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CRIME & SOCIETY IN WESTERN AUSTRALIA 1829-1914.

A report on research completed between January 1980 and November 1983 with the aid of grants from the A.R.G.C. and the Criminology Research Council.

by

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ACKNOWLEDGEMENTS:

The progress which I have made so far on this research project could not have been achieved without the encouragement and assistance of many people. Foremost among these is Dr. Tom Stannage. Without his inspiration and efforts, the project would never have begun. It was entirely at his prompting that I first descended into the W.A. Supreme Court vaults to analyse the criminal case files which form the foundations of the Data Base.

Other people whom I would like to thank for their help are:

The Master of the W.A. Supreme Court - for access to the Court Archives;
The Librarians of the Universities of Western Australia, Nottingham and Leicester;
The staff of the J.S. Battye Library of Western Australian History;
Carol Harriman at the University of Western Australia Computing Centre;

I would particularly like to thank the Governor of H.M. Prison Parkhurst, Isle of Wight, A.H. Rayfield, for allowing me to see the Parkhurst Governor's Character Book for the years 1844-1845.

Finally I would like to thank the typists in the History Department, University of Western Australia for typing this report.

This report covers research undertaken in Western Australia from January 1980 to March 1983, and in England, from March to October 1983.

The main locations used in Western Australia were:

Western Australian Supreme Court Archives;
University of Western Australia;
J.S. Battye Library of Western Australian History.

The main locations in England were:

Public Record Office, Kew;
British Library, Bloomsbury;
Surrey Record Office, Kingston-on-Thames;
University of Leicester;
University of Nottingham;
Home Office Library, Queen Anne's Gate, London;
H.M. Prison, Parkhurst, Isle of Wight.

1. Computer Data Base on Indictable Offences in Western Australia 1830-1890.

This constitutes the most ambitious and the most time consuming part of the research project. Indeed it is probably currently one of the most ambitious social history projects which relies on a computer in Western Australia.

The original time span for the computer Data Base was the period 1829-1911. This was rapidly reduced to 1829 to 1890 on the grounds that there was plenty of printed statistics on crime for the 1890s onwards.

A large part of the input for the design of the Data Base came from two previous studies of crime in an historical context: D. Phillips' (1977) study of the Black Country, 1835-1860, and M. Sturma's study of New South Wales, 1831-1861 (1983 - based on his Ph.D. Thesis completed in 1980). Phillips' innovation in his study was to direct attention to the Prosecutor and the Victim as well as the Defendant. In England in the early 19th Century, the prosecution process depended on private initiative, both at the committal hearing and at the Jury Trial. This situation continued until the late 1850s when Police started to appear more frequently in court as Prosecutors.

In Western Australia, the system was mixed. At the committal hearing, the initiative and the cost rested entirely with the private individual. But at the trial itself, a paid government official was available to prosecute the Defendant. Up to 1834, this task may have been partially undertaken by either W.H. Mackie, the Chairman of the Bench of Magistrates, or by the Clerk of the Peace, A.H. Stone. From August 1834 onwards, G.F. Moore was quite clearly distinguishable as the Colony's Advocate General, whose responsibilities included the prosecution of offences at the Quarter Sessions. In the early 1840s, a part time Crown Solicitor was appointed to advise on legal questions arising from criminal cases. In 1855, when the Grand Jury was abolished, the Advocate General took on the additional responsibility of deciding, on the basis of the committal hearing depositions, whether there was a case to be answered, and whether a conviction was likely to be obtained. Thus up to 1855, there was a public prosecutor available in Western Australia at the Quarter Sessions. After 1855, the Advocate General automatically appeared to prosecute all cases which he had passed as fit to go before a Petty Jury.

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If then, I wished to examine the relation of the Prosecutor/Victim with the Defendant in a Western Australian context, this had to be done at the Committal hearing rather than at the trial.

In Phillips' study (1977) he was fortunate to be able to identify prosecutors by means of recognizances. In Western Australia, no books specifically exist to identify the recognizances of prosecutors where the Defendant was committed to the Quarter Sessions for Trial. The identity of the Prosecutor and Victim in Western Australia comes from information in the depositions taken at the committal hearing.

Having made the decision to make Committal hearings the base for information on the Prosecutor, Victim and Defendant, I was able to use the Committal depositions to find additional details about the offence, and the subsequent legal process:

Date of the offence;
Date of the start of the committal hearing;
Date of the committal;
Place of the committal hearing;
Bail: offered or refused to the Defendant;
Defendant's choice of Summary or Jury Trial.

Two other items of information on the offence might have been extracted from the depositions:

weapons used in assaults or crimes of violence (as in Sturma, 1983);
items stolen (as in Phillips, 1977 and Sturma, 1983).

I considered that the weapons used in assaults were less important than the character of the people using them. The decision to exclude any record of the items stolen arose from the sheer complexity of recording the bewildering variety of objects stolen. If the classification used by Sturma or by Phillips were applied in Western Australia, then multiple codes would be required for many offences; Western Australia's thieves rarely stole just 1 category of articles. This is apparent from the long lists of articles given on the Indictments which form part of each case file. The figures for categories of articles stolen compiled by J. Fall (1978) were based on very brief entries in the Criminal Record Book No. 1. They do not express the full variety of objects stolen.

I also rejected the possibility of including legal data extracted from the depositions. Myers & Hagan (1979) suggest from a study of American prosecutors that 'evidentiary strength' plays some part in the decision as to whether or not to prosecute a defendant. They tested the following variables:

Eye-witness identification;
confession of a defendant or an accomplice;
weapon recovered;
stolen property recovered;
amount of 'Expert' testimony;
amount of 'Non-Expert' testimony;
number of witnesses.

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Such legal data would be available in the Committal hearing depositions, and no doubt the results would be of interest to legal historians. At the same time I feel that such research would be better left to a researcher with a fuller knowledge of British law, and to someone able to develop questions and tests appropriate to the Western Australian context. My own impression is that much of the decision to commit a defendant to Trial was based on the Magistrate's visual examination of the Defendant and of the Prosecutor's witnesses while being questioned. 'Evidentiary strength' would also undoubtedly play a part in the decision of the Crown legal officers, whose decision on whether or not to send a case to Trial (after 1855) would depend primarily on the written evidence contained in the depositions sent in by the Magistrates. For better or worse, legal questions concerning 'evidentiary strength' will not be conclusively answered by this study.

Several decisions remained to be made between the date of the committal and the commencement of the trial. Phillips (1977) disposed of the Grand Jury in 4 short paragraphs and a very simple table. I think the operation of the Grand Jury in England as well as in Western Australia requires much more detailed attention. From at least the 1820s, legal reformers and J.P.s in England were making calls for the abolition of the Grand Jury. Yet it was not until 1933 that this was achieved. In Western Australia, the Grand Jury was abolished in 1855 with very little opposition or argument. But in the late 1850s and again in the 1860s, there was a fierce dispute among Perth's legal community (by means of anonymous letters to the colony's newspapers) over the comparative virtues of the Advocate General and the Grand Jury. Finally in 1872, an attempt was made to abolish the Attorney-General's powers to approve Indictments, and to restore the Grand Jury. Phillips allows the Grand Jury only two possible decisions on cases sent to it: No True Bill (or Bill Ignored) or True Bill. But the Grand Jury could also reduce the charge on the indictment which was to be sent to the Trial before the Petty Jury. Thus Murder could be reduced to Manslaughter, Rape to Carnal Knowledge and Grievous Bodily Harm to Common Assault.

Phillips also gives scant attention to the composition and function of Grand Juries in the Black Country. He notes the difference between Assize and Quarter Sessions Grand Juries, but provides no data on how they may have changed or not changed over the period he studied. He observed that the social character of Magistrates responsible for committing cases to Jury trials changed from domination by landowners to domination by industrial entrepreneurs. Did the same change take place within Grand Juries?

I would have liked to have included in this study a section on the changing composition of Grand Juries in Western Australia. But such an analysis would have greatly complicated the task of devising and preparing a computer programme to analyse the Data Base. At least 13 men were called to be Grand Jurors at each Quarter Session between July 1830 and April 1855. Assuming there to be four Quarter Sessions in each year, and different men to be summoned to each session, then the minimum number of Grand Jurors to be analysed would be at least 1300 additional individuals. In fact the number is probably less than this since there was a substantial overlap in Grand Jurors between each Quarter Session and each year. Nonetheless the task of recording changes about each individual for each time he sat as a Grand Juror would be a daunting one. It is one which I am quite prepared to leave to another research project. One of the bi-products of the computer Data Base will be the publication of lists of Grand Jurors. See Section 4 of this report.

