

FEMINIZED JUSTICE



Law and Society Series

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Amanda Glasbeek

FEMINIZED
The Toronto Women's Court, 1913-34
JUSTICE



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FEMINIZED JUSTICE

Introduction

In reviewing past history, we will always think of the Women's Court as one of our great achievements.

— Toronto Local Council of Women, *Annual Report*, 1925

In 1911 Dr. Margaret Norris Patterson, prominent member of the Toronto Local Council of Women (TLCW), began going to City Hall to attend the sessions of the Toronto police courts, although it “wasn’t ... a proceeding that she enjoyed.”¹ Her distaste for these visits is not surprising. In the 1910s, police court sessions were jostling, noisy, and often malodorous affairs. “Day by day steady streams of unfortunates pass[ed] through the police court”;² the corridors and hallways were abuzz with “a hundred voices, in subdued tones and a half-dozen languages”; and “puffs of hot, foul, trouble-laden air, which come through the closely guarded door, might easily suggest deeds of evil within.”³ Police court justice was also a form of free, popular entertainment and gossip that attracted a wide variety of Torontonians to its public galleries.⁴ Wading into this boisterous din “morning after morning,” Patterson and her group of hand-picked women volunteers sat in court, armed with paper, pens, and a steely determination to assess the criminal justice system from a woman’s point of view.⁵

What these reform-minded women saw in court both confirmed their suspicions about criminal trial processes and fuelled their imaginations about what else might be possible. Their observations proved to them that, for women, the criminal justice system was criminogenic. The criminal categories that brought women into the courts, the policing system that enforced those crime categories, the process of judicial interpretation of guilt and innocence, and the fact that anybody off the streets could, and did, enjoy the spectacle of police court justice were themselves causal factors in women's criminality. Something had to be done.

The most immediate problem was the audience. Women who were accused of a crime suffered the humiliation of an open court in which "foot-loose men ... liked to come into the court room because it was a warm place to sit, and because their tastes were so perverted that they could find much amusement in the court proceedings." Patterson explained the consequences of the (male) public spectacle of justice: "We noticed that in the open court men often marked down the names of the women who appeared there, also the length of their sentence, and different girls told us of being met when they came out of jail by these men, who, taking advantage of their lonely, often friendless, and penniless condition, induced them to go into immorality." Rather than the solution, police courts were the breeding ground of vice. On the basis of their collected evidence, the TLCW began to agitate for a separate court, "to which men would not be admitted unless they could show just cause for being there."

But documented evidence of induced immorality was not the only requirement that the TLCW had to meet to win approval for a separate court for women. When they first suggested their idea to Senior Police Court Magistrate Colonel George Taylor Denison, he replied that "it was not in accordance with British justice to have a closed court." This, replied the feminist lobbyists, was not what they were asking for. Instead, they proposed, "they would see that there would always be present one woman who was an outsider, to fulfil the requirements of an open court." Margaret Patterson then took it upon herself to prove that the women's community to which she belonged was up to this challenge. She visited every women's social service and religious organization in the city and drew up a calendar "with each woman's name signed over the date or dates when she promised to attend." Through this demonstration that the organized women's community could provide the substantial backing necessary for both their own proposal for women's justice and the dictates of "British justice," the Toronto Women's Police Court, the first court for women in Canada, was

formally approved by the Board of Police Commissioners on 5 February 1913.⁶ Magistrate Denison, one of the members of this three-person police board, appointed himself to the bench. Five days later, on 10 February, the Toronto Women's Police Court heard its first cases.

This book examines the Toronto Women's Court from its inception in 1913 to its political demise in 1934. This twenty-one year period captures the tenures of two different magistrates. Colonel Denison presided over the court from 1913 until his retirement in 1921. Thanks to the lobbying efforts of Toronto's organized women's community, Denison was replaced by none other than Dr. Margaret Patterson, who would serve as the court's first, and only, female magistrate until she was forced off the bench in 1934. Although the next chapter offers an overview of the institutional setting and significance of the Women's Court, as well as the important changes that were undertaken by Patterson while she was magistrate, this book is not an institutional history of the court. The Toronto Women's Court had no single significance and was marked, instead, by contradiction. This is a core theme of this exploration. Specifically, the Toronto Women's Court was, simultaneously, a site for a feminized adaptation of criminal justice and a criminal court empowered to punish the women who appeared before it. Women's relationships to the court were fundamentally shaped by the very nature of their encounter with it.

These multiple tendencies of the court were never far from the surface. Indeed, only two days after the Toronto Women's Court was established, a (*Toronto*) *Star* reporter offered the following introduction to this new institution: "Anyone in search of convincing halftones for a column on the way of transgressors had better drop in at the new Women's Court ... Colonel Denison has a brand new red-carpeted platform to preside on, and the erst-while committee room, with its chaste frescoes and soft carpet, has settled down into a real court, where the law rattles through the commonplaceness of discharge, remand, and commitment."⁷ This characterization of the court offers some interesting juxtapositions. On the one hand, the court's novelty is stressed through the use of terms like *chaste* that simultaneously evoke images of the young women imagined as the central beneficiaries of the Women's Court project. On the other hand, the judgments that will emanate from the yet-to-be-tarnished courtroom are commonplaces that are not simply familiar, but time-worn and old hat. Chastity, softness, and an eager sincerity mark the design of the Women's Court, its location, and its overall appearance, but beneath this exterior one finds a "real" court that "rattles" on through its usual

and humdrum business. The reporter invoked biblical injunctions and sacred sins by beginning her column with references to transgressors whose stories offered parables of virtue and vice. She concluded that the process for adjudicating these cases was less divine and more the profane determination of discharge, remand, and commitment. Overall, the reporter seemed puzzled by the questions raised by the court, questions that she seemed hesitant to answer: Was the Women's Court special, unique, and distinct, or was it simply another court, like any other, yet one more part of the machinery of grinding local justice? Did overlaying a police court with the ideas of women's special qualities change that court, or did the fact that it was a court overdetermine, and undermine, the hoped-for outcome of feminized justice?

The *Star* reporter's perplexed take on the court is justified. The Toronto Women's Court employed coercive mechanisms to promote womanhood and to protect women. Feminists had problematized the law as being inherently detrimental to women and argued that a separate court for women was necessary; however, in separating women's cases out of the "ordinary" process, the Women's Court simultaneously legitimated and authorized a moral code that penalized women more than men for offences against morality. The court was justified through the deployment of familial metaphors that stressed a unity of purpose through gender-specific bonds, while maintaining adversarial processes and disciplinary practices to punish some women more than others. How can we best make sense of these dualities? Was the court's principal function to regulate sexual conduct and impose on women a rigid, bourgeois standard of femininity and morality, or was it a feminist intervention into women's legal experiences aimed at adapting criminal justice mechanisms to be more inclusive of, and sensitive to, urban women's needs? Or, if both, was one aspect of the court a by-product of the other? That is, did the rhetoric of salvation, reclamation, and protection that Toronto's female reform community used to justify the court simply mask its true nature as an exercise in coercion, or was coercion an unanticipated and unfortunate side effect of their efforts to reform the law and an inevitable paradox of maternal feminist politics?

These questions are at the heart of this book. As a product of local feminist activism, the Toronto Women's Court bore the stamp of its founders' particular political views. The TLCW engaged in a broad platform of urban reform aimed at "assist[ing] one another in all good movements for the benefit of humanity, especially those having for their first object the bettering of the conditions of women and children,"⁸ of which the Toronto Women's Court was

only a part.⁹ But although the court shared a common logic with the multiple initiatives of the TLCW, it was also unique. It stands out among the TLCW's accomplishments not only because the members themselves declared it as one of their "great achievements" but also because it was not an institution that was used on a voluntary basis. Rather, women were brought to court because police officers had charged them with an offence. Importantly, the powers brought to bear on those women appearing in the court were not simply those of the TLCW. A criminal court, even a low-level police court such as the Women's Court, represents the exclusive power of the state to engage in punishment, often over unwilling subjects. As one contemporary police court observer put it: "respect for the law must be supported by fear, and fear may only be impressed by dramatic proofs of power."¹⁰ The Toronto Women's Court was, thus, an ongoing experiment in balancing its police court origins, through which it exercised power over women in conflict with the law, with its specifically feminist design as an effort to save women from the criminal law itself.

Given these multiple dimensions, I analyze the Toronto Women's Court not through a single narrative but as a window on the differing relations that Toronto women had to the criminal justice system. To the organized women's community, the court was a feminist intervention into the workings of the criminal law, one that would better reflect women's specific needs as women. From this perspective, the Toronto Women's Court offers a history of white, middle-class women's politicization of the criminal justice system. At the same time, as a criminal court that routinely punished mostly poor and marginalized women for a range of disorderly conducts, the Toronto Women's Court was a police court and, for many, an institution through which they were disciplined for exercising their own agency or autonomy in ways that were troubling to the members of the TLCW. Thus, an analysis of the Toronto Women's Court also offers a window into criminalized women's experiences of the city and their often complex entanglements with the law. Just as importantly, the Toronto Women's Court was a place where these very different groups of women met and was a site through which they struggled, as women from very different social locations, with the law.

