12] The legal position in the colony remained unclear until 1864 when publicans were specifically required to house dead bodies for post-mortems, for which they received one pound.[13] Whatever the letter of the law in 1853, however, the practice of holding inquests in hotels was common, and accepted as the proper practice, as the protest from the *Argus* suggests. Approval of this practice is also clear in the letter from 'A Jury man' quoted above. Crawford Mollison, Melbourne's premier pathologist at the end of the nineteenth century, recalled that before the erection of the 1888 morgue, 'post-mortems were made in stables and barns, and inquests were held in hotels'.[14] Mollison slightly overstates the practice to the extent that inquest records from the 1850s list bodies being stored in a range of mortuaries; for example, gaols were used for inquests on prisoners who died in custody as well as those who were executed, and inquests were held in lunatic asylums, the Immigrants Home and the Melbourne Hospital on those who died in these institutions.[15] The common practice of keeping bodies in hotels was, however, an accepted cultural norm of the British city in the mid-nineteenth century.

The novelty of the morgue in British culture can be measured against the primacy of the Paris morgue as a *sine qua non* of civil surveillance. The keystone of the French morgue was public display to maximise the likelihood of identifying the dead, and the central location of the Paris morgue was designed to attract many passers-by. But more than that, the Paris morgue was 'La Musée de la Mort', a morbid attraction listed in guide books to the city as a must-see alongside the Eiffel Tower, the Louvre, the waxworks and the theatre. [16] It has been estimated that a million visitors a year passed through the morgue by the end of the century. While as a place of banal curiosity the Paris morgue may have been the 'Luxembourg de la Cité', French commentators noted ironically that its clientele comprised mostly English tourists. Not content with the offerings of the Salle d'exposition, they would, if they could, go over the place with a fine-tooth comb.[17] In 1833 F de Courcy commented that now that well-known people were no longer executed on the Place de la Grève, it could only be hoped that onlookers would not be deprived of the stocks, as the morgue would then be the only place of comparable recreation left.[18] Changing ideas of decency through the nineteenth century eventually put an end to this display of death. Bodies were no longer displayed naked at the Paris morgue from 1877, and public exhibition of bodies was ended in 1907.[19]

The French example was certainly not lost on those in Melbourne. In 1868, Chief Commissioner of Police Standish noted that 'the Morgue in Paris is now the most complete structure of the kind, and should the Officers entrusted with the erection of the new Morgue in Melbourne require details of that building I shall be happy to procure them from the Parisian authorities'. [20] Not everyone was so happy about following the French example. The *Age* newspaper regarded the French morgue as 'one of the dismal sights of Paris' and claimed it was 'a gloomy emanation from the morbid sentimentality of the French mind'.[21] While the *Age* identified some crucial differences between British and French culture and judicial systems, it somewhat overstated the case. A body could only be identified at inquest when someone could testify to the identity. Some of the early calls for a morgue addressed this very problem by insisting that identification was a key function that the morgue would play. Coroner Youl, who took over from Wilmot temporarily in 1854 and permanently in 1857, emphasised the importance of having a central place where people might look for 'persons, who in a state of Delirium wander from their homes and are found by the Police'. Public houses failed to provide this central point for identification. Similarly, the Mayor called for 'a morgue or dead-house for the reception of dead bodies awaiting Coroners Inquests or recognition by their friends'.[22]

The extent to which colonists took 'advantage' of the number of unidentified corpses to view the dead as spectacle, as was the case in Paris, is unclear for the 1860s and 1870s, although as discussed below there were moments later in the century when this certainly occurred. It is clear however that the call for a morgue was partly a response to the desire of the government to be able to identify the deceased in a society of immigrant strangers, and partly a requirement of the climate. Traditional practices, rooted in localism, were inefficient in a growing colonial society with hot summers.[23] The surveillance of the dead was common in French and English societies, but was given particular emphasis in a town experiencing a gold-rush population boom.[24] Identification, decency and health, therefore, provided varying motivation for this radical departure from local English practice.

II

Once the idea of a morgue was accepted, the problem became where to put it. A morgue ensured that bodies were not stored in public houses. But at the same time it also meant creating a location where bodies would *always* be present, and to where bodies would have to be carried, concentrating the visibility of death in the streets. Choosing a site meant carefully considering each of these possibilities.