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Aside from its importance as a legal decision making body, the composition of Western Australian Grand Juries would provide a useful index of social hierarchy in Western Australia. To serve on a Grand Jury in England was a mark of social trust and respect. In Western Australia it would be interesting to see who merited such trust and respect, and how many Petty Jurors made the transition to the Grand Jury.

I have similar regrets that I can provide no detailed analysis of the composition of Petty Juries. To be called to serve as a Petty Juror was also a mark of social trustworthiness. The construction of Petty Jury lists revealed a deep divide between Ex-convict and Free in the late 1870s. The 1871 Jury Act (35 Vict. No. 8) specifically prohibited ex-convicts from serving as Petty Jurors. In the late 1870s, an unsuccessful attempt was made to remove this social and legal barrier.

The most I can do in this project with respect to Grand Juries and Petty Juries is to record their decisions in the hope that later research will throw light on how these decisions came to be made.

The Grand Jury was not the only 'institution' to make significant legal decisions concerning defendants prior to his/her trial. It was possible for the Crown to intervene in some cases: some defendants were pardoned on condition that they left the colony; in other cases, the Advocate General (or later the Attorney General) entered a Nolle Prosequi on the grounds that the evidence in the depositions sent in by the Magistrates was not enough to justify a trial or likely to secure a conviction. Equally it would be interesting to know how many cases Crown officers accepted as bona fide but were forced to abandon after the trial had begun. Decisions by Crown office are also relevant to detecting the practice of plea bargaining, which may well have been a feature of Western Australian Courts in the 19th Century.

No official notes or records were taken of Trial proceedings before the Perth Quarter Sessions or the Western Australian Supreme Court prior to 1871. Occasional and irregular accounts of Quarter Sessions trials at Albany and Geraldton do appear in the correspondence of the Colonial Secretary's Office. In the 1880s, specific books were kept to record Quarter Sessions trials at Bunbury, Albany and Geraldton. Using the reports in newspapers prior to 1871, it is possible to find the information on the following items:

Presence of Defence Counsel;
Identity of Defence Counsel (including whether they were legally qualified or not);
Challenges to the Petty Jury by the Defence and by the Crown;
Plea entered by the Defendant - including pleas entered by the order of the court;
Verdict by the Petty Jury - including an indication whether the conviction was on a lesser charge than that committed by the Magistrate;
Addenda to the verdict by the Jury e.g. recommendation to mercy;
Addenda to the verdict by the Prosecutor e.g. recommendation to mercy;
Sentence passed by the court;
Sentence broken down into: type of punishment, its length and by the place where it was served.

The range of legal decisions did not end with conviction and sentence. Many prisoners convicted at Petty Sessions, or at Quarter Sessions and the Supreme Court petitioned for a remission of part or all of their sentences, and very occasionally challenged the legality of the sentence itself. I plan to include how often this practice occurred, how many petitions were allowed, and how many refused.

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Merely accumulating the details of Defendants, Prosecutors, Victims and the legal decisions taken prior to the Jury Trial would be a worthwhile exercise in itself. Yet it would omit perhaps the most significant group of legal decision makers in Western Australia: the J.P.'s who selected cases for Committal to a Jury Trial, and the J.P.'s who sat on the bench at the Quarter Sessions. From 1830 to 1861, the Fremantle and Perth Quarter Sessions were the major courts in the colony. From 1844 at Albany, and 1865 at Geraldton, Quarter Sessions were also held. Benches of Magistrates continued to sit with Juries well past 1900. Since there was often an overlap between the J.P.'s who committed the Defendants to Trial and those J.P.'s who passed sentence on the same Defendants, it seemed essential to me to quantify this observation and to analyse its incidence.

But the task of distinguishing and recording the details of 'Committal' Magistrates and 'Trial' Magistrates proved a difficult concept to include in the program to be used to analyse the Data Base. Eventually a sub-file was arranged to record the details of all Magistrates recorded as attending the Quarter Sessions. Each unique grouping of these men was given a unique 'Block Number', and this 'Block Number' was included in the 'Legal Process File' (described below). This procedure was in part an acknowledgement that it was impossible to discern precisely which J.P.'s sat on which individual trials. I have assumed that where J.P.'s are recorded as attending the Quarter Sessions, they attended all the cases to be heard.

A separate 'Magistrates file' was devised to record the details of Committal Magistrates involved in each Defendant's case. Each Magistrate, Victim, Prosecutor, Defendant and Defence Counsel was given a Personal Number unique to him or her. In this way it will be possible to quantify any overlap between these groups.

The final arrangement of the information to be stored in each file can be briefly expressed as follows:

Legal Process file

Date of offence;
Date of start of committal hearing;
Date of Committal;
Type of court in which the case was heard e.g. Quarter Sessions or Supreme Court (allowing for later inclusion of cases heard in Summary jurisdiction);
Place of Committal;
Place of Trial;
Date of Session at which Trial took place;
An abbreviated code for the offence committed for trial by the Magistrate;
The Personal number, if only a single Judge sat at the Trial (rather than a Bench of Magistrates or a single J.P. in summary Jurisdiction);
The Block Number of the Bench of Magistrates who sat at that particular session.

Defendant file

This covers information on the social character of the Defendant:
age, sex, marriage, condition (Free or ex-convict), convict number if any, religion, relation to victim;
relation to Prosecutor;
PLUS
a record of decisions which primarily affected the Defendant:
offer of Summary or Jury Trial;
offer/refusal of Bail;
Decisions of the Grand Jury;
Pre-Trial decisions by Crown legal officers;
Trial decisions by Crown legal officers;
presence & identity of Defence counsel;

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Challenges to Jury by Crown and Defence;
Plea by Defendant;
Verdict/outcome of the Trial;
addenda by Jury or by Prosecutor;
Type of punishment;
amount of punishment;
place of punishment;
pardon if granted;
Petitions if any, and answers to them.

Prosecutor/Victim file

This file records much the same information about the 'social character' of the Victim and/or Prosecutor as appeared in the Defendant file. A code letter will indicate at the start of the file whether the Victim and the Prosecutor are one and the same person, thereby avoiding unnecessary duplication of information. Other items in the file are:

Relation of Prosecutor to Victim;
Type of Prosecution, e.g. by Civilian, by Military N.C.O. or officer, by Government official e.g. Sheriff;
a more specific description of 'Government official', e.g. varieties of Police, court officers, prison officers.

Magistrates File

This file will contain information on the 'social character' of the Magistrates sitting at Committal hearings. The items selected will be similar to those recorded in respect to Defendants and Victims/Prosecutors.

Personal File

This file is intended to include data on individuals appearing in court cases, e.g. Defendant, Victim/Prosecutor, Magistrates & Defence Counsel, which remains, or may be said to remain static:

Name & Christian name;
(with provision for name changes by marriage or by the use of alias);
Date of 1st arrival in Western Australia;
Name of ship of 1st arrival;
sex;
birthplace;
special status group: e.g. Children's Friend Society child, Parkhurst boy etc.
Membership of a select number of Societies in Western Australia - drawn from information in newspapers prior to 1871 - open to revision as the research proceeds;
Agricultural Societies, Mechanics Institutes, Working Men's Associations;
Literacy;
1st convict number on arrival;
Listed for service on the Grand Jury;
Listed for service on the Petty Jury;
religion;
ethnic background.

The information in the Personal file will enable me to build up a wider picture of people connected to or involved in the criminal justice system in Western Australia. For instance - by the use of a 'false trial code', it

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will be possible to store infcrmation on Magistrates who were not active in Summary jurisdiction, committal hearings or at Jury Trials. At a later stage, the Personal file might be expanded to include other items of information.

This concludes the section of the report which describes very briefly what information I have elected to include in the Data Base. It remains only to report progress made towards producing some sort of analysis from the Data Base.

Up to September 1981, this research project was supported by a grant from the A.R.G.C. Since it was clear that this funding would run out before the end of 1981, I applied for a grant for a further six months (half-time) from the Criminology Research Council for October 1981-March 1982.