Police Court Justice

Placing a police court at the centre of an analysis of women's struggles over the meanings of justice means paying attention to the more quotidian aspects of

the law, that is, to a historicization of the law as early twentieth-century Torontonians encountered it. Although officially a court of first resort, the police court was, for most people, *the* justice system: over 90 percent of all criminal cases began and ended at the police court level.¹¹ Although Toronto women stood accused of a wide variety of criminal offences – from murder and infanticide, bigamy, and assault with a weapon to conspiracy to procure an abortion – the overwhelming majority of criminal offences that brought women to the courts were summary conviction offences. This was a definition imposed by the *Criminal Code*, which specified a maximum penalty, usually a set fine or imprisonment up to six months, and the classification meant that the proceedings could be held in the magistrates' courts. In more serious cases – criminal charges of an indictable nature – the police court might be the site of a preliminary hearing. The magistrate heard the Crown's evidence and decided whether it was sufficient to warrant a trial at the General Sessions (jury trial), the County Court Judges' Criminal Courts (trial by judge without a jury), or the Assizes (quarter sessions).¹² But in addition, police court magistrates, with the consent of the accused, were empowered to try most cases of an indictable nature summarily (serious offences such as murder, rape, or treason were excluded from this option). This power gave the police courts a central function in the justice system. For example, during his forty-four year tenure as a Toronto Police Court magistrate, Colonel Denison heard over 650,000 cases, including 83 percent of all indictable cases in Toronto.¹³ As one contemporary police court watcher observed, "[I]t must be apparent to everyone that the peace of the community depends more on the police court than any other institution."¹⁴

Despite the centrality of police court justice, few legal histories examine these lower courts, especially for what they can teach us about crime, gender, and criminal justice. Most histories of female crime focus attention on indictable offences heard at the higher court levels. There are good reasons to do so. Although they constituted only a minority of court cases, criminal cases heard at the higher courts have the advantage of leaving a paper trail and, as a result, can be scrutinized for what they can tell us about the legal ordering of social conflicts.¹⁵ The richness of these data is decidedly lacking in police court files; in fact, so massive was the volume of this court system that records have been systematically purged from provincial holdings. But record keeping is not the only reason for the relative neglect of police court justice. As mechanisms of low law, police courts have not enjoyed the same scholarly attention that the higher courts have.¹⁶ As Douglas Hay points out, there is an important

distinction between high and the more commonly experienced low law.¹⁷ High justice is “the word,” or that version of the law that celebrates the values of fairness to individual claims against injustice. It is this version of the law with which we become acquainted through the press, drama, storytelling, reputation, and other means of public representation, which may be extended to include historical analyses. Low justice, meanwhile, is more coercive, less well scrutinized, and more violent: it is the silence of the word. This is largely a class-based distinction: “In a market, there must be expensive justice and cheap justice and, historically, this has, in large measure, translated into high justice and low justice.”¹⁸ In other words it is not in the wood-panelled chambers of high justice, in which the finer points of judicial procedure and due process are debated, but in the overheated, overcrowded, and stuffy courtrooms of low justice that the vast majority of the population meets the law. As Judith Fingard has observed, to bypass these courts is “to neglect the more prosaic common offences [that] kept the criminal courts and the prisons in business.”¹⁹ Returning those women charged with such prosaic offences to the history of female crime expands and reshapes our knowledge of women’s relationship to criminal justice. In these various ways, an exploration of the Toronto Women’s Court renders visible a series of tensions, conflicts, and mediated interactions between and among women of decidedly different social powers.

Opening Day in Court

And what were those tensions? Who was tried in the Toronto Women’s Court, and what difference, if any, did a segregated police court make to their lives and their criminality? What were the effects of a separate criminal court, for the white, middle-class women who invented it and for the criminalized women who involuntarily experienced it? And what can the Women’s Court teach us about the relationships, real and imagined, among women in early twentieth-century Toronto? Remarkably, many of the answers to these questions are suggested by the opening day of the court. The first three cases tried in the Toronto Women’s Police Court on 10 February 1913 collectively contained all the main features that would characterize the court for the next two decades and foreshadowed both the achievement and the complications of this early experiment in feminized justice.

It is possible that the first day in court was deliberately staged, for it closely followed an easily accessible plotline and featured ideal-type characters.²⁰

But even if the cases were not pre-selected, an all female press corps actively interested in the “vision made real”²¹ was able to transform three minor charges into telling parables on morality, gender, and crime in the city.²² The continuum between good and bad, between reclamation and damnation, between protection and punishment, and between endangered womanhood and dangerous women was made abundantly clear to those Torontonians who were no longer allowed to witness women’s trials and whose acquaintance with the Women’s Court had to come from the press. This continuum would also be central to the ongoing existence, legitimation, and limitations of the Women’s Court for the next twenty-one years.

Ida J., described by the *Star* as “a mentally underaverage, ill-dressed colored girl,” was the first woman to be tried in the Women’s Court.²³ Ida was charged with vagrancy, a *Criminal Code* offence that targeted a broad range of disorderly behaviours, including, but not limited to, soliciting for the purposes of prostitution.²⁴ The charge against Ida did refer to solicitation. She entered a plea of not guilty, but “[q]uickly ... a male witness [gave] the damning evidence that the girl had solicited five men, and Magistrate Denison order[ed] her away with the words, ‘Remanded till the 13th on your own bail of \$100.’”²⁵ Like many of the women who would come after her, Ida did not have the money to secure her release, and she was sent to the local jail cells for three days, until her trial. She was found guilty and sentenced to jail for thirty days.

“It is a story of foulness that comes next. No quivering of face or voice here – just the assurance of a woman whose womanhood was long ago forgotten. She is Bridget D.”²⁶ Bridget, along with Frank M., “an Italian whose face shows what he is,” was charged with keeping a house of ill-fame.²⁷ Three male eye-witnesses, visitors to the impugned house, gave evidence against the pair, and both were found guilty, although Frank was given a longer (six-month) prison sentence than was Bridget, who was sent to jail for thirty days. Magistrate Denison reasoned that “[h]e deserve[d] it more than the woman – living on her earnings.”²⁸ In contrast to Ida’s characterization in the press as passive and somewhat incapable, Bridget, who already had several previous convictions on similar charges, took an active, and defiant, part in her proceedings: “[S]he denied everything, upbraided the judge, questioned the witnesses, and when she was led away by the matron, muttered vindictively her opinion of the law that would send folks to jail for nothing.”²⁹ But she did not get the last word: Margaret Patterson, in court to witness history in the making, did. Patterson called Bridget a human vulture and explained to the reporters: “That is the kind

of woman for whom there should be an institution. What good will 60 days do for her? She is a public menace and ought to be sent down indefinitely. What's the use of allowing her out in two months to go on corrupting the city?"³⁰

Ida, Frank, and Bridget did not capture the publicly proclaimed *raison d'être* of the Women's Court. Although theirs were "typical cases,"³¹ a prostitute, a pimp, and a madam were not the "girls" invoked by Patterson as those most likely to suffer from notoriety. To the contrary, each of these cases personified larger social problems that were widely publicized by reform groups such as the TLCW as being in need of public attention and action. By describing Ida as "mentally underaverage," news reports were drawing on the reform concept of the feeble-minded, a turn-of-the-century eugenic term that fused race, class, heredity, and sexuality together to describe "degenerate" or "unfit" persons who constituted a threat to the healthy reproduction of the Canadian nation.³² Ida – black, poor, and sexually active – literally embodied the presumed dangers posed by the feeble-minded as well as the urgent need for institutional care of such "defectives" – for their own good. Frank's appearance in the courtroom offered an entry for another reform trope. His presence was possible because the mandate of the Toronto Women's Court was to hear not only women's but also "morals" (i.e., prostitution) cases in which men were accused with women. Frank and Bridget's case signalled the importance to Toronto reform circles of taking houses of prostitution seriously, as well as the wider and decidedly more punitive role that the court was to undertake.³³

As a result, none of these cases was treated with the sympathy one might expect on this historic day in women's justice. The cavalier contempt in which Ida was held, the active denial of her claims to innocence, and the treatment of male testimony as more credible than her own were all at odds with the claim that the Toronto Women's Court would, and could, intervene in women's criminal justice experiences and create a more woman-friendly environment to help women redeem themselves from "immorality." Meanwhile, the active hostility directed toward Bridget belied any sense of a commonality among women. Constructed by the press and, more tellingly, by Patterson herself as an enemy of "good," Bridget represented that which had to be coercively suppressed. But Bridget's open defiance in the courtroom – indeed, her active hostility to both the law and those who embraced it – also belied the notion of women's victimization that underscored the foundations of a separate criminal court for women. These cases make it clear that the Toronto Women's Court was not simply about protecting women victimized by men. As a police court, the Women's Court's

function was also to exercise its coercive powers to discipline women who violated the moral standards – and the laws – of the community.

