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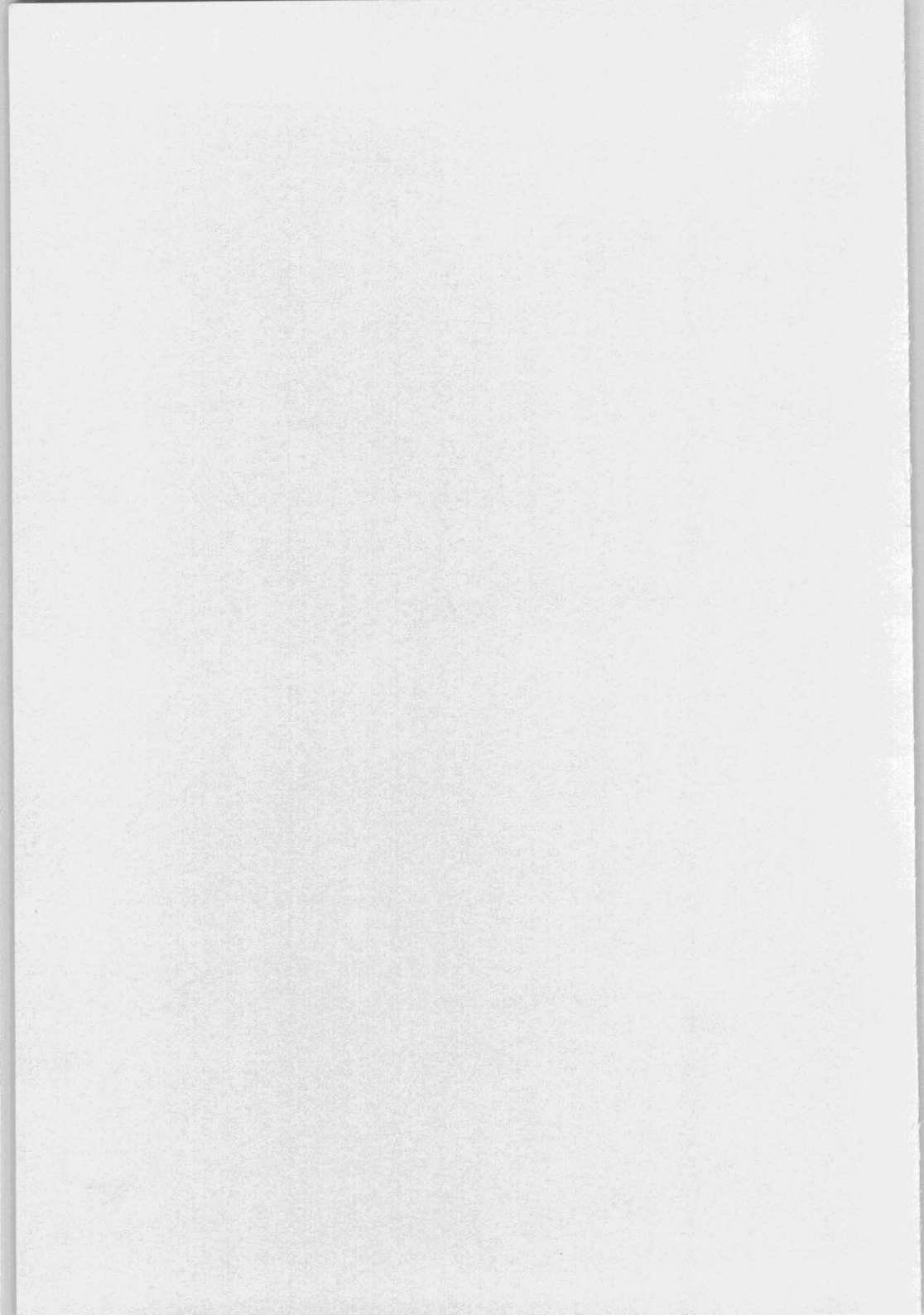
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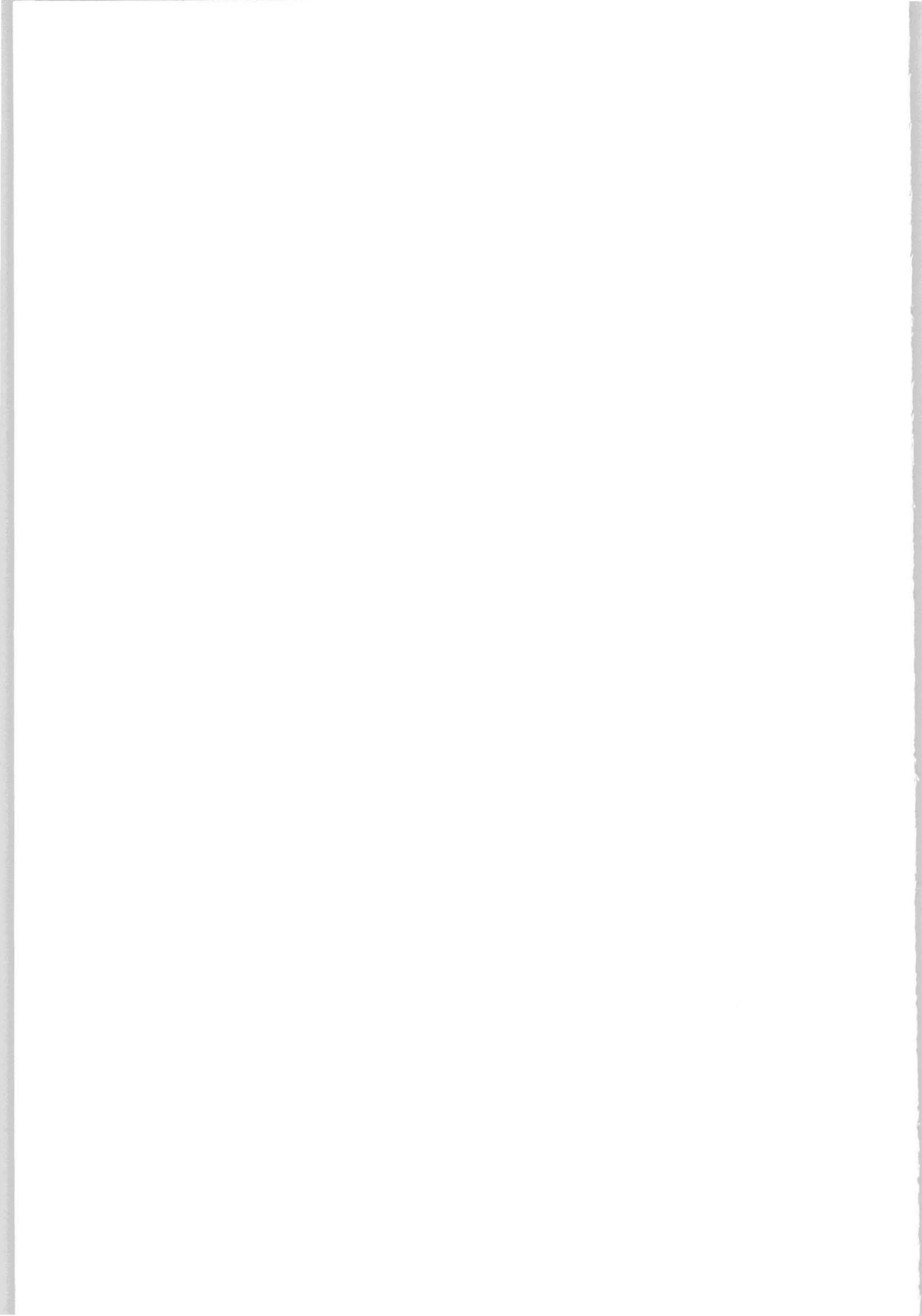
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## **Class Law in Victorian England**