During this time I had hoped to add some 2000 more case files to the Data Base, taking it as far as the late 1880s. This proved to be a hopelessly optimistic estimate of the work I could accomplish working alone. By late January 1982, I had added only 230 case files and reached the end of the Supreme Court Session of October 1871. It was clear that I had no chance of reaching the end of 1875, let alone 1880 or 1890. At this point I made the decision to stop expansion of the Data Base, and to spend the remaining period of the C.R.C. grant in preparing for the coding of information, and in filling gaps in my knowledge of the legal system of the 1850s and 1860s.

In November 1981, I began discussions with the Staff of the University of W.A. Computing Centre about the program to be used to analyse the Data Base. Once again I had seriously underestimated the complexity of this task. In April 1982, at the end of the C.R.C. grant, discussions were continuing; the only major step forward had been the choice of a specific Computing Program: Query-Update.

During the winter of 1982, I continued discussions with the Computing Centre Staff as far as my other research commitments would allow. By March 1983, the text of the Code Book and its annotation had been virtually completed.

During the period November 1981 to March 1983, the History Department of the University of Western Australia supported the costs of consultations with the Computing Centre staff. This amounted to about $4,000.

The situation in October 1983, following my return to Western Australia is as follows:

1. A total of 1450 case files from the Quarter Sessions and the Supreme Court trials between July 1830 and October 1871 have been searched, and data extracted from them for use in the Data Base.

2. These 1450 cases represent details on approximately 5255 distinct individuals, including Defendnats, Victims, Prosecutors, Magistrates and Defence Counsel.

3. A code book has been completed covering the Data described in this section of the report.

4. Subject to the availability of finance from the University of Western Australia History Department towards input and computing time, I shall continue research on this section of the project on a casual basis.

Collection & Collation of Printed Crime Statistics for Western Australia, 1870-1914.

This is the section of the project which is most substantially complete. Progress on the period 1829-1902 has been reported in a paper read to the Bi-annual Research Seminar organized by the Australian Institute of Criminology in Canberra in February 1983. For details of this period I refer the reader to the abstract of the paper. (See Section 5 of this report).

The remainder of this section of the report will be a summary of progress on constructing continuous series of figures from 1895 to at least 1915, and in some cases from 1870 to 1915.

In 1896, the Western Australian Commissioner of Police published the 1st in a series of his Annual reports (hereafter WACPAR). In the same year, there appeared the first edition of the Western Australian Statistical Register (hereafter WASR). Both these publications contained detailed sets of statistics on crime, for the calendar year 1895. The WASR also contained some Decennial series of statistics covering the years 1887 to 1896. These figures overlap with those given annually in the W.A. Blue Books (hereafter WABB) since 1871. Section VIII of WASR continued to contain Crime statistics from 1896 onwards.

But, whereas, the WABB had given only Totals for the categories of Offences reported, charges laid, and summary convictions, in the WACPAR and the WASR, a detailed breakdown was given for the number of each offence, for charges (arrests + summons), summary convictions and committals. This practice continued until at least 1915, when the size of the WASR was reduced, and the variety of Crime statistics in Section VIII was also reduced.

The availability of figures on particular offences opens up the possibility of constructing or re-constructing categories of offences similar to those used by P.N. Grabosky in Sydney in Ferment (1977).

In the WASR and the WACPAR, offences reported, charges heard by magistrates and summary convictions continued to be broken down into the same categories used since 1872:

Offences against the Person;
Offences against Property;
Praedial Larceny;
Offences against the Currency (added in 1889);
Other offences.

But in 1904, several changes took place. Figures for 'offences reported' to the Police or Magistrates were no longer given. The categories of offences, charges and convictions used now numbered 8 instead of 5:

Offences against the Person;
Offences against Person and Property;
Offences against Property only;
Offences against the Currency;
Offences against Good Order;
Offences against the Carrying Out of Laws;
Offences against the Revenue;
Offences against Public Welfare.

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A third change was the appearance of completely separate Tables for offences by Aborigines, distinguishing charges, summary convictions, arrests, summons, committals, and convictions in Superior Courts (Quarter Sessions and the Supreme Court).

Finally the passing of the Criminal Code Act in 1902 had changed the titles and definitions of some offences as well as some penalties.

All these changes affected the figures given in the WACPAR and the WASR until at least 1915.

These alterations were the result of several social and political changes taking place in Western Australia following the departure of Sir John Forrest to Australian Federal politics. One of the last appointments made by Sir John Forrest was a new Commissioner of Police, Frederick Arthur Hare, ex-Magistrate, pastoralist, pearler and onetime brother-in-law of the man he succeeded, George Braithwaite Phillips. Hare liked to think of himself as a 'new broom' in the W.A. Police Department. He took advantage of the first Conference of Australian Police Commissioners held in Melbourne in October 1903 to press for a uniform system of fingerprint classification to be used throughout Australasia. The previous year, in October, he had appointed George Mellish, an ex-detective Inspector from the London Metropolitan Police to head the local C.I.B. At roughly the same time, Sub-Inspector Robert Connell went to London on leave, and to study the fingerprinting system employed at Scotland Yard. On his return in early 1904, Connell was appointed to replace Mellish as Inspector in charge of the C.I.B. and in 1913 he succeeded F.A. Hare as Commissioner of Police. The change in Western Australian Crime Statistics may well have been as the result of discussions at the Conference of Police Commissioners in 1903, and of the contacts with Scotland Yard established through Mellish and Connell.

These changes make the task of producing continuous and consistent categories of statistics from 1895 to 1915 difficult but not impossible. Indeed, it is still possible to propose a limited range of statistics which may be continuous as far back as 1871. I will briefly list and describe the series which I have constructed for (1) 1871-1915 and (2) 1895-1915.

(1) 1871-1915.

The series are as follows:

Title of Series	Type of Statistic	Date Range	Including/Excluding Aborigines.
1. Offences against Property (including Praedial Larceny)	Offences reported	1871-1900	including aborigines
	Total charges heard	1887-1915	including aborigines
	Summary convictions	1871-1915	including aborigines
2. Offences against the Person.	Offences reported	1871-1900	including aborigines
	Total charges heard	1888-1915	including aborigines
	Summary convictions	1871-1915	including aborigines
3. Total Persons charged	Total persons charged	1878-1884	Including & excluding aborigines.
		1888-1915	including aborigines
		1889-1915	excluding aborigines
4. Arrests	Total Arrests	1878-1888	including
		1895-1915	aborigines
		1878-1884	excluding
		1904-1915	aborigines
5. Summary Convictions	Total Summary Convictions	1872-1915	including aborigines
		1878-1886	excluding aborigines
		1888-1889	excluding aborigines
		1891-1915	excluding aborigines

Series Nos. 3, 4 & 5 present very few problems since the figures run continuously from the W.A. Blue Books to the WASRs. The figures in the W.A. Blue Books match those in the Annual reports of the Superintendent of Police for the years 1878 to 1884. (The title Superintendent of Police changed to Commissioner of Police in 1887).

Series 1 & 2 are rather more doubtful. No detailed breakdown was given of the precise offences in these categories till 1895. If one assumes that the content of the categories had been consistent from 1871 to 1895, they may be of some use. For the figures in these Series from 1904 to 1915, I have returned offences as far as possible to the old categories existing from 1895 to 1903. Figures for Praedial larceny have been added to offences against Property. Prior to 1889, offences against the currency were probably included in offences against Property.

(2) 1895-1915.