Only one reporter remarked on the dissonance between the ideals that underlay the court and the ugly nature of its first two cases: “Surely these women don’t need to be shielded from publicity. Surely they–’ begins a spectator, when a sudden call rings through the room. There probably isn’t one of the women in the court who does not feel a throb of mingled pity and sympathy with the little pitiful figure who came forward. One says under her breath: ‘Thank God for this court for such as she is.’”³⁴ The cautious doubt about the viability of a separate court for women such as Ida and Bridget was set aside by the arrival of the “pitiful figure” whose case, another reporter would claim, was “the stuff for which the court has been instituted.”³⁵ This was “the girl,” a young teenager who had quarrelled with her mother and run away from home. Discovered by a police officer, “wandering the streets, without any visible means of subsistence, and unable to give a satisfactory account of herself,” she was arrested for vagrancy, although a different kind of vagrancy than that for which Ida had been arrested. “The girl” was never named. In part this was deliberate and of a piece with the aims of the Women’s Court itself: the girl was to be shielded from the publicity that might lead to her ruination. But not naming her also served a symbolic function: “the girl” represented every girl in Toronto that the TLCW hoped to protect and redeem through the Toronto Women’s Court.

Accounts of the girl’s case appeared in three different newspapers and were remarkably similar in emphasis and theme. Most notably, these accounts are replete with familial metaphors and reach the common conclusion that the Toronto Women’s Court had arrived on the scene not a moment too soon. Thus, reported the *Daily News*, “the frightened young girl ... had never been near a court room before [and] would have been branded for life if she had been obliged to appear in the ordinary court.”³⁶ Her case was a modern day parable about the dangers of the city for young women and the redemption to be found in institutionalized motherly guidance.

Mothers are everywhere in the girl’s story. When the girl first appeared in the courtroom, “a Salvation Army woman [stood] protectingly beside her.” But there was “a deeper stir when the constable [said]: ‘Her mother is here.’”³⁷ Magistrate Denison, “tempering the justice of the law with the insight of a man used to such domestic tragedies,” asked the mother – a widow – to come forward to speak about the case.³⁸ The mother “piteously” told the magistrate twice that her daughter “ain’t never done otherwise before.”³⁹ Denison asked the girl if she

knew what “the wrong road means.” The young woman, bowing her head, whispered back, “But, I’ve made up my mind to the right road.”⁴⁰ Satisfied by her awareness of the dangers she faced and by her physical display of contrition, the magistrate pronounced on the object lesson to be learned: “You hunt all around and you’ll never get any better friend than your mother. Keep friends with your mother.”⁴¹ The girl was then remanded into her mother’s care.

The purpose of the Women’s Court could not have been made clearer. True to its avowed aims, the court, in the relative seclusion provided by the select audience, had facilitated an urban rescue mission and restored familial security to a young woman guilty of a momentary lapse in judgment. The women reformers in the court capitalized on this case to prove the value of their efforts. Margaret Patterson remarked to the newspaper reporters: “The case of that young girl shows the necessity for a court like this. In the other court a dozen men would have been watching her, would have taken down her name, and have followed her to drag her down to Heaven knows what inferno.”⁴² Noted feminist Flora MacDonald Denison (no relation to the colonel) also called the girl’s case the “justification of our court ... She shouldn’t be subjected to notoriety. She isn’t a criminal. She’s just an untaught little girl.”⁴³

In so saying, Flora Denison (unwittingly) captured the central problem that this book explores. The Toronto Women’s Court was “justified” through its delivery of specialized justice to women in distress. Unlike other police courts, the Women’s Court was meant to provide maternal guidance, a woman-friendly environment, and a protective (i.e., relatively man-free) ethic of caring for those who were *not* criminals. But if this was the case, how could it also justify its treatment of those women who *were* criminals, a treatment that looked very similar to that received in the regular police courts? How could the Women’s Court achieve a balance between the “reclamation of the daughters of Eve”⁴⁴ and the punishment of the “human vultures” like Bridget D.? What relationships did the TLCW imagine women had to men, to the law, to crime, and to the courts that enabled them to extend their reach over both “the girls” and the Bridgets and Idas of the city with a legal authority hitherto unknown to white, middle-class women reformers? And what relationship did their imaginings of the causes of, and solutions to, the problems of women’s criminality have to do with the actual incidence of female crime in early twentieth-century Toronto? The first day in the first court for women in Canada raises all of these questions. This book examines the next twenty-one years in the Toronto Women’s Court with a view to answering them.

The Toronto Women's Court as a "Great Achievement"

As opening day indicates, and as this book takes as its central point, the Toronto Women's Court had multiple functions and significances that cannot be reduced to a single formulation. For street women such as Ida J., and for brothel-keepers such as Bridget and Frank, the court may not have looked much different than what they would have encountered had they appeared for trial a day earlier: Colonel Denison presided over a court that was still populated by many men (clerks, police officers, and witnesses), and it was one in which women's breaches of public morals were met with legal censure and punishment. For young women such as "the girl," however, the Toronto Women's Court might have come close to matching its promise as a site of redemption and gender-based empathy for legal entanglements. Yet even the lenient treatment that the girl received tells a story – or, more precisely, a cautionary tale – in which the power not only of mothers but also of the specific politics of maternal care is the moral of the story.⁴⁵

As an institution, the Toronto Women's Police Court was a concrete reform achievement of the TLCW. The TLCW was an amalgam lobby group made up of the city's autonomous women's organizations, which worked in a variety of social service causes. Although the member groups included some working-class and non-Anglo or non-Protestant organizations, the Executive Committee of the TLCW was astonishingly homogenous throughout the twenty-one-year period under study. These relatively affluent, well-educated, white, Anglophone women activists were also involved in many other social service organizations, including the Young Women's Christian Association, the Ontario Welfare Council, the Toronto Women's Hospital, and so on. In addition, as members of the Local Council, they were part of the National Council of Women of Canada, which itself was a member group of the International Council of Women. In 1923 the intermediary Provincial Council of Women was also formed. Thus, local Toronto women activists were connected to like-minded women across the city, the province, the country, and the world.

The movement for a separate court for women, then, was more than a local initiative, and it was inspired by more than Patterson's visits to the police court sessions. By observing police court justice, Patterson was fitting herself into a new tradition in women's activism. Transforming the machinery of adversarial and androcentric crime control was a movement that swept Canada and the

United States in the early decades of the twentieth century.⁴⁶ Jurisdictions in the United States offered an important source of inspiration. Chicago was a leader in Progressive court change, having established a Court of Domestic Relations in 1911 and a specialized morals court, designed to hear prostitution cases exclusively, in 1913.⁴⁷ That same year Los Angeles established a women's court, which was presided over by a female judge (Georgia Bullock).⁴⁸ And New York City (Manhattan and the Bronx) set up separate night courts for women in 1910 that became day courts in 1918.⁴⁹ Women's courts also existed in other US cities, such as Detroit, Cincinnati, Philadelphia, and Boston.⁵⁰ Three years after Toronto's Women's Court opened, Edmonton established a women's court and Emily Murphy was appointed as the first female magistrate in the British Empire.⁵¹ Thus, although Toronto's Women's Court was one of the earliest women's courts in North America, and the first of its kind in Canada, it was also a local reform within a larger movement for woman-specific legal justice.

Histories of similarly inspired maternal justice projects undertaken throughout Canada and the United States during the Progressive period struggle to make sense of the multiple dimensions that characterized these courts.⁵² Overwhelmingly, histories of what Estelle Freedman calls feminist institution building in women's criminal justice tend to come to the common conclusion that these projects were, at best, paradoxical.⁵³ Indeed, the historical evidence is damning: by highlighting women's specific moral and legal vulnerability and then intervening to create more moral, or "just," courts and institutions, the effect of feminist activism in the criminal terrain was an increased moralization, and criminalization, of women's behaviour. The evident contradictions of projects such as the Toronto Women's Court raise the question: was the court a failure? That is, were the claims of alternative, gender-based justice simply unrealizable? Was the price of this justice too narrowly conceived? And were the more punitive aspects of the court indicative of a lack of appreciation of the consequences of British justice?

