EDITED BY JOHN McLAREN,
ROBERT MENZIES, and
DOROTHY E. CHUNN

REGULATING
LIVES

HISTORICAL ESSAYS
ON THE STATE, SOCIETY,
THE INDIVIDUAL,
AND THE LAW

Edited by John McLaren, Robert Menzies, and Dorothy E. Chunn

Regulating Lives:
Historical Essays on the State,
Society, the Individual, and the Law

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Regulating Lives

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LAW AND
SOCIETY

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Introduction

John McLaren, Robert Menzies, and Dorothy E. Chunn

This book is the product of discussions and research of a collaborative nature that reach back to the early 1990s, when six scholars from Simon Fraser University, Osgoode Hall Law School, and the University of Victoria embarked on an extended investigation of the history of law as an instrument of social control, moral regulation, and governmentality in Canada. Given the research interests of the participants, the primary focus of the work was British Columbia. As some of the scholars had worked with graduate students doing research in the general area and were able to engage others in this project as it developed, interest in the project spread beyond the original six researchers to incorporate work originally presented in doctoral or master's theses.

In this series of essays we include writings by four of the six academics who contributed to the project from the outset, and by five younger scholars who were drawn in as it progressed. As a result we have been able to chronicle the historical operation of the law in a number of different social and cultural contexts in which it has been mobilized to define and manage deviancy as part of a process of social control, moral regulation, and governmentality. The contexts and processes relate to the sex trade, the spread of venereal disease, the use and abuse of liquor, child welfare, mental disorder, intrafamily sexual abuse, Aboriginal culture and tradition, and Doukhobor beliefs and customs. The research in each case involved lengthy forays into archival material at the national, provincial, and local levels. Although the scholarship in question reflects the individual interests of the participating scholars, from the start we have been concerned to create and maintain a set of intellectual themes. These themes have guided the construction and content of the contributions. We were also determined to bring out the connections between the various substantive topics and regimes of control, regulation, and governance that have developed around them.

The book comprises nine chapters, each of which represents a critical site of intersection between the state, law, social control, moral regulation, governmentality, and the populace in British Columbia history. We have arranged the nine contributions in rough chronological order. In Chapter 1, Jay Nelson explores the legal and cultural responses to intermarriage between Aboriginal peoples and European settlers in colonial British Columbia. Gerry Ferguson in Chapter 2 chronicles the origins and evolution of psychiatric care and control practices during the mid-nineteenth century. Chapter 3 is Mimi Ajzenstadt's analysis of prohibition legislation and its impact on racial/ethnic minorities in British Columbia between 1871 and 1927. Following this chapter, Dorothy Chunn addresses incest law and British Columbia families from 1890 to 1940 (Chapter 4); Robert Adamoski charts the history of the Vancouver Children's Aid Society and familial regulation in the early twentieth century (Chapter 5); Renisa Mawani looks at the spread of venereal disease and public health campaigns in Canada from 1914 to 1935 (Chapter 6); and Robert Menzies writes about the mass 'repatriation' of sixty-five Chinese mental patients from BC's three segregative mental institutions in February 1935 (Chapter 7). The book concludes with Michaela Freund's examination of the regulation of prostitutes and other 'disreputable' Vancouver women during the Second World War (Chapter 8), and with John McLaren's exploration of the seizure of Doukhobor Sons of Freedom children in the 1950s (Chapter 9).

The British Columbia Context

In many respects, British Columbia represents an ideal theatre for staging this multidisciplinary inquiry into the regulation of public and private life during the 1800s and the first six decades of the twentieth century. As the 'west beyond the west,'[1] BC was one of the last frontiers of North American colonial conquest, European settlement, and Canadian nationalization. Compressed between mountains and sea, and disconnected by geography and history from the land mass to the east, the colony and province rapidly developed a singular political culture and fiercely regional identity that survive into this millennium. With the wilderness never far removed, images and ideologies of individualism and localism – Europeans as the agents and advocates of order and civilization, and the perpetual threat of encroachment by or descent into 'wildness' – are deeply ingrained in west-coast consciousness. These elements in the mindset of British Columbians were often shared with and influenced by those who settled in the western mountain ranges and on the Pacific coastline of the United States. The vagaries of a resource extraction economy based on fur, rock, and wood; powerful cultural and perceived economic competition from First Nations in the region; anxieties born of 'influxes' of Asian immigrants; austerity and insecurity of life for many; turbulent struggles between capital and labour; and inherent

conflicts of class, race, and gender – all of these issues figure prominently in BC's historical obsession with the problem of social order.[2]