Title of series	Category of Offence	Date Range	Including/Excluding Aborigines
1. Crimes of Indolence	Arrests + Summons	1895-1915	including aborigines.
2. Offences relating to Drunkeness	Arrests + Summons	1895-1915	including aborigines
3. Aggressive crimes against the Person	A. Arrests	1895-1915	including aborigines
	B. Arrests	1895-1903	including aborigines
		1904-1915	excluding aborigines
	C. Arrests + Summons	1895-1903	including aborigines
		1904-1915	excluding aborigines
	D. Arrests + Summons	1895-1915	including aborigines
4. Sexual offences	Arrest + Summons	1895-1915	including aborigines
5. Offences relative to Prostitution	Arrests + Summons	1895-1915	including aborigines
6. Gambling & related offences	Arrests + Summons	1895-1915	including aborigines
7. White Collar Crimes of Acquisition	Arrests + Summons	1895-1915	including aborigines
8. Aggressive crime vs Person & Property	Arrests + Summons	1895-1915	including aborigines
9. Acquisitive crimes against property.	A. Arrests	1895-1915	including aborigines
	B. Arrests + Summons	1895-1915	including aborigines
	C. Arrests	1895-1903	including aborigines
		1904-1915	excluding aborigines
	D. Arrests + Summons	1895-1903	including aborigines
		1904-1915	excluding aborigines

The offences in each of these categories corresponde roughly to those used by P.N. Grabosky (1977). I have preferred to use figures for Summons + Arrests since it seems to me that both Summons & Arrest represent, even in Grabosky's terms, 'an official reaction'.

Pending the formulation of a theory around the principle of 'Control' as opposed to 'crime', I decline to make any interpretative statement on any of the figures referred to in this section. I will however supply some or all of these figures to the Australian Historical Statistics Bulletin. This will be in addition to those I mentioned in my paper to the Australian Institute of Criminology Research Seminar.

A preliminary assessment of the significance of 'Controlology' for the history of 'crime' in Western Australia 1829-1914

Social historians approaching the study of 'crime' have two options open to them at the start of their work: they can take the 'easy' road, and rely primarily on 'historical' studies of crime as their starting point; or they can enter fully into the variety of theoretical approaches and arguments available in the discipline of law, sociology, criminology and penology.

In most of the recent historical writing on crime the authors have either presented their findings with little attention to declaring openly the theory or values which underlie their work (P.N. Grabosky, 1977), or they have taken the 'easy' road via existing historical literature. D. Phillips (1977) and M. Sturma (1983) both fall into the latter category, though attempt to conceal this by token references to the Labelling/Interaction approach.

Equally, a recent analysis of 'crime trends in Twentieth Century Australia' is almost totally ahistorical (S.K. Mukherjee et al., 1981). Mukherjee offers no historical or theoretical grounds for the statistics he uses or the methods he applies to them.

I believe it is essential that historians enter and contribute to the debate on crime statistics. To borrow a remark from a controversy on the subject matter of 'labour history':

> "They (historians of crime) should not be content to chip away at the easily sacrificed protuberances of received historical interpretation...They should establish the theoretical foundations of any history....Otherwise the limp ghosts of departed liberal (positivist!) mandarins will 'weigh like a nightmare on the brain of the living'." (quoted H. McQueen, A New Britannia, Ringwood, 1970, p. 11 my emphasis).

It is my hope that 'Controlology Beyond the New Criminology' (J. Ditton, 1979) will contribute to establishing those foundations and to blowing the positivist cobwebs out of the historical study of crime.

The remainder of this section of the report will be an assessment of the consequences for historical research on crime posed by 'Controlology'. It is not intended as a detailed critique, nor as an adaptation of 'Controlology' to the context of Western Australia in the nineteenth century.

There are approximately five sections to Ditton's argument which are peculiarly relevant to the study of crime and crime statistics in an historical context:

1. That all 'crime' statistics purporting to show rises or falls in 'real' crime are contaminated and distorted;
2. That the 'Dark number' of 'unreported crime' is a pernicious myth promoted for conservative political purposes;
3. That the only record of 'crime' is the official reaction to it; indeed the reaction is the crime.
4. That the measurement of the 'reaction rate' should be derived from Convictions and not from 'offences reported or known to the police';
5. That no deductions can be made about the motives or intentions of the accused prior to conviction;
6. That a model of 'Control waves' may be substituted for 'crime waves'.

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Ditton distinguishes 4 possible situations/categories by which official statistics of crime may rise or fall:

1. Constructed crime rise/fall:
   More/less originally defined non-deviant acts are defined as deviant;

2. Fantasy crime rise/fall;
   More/less of the acts originally committed are discovered;

3. Book-keeping crime rise/fall:
   More/less (subsequently or originally) discovered deviant acts are officially collated;

4. Reporting crime rise/fall:
   More/less mass-media coverage of deviant acts.

From J. Ditton, 1979, p. 11.

For each of these Ditton gives examples drawn from contemporary criminology/sociology, and from history. Examples of each of these categories exist in Western Australia in the 19th century:

Constructed crime rises/falls:

As Ditton suggests these are epitomised by legislative change. A classic example occurred in the mid 1870s. 36 Vict. No. 5 s. 41 allowed drunken persons to 'sleep it off' on licensed premises. But publicans were accused of taking advantage of this to take money from drunken persons. 39 Vict. No. 11 s. 6 made it an offence to allow an intoxicated person to remain on licensed premises. The result: drunks were forced out of public houses on to the streets where they were arrested for drunkeness!

In the late 1890s, the Forrest junta passed retrospective legislation abolishing the Dual title to Mining leases, thus opening the way to prosecuting alluvial miners who continued to claim the traditional right to mine surface gold for theft. Legislation passed in the 1850s setting up a category of convict known as 'Ticket of Leave Men' created by regulation a large number of offences which were still being prosecuted in the 1890s long after Western Australia had physically ceased to receive convicts. In 1902, the offence of 'unlawful possession of gold reasonably supposed to have been stolen' was created as an attempt to suppress 'gold stealing' from the mines on the Golden Mile.

Fantasy crime rises/falls:

The classic cases of police action against brothels, prostitutes, against gambling 'dens', sly grog sellers and trading outside licensed hours all exist in Western Australia particularly in the late 1890s and the first decade of the 20th Century. Gambling prosecutions, particularly after 1900 were part of a campaign against the Chinese in Perth. The Licensed Victuallers Association sponsored prosecutions and rewarded informers in cases brought against sly-grog sellers. In 1882, after complaints from pastoralists in the North-West, a special Travelling Magistrate was appointed to tour sheep and cattle stations to hasten the punishment of aborigines for stock killing or for breaches of the Master & Servant Act. In 1909, police were instructed to arrest only the 'ringleaders' among aborigines allegedly involved in cattle killing or in the 'possession of stolen beef'. The result was a marked drop in arrests of aborigines arrested and imprisoned.

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Book-keeping crime rises/falls:

In 1837, the British Colonial office instructed the Western Australian Government to prosecute Aborigines at Quarter Sessions, as if they were full British subjects. Previously, Aborigines had been punished summarily by whipping; or totally illegally without any trial at all. The result of the change was the appearance of substantial numbers of Aborigines at the Perth Quarter Sessions in the late 1830s and 1840s. Similarly when the Western Australian Government grew alarmed at the costs involved in prosecuting such cases, in the late 1840s, they pressed the British Colonial office to allow the extension of summary jurisdiction to cover Aborigines in order to allow them to be punished summarily by whipping and short terms of imprisonment. This was finally allowed by 12 Vict. No. 8. Thereafter the number of cases of Aborigines tried for property offences at Quarter Sessions soon fell to zero.

Similar efforts were made to put all convicts sent to Western Australia under summary jurisdiction for the whole period of their sentence. This was partially achieved in 1864 by the abolition of the 'Conditional Pardon' which had entitled ex-convicts to a Jury trial for property offences if they wished it.

Reporting crime rises/falls:

Throughout the nineteenth century, the colonial press treated 'crime' reporting with a selective bias which varied according to the political, economic and social conditions prevailing. At the same time the capacity of the press to influence the incidence of the recording of 'crime' varied with the stage of development of the press itself. Until the 1890s, most newspapers in Western Australia were weekly, bi-weekly or tri-weekly. This limited the ability of the press to promote 'panics' or campaigns against particular offences or groups.

Nonetheless the press played an important part in presenting and mediating the image and extent of 'crime' in Western Australia. In the early 1850s, there was still a substantial belief in the reformatory nature of the Transportation system in Western Australia; accordingly the extent and nature of 'crime' in Western Australia was played down by the colony's press which broadly agreed on the virtues of the convict system. Frequently there were simply no reports of the day to day offences tried in Magistrate's courts. As doubts about the success of the Moral/Reformatory system grew, so there was more attention to crime. One instance is the treatment of escapes by convicts: in the early 1850s, these were reported but little significance was attached to them. In the 1860s, escapes by prisoners, particularly from the hard labour penal gang employed on building a bridge across the Swan River near Fremantle, were taken as an indication of the failure of the system, and the need for more military guards, police etc. The incidence of the escapes was used to discredit the administration of Governor Hampton and to support the demand for Representative government. Such reports also helped to distract attention from the complaints of mal-treatment of prisoners in Fremantle prison by the use of dark cells and bread and water diets for long periods.