The large proportion of bodies for inquest retrieved from the Yarra led to various officials suggesting sites near the river. Public propriety, which had begun the debate, was also influencing the location of the morgue. Wilmot considered a site in the immediate vicinity of Prince's Bridge to be the most appropriate, close to the river. He pointed out that it had a number of other advantages as well, being nearer the Swanston Street police station and the wharf, 'more especially when we consider how great a desideratum it is that the Streets of the City should be harassed as little as possible by the dead bodies found in such various stages of decomposition'.[25] Lieutenant-Governor La Trobe, who had the ultimate authority over where public buildings were to go, reacted with cautious approval to this proposal, so long as the morgue was not 'made a prominent object in any position'. To this end, he suggested embedding the morgue in the embankment of Prince's Bridge. Colonial Architect Henry Ginn was not so sure about La Trobe's idea, both on account of its expense and on the grounds that 'many females would be much shocked at having to pass over a place where dead bodies are kept'.[26] The emergent ideology of public space as a reformed, sanitised and generally accessible and democratic domain, open in theory to all the city's denizens, was compromised in practice by complex manipulations of behaviour and locations that demanded conformity to particular notions of convenience and propriety.[27]

Plans for a morgue were first drawn up in early 1853, but apparently came to nothing. The bureaucratic indecision soon frustrated the city corporation, which again resolved in Council to urge the Lieutenant-Governor to speed up the process, citing 'the extreme hardship requiring licensed victuallers, in the present crowded condition of their houses, to receive dead bodies awaiting Coroner's Inquests'.[28] A further site was selected near Prince's Bridge by August 1853, and appeared to have been approved by La Trobe. The morgue was to 'be situated in the bank of the bridge approach, and thus form a kind of catacomb, which will be masked with shrubs, &c.'[29] However, La Trobe soon noticed that the morgue was being built on the east side rather than in the embankment on the west side; plans which were supposed to have been submitted to him in October the previous year had never in fact been formally approved. La Trobe regarded the final position on the eastern side as 'horrible' and 'needlessly offensive to the feelings of the citizens'.[30] Work was suspended.

The problem now was that construction was already well in hand. The partially built morgue made the spectre of death in the city much more real, even before any bodies had been placed there. What had once been pure imagination, guided perhaps by the example of the Paris morgue, now had a physical reality. The *Argus* addressed the 'very sorrowful and disagreeable subject' of the new dead-house, and like La Trobe viewed with disfavour the 'indelicate' location at Prince's Bridge, impinging as it did onto the 'busy street-life of a bustling city':

> As our rich cits drive across the bridge then, exhausted by the labors of the day; and, with empty stomachs, begin to turn their thoughts to the fragrant hashes and savory cutlets which will greet them on their arrival at St. Kilda or South Yarra, they must not feel surprised if they find themselves suddenly assailed with a whiff of something not particularly appetising. They must console themselves with the reflection, that it is nothing worse than the smell from the decaying bodies of a few of their fellow creatures.[31]

All of Wilmot's assurances about the decency of the site came to little. The problem of locating the dead proved too difficult, and the *ad hoc* use of public houses continued.

The Prince's Bridge complex, though at least partially completed, was being used as the City Coroner and Registrar's office, but not as a morgue. In August 1854, Acting Coroner Youl re-ignited the demand for a centrally located morgue, now to deal with the high mortality of recently arrived Chinese gold-rush immigrants encamped on the south bank of the river. At the end of 1854, dead bodies were still being conveyed to public houses, a practice which served to keep the issue of the morgue alive. The body of Alexander McQueen, a boy who had drowned, was 'deposited in a fowl-house, exposed to the heat of the atmosphere' while awaiting inquest, to the distress of his friends and the *Argus*.[32] The hot summer season in January 1855 saw the Acting City Coroner making arrangements with an undertaker, Mr Crofts, to store corpses.[33] At the end of that month Youl reported to a special committee on government office accommodation on 'the absolute necessity which exists for the erection of a morgue, in connection with the office of the coroner, whether the present site be retained or not'.[34]

III

Despite the failure to complete the proposed Melbourne morgue in 1853-4, small-scale use of a dedicated morgue began in the late 1850s, in a temporary structure at the western end of town nearer the wharves. In 1858 Constable Mooney noted at an inquest that he had found a body in the Yarra on 17 September and 'conveyed it to the morgue', and the inquest was said to have taken place in Flinders Street. In the following year a number of inquests were held at 'the Morgue' on bodies taken from the Yarra near the wharves, and the jurors said to be good and lawful men of Flinders Street. Certainly the morgue was far removed from the central position of the proposed Prince's Bridge site.

Nevertheless, having a central morgue did raise the problem of bodies being conveyed thence. In 1858 Youl suggested that a truck used for removing corpses to the morgue might be stationed at his Prince's Bridge office, for use 'when the distance is long', and that a painted canvas stretcher could be kept at the morgue for shorter distances, which would keep the bodies completely hidden to avoid offence to the public.[35] However, many inquests were still being held in the city and the body was *not* being taken to the morgue. Wilmot's vision of the dead being brought from the suburbs to the central morgue was certainly a long way from realisation and was bringing with it its own set of problems.