A central contention of this book is that, contradictions and all, the Toronto Women's Court was neither a failure nor, even, a paradox. To the contrary, I argue that the Toronto Women's Court was an ideal reflection of the politics of the middle-class, white feminists of the TLCW. I take as my starting point the fact that the members of the TLCW themselves declared the Toronto Women's Court to be one of their great achievements. Using this declaration as an invitation to investigate, I ask not, did the court fail? but rather, what was successful

about it? The answer, I argue, lies in paying more detailed attention to the maternal feminist reformers' politics of coercion. Rather than an unanticipated side effect or a paradoxical outcome, the disciplinary powers that were a part of the court's functions were actively sought out and welcomed by its feminist proponents. They were, in fact, precisely what made the court appear to be a feminist achievement.

Some historians take a more kindly view of the paradoxical outcome of these projects and attribute the limitations of these efforts to naïveté, misplaced optimism, or unfulfilled intentions. This conclusion is based on a particular understanding of maternalism as an important strategic resource for women in their efforts to pressure state projects to become more responsive to the needs of women. Linda Gordon, for example, has argued that “[w]hat makes maternalism more than just a women’s paternalism ... is its rootedness in the subordination of women. Maternalism showed its standpoint – its view from underneath – and from there built a strategy for using the space inside a male-dominated society for an activism that partially subverted male power.”⁵⁴ To the extent that these women paved the way for others by breaking into a masculine world of legal adjudication, and to the extent that they were able to use their influence to make demands upon the state to provide services specific to the needs of women, their activities have been assessed as successful feminist endeavours, albeit endeavours that reflected a conservative form of feminism. In this vein, the limitations of feminist gains are attributable to the enormity of their projects and the structural complications arising from their efforts to make wholesale change. John McLaren, for example, writes that maternal reformers “displayed considerable naivety in supposing that the law would be enforced in the spirit in which they intended.”⁵⁵ Instead, the feminist goals of protecting vulnerable women were co-opted and reshaped into a masculinist order by male law enforcement agents. Importantly, this gap between goals and enforcement was narrowed the most when women were the presiding magistrates. Beverly Cook comes to a similar conclusion about the limited nature of the authority of Georgia Bullock, appointed in 1913 as judge in the Los Angeles Women’s Court. Cook argues that through her identification with a woman-specific ethic of care, Bullock “trapped herself in a small public space” and was unable to translate her maternalist practices into the larger criminal justice network.⁵⁶ These analyses grant maternalist reformers the benefit of the doubt and argue that it was the limited number of courts, the limited authority of female professionals, and/or the limited nature of their feminist vision that

resulted in the paradoxical outcome of the over-policing of women for sexual and other moral transgressions.

Other historians are more critical of maternal justice efforts. Freda Solomon argues that it was the project of women's courts themselves – not their limited number and authority or specific personnel – that led to their, at best, contradictory outcomes.⁵⁷ According to Solomon, while the Women's Night Court in New York City “broke new ground for women in public life by providing a place in the judiciary,” the court itself was an anomaly that “set in motion a legal quagmire about women, sex, and crime.”⁵⁸ Dorothy Chunn uses a similar evaluative framework in her analysis of Margaret Patterson's tenure on the Toronto Women's Court bench.⁵⁹ Using Patterson's magistracy as a lens into the “two-sided character of reform” and as a test case on the efficacy of legal reform as a route to women's equality, Chunn concludes that the rise and fall of Patterson offers contradictory lessons, that is, lessons “with both positive and negative effects.”⁶⁰ On the one hand, Patterson's magistracy “improved the substantive position of women vis-à-vis men in the public sphere”; on the other hand, it was accompanied by “little setbacks” and did not catapult women into similar positions of authority, as hoped.⁶¹ Part of the setbacks that these critical scholars point to is that a core feature of maternal justice was the elevation of some women to power, including the “coercive power over working-class and immigrant families.”⁶²

Critical historians also emphasize the normative bourgeois and white standard that underpinned the political significance of motherhood in maternalist projects. Certainly, for the white, middle-class women who used maternalism as the basis for their activism, motherhood not only signified a politics of gender, it was also linked intimately to the concept of nation-building. This politics of motherhood was far from egalitarian. As Mariana Valverde writes, these women “produced a profoundly racist form of feminism in which women of the ‘lower’ races were excluded from the specifically Anglo-Saxon work of building a better world through the freeing of ‘the mother of the race.’”⁶³ The prescriptively white mother of the race was also embedded in a bourgeois normative model of family and motherhood. As Diana Pederson has argued, in positioning themselves as social or political mothers, middle-class women by definition conceptualized the working-class and poor women they sought to help as their metaphorical daughters.⁶⁴ Carolyn Strange similarly argues that middle-class women who acted in urban reform movements that carved out a specific place for female benefactors and beneficiaries drew unquestioningly on

a model of *in loco parentis*, thus infantilizing women defined as in need of their help.⁶⁵ Through these mobilizations, middle-class women acted to constitute themselves not only as white women but also as members of a class.

The vested authority relations implicated in maternalism are perhaps nowhere in better evidence than in the development of female juvenile courts. John McLaren concludes that Emily Murphy's tenure as magistrate of the Edmonton women's and children's courts (1916-32) was characterized by "her personal frame of reference [as an] intelligent, successful maternal figure who, through her familial role, strength of character, and moral insight, could lead the less fortunate to a recognition of the error of their ways and personal reformation, and society to a new and more moral tomorrow."⁶⁶ Estelle Freedman's biography of Miriam Van Waters,⁶⁷ a long-time maternal feminist activist in the US juvenile justice system, similarly argues that Van Waters "assumed [in the Los Angeles female juvenile court] the role of a wise, compassionate, yet professional mother," a persona that was key to her career as "a successful, public, maternal authority."⁶⁸

Mary Odem's analysis of the Los Angeles female juvenile courts offers an in-depth example of these women's politics of maternal justice.⁶⁹ Odem follows the US women's social reform movement's politics of "protecting and policing adolescent female sexuality" through two phases. The first phase, in the nineteenth century, centred on their battles to raise the age of consent laws. The second phase, in the twentieth century, was marked by their entry into the justice system as legal adjudicators, as they increasingly recognized the limitations of passing laws that depended on men for their enactment. She writes, "In calling for state regulation of female sexuality, women reformers specifically envisioned a maternal state."⁷⁰ Once ensconced in the legal system, however, these professional women, who acted in surrogate maternal roles, ultimately came into conflict with parents whose authority over their daughters' behaviour was being contested in the courtroom. Although these maternal courts sometimes helped to boost the parental authority of those who sought the state's help to control their "delinquent daughters," they just as often superseded this authority in the name of "protecting" young women from what they saw as the disreputable characteristics of single mothers, non-white mothers, working mothers, or poor mothers.⁷¹ Thus, concludes Odem, one result of maternal justice was that it delegitimated some women's mothering roles in the name of providing maternal protection to young women.

These experiments in creating a maternal justice system for young women highlight its seemingly paradoxical outcomes: the success, and failure, of maternal justice was its creation of gender-specific notions of deviance and rehabilitation, which (some) women were able to implement and enforce, but which were also used to limit (other) women's possibilities to those that fit within the schemata of mother-daughter relations. Histories of juvenile justice reform also make it clear that an abiding characteristic of maternalism was authority, vested in, and out of, particular constellations of gender, race, and class relations: maternalism was as much about transforming middle-class, white women into legitimate rulers as it was about transforming the socio-political landscape that they found so unfriendly to their concerns. In a juvenile court, these relations are easily understood as maternalist because of the age differences and corresponding relationships between the principal actors. Matronly justice officials enjoyed power over young, daughterly subjects. These projects are aptly named maternal justice.

But what happens when these same kinds of authority relations are exercised over adult women, as was the case in the Toronto Women's Court? As later chapters will show, a large number of women who appeared in the women's police court were themselves mature matrons. The daughterly deference required by maternal justice was not always easily translatable in adult court. In part for this reason, many scholars prefer to treat maternalism not as a politics in its own right but as a discourse that is rendered significant when combined with other governing strategies.⁷² Kelly Hannah-Moffat argues that the benefit of treating maternalism as a discourse is that it allows us to see both the internal logic of the politics and the way that discourse shaped and produced knowledge about the ostensible targets of maternal reform.⁷³ Similarly, Nicole Hahn Rafter challenges the presentation of the maternalists as unwitting victims of their own optimism and characterizes them, instead, as active agents in the exercise of power over vulnerable women.⁷⁴ Rafter turns the logic of maternalism around, arguing that middle-class maternal reformers deliberately infantilized criminal women to make it appear that they needed the intervention of middle-class women, when, in fact, middle-class women needed criminalized women to appear to be children so they could exercise authority over them.