The 1890s saw a massive growth in the number of newspapers in Western Australia and in the attention given to 'crime'. The existence of three daily papers in Perth from 1896 encouraged conditions in which the reporting of 'panics' could occur. Examples of relatively short term panics were:
'The Influx of Criminals from the Eastern Colonies' December 1896 to January 1897.
'The Perth Burglary Boom' April to June 1898.
Scares over Garotting - during 1898 and 1899.

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To these four sources of 'contamination' of crime statistics in Western Australia I would add 2 more hybrids - 'Constructed Fantasies' perhaps?

1. Until well into the twentieth century, Western Australia was in the process of being conquered. In this process of conquest, the indigenous people - the Aborigines - were gradually driven from their traditional hunting grounds, and attempts were made to bring them under the rule of British law respecting property - particularly European property - and the use of violence to settle feuds and disputes amongst themselves. As European conquest extended further to the North-West, into the Kimberleys, along the South coast and into the Eastern Goldfields, increasing numbers of aborigines were put at risk from prosecution for either:
Interpersonal violence, e.g. offences inter se. or:
Infringements of European property laws, e.g. for cattle or sheep killing or stealing.
I would suggest that at certain periods, this 'frontier conflict', contributed substantially to the fluctuations in official 'crime' statistics, in terms of offences reported, charges laid, persons charged, summary convictions and the use of imprisonment as a penalty. At the present time, the periods in which this is most clearly to be seen are the 1880s and 1890s. Detailed local research may show the 1860s and 1870s to be similarly affected.

However I suggest the process of 'conquest' affects official crime statistics in another way. The usual method by which crime statistics are presented is by a rate per 100,000, 10,000 or 1,000 head of population, or where possible the population at risk. But in Western Australia, as in the other colonies of Australia in the nineteenth century, there are no satisfactory year by year estimates or even 'guesstimates' for the aboriginal population. Where crime rates have been presented (e.g. P.N. Grabosky, 1977), the rate is per head of European population which is not the same as the Total population or the population at risk. I have put this problem to Peter Grabosky concerning the figures he presents in Sydney in Ferment (1977). He agrees that the rates he calculated were overestimated since the population figures he used were drawn from the New South Wales Statistical Registers - these figures did not include Aborigines. At the same time he suggested that all figures for early New South Wales were fragmentary, and the prime interest of law enforcement agencies was against convicts and ex-convicts rather than aborigines. At the time of my correspondence with Peter Grabosky, before I began the present project, I was inclined to believe that this explanation would be satisfactory for Western Australia. Further research makes me think that 'frontier conflict' may be as important an influence as the presence of convicts and ex-convicts, given the very slow growth in Western Australia's population during the nineteenth century prior to the gold rushes of the 1890s.

The point concerning the 'missing' Aboriginal population, and the over-estimation of crime rates has passed totally unnoticed by S.K. Mukherjee (1981) and by Mukherjee, Jacobsen & Walker (1981). In Mukherjee's (1981) study of crime trends, Aborigines do not even appear in the index let alone the text. This is doubly ironic in view of the eulogistic foreword given by W. Clifford, the Director of the Australian Institute of Criminology. In one of his last essays as Director, Dr. Clifford bemoaned the lack of research on crime and aborigines!

Finally, there is a demographic problem in Western Australia's population figures, even for Europeans. These difficulties have been spelt out by Ian vanden Driesen (1983). They cast doubts on our present ability to calculate any worthwhile crime 'rates' for nineteenth century Western Australia.

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2. A second example of a 'Constructed Fantasy' occurs during the period of the Goldrushes in Western Australia between 1885 and 1902. During the first part of the goldrushes, 1885 to 1894 or 1895, judicial administration (police, courts, magistrates, mining wardens, clerks of courts etc.) lagged behind the spread of the population engaged in exploration, mining and prospecting first in the North-West and the Kimberleys, later in the Murchison, and finally on the Eastern goldfields around Coolgardie and Kalgoorlie. The years 1894-1895 saw a distinct change in this pattern. In these years, reserves of gold ore were located at depths below the alluvial deposits. The necessity for heavy capital investment on machinery to mine and process this deep gold led mining companies to demand protection and official modes of justice be extended to the goldfields. Police numbers grew rapidly, the official recording apparatus was extended to cover the goldfields and new magisterial districts were created. In short, the official recording apparatus was extended over new areas and more importantly, over new population. The result was a series of sharp fluctuations in 'offences reported' in 1894, 1895 and 1896 and 1897. I suggest these fluctuations were the result of the extension of official recording, as of any increase or decrease in the incidence of 'real' crime.

All these examples serve to establish at least a prima facie case that statistics of crime in Western Australia for the nineteenth century are as suspect as those for the modern societies of America and England from which Ditton has drawn most of his examples. Added to this is Ditton's argument about the myth of the so-called 'Dark figure' of 'unreported' crime.

The 'Dark Number' of crimes unreported and undetected is <u>in principle unknowable</u> and in <u>practice unmeasureable</u>. As Ditton puts it:

> "...to ask 'how big is the 'dark figure'? is to pose a question of the same logical order as 'how long is a piece of string?' or 'how many grains of wheat are there in a heap?'" (J. Ditton, 1979, p. 21)

If it is impossible to have any idea of the actual or even potential number of deviants or deviant acts, it is impossible to say that 'Crimes known to the police' can represent a standard proportion of the 'actual' number of crimes committed. The 'Dark Number' cannot be treated AS IF it existed. Following Morris Cohen (1931) and H. Vaihinger (1924), Ditton suggests that the 'Dark Number' is a 'fiction':

> "Fictions appear clearly as assertions that contain an element admittedly false but convenient and even dispensable to bring about certain desired results. Although fictions border on myths which are genuinely believed and on pious frauds which are intended to deceive in the aid of good causes, they can be distinguished from them."
>
> "From the point of view of social policy fictions are, like eloquence, important in giving an emotional drive to propositions that we wish to see accepted. They can be used...to keep up pleasant veneration for truths which (should) have been abandoned...But, if fictions sometimes facilitate change they often hinder it by cultivating undue regard for the past....The interest in truth is in fact not as great as in preservation of cherished beliefs even though the latter involves feelings which while temporarily pleasant prove ultimately to be illusions." (M. Cohen, 1931)

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Just as the 'dark number' is infinite, so are the number of potential or hidden deviant acts or actors. The only proof of an act of deviance is the reaction to it: the reaction is the Commission of the act. Thus the 'crime rate' is in fact a 'reaction rate', and cannot be any lesser or greater than it. Ditton puts it thus:

> "So what, in all cases, makes an act a crime? Control. In sum, it is not the offender who 'commits' the crime: it is the offended. The presence of the offender is neither a necessity nor a sufficient condition for the finding that a crime has been committed. On the other hand, the presence of the offended is necessary (and may also be sufficient - as with Coroner's courts) for a crime to be committed. The offended thus commits the 'crime' - whilst possibly and incidentally, albeit in a different way, also committing the 'offender'."
> (J. Ditton, 1979, p. 21, Ditton's emphasis).

Which rate should be the reaction rate? 'crimes reported'? Charges? Convictions? Positivist criminology, following Sellin (1951) believes that 'police knowledge of crimes' is the closest to the 'real' crime rate. Conversely, the logical position, as Ditton sees it, for the 'labelling theory' towards the 'reaction rate' should be to use the figure furthest from positivist criminology i.e. 'Conviction'. This is what Ditton calls the 'atheist' view of crime statistics:

> "From the atheist position, 'crime' is thus NOT an activity engaged in by an offender, it is one formulated (in court) by others. Similarly, 'criminal activity' is the activity of calling activities crimes. There is no resource available to demonstrate that some 'crime' is, after all, 'really' committed by offenders, once the slightest shadow of doubt exists, as it now always does (given it is at least conceivable that one or more of the things described in section (i) of this chapter (i.e. Constructed, Fantasy, Book-keeping or Reporting crime rises/falls), that the empirical basis of the observation might be an artefact of the process rather than the object of that observation."
> (J. Ditton, 1979, p. 23-24)

IF it be accepted that there can only be reaction rates and that this rate must come from the number of convictions recorded, of people irrevocably converted from innocent to guilty, then it follows that we cannot make any deductions from official crime statistics about the motives or intentions of the accused prior to the conviction.