If, as we surmise, the Australian Wharf past the western end of Flinders Street was the location of a temporary morgue, there were moves to develop it (or a site nearby) into a permanent building in 1864. On 13 September of that year, the Inspector General of Public Works ordered that timber lumber be removed from 'the piece of ground allotted for the intended Morgue & that the ground may be reserved & gazetted'.[36] The disgraceful state of the establishment in 1867 again highlighted the need for a new morgue. Coroner Youl put a suggestion to the Minister of Justice:

> The present Morgue is a disgrace to the City – it being no Department's Business to look after – it is dirty and offensive the building is so insecure – that the dead in it have been robbed of their clothes in wet weather it is almost impossible to approach it – the Verandah is the resort of Cattle and Goats ... I think therefore a new Morgue built of stone in a proper site most desirable ... I think the City Corporation should have the charge of it ... [37]

but his plea fell on deaf ears. In May 1868 the morgue was again reported to be in a ruinous condition.

In 1875 Youl still did 'not know in which Department the Morgues are placed'. As he had suggested, throughout this period the failure of the authorities to erect and maintain a proper morgue was the failure of any department to take responsibility for it. Despite its role in the surveillance of citizens, the nineteenth-century morgue occupied an ambiguous place within the bureaucracy of the day. The question of who bore responsibility for the morgue was one that continued from decade to decade without resolution. The Police, the Public Works Department, the Crown Law Office and the Corporation of the City all denied responsibility for building and maintaining a morgue at various points. The dispute is indicative not only of the tight-fisted attitude of government departments, but also of uncertainty about the role the morgue was meant to play. Was it part of municipal responsibilities, like garbage collection? In England, coroners were still a responsibility of local governments, but in the colonies a more centralised state had taken over the appointment and payment of coroners.[38] Or did the morgue fall under police auspices, as it was invariably the police who took bodies to the morgue? Police took part at most inquests, and, if a verdict of murder was returned, it was the first step in the prosecution. The introduction of the 'new police', with their multifarious public welfare duties, added a new dimension to the ancient office of coroner.[39] Then again, was the morgue part of the responsibilities of coroners (and, hence, the Law Department), who presided at inquests? This, in turn, raised questions about the role coroners were expected to play as they became professionals in their own right – salaried government officials rather than local gentlemen holding the occasional inquest for a fee. Eventually the Chief Secretary decided that morgues should be under the control of the police.

IV

The temporary morgues had not met the demand for a city morgue, and the Prince's Bridge site rejected in 1854 again became the focus of attention. In September 1869 the Assistant Commissioner of Crown Lands suggested a new site on the south bank of the Yarra west of Prince's Bridge, and by 1870 there was a clear indication that moves were again afoot to build a new morgue. Significantly, however, the *Age* viewed the delay with a certain amount of pleasure, and it is clear that there was still some opposition to the very institution of the morgue itself.

Finding a suitable location was again a difficult task. Many of the issues in 1871 were the same as those in the 1850s. Despite this, the outcome was the opposite of that of 20 years earlier: the Melbourne morgue ended up at Prince's Bridge, at the city's southern entrance. This site was favoured by the *Argus* over other locations that were deemed to be even more noticeable.[40] The building was completed in 1871, and from JE Neild's sketch-plan in 1878 it appears that the Prince's Bridge morgue was attached to the original 1854 office.

Centralisation was slow to take effect. Even after the central morgue was established in the city, bodies were still being taken to local hotels for inquest. In 1876 attention was drawn in Parliament to an incident where a suicide's body was taken to a hotel in North Melbourne, the state of decomposition driving customers away from the premises.[41] This case drew attention to the problems of grafting new sensibilities onto existing legal structures. The Coroner was still an office based on local participation. There was also new concern about the propriety of having the morgue in such a prominent position. The dilapidated state of the morgue by 1878 induced Coroner Candler to suggest that 'that the place should be made far more presentable than it is – more creditable to the City of Melbourne – and more fitted for its purpose'.[42]

In a sense this signals a new era of civic consciousness in relation to the public image of the city. Plans in the late 1870s for a new Prince's Bridge culminated in 1888 with the opening of the new structure. By 1900 the site was firmly identified as the city's gateway from St Kilda Road,[43] and improvements after 1901 were motivated by the opening of Federal Parliament in Melbourne, a Royal Visit, and the visit of the American Fleet in 1908. By this time, the MCC and the Government had invested hundreds of thousands of pounds on the new railway station and on statues, lawns and flower beds at the city's southern entrance in an effort, as the *Age* would have it, 'to make this spot – the city's front door – a credit to Melbourne'.[44]

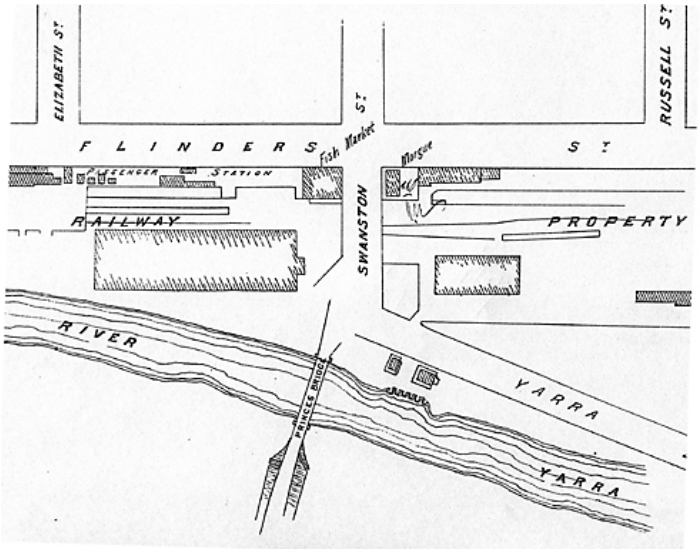

Illustration 1: Location of Melbourne Morgue, 1883.