Examining an adult court rather than a juvenile one forces a consideration of maternalism both as a rationalizing discourse for the governance of

young women's "precocious sexuality"⁷⁵ and as a disciplinary force through which hierarchical class and race relations were rendered natural through references to familial relationships. In other words, the maternalism that organized and helped legitimate the court was not about families per se; rather, it was about the authority of some women and the subordination of others. That this more authoritarian and, indeed, punitive aspect of maternalism was at least as important as its ostensibly protective and, even, subversive values was made clear in a speech by Margaret Patterson. Speaking as a magistrate, Patterson could, in a single breath, claim that "[c]rime is only a symptom of too much leisure, and it can't be cured simply by punishment" and declare, with some evident exasperation, "[s]ome women make homes unhappy and do not show any remorse ... It is all I can do to restrain myself from slapping these girls."⁷⁶ Maternal power in its fullest sense is revealed here. The existence of the Toronto Women's Court suggests, in itself, that *as* self-appointed social mothers providing the right kind of friendship and moral guidance to their social daughters, white, middle-class women required, and actively sought out, some disciplinary backup for their task.

I refer to the combination of maternalism, feminism, moral redemption, and coercion that was encapsulated within the Toronto Women's Court as feminized justice. As Chapter 2 explores in detail, it is because these pillars of the TLCW's broader reform campaigns coalesced in, and as, the Women's Court that this relatively unexplored reform achievement appeared, to them, to be one of their greatest. Importantly, the women reformers for whom the Women's Court was "our Court" did not perceive its contradictions as paradoxes at all. To the contrary, for them, the coercion, the authority, the moral policing, and the increased surveillance offered to them as a result of the court's existence *were* the "great achievement." Following their lead, I treat the Toronto Women's Court not only as an extra court in the network of police courts in Toronto, and not only as a site through which the moral capacities of Toronto womanhood were measured up (and often found wanting), thereby leading to the increased moral surveillance over women in the city and a more punitive policing of women's public personae, but also as a living experiment in feminist ideals. The Toronto Women's Court was a concrete manifestation of the feminists' complex but comprehensive platform for legal, moral, and sexual equality for women. This approach opens up the court as a significant site for exploration.

Women, Crime, and Archival Gaps

To say that the court was feminism in action, however, is not to be inattentive to the criminalized women who bore the brunt of feminized justice. To the contrary, as I shall show, the young women envisioned as the chief beneficiaries of the court were a minority of cases, and a great deal of imaginative work was necessary to maintain the court as a legitimate intervention into Toronto police court justice. Ironically, it required endless effort to insist that the court merely reflected a natural division between women's and men's legal needs. Looking beyond these efforts, I demonstrate that many women were deliberately silenced or ignored in the official narratives of the Women's Court, precisely because their presence threatened to undercut the very claim of the court being a "great achievement" in the first place. Since this analysis is concerned with relationships among women as they are visible through the Toronto Women's Court, these differing expressions of power, agency, resistance, and control are important ones. They are also complex issues involving, simultaneously, careful considerations of theory and method.

The viewpoints, agency, and power of the members of the TLCW are not difficult to assess. The very fact that their vision could be made real testifies to their power, their influence, and their organizational capacities to translate their politics into action. Indeed, by anchoring this exploration of the Toronto Women's Court in the claims of the TLCW, this book not only acknowledges these women's accomplishments but also argues that their agency with respect to the criminal law is an undertheorized aspect of their feminism that is deserving of exploration. Moreover, the fact that they were well-educated, influential, white, affluent, well-organized, and, as a result, prolific women means that it is largely through their records, their speeches, their case reports, and their writings that the Toronto Women's Court comes into view. However, despite a theoretical approach that takes seriously what they were attempting to achieve, along with an abundance of sources through which to document it, I also argue that their political activism was largely ideologically informed. Their views on women, crime, and justice were at least as influenced by what they did not – or did not want to – see as by what they did see. In this way, the Toronto Women's Court was an invention that, simultaneously, allowed the TLCW to position its members as the best arbiters of female justice. This power often came at the direct expense of other women in the city.

For this reason this book also contrasts the ideas of the TLCW with the experiences of those women charged with a criminal offence. This is both a difficult and contentious task, as the concept of experience, as an epistemological foundation of social history, has come under heavy critique. Joan Scott, for example, has challenged essentialist concepts of experience, arguing that there is no such thing as unmediated experience that stands outside discourse and that can be counterpoised as “real” to the social construction of that experience as a political process.⁷⁷ Instead of treating experience as “the lived realities of social life,”⁷⁸ and subjects as having “a pre-existing identity”⁷⁹ through which events, like a trial, are experienced, Scott argues that social historians must attend to the discursive processes that produce subjectivity and create the meanings by which these experiences gain currency. Thus, rather than attempting to arrive at the truth about the experiences of a group of women known as criminals, poststructuralist historians argue that “trying to distinguish falsehood from veracity is not only fruitless but meaningless.”⁸⁰ Instead, it is suggested that we focus on the various, sometimes complementary, sometimes competing, truth-seeking discourses that act as “strategic attempts to order disturbing events into credible narratives.”⁸¹

Although this approach to social history allows for a rich deconstruction of the narratives about crime and justice told by groups such as the TLCW – and, thus, it is employed here – it is only of limited use in an examination of an institution like the Toronto Women’s Court. In large part this is a methodological issue. Even if it could be said that all experience is mediated by discursive processes,⁸² for the archival researcher, it is also the case that all the evidence of these processes is not readily available for analysis. That is, if the members of the TLCW spoke – and spoke often – about their ideas for feminized justice, women charged with a criminal offence speak seldom, if at all. By and large, they were poor, sometimes homeless, often illiterate, and relatively powerless women. They have left few records of their own that speak to, or of, their interpretations of gender, crime, morality, or a specialized court established on their behalf. Their actual existence is noted only in the records of what others – the TLCW, prison and reformatory officials, the press, and so on – had to say about them. And not surprisingly, what others had to say about them is often not very flattering, and the comments are always made in the context of concerns that tell us more about the group speaking than the women being spoken about. Perhaps even more importantly, many women who did appear in the Women’s Court were never spoken of at all.

Part of what the Women's Court accomplished was the denial of agency to women charged with a criminal offence, likely so as not to upset the ordered narratives that gave rise to, and legitimated, the Women's Court and that granted authority to its proponents to speak about "criminal women" in the first place. Thus, although the reformers' narratives reveal a great deal about them, confining our studies to these ordering discourses ultimately only leads us to discoveries about the power of the powerful. Furthermore, I agree with Steven Maynard, who argues that it is also necessary to "historicize discourse itself ... Recognizing that discursive forms have a history, that is, analysing the material context of their emergence, is one interpretive move that makes the sharp differentiation between discourse and the material begin to fade from view."⁸³ Women charged with a criminal offence were an important part of the material context of the Women's Court: it was, after all, their object existence, if not their subjective interpretations, that gave rise to the need to "solve" the "problem" of women's crime. Their presence in the court must, therefore, be recounted.

For empirical data on charges and dispositions, I have used the city jail registers.⁸⁴ These are giant ledger books into which clerks entered the details and particulars of each person committed to the city jail for at least one night; consequently, they provide a wealth of empirical information on criminalized women. For each individual held in custody, the jail clerk was obligated to enter information under the following headings: date of entry, age, name, place of birth (if not Canadian-born, the number of years in Canada), city of residence, occupation, religion, educational status (illiterate, elementary, or superior), social conditions and habits (marital status and temperate or intemperate), offence, date of committal, date of sentence, when the sentence expired (at the city jail), sentence and period of same, by what authority committed, by what court tried, where discharged after leaving the city jail (another prison, bailed, released, etc.), the number of days in municipal custody, and, finally, how maintained in jail (municipal or provincial jurisdiction). Another set of city jail documents records the known addresses of persons committed to the local cells.⁸⁵ Together, these sources help to flesh out the identities and circumstances of women in conflict with the law. I have examined these jail records in three-year intervals, beginning in 1913, and collected information about 4,781 charges against women and 645 charges against men, for a total of 5,426 cases. These records do not speak to the "real" experiences of the women who faced a Women's Court magistrate between 1913 and 1934, but they do testify to a group of criminal women whose lives are deserving of examination.⁸⁶

Nonetheless, these sources only capture a partial view of women in court: those who were not jailed prior to, or because of, a court appearance are, obviously, not recorded. Therefore, I have also turned to other quantitative and qualitative sources to round out the picture of who appeared in the Women's Court. These include official crime statistics, which were collected by the police and the provincial authorities responsible for jails, prisons, and reformatories. Newspaper reports of police court cases provide another glimpse into the daily operations of the Women's Court, although these semi-regular columns need to be treated with some caution.⁸⁷ Early-twentieth-century newspaper reports were glib, formulaic, and tended to be highly selective in what they chose to cover and how they chose to cover it.⁸⁸ The cases reported in the press tended to be those that most closely fit with, and most strongly supported, the ideals of the Women's Court in the first place.⁸⁹ Harry Wodson, veteran police court reporter for the *Telegram*, evinced a particular, if parochial, antipathy for the "fluttering lady scribes" in the Women's Court, whom he accused of writing pathetic, maudlin, sentimental, and misleading reports to elicit reader sympathy for "the diseased figure of a fallen angel."⁹⁰ But even if Wodson was correct, newspaper police court columns in combination with jail records can be used to advantage. Although jail registers tended to give information about those women least likely to be positively affected by a separate court for women, newspaper stories tended to report on those cases that demonstrated the court's power for uplift. The names and cases in these two types of sources are rarely the same. Thus, the jail register might note that eight women were committed to jail on any one day in the Women's Court, while the newspaper might focus on the one woman who was dismissed from the court with a warning and who promised to take the right road. Vagrancy and theft charges were more commonly reported than those for drunkenness, and older repeat offenders were less likely to qualify as good copy than young women arrested for the first time. The police court columns, then, offer a view of the Women's Court not seen in the jail registers and vice versa.