> "At any one time - or between any two - the official juristic crime rate can tell us, admittedly and limitedly, how many people were successfully prosecuted but the construction of those statistics is that that no acceptable deductions can be made about the 'motives' or 'intentions' of the accused from them. Thus the central implication of these conceptual observations is that variations in the official crime-rates are allowable as evidence of 'Control waves': but never of crime-waves."
> (J. Ditton, 1979, p. 24).

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Finally, Ditton suggests, without offering any supporting historical examples, a model in which 'Control-waves' may replace 'Crime-waves'. Briefly stated, Ditton sees the causal relation between 'crime' and 'control' as involving Contraction and Expansion. Each of these involves a possible feedback loop resulting in either Amplification or Attenuation. Ditton suggests Contraction and Expansion are linked to one another: the seeds of Contraction appear in Expansion and vice versa - just as in Trade cycles: each 'Boom' contains the seeds of 'Depression', and vice versa. (For diagrams illustrating this, see J. Ditton, 1979, pp. 32-33).

To support this relation of Contraction and Expansion, Ditton draws on the work of David Matza (1969) to suggest that a particular section of the population is always open to suspicion and thus to arrest and the operation of 'control':

> "Control produces a corps of 'criminals', and Control-Waves (which function pragmatically on a basis of 'criminal' actors rather than 'crime' acts) can alternatively overflow and deplete their own capability for control activity. Thus, the size of the 'criminal' population is wholly determined by the exercise and experience of control, with particular members being periodically extruded into or included from the 'normal' population. That is the logical parameter of the control-wave model: in fact, its pragmatic operation is guaranteed by forms of temporary banishment (deportation or incaceration), which are critical because they contribute to the 'wave' effect of control (J. Ditton, 1979, pp. 34-35, 46-47; and D. Matza, 1969, pp. 181, 184, 185, 186-7).

The underlying assumption of this combination of Matza and Ditton is that there is a 'finite' pool of criminals waiting to be created at the behest of 'control' (J. Ditton, 1979, p. 35). When the 'pool' is exhausted, then Contraction and possibly Attentuation set in: as (presumably) the 'criminals' are released, so the cycle begins again.

The reaction to 'Controlology' from historians has varied from outright hostility by V.A.C. Gatrell (1980) to cautious and partial acceptance by Douglas Hay (1982). These responses came from different areas and approaches in the history of crime and it is worth briefly looking at the cogency of their assessments.

V.A.C. Gatrell

V.A.C. Gatrell (1980) believes the criticisms made by Ditton about the validity of official crime statistics are merely limiting; and that, with care, such statistics can be interpreted to show the long term fluctuations in the level of 'real' crime. Gatrell acknowledges the possibility of 'Constructed', 'Fantasy' and 'Book-keeping' rises/falls in crime (he is noticeably silent on 'Reporting' rises/falls). He even gives examples of each. But he refuses to allow, as Ditton does, that the distortions so produced are unknowable. Ditton believes it is always possible that official statistics are contaminated; Gatrell refuses to accept this. Gatrell is equally dogmatic in his refusal to doubt the existence of the 'Dark number' of 'unreported crimes'

> "A premise of our coming analysis, as of most such analyses, is that there is committed a hypothetically measurable and discrete number of acts which break the law and so are 'Criminal'." (V.A.C. Gatrell, 1980, p. 245).

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Thus Gatrell continues to believe 'crimes' can exist before any one has been charged or convicted of them. Crimes exist independently of any reaction to them.

In asserting this, Gatrell misreads Ditton. Ditton specifically states that it may be possible to find out how many deviant acts - such as Cannabis smoking - are 'actually' committed, but that this will not come from official statistics of 'crime':

> "I am not trying to say that acts (like Cannabis smoking) are not enacted. Nor am I trying to pretend that cannabis-smoking is always and inevitably 'caused' by control. One can even verify, in various ways (perhaps), that more people smoked more cannabis more often in 1978 than was the case in 1958. This, even if it could be demonstrated, regrettably tells us nothing about crime. No 'crime' has been committed (in law and logic) until a court finds i.e. creates for all intents and purposes - guilty intent. Accordingly (sociological) 'evidence' adducing the spread of cannabis use is not the same as, nor may it be substituted for, a legally acceptable and accepted evidence that a crime has been committed. The former rests upon the behaviouristic counting of acts: the latter upon a legal finding of guilt." (J. Ditton, 1979, p. 20)

The point about 'sociological evidence' applies with equal force to 'historical evidence'. It may be possible for instance from private Diaries, from stock and station records, to establish independently, figures for stock losses on the W.A. frontier due to Aboriginal attacks. Such statistics may show different patterns to those inferred from convictions or reports of cattle or sheep killing or stealing recorded by the Police. Taken only as 'convictions' very few Europeans would appear to have been guilty of killing Aborigines on the Western Australian frontier. But from Oral and even Archeological evidence, an alternative picture of the extent and nature of frontier violence can be established to that portrayed in official statistics of crime.

Gatrell's second line of defence against Ditton is the two-tiered approach to crime statistics proposed by Thorsten Sellin (1951): that not all recorded figures for all categories of offences maintain a constant fraction of the 'true' or 'real' level of those offences. Sellin admitted that in some offences for which the recorded figures were small (he cited sex offences, petty theft, blackmail, and fraud as examples), or where the Government was the 'victim' (he cited gambling, vagrancy, prostitution and smuggling as examples), then the recorded offence level did not maintain a constant relationship with the 'Dark Number' or 'True' level of these offences. Thus a rise in gambling convictions or vagrancy arrests might represent a change in police or court procedures and not necessarily an increase in the number of vagrants or illegal gamblers.

It was pointless, in Sellin's view, to use a figure for 'Total recorded criminality to find the 'actual' level of criminal activity. Sellin proposed

> "We must extract from that total the data for only those offences in which the recorded sample is large enough to permit the assumption that a reasonably constant relationship exists between the recorded and total criminality of these types. We make that

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> assumption when the offence seriously injures a strongly embraced social value, is of a public nature in the sense that it is likely to come to the attention of someone besides the victim, and induces the victim or those who are close to him to co-operate with the authorities in bringing the offender to justice. Exactly what offences would fall into this category in various countries would have to be carefully determined, since cultural differences would have to be considered. (T. Sellin, 1951, p. 497).

This allows Gatrell his escape clause when he claims that his prime interest is in long term trends in serious offences, such as theft and violence. These offences he claims are different to drug-taking, prostitution or by-law infringements. The same assumption is made by P.N. Grabosky (1977, p. 31).

> "Our principal and by no means certain assumption is that the criminal behaviours which were of most intense social concern in an era are recorded with relative fidelity."

This is not a convincing argument: every offence, be it theft, murder, burglary, illicit gambling or sly-grog selling requires a reaction. There is no reason to suppose theft and violence statistics will not be just as subject to 'Constructed', 'Fantasy', 'Book-keeping' or 'Reporting' rises/falls as gambling or drunkeness.

It is important to realise that Gatrell's devotion to analysis of long term trends in 'crime', in theft and violence, at a national level is probably a minority pursuit amongst historians of crime. Local and more limited studies are far more common, and it is perhaps here that Ditton's ideas are likely to be most applicable. The more local studies reveal the influences of 'Constructed', 'Fantasy', 'Book-keeping' and 'Reporting' rises/falls, the harder it will be for Gatrell to maintain his faith in positivist orthodoxy.

Douglas Hay

The second historian who has briefly considered the significance of Ditton's arguments is Douglas Hay, writing on crime in 18th century England. Dr. Hay's consideration of Ditton is more flexible than Gatrell's and he makes a genuine attempt to incorporate the influence of 'control' within his study of 18th century court records (D. Hay, 1982). His objections to Ditton are pragmatic and empirically resolvable rather than dogmatic and superficial, as was the case with Gatrell.