V

The Prince's Bridge morgue was abandoned by the Coroners in 1883 when the Railway Department required the old building.[45] A temporary morgue was located in a yard at Cole's wharf, but within twelve months Youl condemned the building as hopeless: 'The dead house is so infected with rats that the bodies have to be protected from them with iron covers. The jury room is cold dark and very uncomfortable so much so that jurors refuse to sit in it and the Court has to be removed to [a] Hotel'.[46] The Secretary of the Crown Law Office was more direct: 'The present disgusting place is enough to kill people [who have to] go there and perform duties in the place.'[47]

While the temporary site was miserably inadequate, no agreement could be reached on a permanent location. The Railway Department and the Secretary for Public Works suggested sites near the wharves, Youl objecting to such proposals on the grounds that this precinct was too far away from the centre of population, that juries would need to be transported in cabs and paid for their time and trouble, and that bodies would have to be carried through the town.

The morgue had finally become an important and often-used building, highlighting the problems of centralising the storage of the dead. In 1885, Solicitor-General Alfred Deakin told Parliament that a central and convenient location could not yet be fixed upon, four proposed sites having been objected to.[48] The MCC and others rejected any site that would be objectionable to the citizens of Melbourne: 'surely the views of the living must be regarded as well as the sentimental view put forward by Dr. Youl or any one else'.[49] Deakin observed that the City Council objected to many sites 'which they considered would be disfigured by the erection of a morgue; they were opposed to a building of the kind, from its associations, no matter how architecturally perfect it might be, occupying a public position'.[50] Having championed the removal of the dead from city hotels in the 1850s, the Council now objected to death in the city *per se*. Nevertheless, this debate seems to have inspired some action, and on 2 September 1886 Youl approved a site just outside the city proper, on the banks of the Yarra at Batman Avenue. The new morgue was opened in 1888, and served as the City Morgue until 1951 when the institution was moved first to the Flinders Street extension, and finally in 1988 to premises in Kavanagh Street, Southbank.

VI

Public viewing of bodies was at least as important in colonial Melbourne as it was in Paris. Victoria was an immigrant society, attempting to recreate the social bonds of 'home'. But while for some of its nineteenth-century history the Melbourne morgue was a centrally located and public institution (despite the reservations shown by various officials about its prominent position), there is little evidence that the general public flocked to the Melbourne morgue as they did in Paris, as a source of titillation and amusement. Certainly by the early twentieth century such a practice was seen to degrade the spectacle of death and to provoke vice and immorality. Charlady Mrs Prendegast, for example, was aghast in 1875 to find the door of the Morgue left ajar, and a corpse 'on the slab in the centre of the Morgue ... so that any person having occasion to enter the yard would have a full view'.[51] Her reaction suggests just how important it had become to keep bodies out of view. Constable Hoey promised to remedy the situation with a sign on the morgue reminding police to close the door. This attitude was consistent with the abolition of Public Execution in 1856, after which only people approved by a Justice of the Peace were allowed to view the bodies of executed felons. Of course, some members of the public must have come to the morgue to aid identification of bodies, and journalists attended the morgue to write up inquests for their newspapers. In 1878 Dr Neild reported for the information of the City and District Coroner requirements at Melbourne Morgue for the enforcement of regulations 'whereby the public should not be admitted to the dead-house while a body is being examined'. This again indicates that there was some degree of public display.

There is however some evidence to show a peak in public interest in the latter decades of the nineteenth century. In 1886 it was reported in the Victorian Parliament that 'a number of the public frequently visited the place for the purpose of identifying bodies which might be conveyed thither; and it was a stigma on the present enlightened age for it to be possible that those bodies should be liable to be mutilated by vermin'.[52] The Hon. LL Smith, medical practitioner, also suggested that the proposed morgue

> should contain suitable accommodation for post mortem examinations, and for the holding of inquests, and that it should be arranged after the mode adopted in continental cities, whereby the public were enabled to view the cadavres, decently laid out, through glass plates – a proceeding which often assisted in the discovery of crime.[53]

> In 1892 a story in the Bulletin entitled 'They met at the Morgue' had two friends making for the morgue after taking their lunch, to flatten their noses against the screen of glass and take in the most recent load of 'wrecked humanity'.[54]