Finally, I have followed those women who were sentenced from the Women's Court to the Andrew Mercer Ontario Reformatory for Females, which tended to keep careful case files on many of the women in its custody. After 1914 most of the women sentenced to the Mercer were given what were known as indeterminate sentences, which allowed magistrates to sentence offenders to custodial institutions for unspecified periods up to two years, less a day.⁹¹ Importantly, indeterminate sentences also made provincially sentenced prisoners eligible for

parole. Together, the indeterminate sentence and parole eligibility meant that Mercer officials took studious notes of inmates' behaviour, conduct, associations, work habits, and other relevant factors to produce a recommendation about early release to the Parole Board. To the extent that they could, they also kept track of women after their release; often, it was the Mercer staff who were designated as responsible for the women on parole. Parole Board files supplement the reformatory case files. Mercer staff, parole officials, and the courts had an active, triangular relationship with one another. Magistrates were required to submit their recommendation for parole along with their sentencing decisions. This court file was sent to the Mercer, along with the warrant of commitment stating the offence and the sentence, and was entered into the inmate's reformatory case file. Mercer staff then added their own case notes to the file, which was then submitted to the Parole Board for its deliberations. In addition, parole officers acted as intermediaries between the convicting magistrate and the reformatory. This included instances when there was a lack of clarity about the intention of the sentence or about the subjective interpretations of the candidacy for parole of any given inmate.⁹² Thus, for those women sentenced to the Mercer, some detailed files – including background histories, prior records, notes on behaviours and demeanours, and, sometimes, letters from incarcerated women themselves – are available to document the variety of experiences of criminalized women.

These multiple sources can still only tell us a fraction of the story of women's criminality and of the practices of the Women's Court. Nonetheless, the glimpses of women offenders provided through these sources serve as a counterpoint to the interpretations of their existence put forward by the TLCW. Together, these quantitative and qualitative sources reveal a picture of criminal women in Toronto that is very different to that imagined by the maternal feminists. This crucial juxtaposition is, I argue, sufficient to treat the statements about criminalized women not as revelatory discourses but as self-interested claims, to which criminal women's experiences are necessarily counterpoised. In this way I seek, whenever possible, to return agency to those women whose entry and exit from the Women's Court was often so disorderly to the TLCW that they attempted to ignore them altogether.⁹³

Organization of the Book

The first part of this book locates the Toronto Women's Court within its feminist origins and its functions as a police court. Chapter 1 offers an overview of

the Toronto Women's Court as an institution, tracking its development and changes over two decades and paying particular attention to the changes instituted by Margaret Patterson after 1922. The chapter also locates the Toronto Women's Court within the wider North American movement for more specialized courts in which white, middle-class, professionalizing women could exercise their authority over other women's legal dilemmas. Chapter 2 elaborates on the Toronto Women's Court as paradigmatic of feminized justice and continues the exploration of the court as a specific achievement of the TLCW. I demonstrate that the maternal feminists had a comprehensive political agenda with respect to criminal law and that this aspect of their feminism has been undertheorized. Locating the Toronto Women's Court within a broader platform of criminal justice reform undertaken by a TLCW committee named the Committee for an Equal Moral Standard clarifies why the TLCW called the Toronto Women's Court a great achievement. The chapter concludes, however, with the argument that because the members of the TLCW had a limited and, in many ways, self-interested view of crime and sexual justice, a broader view of the significance of the Toronto Women's Court and the meanings of justice for women in Toronto is necessary.

Chapter 3 provides an overview of women's crime rates as they are rendered visible through the extant records of the Toronto Women's Court. The statistics available in the local jail records paint a picture of female crime that is markedly different from that produced by either contemporary reform groups such as the TLCW or historians of female crime, both of whom tend to focus on young, single women who were charged mostly with vagrancy and sentenced to the Mercer Reformatory. Instead, the chapter draws attention to the significance of repeat offenders who were arrested principally for drunkenness. The repeat offenders tended to be over the age of thirty, Roman Catholic, and extremely poor and itinerant. When sentenced in the Women's Court, they were most likely to be sent to the Concord Industrial Farm for Women, where short-term detention, rather than reform, was the goal. I argue that the very existence of this group of older, unreformable, drunken women challenges the legitimacy of the Toronto Women's Court and forces a closer examination of its practices and claims.

Chapters 4 and 5 break down women's routes into and out of the Toronto Women's Court by the five most common offences leading to their arrest: drunkenness (23 percent), vagrancy (19 percent), theft (12 percent), bawdy house offences (20 percent), and breaches of liquor laws (8 percent). Chapter 4 examines

vagrancy and theft charges, as these two offences tended to bring in those women who most closely resembled the women envisioned as being in need of a feminized justice venue. Vagrancy has been studied closely by historians and criminologists, and the records from the Toronto Women's Court support claims that vagrancy was used to police sexual and racial boundaries based on hegemonic notions of white femininity. By contrast, theft has been largely unexplored in the history of women's crime. Yet, because theft occurred in a variety of places – on the streets, in department stores, and in domestic service employment relations – theft charges offer a glimpse into women's daily routines in the early decades of twentieth-century Toronto. In addition, theft, like vagrancy, offers a window into prevailing gender ideologies at the turn of the century because different gendered meanings were inscribed onto different kinds of thievery. By placing these offences together in this chapter, I show how many women – especially young, white women or women with claims to “decent” family belonging – could navigate a criminal charge by presenting themselves as “good” women. Women who rejected such self-presentations, however, tended to experience the brunt of the law, which was often justified as for their own protection. In these ways vagrancy and theft charges tested, and outlined the contours of, the legitimacy of the Women's Court itself.

Yet, if some women charged with theft and vagrancy failed to comport themselves in ways the Toronto Women's Court could understand, drunk women and women found in bawdy houses threatened to undermine the court's special status altogether. Chapter 5 examines these charges for what they can tell us about the limits of feminized justice. Women who drank and women who ran illegal liquor shops (after passage of the *Ontario Temperance Act* in 1916 and its replacement, the *Liquor Control Act*, in 1927) were a far cry from the reformable young woman who had temporarily lost her moral compass. Drunk women, in particular, offer special insight into the Women's Court as a project, because these women were most likely to be the repeat offenders whose revolving door relationship to the criminal justice system belied the promise of the court as a site of redemption. Moreover, these same women were also those most likely to work in, or to run, the city's disorderly houses. Indeed, the records of the drunks and the prostitutes show them living, working, carousing, and getting arrested together, indicating a kind of women's community not contemplated by the TLCW. Their presence in the courtroom also signals a form of female knowledge of criminal justice mechanisms that rivalled the claims of middle-class women reformers. I argue that it is for these reasons that the TLCW almost

never spoke of these women in the entire twenty-one-year period under review. It is a silence that is often replicated in histories of female crime and one that this chapter seeks to confront.

Chapter 6 places women charged with a criminal offence and maternal feminists in court together through a close examination of the tenure of Dr. Margaret Norris Patterson. Specifically, the chapter explores the tenuous authority exercised by Patterson as a woman magistrate, as she attempted to bridge the twin aims of protection and punishment in the court. Her controversial dealings with two women in her court – both of whom, in different ways, challenged her legitimacy and opened up broader debates about the role of women in legal authority – reveal the complexities of this experiment in feminized justice for legal professionals, women reformers, and criminalized women. The Conclusion takes up these questions once more. Through a re-examination of the apparently contradictory trends evident in the twenty-one-year political history of the Toronto Women's Court, the concluding chapter reflects on what may be learned from this history of different women's struggles with the criminal law and the meaning of justice. Ultimately, the final word on the Toronto Women's Court – as a feminist project, a police court, an experiment in woman-centred criminological reform, an institution, and an invention – cannot be made. As the following chapters will show, the Toronto Women's Court offered vastly different meanings to the very different women who encountered it. It is precisely this that makes its place in women's legal history so compelling.