> "..Ditton argues also that a criminal act can only be said to have occurred when a court has established guilt and the conviction has not been reversed...That definition, however useful as a reminder that only the law creates crime, precludes consideration of the more interesting lay view: that crime is behaviour which has a high probability of being prosecuted successfully. Guaging that probability, and the circumstances under which it changes, is the central question for thief, victim, and historian. Ditton's definition, fused with his assertion that control is overwhelmingly powerful, leads him to ignore acquittals and their causes, including the role of legal rules. His empirical evidence concerns largely discretionary and non-legal decision by control: notably an employer firing some appropriating employees. The analogy to criminal law is far from perfect, particularly when acquittals are common, as in the 18th century English courts." (D. Hay, 1982, p.119 footnote 4).

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Three points seem to be raised here; in reverse order they are:

1. Doubts over the empirical evidence presented by Ditton, especially when drawn from his observations in the Wellbread bakery;

2. How to place acquittals and legal rules in the context of 'control';

3. The 'central question' of just how and what should be the focus of a history of crime.

The first two sections of Ditton's argument (that official crime statistics are contaminated; and that the 'Dark Number' is a conservative myth) are argued at a logical and societal level. The third section, on 'Control-waves' is supported partially by a metaphor drawn from Economics and partly on observations in the Wellbread Bakery. More recently, McLachlan and Swales (1982) have supported the idea of 'Control-waves' with a mathematical model, which they hope to apply to witchcraft trials in Scotland. Nevertheless, there is still at the moment a lack of empirical evidence to suggest the existence of 'control-waves' in historical situations.

Hay, however, has different concerns. He doubts that the framework of 'control' in discretionary and non-legal situations such as the Wellbread Bakery can be applied to the situations in eighteenth century courts. In particular, Hay claims Ditton makes no provision for Acquittals because he thinks of 'control' as 'overwhelmingly powerful'.

Certainly, Ditton has given no detailed attention to Acquittals in relation to Convictions. But he does point out in another context that even when an accused party admits guilt, she/he may be found innocent by the

> "...application of defeats like accident, coercion, duress, provocation, insanity or infancy." (J. Ditton, 1979, p. 106, footnote 2).

These all refer to legal rules and apply as much to the 18th century as to the 19th or twentieth centuries.

Even so, to speak of Acquittal by a Petty Jury or even a 'No True Bill' by the Grand Jury as a 'defeat' for a private or public prosecutor is not satisfactory. The actions of Petty or Grand Juries must be incorporated into any concept of 'control'. In addition, I would suggest that to treat Conviction as the only proof of guilt is ahistorical. I suggest legal 'guilt' was conferred not all-at-once by the decision of a Judge, a J.P. or a Petty Jury; rather it was a cumulative process: each decision, by committing Magistrates, by the Advocate General (in Western Australia), by the Grand Jury increased the belief in the guilt of the accused. In Western Australia, for a 'respectable' small farmer or tradesman to stand in the same dock as a common felon was treated as a social disgrace. Indeed the Grand Jury, which heard evidence in secret, existed partly to spare the 'respectable' the ignominy and expense of a public trial. Hay points out that Special Juries in Civil cases existed to assure 'gentlemen' that they were unlikely to be tried by their 'social inferiors'. The Grand Jury performed a similar function in Western Australia for criminal cases. (D. Hay, 1975, p. 418).

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Conversely, if a Grand Jury brought in a 'True Bill', this was regarded as being at least a prima facie evidence of guilt. When a felon was convicted, part of his/her sentence might be justified by the fact that although he/she had only been convicted of the charge on one indictment, the Grand Jury had found 'True Bills' on other indictments against the prisoner.

These remarks suggest that the operation of 'control' through the prosecution of indictable offences in the eighteenth century or in nineteenth century Western Australia may involve complexities not thought of by Ditton.

Finally, Hay raised the question of what was the 'central question' for historians of 'crime'; or perhaps of 'reaction'. Hay clearly dislikes the assertion that a 'crime' can only occur when there is a 'reaction' to it. He wants the history of 'crime' to deal with more than the actions and opinions of judges, magistrates, police and prosecutors. To accommodate Ditton's argument, Hay suggests a distinction between 'appropriation' (or theft) committed by the poor to which there is no 'reaction' and therefore no 'crime' has been committed, in Ditton's terms; and those acts of theft which are successfully discovered, brought to trial and a conviction obtained. At the end of his essay, Hay makes the point thus:

> "There is one final and paramount reason why we must keep trying to observe 'real' crime. When we write the word with this qualification we use shorthand for a large part of the life of the poor, the working class, the dangerous class of earlier centuries. They were the ones most knowledgeable about appropriation, about prosecution, and hence about the social significance of criminal law. It touched far more of them, more immediately than the few judges, prosecutors and policemen whom the written culture considered to be the experts. The poor knew how far the law reached and how far its claim to realize justice was vitiated by corruption, caprice or the dedication of the powerful to the constant re-creation of class. Until we understand popular attitudes formed at the boundary of appropriation and control, we do not understand the criminal law. A simple statistical sketch of indictments, verdicts and pardons, such as that sketched here, will not enable us to do so. (D. Hay, 1982, p. 159)

I heartily concur with Hay in his concern for the history of the poor and that the history of crime should not be written solely around judges, magistrates, police and crown prosecutors. When I began research on the Western Australian Supreme Court case files, I had every hope of finding evidence that the poor in Western Australia had their own ideas of justice and criminal law. Such, however, was rarely the case. Prior to 1852, when Magistrates were obliged to administer a caution to defendants about the admissibility of their statements as evidence, very few accused persons who appeared at committal hearings chose to make their defence there. Western Australian Magistrates seem to have followed the English practice of not feeling obliged to either hear or record evidence on behalf of the defence at committal hearings. The result is that the case files contain only the views of the prosecution and these do not reveal conflicting views on the nature of 'popular' and 'official' justice.

My research suggests that sources which openly and coherently state the 'popular' view of justice in Western Australia are rare, at least until 1850. The arrival of convicts changed this situation. Whilst they were rarely openly rebellious, Western Australian convicts were quite prepared to argue for their legal rights if they were denied them.

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Areas Requiring Further Research

Many areas of the Western Australian Criminal Justice System in the nineteenth century have not been covered in my research. In brief, the following areas require further attention:

1. The biography and background of the early settlers in Western Australia, particularly those who arrived whilst the local system of justice was in the process of formation - from June 1829 to September 1834. This applies especially to the men involved in the legal system:

W.H. Mackie - Chairman of the Quarter Sessions & Advocate General;
A.H. Stone - Clerk of the Peace;
G.F. Moore - Advocate General;
W.N. Clark - Solicitor, Barrister & agitator.

2. A 'grass roots' examination of the practice of criminal justice in England in the 1820s, with particular reference, where possible, to areas from which Western Australia's first settlers came.

3. Further details on the administration of the two 'child saving societies' which sent children and juveniles to Western Australia: the Children's Friend Society, 1830-1841, and the Philanthropic Society, 1788 to the present. Records of the Children's Friend Society have yet to be located. The Records of the Philanthropic Society, from its inception in 1788, are available at the Surrey Record Office, Kingston-on-Thames.

4. Details of the lobbying activities of the pro- and anti- convict groups in England in the late 1840s; and the efforts of R.W. Nash to set up the Colonization Assurance Corporation.

5. Similarly, the lobbying of penal reformers in England between 1856 (the opening of the first 'Intermediate Prison' in Ireland) to 1864 (when the decision to phase out the Transportation of Convicts to Western Australia was taken) deserve further research. Of particular interest is the involvement of the issue of Transportation to Western Australia in the controversy over the merits of the 'Irish' and the 'English' penal systems symbolised respectively by Sir Walter Crofton and Sir Joshua Jebb.

6. In Western Australia the following areas require further attention:

A. Local studies, preferably using Summary Jurisdiction sources for Criminal and Civil cases.

B. Analysis of the reporting of Crime in the Colony's press - from 1833.

C. Study of the composition of Grand Juries 1830-1855.

D. Study of the composition of Petty Juries, from 1830 onwards.

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Publications & Discussions during Research.

1. September 1980: Seminar to the Department of Politics & Philosophy Macquarie University, Sydney - given jointly with Dr. C.T. Stannage. (A summary of the background to the study of Crime in Western Australia and a brief discussion of Controlology.)