In the case of at least one notorious crime, there is also clear evidence that Melburnians did indeed flock to the morgue like their Parisian counterparts. The 'Yarra Boot Trunk Tragedy' was one of the names given to the discovery of the naked corpse of an unidentified young woman in a yellow box floating in the Yarra at South Richmond on 17 December 1898. Initially, people wishing to view the body claimed to be looking for missing friends; later, police gave in to public curiosity in the hope (correct, as it turned out) that someone would be able to identify the body. Crowds continued to gather after police removed and preserved her head, allowing her decomposing body to be buried, and the public entertainment was celebrated in verse as 'The Ballad of the Melbourne Morgue':

> Do come an' see the 'Ead
> Of the donah [woman] who is dead;
> It lies upon a marble slab
> In a buildin', you're aware,
> By the Yarra over there –
> Suppose we take a four-wheel cab;
> For the cab can carry eight,
> And will land us at the gate
> Of the villa where the gal's on view;
> Thought we can't say who she is
> From the photos. of her phiz.,
> Thank Gawd! she wasn't me or you![55]

Newspapers reported that over 8,000 members of the public had called in on the morgue in the period prior to identification on 11 January 1899, when police were informed that the body was that of Mabel Ambrose, 17 years of age, who had died in the course of an illegal abortion.[56]

The Paris public may have frequented its 'Musée de la mort' to gawk at drowned bodies 'commes ailleurs on va pour voir la modes nouvelles, les orangers en fleurs, les maronniers'.[57] For a period at the end of the nineteenth century at least, its Melbourne counterpart, too, may have operated as a lurid but nonetheless acceptable venue for macabre titillation.[58] At the same time, however, despite the 'sensation-hunters' (the crowds in Melbourne, as in Paris, noted as being disproportionately working-class and female),[59] public protocols were changing. While these transformations might be more broadly concomitant with general shifts in social sensibilities and the moulding of instinctual urges that saw a withdrawing of bodily functions from the public gaze,[60] restricted access to inquests was also a particular part of a changing equilibrium between science and populism, and the inquest's re-definition as an essentially scientific event.[61]

Conclusion

Around a quarter of a century ago now, Phillipe Ariès opened up the question of how attitudes to death have changed historically. He also championed the argument that there was a massive 'denial' of death in the nineteenth century, the most immediate link with our own modern discomfort with death and the strategies used to hide it from view.[62] Complaints about Ariès' use of evidence are well-rehearsed, and the theoretical underpinning of 'denial' has also been attacked.[63] For the reasons outlined in our introduction, we suggest that the morgue is a good test of this argument. The evidence from the attempts to find a suitable location for Melbourne's nineteenth-century morgue points to the occurrence of fundamental shifts in attitudes to death.

Nevertheless, the critics are right: 'denial' does not adequately express it. The attempt to 'hide' death in the morgue served only to draw attention to it. Instead of bodies in private houses, or even in public houses, an institution had been created where bodies could *always* be seen, and to which they had to be transported in the first place. As our discussion of the morgue as a place for the identification of bodies – if not for public entertainment – has shown, one of the primary functions of the morgue was to put corpses on display. This ambiguity ran right through arguments over the location of the morgue, and was perhaps partly responsible for the inability of officials to agree on any location for long. Other factors must assume an important role. Melbourne's gold-rush population boom (creating a youthful society which may have felt the revulsion of death more keenly) and hot summer climate also go some way towards explaining the early need for a morgue; after all, as the *Age* had noted: 'Who ever heard of a morgue in London, or any of the large towns of the United Kingdom?'[64]

Concerns about health played a surprisingly insignificant role, especially in contrast to the fears of miasmas from the dead in cemeteries. Medical and bureaucratic authority over the dead was important, and the City Coroners in the period (Wilmot, Youl and Candler) were prominent medical men. A constant theme of the debate was 'decency', and the sensitivities of Melbourne's ladies, merchants and 'rich cits' were of great concern to the bureaucrats and press we have surveyed here. This was as much about *appearance* as about death itself; a similar heightened sensitivity is revealed, for example, in the introduction of by-laws against bodily functions such as spitting and public urination, prior to their being retrospectively supported by new epidemiological doctrines.[65]

As the nineteenth century drew to a close, inquests were increasingly held at the Melbourne morgue; the morgue was a place where the inquest was transformed. The *ad hoc* inquest process, carried out in hotels by men who had little experience, was succeeded by a well-organised profession in a custom-built institution.[66] English forensic medicine has traditionally been seen as the black sheep of the European forensic family. Recently historians have shown that this reputation may be unjustified; that, while the English were slow to publish formal treatises on anatomy, they were *practising* forensic medicine all along. In the morgue we see both aspects: the practice of asking medical men to make dissections, and a theoretical interest in the new science.