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## CLASS LAW IN VICTORIAN ENGLAND

This paper investigates the way in which certain economic and financial aspects of working-class life were ordered and regulated by the civil law in Victorian England. The law, I will suggest, both embodied and justified middle-class views about the latent fecklessness and immorality of manual workers and about the latent industry and honesty of the property-owning classes. These legal interpretations of the different behavioural characteristics of the different classes were not new -- the existence of class law in the seventeenth and eighteenth centuries has been clearly demonstrated by a number of social historians. However, the way in which class-based legal prejudice was combined with the supposedly value-free operation of untrammelled market competition makes the working of class law in Victorian times distinct from that of earlier periods.

I will suggest that at the very time when manual workers were being incorporated into the Victorian state structure through a grudging recognition of trade union and political rights, they were being actively discriminated against in other areas of the civil law. Legal barriers were erected in the path of working-class self-help activity and increasingly harsh sanction was imposed on any personal financial lapse not because of the economic circumstances of manual workers but because of their social class. The nature of class division in Victorian society recently has been challenged by a number of revisionist historians who identify a flexible and multi-layered respectability rather than class as the fulcrum around which social relations were articulated.<sup>1</sup> By contrast this paper argues that there was a deeply entrenched middle-class mid-Victorian prejudice against the character and behaviour of manual workers as a class, a prejudice which was embodied in the civil law and which has exerted a powerful long-term influence on class relationships and self-perceptions. Despite the growing acceptance of collectivist ideology and action from the 1880s and the public promotion of

social opportunities via education, housing, health and welfare policies, Victorian class law continued to discriminate against many manual workers and sustain the moral basis of class division well into the twentieth-century. The argument will be developed by looking in turn at the institutional and legal constraints on thrift and on personal indebtedness in Victorian England, but the paper begins by reviewing historical interpretations of the reform of the civil law in nineteenth-century England.

## I

The civil law in England was transformed in the Victorian period as archaic and customary procedures and court structures were replaced by a more streamlined, more professional legal system that was better suited to the new requirements of a growing industrial urban economy.<sup>2</sup> Nowhere was this more apparent than in the regulation of economic transactions. Customary control of trade through guilds, apprenticeships and monopolies was gradually replaced by a more rational regulation under a revised law of contract which had no place for the fading vestiges of what Edward Thompson has described as the eighteenth-century "moral economy".<sup>3</sup> In his study of the evolution of freedom of contract in England, Patrick Atiyah has noted that:

[t]here was simply a clash of moralities between the older, laxer, more paternal, protective Equity; and the newer individualism, stressing risk-taking, free choice, rewards to the enterprising and sharp, and devil take the hindmost. Throughout the eighteenth century these two moralities co-existed uneasily; generally the older morality had the upper hand at first, but increasingly gave way as the century wore on.<sup>4</sup>

According to Atiyah it is in the period 1770-1870 that one can see the emergence within the civil law of principles of freedom of trade and contract closely associated with the ideals of classical political economy and far removed from the traditional concerns of the eighteenth-century "moral



economy".<sup>5</sup> This was certainly the case at the local level where the amateur courts of requests were replaced in 1846 by professional and formal county courts which paid little attention to established principles of custom, discretion and local participation.<sup>6</sup> Not until the late nineteenth-century collectivist developments in social thought and the Edwardian "new liberal" social legislation was the primacy of free-market individualism convincingly challenged. In the civil law the protective and ameliorative functions of eighteenth-century concepts of equity were reintroduced through formal legislation relating to health, safety, adulteration, hours of work and minimum wages.

This interpretation of the incursion of free-market ideals into social, political and legal thought in Victorian England is long established,<sup>7</sup> but it is not necessarily well established. This paper will attempt to demonstrate that in one area of law and practice, the small but crucial area relating to the money management of the working class, the free market was reined-in before it had a chance to develop. A contract economy -- one in which all economic actors are treated according to the same free-market rules -- was rapidly made subservient to moral prejudice. Economic actions undertaken by people of different social standing became regulated in different ways because of a priori value judgements about the character traits of the different classes.

Class law, of course, was not new to England. The class bias in both the criminal and civil law in eighteenth-century England has been well documented. It was a bias that included discrimination in the definition of crimes and misdemeanours, in the prosecution of defendants from different socio-economic backgrounds, and in the corrective treatment of offenders.<sup>8</sup> But nineteenth-century law reform, on both the civil and criminal sides, was intended to produce a more rational, formal and equitable legal system. This was particularly the case in the law of contract, where arbitrary or historical rights and entitlements were gradually replaced by a more general

law relating to bargains openly entered into by the contracting parties.<sup>9</sup> A developing sense of legal formalism was supposed to ensure equal treatment before the law for the economic actors who made their agreements in the free market. But despite this legal rhetoric (which reflected, no doubt, the sincere beliefs of many lawyers), the practice was different. In many aspects of both the civil law and of public administrative practice which touched the economic and financial affairs of the working class, new biases against the interests of workers were deliberately introduced by parliament and the courts. Furthermore these biases became incorporated within the social norms not just of the legal establishment, but of the population as a whole, thereby legitimizing the underlying class prejudice.

In order to analyze these developments, the next two sections of this paper will focus on the self-help activities of manual workers, and will show the way in which legislation and procedure relating to working-class thrift and personal indebtedness incorporated class bias. The final section will then suggest why this class bias was generally accepted rather than contested, even by manual workers and their representatives, and will examine the implications of this argument for revisionist interpretations of class divisions in Victorian society.