2. September 1980: 1 Day Conference at Flinders University, South Australia: on Crime and welfare in South Australia.

3. September 1981: Department of History, University of Western Australia. Postgraduates Seminar Paper: Social Conflict and Police Loyalty in Western Australia in the late Nineteenth Century.

4. September 1982: Department of History, University of Western Australia. Postgraduate Seminar Paper: Approaches to the Study of Crime and Crime Statistics: A Theoretical exploration. (This was primarily a discussion of Controlology. I have drawn substantially on this paper in section 3 of this report).

5. Journal Articles:

M. Grellier, A. Gill, The History of the Swan River Guardian, or, The Death of the Free Press in Western Australia in 1838, Push from the Bush, no. 10, September 1981, pp. 4-31.

A. Gill, Petitions, Memorials & Politics in Western Australia 1829-1849: A Note, Studies in Western Australian History, Vol. IV, December 1981, pp. 46-51.

A. Gill, 'Crime Statistics and their Interpretation in Western Australia 1829-1902' in D. Biles (ed.) Review of Criminological Research. Papers from a Seminar, 22-25 February 1983. Australian Institute of Criminology, Canberra, 1983.

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Sources of possible significance to the History of Crime & Justice in Western Australia in the Nineteenth Century.

This list comprises references culled from Bibliographies, newspapers and other publications. The title, the date and the place of publication are all indications that they may be of interest in the Western Australian context. As yet I have been unable to locate any of these sources. Other researchers may be more fortunate.

1. The Correspondence of R. Whately, Bishop of Dublin.

Whately, was prominent in the Anti-Transportation movement in England in the early 1830s. He also wrote on 'political economy' for school children. He was educated at a school near Bristol run by a man named Phillips. One of Whately's contemporaries at the school was a man named Hinds. Hinds became Whately's private secretary and later the Bishop of Norwich. Both Hinds and Phillips had sons among the first settlers in Western Australia. Both men passed information on Western Australia on to Whately. In 1846, Whately commented on a letter from Phillips (passed on by his father) reporting the pro-convict agitation in Western Australia. Whately was appalled but appears to have done nothing. Any further correspondence between Whately, Hinds and Phillips would be of considerable interest. (See E.J. Whately, Life and Correspondence of Richard Whately, D.D. late Bishop of Dublin, London 1866, 2 vols., vol. 2, p. 102).

2. R.W. Nash, Stray Suggestions on Colonization, 1849

Richard West Nash - a barrister from Dublin - rates an entry in the Australian Dictionary of Biography which mentions his authorship of Stray Suggestions... but which gives no clue as to its content. Nash was on record as declaring that if convicts ever came to Western Australia, he would leave the colony. He was remarkable as one of the few Western Australians to make any effort to find an alternative source of labour to convicts. Stray Suggestions on Colonization was published in England at the time when pro-convict agitation was reaching a peak in Western Australia. Nash's efforts to establish the Colonization Assurance Corporation were also reaching a peak at this time. Although I could trace no copy of this publication at the British Library or in the Goldsmith collection at the University of London, at least one other researcher, Dr. R. Ghosh, Senior Lecturer in Economics at the University of Western Australia sighted this reference during research for his M.A. thesis completed in 1962.

3. Swan River News, later called The Western Australian, published April to December 1849.

During the agitation for convicts to be sent to Western Australia in the late 1840s, several extracts from the Swan River News (which changed its name in about August 1849 to The Western Australian) appeared in the colonial press. It seems likely that this publication was at least partially organised by the pro-convict faction in England to support their counterparts in Western Australia. Again I have been unable to find any copies of this publication. Yet it has been sighted relatively recently and is cited in the Bibliography of G.F.J. Bergman, John S. Levi, Australian Genesis: Jewish Convicts and Settlers 1788-1850 Rigby, Adelaide, 1974.

4. Alexander Maconochie, The Moral System, Harrison, 1854.

During the 1850s, but especially after 1855, the Western Australian colonial press repeatedly described the convict system in Western Australia as 'The Moral System'. This was also the title of a pamphlet/book written by Alexander Maconochie, the well known prison administrator and penal

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reformer. It would be of interest to see whether Maconochie made any specific reference to Transportation or indeed to Western Australia; also whether Maconochie's Moral System bore any resemblance to the system in Western Australia.

5. During the 1850s, 2 pamphlets on the Western Australian Convict System were published in Perth, Western Australia, by A. Shenton and E. Stirling:

George Gordon Wise, Observations on Transportation with Reasons on the Moral Force System in Western Australia, 8 vo. A. Shenton, Perth, 1857

Anon., Female Convicts. Shall we have them Or shall we not? The Questions stated & answered. Printed by E. Stirling, Perth, 1854.

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Publications Planned

It seems unlikely that the results of this research will ever appear as a single monograph. The beginning, let alone the end, of the analysis of the Computer Data Base is not yet in sight; the publication of results from it is probably some years away at the very least.

Nonetheless, some parts of the research can usefully be published in the interim, if only to promote discussion, and to promote research on areas not covered by this particular project.

1. The Compilation of Name Indexes of Defendants, Victims, Prosecutors, and Defence Counsel involved in the case files searched to date. This will be of considerable use to the management of the W.A. Supreme Court Archives, since there is no adequate index to the case files prior to the start of the W.A. Supreme Court in 1861. It will also be of use to family history research.

2. The Compilation of Name Lists of Grand Jurors, 1830-1855, and Petty Jurors, 1830-1858. No lists of Grand Jurors at all exist in Western Australia. The W.A. Supreme Court Archives contains volume 2 of a Petty Juror and Special Juror Book for 1857-1885. But volume 1 (1830-1857?) appears to be missing. (See C.T. Stannage, 1978, pp. 48-52).

3. A brief and preliminary summary of the experience of the Parkhurst Boys in Western Australia will be provided for the Training officer at Parkhurst Prison, Isle of Wight.

4. A brief report will be made to the Australian National Library, the Victorian Public Record Office and the Tasmanian Archives concerning the Governor of Parkhurst's Character Book, 1844-1845, seen by the author of this report during his research in England in 1983. The condition of this book is poor yet its contents are of immense interest to the many descendants of Parkhurst Boys in Victoria, (or Port Phillip as it was called when they arrived there) in Tasmania and in Western Australia. The book includes brief biographies on most of the 221 boys admitted to the prison during the period August 1844 to April 1845; it also indicates punishments inflicted on them by the Governor. Most of the boys described in the book went to Port Phillip, 20 to Western Australia, and the remainder either to Van Dieman's Land, The Refuge for the Destitute or the Philanthropic Society. Since this book provides information on the history of no less than 3 states of Australia, it should be copied by the Australian National Library for use by researchers in Australia. The Parkhurst Governor would be only too happy to co-operate in any scheme to copy the book.

5. The most detailed knowledge accumulated during this research to date has been on the period 1829-1850. This is also the part of Western Australian History which has been most intensively studied, and on which most published research exists. It seems appropriate that I concentrate most of my efforts towards publication of my research in this period. Specifically, the areas I plan to give lengthened attention to are:

1. Juvenile Emigration to Western Australia organised by the Children's Friend Society (1834-1841), Parkhurst Prison (1842-1849), and the Philanthropic Society (1849-1855). This will complement research being undertaken by Judy Collingwood at the Centre for Australian Studies, Russell Sq., London, on juvenile emigration to Australia in general in the 19th and 20th centuries. All three of the institutions mentioned

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above were involved in trying to find solutions to juvenile delinquency in England. The publication of my research would contribute to an area on which there has been much research but relatively little published.

2. The Origins of Forced Labour in Western Australia, 1829-1853. The decision to send Convicts to Western Australia and the peaceful acceptance of them had a profound long term effect on the operation of the Criminal Justice System in Western Australia. Many of the Acts passed in the 1850s and 1860s were not repealed till 1902. No history of Western Australia, of any sort, can avoid an investigation of this decision and its consequences.

3. Aside from these two major studies, journal articles and background papers will be prepared for:

Push from the Bush - criminal justice in Western Australia in 1838;

1888 Bulletin - criminal justice in Western Australia in 1888;

Australian Historical Statistics Bulletin - Sources of Crime Statistics in Western Australia, 1829-1915.

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