Successively, Confederation, the completion of the Canadian Pacific Railway (CPR), massive immigration, developing national and international trade links, the shadow and then the reality of world conflict, and a burgeoning liberal state in the early 1900s were to challenge the west-coast mindset. British Columbian authorities and citizens were perceptibly, if grudgingly, shaken out of their preoccupation with exclusively provincial issues and forced to take account of the world, including those parts of North America and Europe whence the majority had originally come, and beyond. The regionalist spirit of the province increasingly mingled with wider national identities and global preoccupations. From 1870 to 1920, the frontier province underwent dramatic transformations that made it a more economically diverse, hierarchical, urbanized, and ethnoculturally plural society. In this fluid setting, traditional relations of public and private life were replaced or reconstituted as British Columbian European society and its leaders sought to accommodate to or control change and its human dimensions. Part of this movement was the emergence of both imported and homegrown stratagems and experiments to inspire commitment to citizenship based on British values, and to regulate the lives of those ignorant of or resistant to civic virtue and moral rectitude. Towards the end of the period, the provincial government took its first steps towards the construction of the welfare state. After 1920, during the interwar period, anxieties about political and social disruption intensified in the province. Amid worsening labour strife and political division, some feared that the collapse of British institutions was imminent.

In response, the political and social leadership of British Columbia frantically searched for both tested and new ideas and methods to (re)order the 'difficult' segments of the population and secure a recommitment to civic virtue, social compliance, and economic initiative. Emulating jurisdictions elsewhere, but also following its own unique trajectory, BC became a social laboratory where authorities, in concert with assorted religious and secular organizations and leaders, strove to bring its citizenry under political, legal, moral, and self-control. The Second World War, a period of perceived national emergency, was to accentuate concerns about the subversive potential of several minority segments of the population and produce new and focused rounds of racial and gender discrimination. In the postwar period there was evidence of a new-found spirit of tolerance among British Columbia's population and its political representatives, and some of the more egregious practices of discrimination along racial lines were stopped. But it was still possible for the government to take draconian action against the province's most despised religious and cultural minority, the Doukhobor Sons of Freedom.

This book engages squarely with the problematics of government and civic regulation, and the diversity of responses from citizens of BC during these often tumultuous times. In these chapters we ponder some of the key ideas that have propelled the historical study of relations between the state, society, the individual, and the law in recent years. In particular, our authors apply the concepts of social control, moral regulation, and governmentality, as they have been developed elsewhere by such theorists as Stanley Cohen, Michel Foucault, Philip Corrigan, Alan Hunt, Mariana Valverde, and David Garland,[3] to the specific conditions that prevailed in early British Columbia. In this sense, the book is inherently comparative. We are interested in exploring the relevance of these influential social theories to the British Columbia context. In so doing we hope to demarcate in part the relative representativeness in BC of historical trends, ideological currents, and human experiences that unfolded elsewhere.

To what extent can we speak of a unique socio-legal history in British Columbia, and of the attendant need for a separate field of inquiry into regulatory practices situated in this province? As noted above, British Columbia has a reputation for going its own way politically, socially, and legally in constructing and addressing deviance, not to mention ethnic and social difference.[4] Yet, at the same time, many of the studies in this collection project far beyond the provincial borders in thematic, substantive, and human terms. Mawani's chapter, for example, demonstrates how moral ordering practices in central Canada were integral to an understanding of the control of venereal disease control in British Columbia. For his part, McLaren traces the history of governance of Doukhobors in BC, Saskatchewan, and tsarist Russia. Similarly, as Nelson, Chunn, Ajzenstadt, and Menzies show, national preoccupations and legal doctrine emanating from the federal state were integral elements in the regulation, respectively, of BC family life, drinking behaviour, and immigrants deemed to be insane.

The extension beyond British Columbia of the above analyses, therefore, provides a useful basis for assessing the degree to which regimes of control and regulation in Canada's most westerly province were in fact *sui generis*, reflecting local conditions and belief patterns; were influenced by trends or movements that were national and international in scope; and/or had their roots in other regions, provinces, or countries. Ultimately, we hope to demonstrate that the historical study of law, society, and the state must reflexively negotiate the boundaries between centre and periphery, local and global, province and nation. Ideas about and experiments with social control, moral regulation, and governmentality reflected external influences from elsewhere in Canada, from the United States, from Great Britain, and from other parts of the white British Empire. At the same time, British Columbians produced idiosyncratic and syncretic responses to actual or perceived social tensions that were based on their reading of provincial, regional, and local

conditions. At both a political and psychological level, British Columbian regulatory initiatives, particularly those directed towards Aboriginal peoples and non-European immigrants, had impacts outside the province.