## II

In so far as Victorian middle-class advocates of working-class thrift acknowledged any class bias in the operation of thrift institutions, it was in a positive sense of the poor being encouraged in their self-help efforts through subsidization and charitable assistance. Much play was made of the generous labours of middle-class trustees in managing trustee savings banks for use by the labouring poor, of favourable tax arrangements allowed to working-class saving institutions, and of the positive institutional and legal encouragement given by the state to the thrift activities of the labouring population.<sup>10</sup>

However, if we look in detail at the institutional arrangement of

working-class thrift, the structure and mode of operation appears to be far from beneficent. The thrift institution that perhaps most directly appears to be the embodiment of semi-official philanthropy is the Post Office Savings Bank (P.O.S.B.), established by the government in 1861 with the express purpose of promoting working-class thrift.<sup>11</sup> With more than one million accounts opened in the first decade of operation, and over nine million accounts in existence and £187 million of savings accumulated by the eve of the First World War, the P.O.S.B. was clearly a highly successful exercise in the state sponsorship of thrift. Much of this savings effort came from working-class people: figures for 1899 show that 83 per cent of accounts were for sums under £25, with an average value per account of just £4.<sup>12</sup>

The P.O.S.B. was a popular institution; was this popularity a consequence of indirect state subsidization of small-scale thrift, of quasi-official philanthropy? By acting as guarantor of P.O.S.B. funds the government ensured that this form of saving was virtually risk-free, something which was certainly not the case with pub and club-based saving schemes, nor even with the trustee savings banks, which were occasionally subject to fraud on the part of actuaries and managers.<sup>13</sup> This guarantee of security, however, was far from being a new departure for the government, because it had been providing identical guarantees to middle-class investors for many decades through the sale of government bonds at fixed rates of interest. If this was quasi-official philanthropy, then it was a form of philanthropy enjoyed overwhelmingly by the Victorian bourgeoisie.

If we examine the financial returns enjoyed by P.O.S.B. depositors, then it is apparent that they were not treated particularly favourably by the government. The P.O.S.B. paid interest at 2.5 per cent per annum on every whole £1 invested for a full twelve-month period. There was no philanthropy here. The P.O.S.B. interest rate remained unaltered throughout the period to 1914, whilst the yield on consols reached a high of 3.4 per cent and for only three years touched a low of 2.5 per cent. For thirty-three of the fifty-

two years that the P.O.S.B. operated before the First World War the yield on Consols was 3 per cent or above, giving the P.O.S.B. managers a cosy  $\frac{1}{2}$  per cent or more to devote to administrative costs.<sup>14</sup> This allowance for administration was intentional; the 1858 report of the select committee on savings banks which examined proposals for state sponsorship of working-class thrift was very clear in its recommendation that 'the payment of interest and the expense of management ought not to be an annual loss to the State'.<sup>15</sup> Accounts for the P.O.S.B. show that it made a tidy profit; by 1868, just seven years after foundation, it had accumulated a surplus of over £200,000, a surplus ultimately appropriated by the Commissioners for the Reduction of the National Debt. Between 1880 and 1900 the P.O.S.B. paid over £1.6 million to the exchequer; the subsidization was from poor savers to rich tax-payers.<sup>16</sup>

It may be possible to ascribe this cross-subsidization to historical chance and inertia or to lower than expected administrative costs and a paternalistic desire not to confuse working-class savers by altering the rate of interest paid. The positive argument in favour of the fixed rate of interest in the P.O.S.B. is that it did give working-class savers a guaranteed return even when market rates were low. In the 1890s the yield on Consols fell to only 2.5 per cent, so the P.O.S.B. actually ran at a loss, with the expenses of management covered from accumulated surpluses. However, as Avner Offer has shown, this was simply a different form of cross-subsidization from the poor to the rich. At 2.5 per cent, the Consols yield was well below that available on alternative investments. In consequence, almost the only purchaser of Consols by the mid-1890s was the P.O.S.B., a position that was repeated with Irish Land Stock in the Edwardian period.<sup>17</sup> Working-class savers were forced by P.O.S.B. managers to lend to the government at interest rates well below market levels, and the net effect of this was to reduce the debt-servicing bill of middle-class tax-payers.

This was quite intentional. The government had been taken to task

by the 1858 select committee for manipulating trustee savings banks funds in the interests of the national exchequer rather than the interests of the depositors, but was quite open about its desire to do the same with P.O.S.B. monies. In an acrimonious debate in the House of Commons at the committee stage of the P.O.S.B. bill, Gladstone admitted that P.O.S.B. funds were likely to be moved between government stock to suit the revenue-raising interests of the government of the day. In his view, as long as the 2.5 per cent interest continued to be paid on deposits, 'the less the depositors knew about anything else the better'.<sup>18</sup> However, this unfavourable reward for thrift offered by the P.O.S.B. to working-class savers was not the only element of class discrimination embodied in the working of this institution. Equally important was the restriction deliberately placed on access to accumulated savings.

Until 1893 depositors had to wait for several days between requesting a withdrawal of funds and receiving the money. The reason for this was partly procedural -- the deposit book had to be forwarded by post to the ledger department in London to be checked with central records, the sum required for withdrawal was deducted from both, the deposit book was posted back to the initiating post office, and the book and money would then be handed over to the patient depositor.<sup>19</sup> But there was a deliberate attempt at moral control in this system; the delay was a way of imposing forward planning and deferred gratification on working-class savers. This point was made very clearly by Acton Ayrton, the Liberal member for Tower Hamlets, during the Commons debate on the P.O.S.B. Bill: "the great object of the savings banks had hitherto been to withdraw from men the temptation of spending their money by interposing a little difficulty and delay in getting it out of the bank".<sup>20</sup> When the controller of the P.O.S.B. proposed the introduction of a withdrawal-on-demand system for sums not exceeding £1, there was considerable opposition on the grounds that this would increase the costs of administration, increase opportunities for fraud on the part of

working-class depositors, and enable these depositors to dissipate their savings without proper forethought.<sup>21</sup> There was little official appreciation of how valuable this instant access to savings might be for poor families wishing to pay rent or buy food, despite the fact that the point had been made many times by witnesses to the various select committees on savings banks,<sup>22</sup> nor of how discriminatory was a banking system that allowed middle-class customers of the clearing banks to withdraw on demand or even to run up an overdraft, but which prevented working-class customers of the P.O.S.B. from enjoying the same entitlements. The extent of working-class need was shown in 1905, when withdrawal-on-demand was introduced in the P.O.S.B.. In the first full year of operation, this system accounted for over half of all cash withdrawals.

In establishing small savings facilities throughout the country, including areas hitherto lacking a local trustee savings bank, the Post Office Savings Bank served to provide state sponsorship of working-class thrift, but it also produced subsidies from working-class savers to the national exchequer. At one time it looked as if these subsidies might become in effect a tax on electoral participation for the working class; proposals for a savings bank franchise were advanced in 1854, 1859, 1866 and 1867 and were variously supported by Lord John Russell, Palmerston, Disraeli and Gladstone.<sup>23</sup> The public rhetoric surrounding the foundation of the P.O.S.B. suggested that this was an institution that existed outside the normal rules of *laissez-faire* market competition, and the rhetoric was right, but not in the way believed at the time. By underpaying depositors, the P.O.S.B. acted as an instrument of state-controlled taxation of poor savers, and by embodying value judgements about the character traits of working-class savers, it imposed moral and economic restraints on small savers which would not have been countenanced by the wealthy.