The need for a place to conduct *post mortem* examinations was not mentioned in any of Wilmot's proposals for a morgue, although he had suggested that an Assistant Surgeon be appointed to his staff, observing that 'Medical jurisprudence is now regarded as a distinct branch of science, and well worth the attention and fostering of enlightened legislature'.[67] Youl included the cost of 'a post mortem examination room &c' in his estimates of the cost of the morgue in 1854. From being just one of the functions of the morgue, the importance of the *post mortem* grew over time. In a sample of inquests we have examined from the morgue in 1859, 42% included a *post mortem* examination. In 1896-7 that figure had risen to 82%, and a medical examination of the body – without opening it – was held in a further 5% of cases.[68]

By the time the jury was practically abolished in 1903, the importance of professional knowledge of the body had overtaken the value given to the observations of the lay jurors. By creating a regular supply of bodies, especially for practitioners like Neild and Crawford Mollison, the morgue fostered the development of forensic medicine in Victoria as much as it was the product of this developing field.

The establishment of a central, custom-built morgue in Melbourne in the mid-1850s appears to have taken place earlier than in London or New York; Melbourne was in a sense the laboratory of Empire. The needs of family, friends and state to identify the dead in an immigrant society, and the heat of the Australian summer, provided the impetus. To these endogenous colonial factors can be added a falling tolerance found throughout the West in the nineteenth century to unpleasant sights, smells, and the mere presence of the dead. Ultimately, the anxiety created by these feelings was enough to ensure that Melbourne's morgue did not stay in a prominent position for long. With occasional exceptions of public spectacle, the morgue became the institutional home of the Coroner, and a site for forensic expertise. It began to develop its own institutional culture, largely sequestered from the city around it.

Endnotes

[1] The authors thank the following for feedback on their research: respondents to a query posted on H-URBAN; participants in the Melbourne Urban History Discussion Group; delegates at a paper delivered at the 5th International Conference on The Social Context of Death, Dying and Disposal, Goldsmith's College, University of London, September 2000. Thanks also to Sam Furphy, Helen Harris, Christina Twomey, Dean Wilson and Juliet Flesch for references and research assistance.

[2] 'A Jury man' to Colonial Secretary, 16 February 1855, Public Record Office Victoria, VPRS 1189, Unit 135, Item L55/2462.

[3] *Age*, 16 February 1855.

[4] *Times*, 9 January 1854; 14 January 1864; 28 April 1864; 8 July 1864; *New York Times*, 28 April 1864.

[5] The American morgue, championed initially by the Commissioner of Charities and Corrections and constructed 'upon the plan of the famous Morgue at Paris', had by 1882 itself become a repulsive, decaying structure 'unworthy of our civilization', and was relocated a decade later. J DeLuca, 'Morgues' in KT Jackson (ed.), *The Encyclopedia of New York City*, Yale University Press, New Haven, Conn., & New York Historical Society, 1995, pp. 770-1; *New York Times*, 1 July 1865; 8 February 1866; 20 June 1866; 23 February 1882; 15 May 1892.

[6] Pat Jalland's *Australian ways of death: a social and cultural history 1840-1918*, Oxford University Press, South Melbourne, 2002, is the most comprehensive history of death and loss in Australia.

[7] Allan Mitchell, 'The Paris morgue as a social institution in the nineteenth century', *Francia*, vol. 4, 1976, pp. 581-96; id., 'Philippe Ariès and the French way of death', *French Historical Studies*, vol. 10, 1978, pp. 691-4.

[8] Unless otherwise indicated, this paper draws on correspondence files located in PROV: VPRS 24, Units 56, 62, 65, 69; VPRS 44, Unit 687; VPRS 69, Units 3, 14; VPRS 242, Unit 17; VPRS 266, Units 3A, 284, 413; VPRS 1189, Unit 146; VPRS 1198, Units 128, 133, 185, 191.

[9] Melbourne City Council Minutes, vol. 6, pp. 1893-4 (7 June 1852) and p. 1895 (21 June 1852).

[10] loc. cit.; D Dunstan, *Governing the metropolis: politics, technology and social change in a Victorian city: Melbourne 1850-1891*, Melbourne University Press, 1984, p. 149.

[11] Coroner Wilmot to Colonial Secretary, 13 January 1853, VPRS 1198, Unit 128, Item 53/446.