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The Toronto Women's Police Court as an Institution

Between 1913 and 1934, the Toronto Women's Court was a site through which the organized women's community in Toronto could act as arbiters of local justice, at least insofar as criminal charges against or involving women were concerned. In this endeavour the Toronto Local Council of Women (TLCW) was inspired by a variety of political movements and developments occurring across North America that helped to convince its members that a separate court was possible and, when necessary, defensible. One of these developments was the *Canadian Juvenile Delinquents Act* of 1908 and the subsequent opening of juvenile courts in Ottawa and Toronto in 1910 and in Montreal in 1912.¹ Juvenile courts, especially those established specifically to hear cases involving girls, were sites for the elaboration of maternal justice through which predominantly white, newly professionalized, middle-class feminist reformers drew on their "expert" knowledge as matronly subjects to successfully critique, and enter into, the criminal justice system to attend to the specific needs of young girls and women.² At the same time, there existed a parallel development in socio-legal structures, namely, the emergence of increasingly specialized courts that focused on socialized (as opposed to adversarial) justice for specific types of offences, including, importantly, domestic mediations courts (which would

evolve into family courts) and women's and morals courts.³ Like juvenile courts, these courts, and the women who advocated for them, were intimately linked to the Progressive-era movement of urban reform, a movement based on a belief in science, efficiency, and technocracies that drew upon its members' increasing authority as university-trained experts and their political acumen and support for a welfarist regime that would actively and rationally care for the citizenry. These contemporaneous and complementary developments were characterized by their focus on crime as a social, rather than a narrowly legal, problem.⁴ Both of these court reform initiatives were also clearly important factors that helped to shape the Toronto Women's Court.

But as much as it was inspired by these similar socio-legal developments, the Toronto Women's Court does not map neatly onto either the juvenile or socialized justice models. In particular, the maternalism that is associated with juvenile justice was much more difficult to articulate and justify when the subjects did not embody, literally, let alone metaphorically, delinquent daughters.⁵ Nor was the Women's Court quite like a domestic mediation court, despite the fact that Margaret Patterson established an informal domestic mediation court during her tenure as magistrate, an accomplishment that anticipated successful arguments for family courts and was consistent with the desire on the part of TLCW reformers to soften the hard edges of adversarial justice where women were concerned. It is more accurate, then, to say that the Toronto Women's Court was an important bridge between these two well-studied moments in the development of modern court architecture; it incorporated elements of both, but it was not fully one or the other.

This chapter sketches an overview of the institutional location and political project of the Toronto Women's Police Court. The court's history can be neatly divided into two parts: from 1913 to 1921, it was presided over by Colonel Denison, a male magistrate; in January 1922 Margaret Patterson was appointed as magistrate, and the character of the court changed accordingly. Patterson was unceremoniously removed from the bench in 1934, and a legally trained magistrate, Thomas O'Connor, KC, was appointed to the Women's Court bench. By then, however, the political force of the women's movement, and the Women's Court, was spent. This chapter traces the ebb and flow of the court and lays out the broad strokes of its significance, to the women's movement, in the court system, and to the broader project of legal reform in Toronto.

“The manly thing to do”

Not surprisingly, the members of the TLCW were delighted with the opening of the Toronto Women’s Court and declared themselves appreciative of “the outcome of many years of struggle for its establishment and very grateful to Dr. Margaret Patterson and her splendid, self-sacrificing committee.”⁶ But they were not the only ones to welcome this reform. Generally speaking, the Toronto Women’s Court was warmly received by a variety of court watchers, newspaper reporters, and public officials. Police Chief Grasset hailed it as “a step in the right direction.”⁷ Court reporter Robson Black saw it as “an omen of a general thaw” in police court treatments of crime.⁸ And the usually anti-feminist journal *Jack Canuck* claimed that “[t]he new and humane order of things will work wonders in the reclamation of the unfortunate daughters of Eve who have, perhaps, taken the first false step ... The erring sister should be given a chance. It is the manly thing to do.”⁹

The writer for *Jack Canuck* was not the only person to accredit the existence of the Women’s Court to male chivalry. Magistrate Denison, said to be “at all times, in all places, and under all circumstances courteous to the gentler sex,” saw himself as particularly instrumental to its formation.¹⁰ Appointed to the police court bench in 1877, Denison was Toronto’s most famous magistrate for forty-four years, until his retirement in the summer of 1921. According to one historian, Denison was “the living embodiment of the law in Toronto.”¹¹ In his own *Recollections*, Denison prided himself on his role in the establishment of the Women’s Court, claiming that he had facilitated the opening of the Women’s Court in advance of provincial approval: “After this Court had been working for some time and had attracted a good deal of attention, the Attorney-General, Mr. Foy, meeting me casually said: ‘What is this I hear about a Women’s Court being established? How could that happen without my knowing anything about it?’ I replied, ‘You were busy, and I did not want to bother you, as it was no trouble to me to establish it ... and I was not bound to hold my court in any particular room.’”¹² Denison went on to describe the Women’s Court as “an excellent regulation” and explained to his readers that his approval for the Women’s Court was based in his belief that it would play an important part in “prevent[ing] a young girl from going astray.”

Despite the echoes of the TLCW’s court reform ideas in this last statement, Denison was by no means of a mind with Toronto’s reformers. His various

diaries and scrapbooks give no indication that he ever socialized with the women and men of the broader Toronto moral reform movement, of which the TLCW was an important part.¹³ To the contrary Denison was “of the governing class”¹⁴ and “one of Canada’s leading supporters of British imperialism.”¹⁵ His position as senior police court magistrate in Toronto was due more to ties with the governing Liberal Party and his personal friendship with Ontario premier Oliver Mowat.¹⁶ Although a lawyer, Denison evinced an interest in neither the causes of crime nor the law. He tended to view criminal behaviour through a deterministic lens that attributed disorderliness to the working class and through which vice was interpreted based on racial stereotyping.¹⁷ He was also famous for his assembly line approach to justice and his contempt for legal niceties.¹⁸ He preferred his own sense of British fair play and intuitive common sense to legal technicalities and proudly professed: “I never allow a point of law to be raised. This is a court of justice, not a court of law.”¹⁹

As a result Gene Homel argues that a “whiggish view of history” that “[fails] to examine critically the disparity between reform pronouncements and actual accomplishments has contributed to what is probably an inflated assessment of reform advance in the court system.”²⁰ John McLaren’s survey of Denison’s decision making with respect to prostitution-related offences confirms this view. Although inclined to be harsh with male procurers and pimps (recall that Frank M. received a harsher sentence than Bridget D. on the first day in the court), Denison remained unconvinced by various reform efforts to deal more harshly with bawdy houses.²¹ Despite a moral campaign, led largely by the TLCW, to have bawdy houses treated more rigorously by the courts (a campaign discussed in more detail in Chapter 2) and subsequent changes to the *Criminal Code* that transformed bawdy house charges from summary convictions to indictable offences with proportionately greater maximum sentences, McLaren finds that “[t]hese changes seem to have [had] little perceptible impact on Denison’s sentencing pattern [which] suggests that ... even when it was given legislative approbation, [Denison] continued to administer the law in the conservative and determinist spirit which had always guided him.”²² Homel reaches a similar conclusion. Noting Denison’s “genial Toryism” and general paternalistic approach to crime and criminal justice, Homel argues that “[n]otwithstanding the evolution of separate trials for women and children, the addition of court translators, and the like, there was essentially little implementation of these reform goals in the police-court system while Denison presided as chief magistrate.”²³

Homel is partially correct. As later chapters will show, as far as women charged with a criminal offence are concerned, there is little evidence to suggest that the mere existence of the Women's Court had any great impact upon either their entry into police court or their exit from it. Indeed, apart from the exclusion of a public gallery, Denison's court did not entail any substantive changes in women's relationship to the criminal law. But Homel underestimates the significance of the Toronto Women's Court as an ideological event, especially for the local women reformers whose vision was what had been made real by its establishment.