Value judgements about the latent beastliness of the working class were even more apparent in the regulation of another type of working-class

thrift -- the purchase of life assurance. Industrial assurance stood well beyond the boundaries of state welfare throughout the Victorian and Edwardian periods, and it was only in 1948 that a £20 death grant was introduced as part of the Beveridge national insurance scheme. No-one could level the accusation of quasi-official philanthropy against the companies and friendly societies that organised the practically universal insurance of the working population by the end of the nineteenth century (although the charge would be valid for the ordinary life assurance companies selling policies to the middle class, since from 1853 these policies enjoyed the privilege of tax relief).<sup>24</sup> By 1900 the accumulated penny-a-week premiums had established a capital fund of over £26m in working-class insurance organisations.<sup>25</sup> The state provided no subsidy but took no cut; this was self-contained working-class self-help. Working-class families were not, however, allowed to pursue this effort at thrift untouched by the value judgements of middle-class legislators because of a belief, ultimately enshrined in legislation, that the baseness of many elements within the working class left them only one step away from infanticide.

In 1846 parliament forbade any insurance on the life of a child under 6 years of age by the inclusion of a restrictive clause in the Friendly Societies Act of that year; in 1850 insurance of children under ten years of age was limited to a maximum of £3.<sup>26</sup> In 1855 this restriction was relaxed, and insurance up to £6 was allowed on children under 5 years of age, and up to £10 on children aged 5 to 10, but the issue was raised again during the Royal Commission on Friendly Societies in the early 1870s, when the claim was made that the high infant mortality rates and extensive infant life insurance in Lancashire was proof that children were being deliberately killed for cash.<sup>27</sup> The foundation of the London Society for the Prevention of Cruelty to Children in 1884, and the National Society four years later, gave further impetus to a new round of allegations. At the 1888 select committee on friendly societies the Hon. E. Lyulph Stanley, former assistant commissioner

to the 1874 royal commission, proclaimed that infant insurance in some cases leads to murder and often leads to negligence,<sup>28</sup> and in the following year the Rev. Benjamin Waugh, director of the Society for the Prevention of Cruelty to Children continued the argument. "The impression of our committee", he told a group of MPs, "is that infant life insurance is a direct incentive to the destruction of infant life", and a number of coroners came forward to support this assertion.<sup>29</sup> Mr Athelstan Hicks, the deputy coroner for Surrey, admitted that :

I cannot prove perhaps absolutely anything certain, or I should send the cases for trial; but the general impression was that there did seem to be at times a larger amount of negligence or carelessness with children who were insured than otherwise might have been expected.<sup>30</sup>

Indeed, no-one seemed to be able to produce any firm evidence to support this calumny on working-class parents, but that did not prevent the introduction by the Bishop of Peterborough of a bill to the House of Lords in 1890 proposing that any sums payable on the death of young children should be handed direct to the undertaker and not to the parents or guardians who had paid the premiums. Some of the evidence presented to the select committee appointed to consider this bill is illuminating, if only for its extremism. Doctors, coroners and judges concurred that infant life insurance put temptation in the path of the poor. Sidney Barwise, former parish doctor for the Birmingham Poor Law Union, became convinced that "the chief anxiety of the parents was to see the child dead from the moment of its birth". When asked how much money in terms of payout was necessary to induce wilful neglect on the part of parents, he replied "a very few shillings; anything sufficient for a drink".<sup>31</sup> The Honourable Sir Alfred Wills, a high court judge, held much the same view: "I think it would be the idlest affectation to doubt that there are not a few parents in this country who would starve their children for 5s. a-piece".<sup>32</sup> And Henry Hooper, the



Coroner of Exeter, was bold enough to use a term that others shied away from when he ventured that child life insurance was "an incentive to cruel neglect, and what is, morally speaking, murder".<sup>33</sup>

This vicious slur on working-class parents drew an eloquent denial from the one manual worker called to give evidence, Will Crooks. His reading of working-class motives was very different:

I find always mothers willing and very ready to make every sacrifice to keep their children alive, and it seems to me to be the case that the most thrifty of the very poor always insure. I do not find in my experience anyone who has not that maternal affection for their children which it seems to be the general opinion that we lack as poor people.<sup>34</sup>

Whether it was the sentiments of Will Crooks or the business lobbying of witnesses from the Prudential, Royal Liver, Liverpool Victoria and other insurance organisations which persuaded the select committee to maintain the status quo is unclear, but no further changes were made to the regulations restricting infant and child assurance until after the First World War. Nevertheless, the financial limits, and the moral implications of these remained. Legislation enshrined a middle-class belief that the customs and habits of many workers were so base that they would be prepared to kill their children for an insurance pay-out of just £6.

Restrictive legislation, institutional structures and operational practices in Victorian thrift institutions all worked to enshrine a particular view of the immaturity and potential viciousness of working-class savers. These middle-class value judgements prompted the discriminatory regulation of the thrift activities of the working population. Neutral market relationships were adjusted and constrained not in accordance with any pre-industrial "moral economy" tradition that the poverty of the poor justified compassion, but in a new tradition, a creation of the Victorian period, that the poverty of the poor necessarily justified suspicion, and often implied guilt.

### III

The regulation of thrift, however, was almost benevolent when compared to the regulation of indebtedness that was revised and elaborated during Victoria's reign. The differential treatment meted out to debtors from different classes is perhaps the clearest example of the laws and institutions of the market being driven by value judgements about the worth of the middle class and the fecklessness of the workers.

Laws relating to debt and bankruptcy in England and Wales underwent repeated changes throughout the nineteenth century, but the crucial developments occurred in the 1860s with bankruptcy acts in 1861 and 1869 and the well-known Debtors Act, also in 1869, which supposedly abolished imprisonment for debt.<sup>35</sup> As Gerry Rubin has pointed out in his excellent study of this legislation, these enactments appeared to represent the triumph of rational economic calculus over punitive barbarism in the regulation and recovery of debt:

the abolition of imprisonment for debt and the expansion of bankruptcy proceedings were two sides of the same coin, in that the structural principles of bankruptcy law on the one hand and of civil proceedings against the body on the other, stand in contradiction to one another. While the object of the former is to enable creditors to share equitably and to permit debtors to undergo a laundering process, offering them the opportunity of a fresh start free from debt, the object of committals was, by contrast, to substitute imprisonment for payment of debt. The former procedure aimed to be economically rational, the latter to be punitive or obstructive to economic efficiency.<sup>36</sup>

In theory the equality and openness required in a contract economy had been established, but in practice new moral constraints were introduced into laws regulating indebtedness with the result that the poor were in effect criminalized for their poverty and forced to repay all they owed, whilst

middle-class and entrepreneurial debtors were protected from their creditors and absolved of a large proportion of their debt.