[12] *Argus*, 11 January 11 1853. Unfortunately, there is still no social history of the coroner in the eighteenth and nineteenth centuries, but there is a growing body of work on related issues: TR Forbes, 'Crowner's quest', *Transactions of the American Philosophical Society*, vol. 68, 1978, pp. 1-52; JDJ Havard, *The detection of secret homicide: a study of the medico-legal system of investigation of sudden and unexplained deaths*, Macmillan, London, 1960; RF Hunnisett, 'The importance of eighteenth-century coroners' bills', in EW Ives and AH Manchester (eds), *Law, Litigants and the Legal Profession: Papers presented to the Fourth British Legal History Conference at the University of Birmingham, 10-13 July 1979*, Royal Historical Society, London, & Humanities Press, Atlantic Highlands, NJ, 1983, pp. 126-39; E Cawthon, 'Thomas Wakely and the medical coronership: occupational death and the judicial process', *Medical History*, vol. 30, 1986, pp. 191-202, and 'New life for the deodand: coroners' inquests and occupational deaths in England, 1830-46, *American Journal of Legal History*, vol. 33, 1989, pp. 137-47; J Sim & T Ward, 'The magistrate of the poor? Coroners and deaths in custody in nineteenth-century England', in M Clark & C Crawford (eds), *Legal Medicine in History*, Cambridge University Press, 1994, pp. 245-67; O Anderson, *Suicide in Victorian and Edwardian England*, Clarendon Press, Oxford, 1987, chap. 1; R Richardson, *Death, dissection and the destitute*, Routledge & Kegan Paul, London, 1987; M MacDonald and TR Murphy, *Sleepless souls: suicide in Early Modern England*, Clarendon Press, Oxford, 1990, chap. 4; IA Burney, 'Viewing bodies: medicine, public order, and English inquest practice', *Configurations*, vol. 2, no. 1, 1994, pp. 33-46; RW England, Jr, 'Investigating homicides in Northern England, 1800-1824', *Criminal Justice History*, vol. 6, 1985, pp. 105-23; D Zuck, 'Mr Troutbeck as the surgeon's friend: the coroner and the doctors – an Edwardian comedy', *Medical History*, vol. 39, 1995, pp. 259-87; GHH Glasgow, 'The election of county coroners in England and Wales circa 1800-1888', *Journal of Legal History*, vol. 20, no. 3, 1999, pp. 75-108; IA Burney, *Bodies of evidence: medicine and the politics of the English inquest, 1830-1926*, Johns Hopkins University Press, Baltimore, MD, 1999; MB Emmerichs, 'Getting away with murder? Homicide and the coroners in nineteenth-century London', *Social Science History*, vol. 25, no. 1, 2001, pp. 93-100.

[13] *An Act to consolidate and amend the Laws relating to the licensing of Public Houses and the Sale of Fermented and Spiritous Liquors*, 27 Vic. No. 227 (1864) s. 55.

[14] CH Mollison commenting on GA Paton, 'The development of forensic medicine', *Proceedings of the Medico-Legal Society of Victoria*, vol. 4, 1939-41, p. 261. Mollison's textbook draws on his experience in Melbourne's morgue: *Lectures on forensic medicine* (1921). See also 'Some medico-legal reminiscences', *Proceedings of the Medico-Legal Society of Victoria*, vol. 2, 1933-6, pp. 63-83.

[15] From sampling of VPRS 24, Coroners' Inquest Papers.

[16] A Higonnet, M Higonnet & P Higonnet, 'Façades: Walter Benjamin's Paris', *Critical Inquiry*, vol. 10, 1984, pp. 391-419; VR Schwartz, 'The morgue and the Musée Grévin: understanding the public taste for reality in fin-de-siècle Paris', *The Yale Journal of Criticism*, vol. 7, 1994, pp. 151-73; Mitchell, 'The Paris morgue'; B Bertherat, 'Les visiteurs de la morgue', *L'Histoire*, vol. 180, 1994, pp. 16-21.

[17] F Maillard, *Recherches historiques et critique sur la morgue*, Paris, 1860, pp. 92-3.

[18] Quoted in Maillard, p. 94.

[19] Mitchell, 'The Paris morgue', pp. 581-2; Bertherat, pp. 16-21.

[20] VPRS 266, Crown Law Office Inwards Correspondence, Unit 284, Item 75/4301.

[21] *Age*, 13 January 1871.

[22] In 1869 the Board of Health included identification as a function of the morgue. The *Argus* agreed with Youl and the Mayor: *Argus*, 30 December 1854.

[23] Melbourne's average maximum temperatures in the summer months are approximately 4oC higher than those of London or Paris. While New York City experiences higher average summer maximums, Melbourne's overall average yearly temperature and highest maximum temperatures exceed those of the other three cities.

[24] M Perrot (ed.), *A history of private life*, vol. IV: *From the fires of revolution to the Great War*, Belknap Press of Harvard University Press, Cambridge, Mass., 1990, pp. 468-75; L Prior's 'Policing the dead: a sociology of the mortuary', *Sociology*, vol. 21, 1987, pp. 355-76 develops this theme, but not in an historical framework; IA Burney's 'Viewing bodies' discusses the limits of the medical gaze, which was enforced by the popularity of the coroners' jury. It is interesting to note that the Victorian coroners' jury was, for all practical purposes, abolished in 1903 (*Coroners Act* 1903, 3 Edw. VII, No. 1828).

[25] Wilmot to Colonial Secretary, 1 March 1853, VPRS 1198, Unit 128, stack marked 'Coroner', Item A53/2204.

[26] loc. cit.

[27] The regulation of nineteenth-century public space generally, and women's value as the focus of male competitive exchange that involved the stereotype of female 'delicacy' being invoked in the mitigation of a variety of perceived urban nuisances in particular, have been explored in relation to nineteenth-century Melbourne in A Brown-May, *Melbourne street life*, Australian Scholarly Publishing, 1998.