In addressing these questions and introducing the substantive work that comprises these nine chapters, this book contributes to the growing body of socio-legal history that has emanated from British Columbia over the past two decades. As the following pages will show, our contributors have built on an impressive foundation of multidisciplinary scholarship that is indigenous to this province. BC is no longer a bystander in the Canadian movement towards a distinctive field of historical socio-legal studies. Through the work of researchers like Barry Gough, Hamar Foster, Mary-Ellen Kelm, Indiana Matters, Angus McLaren, Tina Loo, and David R. Williams,[5] among many others,[6] we have learned much in recent years about the relations between authorities and subjects in this province's past. Indeed, without this recent BC-centred research and the interest it has generated, a book such as this would have been unthinkable. While presenting new findings, this edited collection also showcases and examines the wider tradition of British Columbian historico-legal scholarship.

Social Control, Moral Regulation, and Governmentality in Historical Inquiry

These chapters variously incorporate three interconnected lines of social inquiry. The triad theories of social control, moral regulation, and governmentality have been influential over the past thirty years or so in explaining the phenomenon of the deployment of law and modes of control as instruments for suppressing and policing activities that are labelled as socially deviant. In this section we introduce three concepts at the heart of these theories, and preview their role in framing the book's main themes, which are canvassed in the latter sections of this introduction.

In various ways the authors are informed by these three theoretical approaches in their explorations of relations between the state, the social, the self, and the law in British Columbia history. In our own conceptual scheme, each of these analytic frameworks for interpreting the phenomena and practices of social order has much to offer. From the revisionist social control theories of the 1970s and 1980s (with their centring of the state), to the moral regulation literature of the 1990s (with its accentuation of civil society), to recent writings on governmentality (with their highlighting of the self), there is much opportunity for reflexivity and fusion in the advance of historical understanding.

A flexible and integrative analysis shows the many convergences, as well as departures, of emphasis and direction among these three theoretical traditions. It also reveals that none is entirely coherent internally, nor sufficiently broad or deep to subsume the full complex of discourses, structures, and

practices that frame the regulation of human life. We argue, therefore, in favour of an inclusive, dialectical, and materially grounded approach that traverses the traditional dichotomies of state and civil society, public and private, power and resistance, law and social control, authorities and subjects. Instead of declaring a one-sided theoretical allegiance, we chose to incorporate the insights of these three potent constructs – social control, moral regulation, and governmentality – into a multidimensional study of public order, law, and the British Columbian state and citizenry from the early 1800s to the mid-twentieth century.

Social Control

The task of even defining 'social control,' much less incorporating it systematically into historical inquiry, is problematic. As Chunn and Gavigan have observed: 'There is probably no concept that is used more widely and with less precision than that of "social control."'[7] The authors go on to suggest that even the most serious attempts to construct a universally applicable definition for the term have failed because of the inevitable ambiguities that result.[8]

Some theorists and researchers, especially in the instrumentalist traditions of radical criminology and critical legal studies,[9] have tended to equate social control with state repression. For them the public deployment of law and other coercive mechanisms of centralized government is the core subject of inquiry. Social control occurs as a state apparatus on behalf and at the behest of powerful elites. In our view, however, such a conception – like the concept of moral regulation (see below) – is unproductive and myopic because it disregards the manifold ways in which lives are subject to social control in both public and private spaces beyond the purview of the state.

Other scholars have used 'social control' in a highly abstract fashion. In their view it embraces a sweeping variety of mechanisms and strategies – laws, custom, rules, practices, and moral precepts – used consciously by the state or powerful groups within it to induce or educate individuals and groups to conform to some common vision of normality and virtue. For our purposes, this catch-all definition is also less than helpful because significant segments of human activity, not least generic education policies and practices and other general modes of socialization, fall within its embrace. In other words, the definition is too vague and inclusive. It is what Stanley Cohen has labelled 'a Mickey Mouse concept' – 'a neutral term to cover all social processes to induce conformity from infant socialization to public education.'[10]