The value judgements embodied in the law can best be revealed through a brief discussion of the ways in which debtors of different types were processed by the legal system. From 1847, when the county court system was established, small debts (defined as those under £20 to 1850, under £50 to 1902 and under £100 thereafter) could be recovered by the creditor entering a plaint with the local court. Throughout the period up to the First World War the overwhelming majority of cases (over 98 per cent) were for sums under £20, with an average amount owing of £3.<sup>37</sup> Few detailed court records have survived, but those for West Hartlepool for 1910 show that 28 per cent of plaints were for sums under 10s, 50 per cent for sums under £1, 75 per cent for sums under £2.<sup>38</sup> The number of claims and people processed by this county court system was enormous -- in 1904, for instance, almost 1.4 million plaints were initiated, and these plaints were brought primarily against working-class men. The West Hartlepool court registers show that 40 per cent of defendants were labourers, 20 per cent worked in the engineering industry, 25 per cent had manual jobs of some other kind, whereas only 4 per cent were clerks or insurance agents and 6 per cent traders or dealers of some kind.

What conception of the legal process did these working-class debtors gain from their court experience? Rough and summary justice is probably the best description. Once a plaint had been entered in the court book a summons was served on the defendant stating the substance of the action and the date of a court hearing. When the case came to court it was seldom decided in the interests of the defendant -- his chances were never better than 2:100 and usually nearer 1:100 throughout the period. The unlikelihood of winning the case and the cost of losing a day's wages persuaded many defendants not to attend these initial hearings and if they did attend they were given scant opportunity to explain their circumstances; in West

Hartlepool cases were heard and judgements were dispensed at the rate of one every 85 seconds. Judgements normally awarded the full claim plus costs to the creditor; costs and fees typically amounted to something over 30 per cent of the value of the debt.<sup>39</sup>

Compare this with middle-class debtors. Traders and, from 1861, non-traders who owed substantial debts could file a petition in bankruptcy. Debtors had to be fairly wealthy in order to go bankrupt, because a £10 fee was charged in order to file a petition for bankruptcy, a figure somewhat greater than the average per capita financial resources of working-class adults in the late-Victorian and Edwardian period.<sup>40</sup> Bankruptcy status protected the assets of the debtor from summary seizure by the creditors, and also wrote off much of the debt, because if the bankrupt paid out of his existing assets 10s. in the £, or a lesser composition acceptable to his creditors, he was discharged. It was argued that the rules of bankruptcy were required both to ensure a speedy and efficient distribution of assets to creditors, and to provide some protection of house and home for the bankrupt and his dependents. Implicit in these rules was the idea that the bankrupt was an unfortunate victim of market pressures, and the low level of composition required to discharge the debt was a strong incentive for creditors to extend further credit in the hope of achieving full repayment rather than force foreclosure. In consequence the number of bankruptcies was quite small -- in 1897, for instance, there were 7282 bankruptcies, compared with over 1.1 million claims for recovery of small debts.

It was not just the very different financial treatment, with small debtors paying 100 per cent of the debt plus costs, and bankrupts paying usually only 10s. in the £, and sometimes much less, that led some radical commentators to describe the laws relating to recovery of debt as class laws.<sup>41</sup> More important, perhaps, was the way in which the courts effectively criminalized poor debtors whilst deliberately preventing the criminalization of middle-class bankrupts. In 1844 legislation had been enacted to abolish

imprisonment of small debtors for debts of less than £20, but immediately a campaign began to reinstate imprisonment for small debts, in the belief that the poor of the nation would use this release from the threat of imprisonment wilfully to run up extensive debts with traders.<sup>42</sup> An article in the Westminster Review in 1845 claimed that "immense sums were at once confiscated, and a state of lawless fraud and imposture destroyed many honourable traders".<sup>43</sup>

The poor, it was believed, were naturally scheming and naturally dishonest, and the law should take account of this latent characteristic in order to protect the interest of middle-class traders. Parliament soon succumbed to the pressure -- in 1845 an act was passed which effectively criminalized the poor borrower by allowing courts to imprison for 40 days a small debtor guilty of fraud in contracting a debt or of having wilfully contracted it without any reasonable prospect of being able to pay. As Rubin says, this was a prospect which the poor must have confronted every day -- indeed it was the lack of any reasonable prospect of paying that drove the poor into debt in the first place. This was widely recognised by county court judges; they agreed that "that upon which the labouring classes obtain credit is, beyond all question, not their realised property but their presumed ability to pay out of future earnings."<sup>44</sup> But since future earnings were, in Victorian England, inevitably precarious and contingent, especially for those who were driven to contracting a debt by a period of under or unemployment, it was seldom possible for working-class debtors to demonstrate a reasonable prospect of paying. From the behaviour of working-class debtors the courts inferred a criminal intent and punished with criminal sanction what was in fact a structural condition of working-class poverty.

This did not change even with the complete abolition of imprisonment for debt in 1869 because a new twist was introduced which allowed working-class debtors to be imprisoned for contempt of court. Debtors could still be

incarcerated for up to 6 weeks if they defaulted on payments to creditors, and if it could be proved to the satisfaction of the court that the defaulter either at the time of default or at some time since the date of the judgement had possessed the means to pay, and had refused or neglected to pay. In other words, if an instalment of the debt was not made on time, and if it could be demonstrated that at any time since the first court hearing the debtor had been in receipt of an income which permitted some discretionary expenditure -- for instance 'where it has been clearly proved that the debtor was spending money on drink' -- then the debtor was guilty of contempt.<sup>45</sup> The possibility that at the time of default the debtor might again be unemployed and penniless was irrelevant to the decision. And even if the debtor was imprisoned, he still had to pay. Under the old law of imprisonment for debt, the prison sentence purged the debt; under the new law, imprisonment purged the contempt of court, but the debt still remained unsatisfied until repayment was made. In effect the sanction of law became more, not less, severe in 1869.<sup>46</sup>

Between 1869 and the First World War there were three enquiries into this effective continuation of imprisonment for debt, but no change in the law -- indeed, the procedure was not abolished until 1970. Although not all county court judges supported the system, the majority felt that the authority of the law and the courts would be fundamentally weakened if the power to imprison were removed. Judge Whitmore in Southwark had put the case very clearly in the 1860s, and legal opinion had shifted little before the First World War:

An universal system of ready money payment among the working-classes is impossible. The credit they obtain is on the faith of repayment not out of assets which can be touched by a fi. fa. but out of their periodical earnings, and this tacit engagement between the parties can only be enforced, in the majority of cases, by fear of imprisonment.<sup>47</sup>

The procedure of debt repayment adopted by the county courts widened still further the disparity between the treatment of middle-class bankrupts and working-class debtors. Once a petition in bankruptcy was filed, a bankrupt's subsequent income was untouched by the bankruptcy proceedings. Bankruptcy was a way of distributing existing assets to creditors, not a way of imposing some sort of attachment to the bankrupt's future earnings. But the system of repayment by instalment used in the county courts was a direct imposition on the worker's future income, an imposition which in some instances could run for many months.