[28] MCC Minutes, 9 August 1853.

[29] *Argus*, 22 April 1854; 15 May 1854.

[30] Colonial Engineer to Colonial Secretary, 26 May 1854, VPRS 1198, Unit 128, stack marked 'Coroner', Item E54/5695.

[31] *Argus*, 10 June 1854.

[32] *Argus*, 1 December 1854; see also *Argus*, 30 December 1854.

[33] *Argus*, 3 January 1855.

[34] *Argus*, 27 January 1855.

[35] VPRS 937, Unit 284.

[36] Inspector General of Public Works to Assistant Commissioner of Crown Lands, 13 September 1864, VPRS 44, Unit 687, J64/8348.

[37] Minute for the Chief Commissioner of Police by the Inspector General of Public Works, 8 May 1867, VPRS 266, Unit 284, Item 75/4301.

[38] Anderson, chap. 1; Havard, chap. 4.

[39] M Finnane, *Police and government: histories of policing in Australia*, Oxford University Press, Melbourne, 1994, chap. 1; R Haldane, *The people's force: a history of the Victoria Police*, Melbourne University Press, 1986.

[40] *Argus*, 13 February 1871.

[41] *Victorian Parliamentary Debates (VPD),* vol. 25, 13 December 1876, p. 1734.

[42] Candler to the Minister of Justice, 17 August 1878, VPRS 266, Unit 317.

[43] *Argus*, 17 January 1900.

[44] *Age*, 20 April 1908.

[45] *VPD*, vol. 45, 9 July 1884, p. 494.

[46] Youl, 9 July 1884, VPRS 266, Unit 413, Item 87/3721.

[47] Secretary Harriman, Crown Law Office, Memo, 8 July 1887, VPRS 266, Unit 413, Item 87/3721.

[48] *VPD*, vol. 48, 28 July 1885, p. 460.

[49] *VPD*, vol. 52, 24 August 1886, p. 1178.

[50] loc. cit.

[51] VPRS 266, Unit 284, Item 75/4301.

[52] loc. cit.

[53] *VPD*, Session 1886, vol. 53, 8 December 1886, p. 2699.

[54] *Bulletin*, 9 July 1892, p. 21.

[55] *Bulletin*, 21 January 1898.

[56] loc. cit.

[57] Gozlan quoted in Maillard, p. 93. See also K Baedeker's *Paris and its environs*, Leipsic, 1900, p. 227.

[58] On the Paris morgue as spectacle see V Schwartz, *Spectacular realities: early mass culture in fin-de-siècle Paris*, University of California Press, Berkeley, 1998, pp. 45-88.

[59] *Argus*, 20 December 1898; Maillard, p. 87.

[60] See for example N Elias, *The civilising process*, trans. E Jephcott, Urizen Books, New York, 1978; A Corbin, *The foul and the fragrant: odor and the French social imagination*, Harvard University Press, Cambridge, Mass., 1986.

[61] Burney, 'Viewing bodies', p. 33.

[62] P Ariès, *Western attitudes toward death: from the Middle Ages to the present*, trans. PM Ranum, Marion Boyars, London, 1976; and *The hour of our death*, trans. H Weaver, Harmondsworth, Penguin, 1983 (1977). See also G Gorer, 'The pornography of death', *Encounter*, vol. 5, 1955, pp. 49-52; and *Death, grief, and mourning in contemporary Britain*, Cresset Press, London, 1965.

[63] A Kellehear, 'Are we a "death-denying" society? A sociological review', *Social Science and Medicine*, vol. 18, 1984, pp. 713-23; T Walter, 'Modern death: taboo or not taboo?', *Sociology*, vol. 25, 1991, pp. 293-310. Historians have also criticised this aspect of Ariès's achievement: R Houlbrooke, 'Introduction' to his (ed.), *Death, Ritual, and Bereavement*, Routledge, London, 1989, p. 4; D Cannadine, 'War and death, grief and mourning in modern Britain', in J Whaley (ed.), *Mirrors of Mortality: Studies in the Social History of Death*, Europa, London, 1981, pp. 187-242; PC Jupp & C Gittings (eds), *Death in England: an illustrated history*, Manchester University Press, 1999, p. 2.

[64] *Age*, 13 January 1870.

[65] On changing attitudes to public urination and expectoration in the nineteenth-century city, see Brown-May, pp. 64-88.

[66] S Cooke, 'A "dirty little secret"? The State, the press, and popular knowledge of suicide in Victoria, 1840s-1920s', *Australian Historical Studies*, vol. 115, 2000, pp. 304-24.

[67] WB Wilmot, 9 July 1853, VPRS 1189, Unit 146, Item C53/6852.

[68] From a sample of 100 consecutive inquests held in Melbourne (57 of which were at the morgue) between 2 September 1896 and 18 January 1897 (VPRS 1205/P1).