The meaning we have chosen to give to the term 'social control' occupies a space between these two conceptual extremes. It emphasizes what Cohen

has described as the 'planned and programmed response to expected and realized deviance rather than ... the general institutions of society which produce conformity.'[11] A working definition that appeals to us is that utilized by Cohen in *Visions of Social Control*:

> Social control ... the organized ways in which society responds to behaviour and people it regards as deviant, problematic, worrying, threatening, troublesome or undesirable in some way or another. This response appears under many terms: punishment, deterrence, treatment, prevention, segregation, justice, rehabilitation reform or social defence. It is accompanied by many ideas and emotions: hatred, revenge, retaliation, disgust, compassion, salvation, benevolence or admiration. The behaviour in question is classified under many headings: crime, delinquency, deviance, immorality, perversity, wickedness, deficiency or sickness. The people to whom the response is directed, are seen variously as monsters, fools, villains, sufferers, rebels or victims. And those who respond ... are known as judges, policemen, social workers, psychiatrists, psychologists, criminologists, or sociologists of deviance.[12]

The definition is broad enough that it embraces conduct, judgments, practices, and agency that are not strictly the preserve of the criminal justice system, but which would fall within other control systems; for example the domains of psychiatric management and treatment, child protection, and public health control. Moreover, it gainsays the linking of 'social control' to formal systems of coercion, regulation, and manipulation. In other words, it is not confined to institutional mechanisms for inducing changes in behaviour, such as the activities of courts, tribunals, asylums, and hospitals, but extends to more autonomous methods of applying pressure to groups and individuals. Thus the definition includes the moral and legal pressures brought by settler society against traditional marriage practices between Aboriginal women and white men chronicled by Nelson, the individualized activities of social and childcare workers seeking to direct the lives and behaviour of children in care explored by Adamoski, and the prostitutes and 'loose' women and girls examined by Freund. In the same vein, both Ferguson and Menzies, in their discussion of the treatment of mental patients, draw our attention to the important role of psychiatrists in creating and sustaining regimes of social control. Mawani and Freund do the same for public health officials in their respective studies of venereal disease and prostitution. Freund's chapter is also revealing in what it says about unofficial modes of regulation, such as informal pressures applied to and harassment of 'deviant populations,' in this case working-class women and girls, by another professional group, the police.

Cohen's definition also accommodates a diversity of motives behind so-cial control, recognizing that the impact of deviant or troublesome behav-iour evokes different mental reactions in those who are directly or vicariously affected by it. What his definition excludes are both purely conventional educational strategies and mechanisms and broader patterns of socialization that provide for the diffusion of ideas about desirable conduct and virtue. Education and socialization are in fact not irrelevant to our study. As McLaren's study of the internment of Doukhobor Sons of Freedom children reveals, that experiment was prompted by the state's desire to turn the minds of the young by a combination of placing them in detention and reeducating them in 'Canadian' ways. However, this was far more focused and coercive a program than the general education of children.

We would add a further important element to the meaning of 'social con-trol' that we believe is indispensable to its understanding in the historical context in which we propose to use it: social control mechanisms can be applied to individuals who happen to be members of groups constructed and defined by the dominant society or its leaders. At the same time, such mechanisms can be and have been utilized to constrain groups who are culturally organized and recognized as such by those within their ranks. In this series of essays we have studied both forms of social control. Nelson's examination of Aboriginal-settler intermarriage in nineteenth-century BC, McLaren's chapter on the Sons of Freedom children, and Ajzenstadt's dis-cussion of minority-member liquor entrepreneurs and the law fall clearly into the latter category. The other chapters focus more on the application of the law to police individuals whose behaviour falls into patterns of devi-ance and irresponsibility as constructed by the state or powerful interests in the dominant community, and who are as a result categorized as members of a problem population. In both these contexts of experience, collective and individual, the social control construct has much explanatory value.[13]

Moral Regulation

Social control theories have been criticized for placing too heavy an emphasis on the role of the state in ordering people's lives and for exaggerating the control element. It has been correctly observed that attempts to develop re-gimes of control for individuals and groups within society have often found their original inspiration in both professional and reformist initiatives, with the state (if it is engaged at all) a relative latecomer to the process.[14] Much greater weight, it is argued, needs to be placed on professional and reformist discourses and the practices they supported. At the same time, it should be recognized that professional and reformist prescriptions for dealing with de-viance have never been uncontested and have met with resistance, particu-larly from those at whom they are aimed.[15] These critiques of social