The value judgements embodied in the laws of debt and bankruptcy were stark : middle-class individuals and traders who petitioned for bankruptcy did so because they wished honestly to repay, to the best of their ability, debts often unwittingly acquired because of fluctuations in trading conditions, whereas working-class small debtors ended up in court because of a fundamental lack of desire and intention to honour debts they had willingly entered into. Whilst the rhetoric of nineteenth-century law reform emphasised the simplification and standardization of the law to fit the new requirements of a competitive market economy, the practice was quite different. Value judgements about the distinct moral characteristics of working and middle-class people were embodied in legal enactments and procedures which underpinned a new type of class-conscious economic regulation created in the mid-Victorian years.

#### IV

Both the institutional structures and the legal procedures relating to working-class thrift and indebtedness in Victorian England embodied class bias. The bias existed both in terms of behavioural assumptions and in terms of outcomes. But such bias must have some congruence with social norms if it is to endure. Edward Thompson has pointed out that "[i]f the law is evidently partial and unjust, then it will mask nothing, legitimize nothing, contribute nothing to any class's hegemony".<sup>48</sup> How was it that the partiality

of the law became incorporated within social norms instead of becoming a focus for effective opposition and dissent?

There are, I think, three reasons for this, which operated at the societal, organizational and individual levels of awareness and belief. The assumed behavioural characteristics of the working class that became incorporated in law and legal procedures -- their fecklessness, dishonesty, inability to plan ahead or defer gratification -- were consistent with a powerful class characterisation derived from evolutionary biology and influential across a broad range of political and social thought. In her study of the influence of social darwinism on English thought, Greta Jones has noted that:

a contradiction existed between the theory of legal, political and economic equality and the existence of hierarchy. When it came to describing subordination the Victorians took much of their imagery from an area where subordination was legitimised -- that of the family. Thus they intertwined the language of political and legal equality with that of the family to find a means of reconciling the fact of subordination with the precepts of a system which theoretically rejected it. Thus they talked in terms of dependence, of development, of benevolent and paternal supervision and of the "child" or the childlike qualities of "primitive" people.<sup>49</sup>

This type of biological analogy, in which blacks and the working class were put in their place on the evolutionary hierarchy in the position of the morally "unfit" or "immature" was not restricted to the recondite writings of men of letters and science. In 1859, the year Darwin published his Origin of the Species, Samuel Smiles produced his popular study of conduct and perseverance, Self-Help, which sold twenty thousand copies in its first year, fifty-five thousand by the end of five years, and reached its seventy-second impression in its centenary year.<sup>50</sup> "Any class of men that lives from hand



to mouth will ever be an inferior class", Smiles told his respectable and aspiring audience, and then linked hierarchy to biology by noting that "[e]conomy also means the power of resisting present gratification for the purpose of securing a future good, and in this light it represents the ascendancy of reason over the animal instincts".<sup>51</sup> The following year, and with Darwin's work very much in the limelight, he was able to develop the evolutionary argument further:

Wise economy is not a natural instinct, but the growth of reflection, and often the product of experience. Prodigality is much more natural to man. Thus the savage is the greatest spendthrift, for he has no forethought, no to-morrow, and lives only for the day or for the hour. Hence the clever workman, unless he be trained in good habits, may exhibit no higher a life than that of the mere animal; and the earning of increased wages will only furnish such persons with increased means of indulging in the gratification of the grosser appetites.<sup>52</sup>

This evolutionary metaphor swept into all areas of social thought, more often carrying forward the moral elitism of Spencer than the evolutionary socialism of Hobson. Not even the dismal science was immune; in 1879 Alfred Marshall suggested that:

if the lower classes of Englishmen multiply more rapidly than those which are morally and physically superior, not only will the population of England deteriorate, but also that part of the population of America and Australia which descends from Englishmen will be less intelligent than it otherwise would be.<sup>53</sup>

Admittedly some resistance to the implications of social biology remained among evangelicals, but they had their own explanations for the moral and behavioural inferiority of the lower orders. At the societal level, therefore, there was an overwhelming reinforcement of the prejudicial beliefs about the moral characteristics of the working class that had become enshrined in the

laws and institutions regulating their efforts at money management.

At the organizational level there were also enormous barriers to any effective challenge to the class prejudices of the civil law. Thomas Wright regarded the discriminatory treatment of bankrupts and debtors as one of the "things that sting and rankle, that perpetuate and intensify class jealousy and hatred"<sup>54</sup>, and Robert Knight, general secretary of the Boilermakers' Society spoke several times at the Trades Union Congress in the 1870s and 1880s about the need for law reform, particularly relating to the imprisonment of small debtors<sup>55</sup>. In 1873 the TUC's Parliamentary Committee fleetingly raised the issue of the widespread imprisonment of debtors as a possible subject for legislative action in the next session of Parliament, but this was dropped, along with all other non-industrial items, from the list the TUC subsequently submitted to candidates in the 1874 general election.<sup>56</sup> The attitude of the union movement towards the law was ambivalent. As Henry Pelling has shown, sectional interests divided union leaders over whether to entrust wage determination to the legal apparatus of arbitration courts,<sup>57</sup> and a general inclination to steer clear of the expensive and prejudiced legal system was tempered by important political and industrial concerns. From the 1860s to the First World War, trade unions were required repeatedly to seek legal justification of their organisational integrity and protection of their financial position. The several successes they scored in court judgements and in the subsequent formulation of trade union law showed that the prejudice of the law was neither blind nor absolute. And specific legal developments in the field of employers' liability and workmen's compensation demonstrated that a small incursion of the rule of law in industrial matters could bring real financial advantages to some of their own needy members.

The early Labour Party was likewise hamstrung by its commitment to gradualist reform through the formal process of parliamentary representation and legislation; wholesale law reform was hardly compatible with either the

party's parliamentary designs or with the deeply-rooted "ideology of rights" which existed in British working-class culture.<sup>58</sup> Furthermore, the dense associational life of working-class men in unions, friendly societies, sports clubs and chapels gave a very practical lesson in the need for and utility of fixed and formal rules of conduct and hierarchy. Some friendly societies made an indulgence of antiquated rules full of odd customs which imposed capricious fines on members who failed to show due respect for the established customs.<sup>59</sup> In the rules of working-class associations, as in the civil law, traditionalism, formalism, and the opinion of high authority were the norm.

Finally, at the individual level, there was a genuine (though no doubt limited) belief in the ability of the law to provide justice. In the early Victorian period it has been found that "the working class made considerable use of the system of prosecution, predominantly to prosecute property offences committed against themselves."<sup>60</sup> Working-class people also made use of the small debt courts; the West Hartlepool plaint books show that in a small proportion of cases (2-3 per cent of the total) manual workers appear as plaintiffs, using the courts to enforce payments by lodgers or the repayment of small loans.<sup>61</sup>

The class bias that existed in the laws and practices regulating working-class thrift and indebtedness acquired a social legitimacy, therefore, because of its accordance with the dominant social ideology that explained and justified social hierarchy in terms of evolving economic and moral fitness, and because of the inability of working-class people, either collectively or individually, to articulate a convincing opposition to the legal formalism on which this class bias rested. In this sense, therefore, the prejudices of the civil law became incorporated in a Victorian social morality which acted against the economic interests of the working class, but in which the working class acquiesced.

This interpretation challenges those revisionist historians who argue

that class harmony and the quest for respectability rather than class antagonism was the dominant social characteristic of mid-Victorian England. Michael Thompson talks of "the working classes ... settling down to urban living and to industrial work, incorporating these conditions into a normal and accepted pattern of living, carving out for themselves an honourable place in the new society".<sup>62</sup> Gertrude Himmelfarb has an even more positive view of the social position of manual workers:

the stigma that had attached to poverty in the aftermath of the New Poor Law and in the turmoil of the thirties and forties gradually disappeared; whatever stigma remained was reserved for the dependent and unrespectable poor, those who existed on the margins of or were outcasts from society. The bulk of the poor, the "working classes" as they were increasingly called, were seen as respectable, deserving, worthy, endowed with the puritan virtues which had served the middle classes so well, and which were shortly to earn the working classes that coveted badge of respectability, the suffrage.<sup>63</sup>

More recently Himmelfarb has argued that the moral expectations embodied in late-Victorian middle class social attitudes were not "lofty or exalted", that "[t]hese virtues depended on no special breeding, talent, sensibility or even money. They were common, everyday virtues, within the capacity of ordinary people".<sup>64</sup> In the light of the evidence surveyed in this paper, it would seem that these revisionist historians present a misleading "one nation" Tory-progressive interpretation of Victorian middle-class attitudes.

In practice, the poor were not seen as respectable and endowed with middle-class puritan virtues. Although middle-class thoughts about middle-class morals clearly did change in a liberal direction in this mid-Victorian period, the morals of the poor were kept quite distinct. Boyd Hilton has traced this reformation of middle-class attitudes towards money, trade and

debt. "Liberal Tory or Peelite economists", he notes, "had regarded debt as sinful, and their dear money policies had been designed to make things difficult for those who sinned", but new economic opportunities and the new economic problems of regular fluctuations in the trade cycle demanded a new moral outlook. Reform of the bankruptcy and debt laws and the introduction of limited liability marked the victory of this new moral view, but, as Hilton has noted, these reforms "can be stigmatized as a gross example of middle-class selfishness".<sup>65</sup>

The moral legitimization of middle-class default encapsulated by the bankruptcy and limited liability legislation can be seen as "the moment when the middle classes suddenly opted out of the capitalist system at the point where it stood to damage themselves. Hitherto they had been able to justify its inequality with the thought that they were not only more diligent and resourceful, but also more daring than the workers, and consequently more vulnerable".<sup>66</sup> But from the late 1860s the stark inequality that was incorporated in the institutional and legal regulation of thrift and indebtedness could no longer be justified by the economics of differential risk. It instead came to be justified by the alleged difference in the moral characteristics of the rich and the poor. Far from manual workers being seen as endowed with middle class puritan virtues, they were repeatedly characterized in juridical discussion and in more general middle-class social discourse as morally different in a fundamentally inferior way. This was a deeply divisive class outlook, but it was projected from above rather than below, an attitude much more of middle class exclusion than of working-class ambition.

Legal discrimination against workers pervaded many other areas of the civil law -- for instance with respect to gambling, drinking and divorce -- but this paper has focused specifically on the money management of the working class because this activity, above all others, should have been the least subject to any kind of moral imposition in a genuine contract economy. In

practice the economic activities of workers were consistently regulated in accordance with middle-class prejudices about the character weaknesses of the masses, and these middle-class moral prejudices assumed the position of general social norms. No doubt these norms held greater sway in the Inns of Court and the London clubs than in the workingmen's clubs and local inns, but they appear seldom to have been seriously challenged before the Second World War.

Even after the war the moral precepts of the mid-Victorian legislation continued to hold sway in the legal establishment, though increasingly they appeared to be at odds with broader social attitudes. Atiyah explains the ideological conservatism of the law thus:

when lawyers encounter ideas from outside the law, as they do from time to time, they tend to absorb a smattering of these ideas which may then remain with them, handed down from generation to generation, until they emerge from their narrow professional interests to look at the same problem perhaps fifty or a hundred years later.<sup>67</sup>

In the case of working-class debtors, it took 101 years for the theoretical abolition of imprisonment for small debts in 1869 to be made a reality.

## NOTES

1. F. M. L. Thompson, The Rise of Respectable Society (London, 1988); G. Himmelfarb, The Idea of Poverty (New York, 1985); G. Himmelfarb, Poverty and Compassion (New York, 1991).
2. For a survey see W. R. Cornish and G. de N. Clark, Law and Society in England, 1750-1950 (London, 1989), particularly pp. 17-52, 75-6.
3. E. P. Thompson, "The Moral Economy of the English Crowd in the Eighteenth Century", Past and Present, no. 1, (Feb. 1971), pp. 76-136.
4. P. S. Atiyah, The Rise and Fall of Freedom of Contract (Oxford, 1979), p. 176.
5. Ibid., p. 398.
6. H. W. Arthurs, "Without the Law": Administrative Justice and Legal Pluralism in Nineteenth-Century England (Toronto, 1985), pp. 13-49.
7. Notably by A. V. Dicey, Law and Public Opinion in England (London, 1905).
8. See, for instance, Douglas Hay, "Property, Authority and the Criminal Law", in D. Hay et al., Albion's Fatal Tree (Harmondsworth, 1977), pp. 17-63; E. P. Thompson, Whigs and Hunters (London, 1975); Joanna Innes, "Prisons for the Poor: English Bridewells, 1555-1800", in Francis Snyder and Douglas Hay (eds.), Labour, Law and Crime (London, 1987), pp. 42-122.
9. Atiyah, Rise and Fall, chs. 14-16. Cornish and Clark place greater weight than Atiyah on the Judicature Act of 1873 in ensuring the predominance of the common law view of the sanctity of contract over more flexible concepts of equity. See Cornish and Clark, Law and Society, ch. 3.
10. See, for instance, many comments in the evidence presented to the Select Committee on Investments for the Savings of the Middle and Working Classes, Parliamentary Papers (hereafter P.P.) 1850, xix.
11. H. Oliver Horne, A History of Savings Banks (London, 1947), pp. 168-81.
12. Paul Johnson, Saving and Spending: the Working-Class Economy in Britain 1870-1919 (Oxford, 1985), ch. 4.
13. Major frauds were perpetrated at the Bilston, Macclesfield, Cardiff and

Sudbury trustee savings banks. See Horne, History of Savings Banks, pp. 236-45.

14. Consol yields from B. R. Mitchell, British Historical Statistics (Cambridge, 1988), p. 678.
15. Report of the Select Committee on Savings Banks, 1858, P.P. 1857-8 (C. 441), xvi, p. x.
16. Fifteenth Report of the Postmaster General, 1868, P.P. 1868-9, xviii, p. 17; Horne, History of Savings Banks, p. 271.
17. Avner Offer, 'Empire and Social Reform: British Overseas Investment and Domestic Politics, 1908-1914', Hist. J. xxvi (1983), pp. 119-38.
18. Hansard, 3rd ser., cxii, col. 289 ( 8 April 1861).
19. Public Record Office, London (hereafter P.R.O.), Short history of the P.O.S.B., NSC 9/758.
20. Hansard, 3rd ser., cxii, col. 281 (8 April 1861).
21. P.R.O. NSC9/1021; Fifty-second Report of the Postmaster General, P.P. 1906, xxvii, pp. 12-13.
22. See, for instance, Select Committee on Savings Banks, 1858, qq. 1445-62, 2409-10; Select Committee on Trustee Savings Banks, 1889, P.P. 1889, xvi, qq. 653-4, 740, 1128, 1451.
23. Horne, History of Savings Banks, pp. 199-207.
24. Meta Zimmeck, "Gladstone Holds His Own: the Origins of Income Tax Relief for Life Insurance Policies", Bulletin of the Institute of Historical Research, lviii (Nov. 1985), pp. 167-88.
25. Johnson, Saving and Spending, p.17.
26. For details see Lionel Rose, The Massacre of the Innocents (London, 1986), pp. 136-58.
27. Fourth Report of the Royal Commission on Friendly and Benefit Building Societies, P.P. 1874 (C. 961), xxiii part 1, pp. cxxxiii-cxli.
28. Report from the Select Committee on Friendly Societies, P.P. 1888, xii,



q. 521.

29. Select Committee on the Friendly Societies Act, 1875, P.P. 1889, x, qq. 3746.

30. Ibid., q. 4054.

31. Select Committee of the House of Lords on the Children's Life Insurance Bill, P.P. 1890, xi, qq. 10, 50.

32. Ibid., q. 1876.

33. Ibid., q. 1201.

34. Ibid., q. 2274.

35. Jay Cohen, "The History of Imprisonment for Debt and its Relation to the Development of Discharge in Bankruptcy", Journal of Legal History, iii (Sept. 1982), pp. 153-71.

36. G. R. Rubin, "Law, Poverty and Imprisonment for Debt, 1869-1914", in G. R. Rubin and David Sugarman (eds.), Law, Economy and Society 1750-1914 (Abingdon, 1984), p. 244.

37. Aggregate statistics of court business are derived from the returns of the County Courts, published annually in the Judicial Statistics volume of the Parliamentary Papers.

38. PRO AK 19/9.

39. For details of the small debts business in the county courts see Paul Johnson, 'Small Debts and Economic Distress in England and Wales, 1857-1913', forthcoming in the Economic History Review.

40. Barbara Weiss, The Hell of the English (London, 1986), pp. 23-47.

41. As far as the 1909 Select Committee was concerned, this accusation was "entirely disproved", but the evidence on which this conclusion was based came overwhelmingly from representatives of the legal profession and from tradesmen. See the Report of the Select Committee on Debtors (Imprisonment), P.P. 1909, vii, p. vi.

42. Cornish and Clark, Law and Society, p. 229.

43. "Imprisonment for Debt", Westminster Review, vol 44 (1845), p. 450, quoted in Rubin, "Law, Poverty and Imprisonment for Debt", p. 245.
44. Questions addressed by the Committee of County Court Judges to the Judges of the Courts, on County Court Commitments, P.P. 1867, lvii, p. 52.
45. Select Committee on Imprisonment for Debt, P.P. 1873, xv, q. 1737. Because county court judges were empowered to allow and take account of hearsay evidence, assessment of means to pay could appear to be capricious. The varying practice of different judges in the assessment of means was a particular concern of the 1909 Select Committee.
46. This increased severity was noted in the Report of the Select Committee of the House of Lords on the Debtors Act, P.P. (H. of L.) 1893-4, ix. Although this went against the spirit of the 1869 reforms, judges consistently upheld the need to maintain this harsh sanction.
47. Questions addressed by the Committee of County Court Judges, p. 59. A writ of fiery facias is used in execution against the goods of debtors.
48. Thompson, Whigs and Hunters, p. 263.
49. Greta Jones, Social Darwinism and English Thought (Brighton, 1980), pp. 143-4.
50. 'Introduction' by Asa Briggs to the centenary edition of Samuel Smiles, Self Help (London, 1958).
51. Smiles, Self-Help, pp. 283, 286.
52. Samuel Smiles, "Workmen's Earnings and Savings", Quarterly Review vol. 108 (1860), p. 8, and reprinted in his Workmen's Earnings, Strikes and Savings (London, 1861), p. 44.
53. Alfred Marshall, The Economics of Industry (2nd edition, London, 1881), p. 31.
54. T. Wright, Our New Masters (London, 1873), p. 155.
55. Alastair J. Reid, "Old Unionism Reconsidered: The Radicalism of Robert Knight 1870-1900", in E. F. Biagini and A. J. Reid, Currents of Radicalism: Popular Radicalism, Organized Labour and Party Politics in Britain, 1850-1914 (Cambridge, 1991), pp. 214-43.

56. Ross M. Martin, TUC: The Growth of a Pressure Group 1868-1976 (Oxford, 1980), p. 46.
57. Henry Pelling, "Trade Unions, Workers and the Law" in his Popular Politics and Society in Late Victorian Britain (London, 1968), pp. 62-81.
58. See Ross McKibbin, "Why Was There no Marxism in Britain?" in his The Ideologies of Class (Oxford, 1990), pp. 1-41.
59. P. H. J. H. Gosden, The Friendly Societies in England, 1815-1875 (Manchester, 1961), pp. 115-37.
60. David Philips, Crime and Authority in Victorian England (London, 1977), p. 285.
61. P.R.O. AK 19/9.
62. Thompson, Respectable Society, p. 203.
63. Himmelfarb, Idea of Poverty, p. 529.
64. Himmelfarb, Poverty and Conscience, p. 8.
65. Boyd Hilton, The Age of Atonement (Oxford, 1987), pp. 263, 265.
66. Ibid., p. 267. Emphasis in original.
67. Atiyah, Rise and Fall, p. 235.