Although paternalism has long been a feature associated with local judicial practices, the Women's Court was celebrated largely because it brought the values of maternalism to the low-level police courts. White, middle-class women purposefully adapted a familial model as an organizing principle for the court. In its original guise, this family was governed by Denison, who sat in as the *paterfamilias*. As far as the members of the TLCW were concerned, the existence of a father figure was only a temporary glitch, and they argued continuously for a female magistrate. The model of the family was also apparent in the Women's Court design, location, and function. Held not only as a separate court but also in a distinct location away from the other police courts, its architectural design and institutional setting helped to make it more than simply one more court in the system of police courts in Toronto. On the court's opening day, the *Telegram* reported that the proceedings in a committee room in City Hall operated without much formality and described the new site as "a large square room with softly covered and decorated terra cotta walls. There are pictures too, comfortable seats, and the railed dock is absent. Instead there is a wide open space in front of a long table, behind which Magistrate Denison sits."²⁴ Similarly, the reporter for the *Daily News* could not refrain from commenting on the "strange surroundings, so removed from the thought of crime or prison."²⁵ And the *Globe* remarked on the proceedings: "To the onlooker it seemed all as simple as being called to the teacher's table at school."²⁶ The home-like atmosphere, the informal hearings, the absence of any of the trappings of the adversarial trial process, the likeness to a schoolroom in which educative discipline was benevolently dispensed, these, along with the substitution of the public gallery with reform-minded women "who attended the court regularly and did their best to help the fallen girls and women," were what made the Toronto Women's Court unique.²⁷

Nonetheless, under Denison's tenure the Women's Court was never just about women, and the court's docket included men charged with morals

offences (a police category that distinguished public order offences from property crimes and crimes against the person) as well as women charged with all criminal offences. In this mandate the Toronto Women's Court borrowed from but also departed from emerging US models of specialized justice. In Chicago, for example, the development of a "morals court" was inspired not by a desire to create a gender-specific legal experience for lonely and impressionable city women but to deal with a specific array of offences, most notably prostitution, fornication, obscenity, pandering, and other "vices."²⁸ In other words, although the regulation of women's bodies was a central aim and function of these Progressive-era US morals courts, they were formally organized by criminal law categories, not gender, and they therefore enjoyed a legal scope wide enough to bring in a large number of male offenders. By contrast the Toronto Women's Court was meant to function first and foremost as a form of legal protection for women or, as Denison himself put it, to keep "female wrongdoers away from the mob."²⁹ Yet, because the Women's Court drew on the logic of US morals courts, its jurisdiction also extended to cases in which men were accused of morals crimes involving women (typically, bawdy house offences). This combination of gender-specific and morals cases made for a sometimes confused appearance. On the one hand, the Toronto Women's Court mirrored its US counterparts in the "expanded scope of state intervention and centralized administrative powers that [it] brought to public morals," powers that could be extended over men as well as women.³⁰ On the other hand, the Toronto Women's Court's decidedly more inchoate organization by gender, rather than by *Criminal Code* categories, meant that most men charged with morals offences other than those related to houses of ill fame were not shepherded into the court.

Adding to this confusion was the fact that men continued to be important players in the operation of the court, as clerks, witnesses, police officers, lawyers, and, of course, between 1913 and 1922, the magistrate. That the members of the TLCW were greatly disappointed that the court was presided over by a male magistrate is evident in the fact that, only three months after the court was established, the TLCW sent a delegation (headed by Margaret Patterson) to City Hall to "see about the appointment of a Judge of the Women's Court."³¹ Given that Denison already sat on the Women's Court bench, one assumes they meant a female judge.³² The placement of women in positions of authority within the criminal justice system – as magistrates, policewomen, matrons and wardens, parole and probation officers, and so on – was central to the politics of feminized justice.³³ Dorothy Chunn places this movement for women judges within

the broader context of the movement for socialized justice, which was, in part, characterized by “the assumption that ‘doing good’ should take precedence over legal rights in the administration of family-welfare law.”³⁴ Feminists, acting in accordance with these politics, expected women magistrates to bring a new perspective to the adjudication of women’s criminal cases. Beverly Blair Cook refers to this perspective as “moral authority,” a particular form of expertise that women brought to the courts that identified them with “the nurturing cooperative values attributed to feminist jurisprudence.”³⁵ Accordingly, women activists favourably contrasted their moral authority to the judgements of “the average male Solon.”³⁶ Whereas men tended to be interested in the crime, women were interested in the criminal; whereas men were tied to legal precedent, women advocated social casework in the courts; and whereas men were, at best, indifferent and, at worst, hostile to women’s experiences, women could offer friendly and understanding counsel to “girls” in trouble.

In their efforts to secure a female magistrate, the members of the TLCW were likely influenced by developments in other jurisdictions such as Los Angeles, where Georgia Bullock had been named as judge in the Women’s Court.³⁷ Bullock was a single mother and a graduate of the University of Southern California Law School who, while a law student, acted as a voluntary probation officer for women convicted in the police courts. The Los Angeles Women’s Court had been established in 1913, in large part as a result of the lobbying efforts of California’s newly enfranchised club women, who, like their Toronto counterparts, argued that women charged with a criminal offence needed a closed court to protect them from the morbid curiosity of male onlookers. The formal establishment of the court itself, however, was largely due to the amenable political sentiments of Thomas White, a police court judge. Judge White, clearly sympathetic to the idea that women had distinct legal needs, appointed Bullock as an assistant judge in the newly created Women’s Court. Between 1914 and 1917, Bullock worked in this assistant capacity, without pay or formal status, while Judge White formally legalized her decisions. In 1924 Bullock was granted formal recognition as a paid judge in the Women’s Court.

These parallel developments, however, seem not to have moved either Magistrate Denison or the provincial government. In a 1914 speech to the Social Service Congress about the Toronto Women’s Court, Margaret Patterson noted, with pragmatic resignation: “This court is not yet all that we hope to see it, but it is a step in the right direction and an earnest of the time when we shall have a night court for women with a woman on the bench.”³⁸ Once again this motion

implicated developments south of the border. In Chicago and New York, the women's and morals courts that had emerged not only employed female officials as assistant judges, lawyers, policewomen, and probation officers but also operated as night courts. The logic of having courts run at night was based largely on an understanding of women's crime as almost exclusively prostitution-related. The Page Commission, empanelled by the City of New York to investigate the court system, reported in 1910 that night courts were an important development if women's cases were to be given the treatment they deserved. The reasoning used by the commission would have been intimately familiar to Toronto's reformers: "The establishment of a night court for women only will undoubtedly [sic] limit the number of doubtful male characters who are seen from time to time among the spectators at the court."³⁹ Separate night courts for women were established in Manhattan and the Bronx in 1910, and they clearly provided another model for Toronto's court and moral reform advocates.

Nonetheless, the movement for a separate night court for women was no more successful than the efforts to have a woman appointed to the bench. The TLCW turned to another tactic. In January 1915 the council women engaged in an "animated discussion," during which they resolved "[t]hat this Council recommends the appointment of a woman physician for all cases in which women are concerned who shall be present at all trials of same and have full powers of interrogation of accused and witnesses on equal terms with the Crown Attorney or the presiding magistrate."⁴⁰ Although this resolution was not immediately successful, it, along with the other various efforts to reform the Women's Court, paint a clear and comprehensive picture. Toronto's maternal feminists did not trust men to implement woman-centred and woman-positive measures. Achieving formal legal change without the (female) personnel to oversee its implementation was only the first step. The appointment of Margaret Patterson – physician, feminist, and moral reformer – in 1922 was the essential second step toward the achievement of feminized justice.

The Appointment of Margaret Patterson

When, in 1920, Denison announced his imminent retirement, the TLCW "and kindred organizations" were quick to act, sending a deputation to the newly elected United Farmers of Ontario (UFO) and "asking for legislation providing for and, in due course, the appointment of a woman magistrate in Toronto."⁴¹ In 1921 the UFO, attentive to the demands of its recently enfranchised female

supporters, amended the *Police Magistrates' Act* to enable any Ontario city with a population over one hundred thousand to appoint a female magistrate.⁴² On 4 January 1922, the government announced that it had selected Margaret Patterson to sit on the Women's Court bench.⁴³ Needless to say, the TLCW rejoiced at the news, declaring: "We worked for the appointment of a woman magistrate, we recommended the appointment of Dr. Margaret Patterson and now we will certainly stand behind her."⁴⁴

The support of the TLCW was crucial, because the decision to appoint Patterson was controversial. The provincial government had overstepped its jurisdiction: the cities paid the salaries of police court magistrates, and they were, therefore, entitled to appoint them. Toronto City Council was initially opposed to Patterson's appointment, especially to having the appointment imposed upon it by the province. The City threatened not to pay Patterson the \$3,500 per year salary (and even suggested she work without remuneration), and it acquiesced only in the face of a mounting female campaign in support of Patterson's appointment. A deputation of women's organizations, led by the Local Council of Women, called on the City Council to urge it to allow Patterson's appointment. The Woman's Christian Temperance Union also made it clear to the City that they would "back [Patterson] up and help her in this in any way we are able," including further actions against the councillors if they did not agree to more graciously accept Patterson as a salaried magistrate.⁴⁵ The City backed down from its challenge.⁴⁶

Patterson herself stayed away from this debate, and other than to evince surprise at the announcement on 4 January 1922, she refrained from comment. She claimed to have first learned about her appointment when the press asked her for a statement about it and insisted that she had not sought out the position. At first, she said, she was not sure if she would accept it, demurring to her role as mother to a thirteen-year-old son, Arthur. "It wasn't until deputations kept coming that I took the matter seriously," she told the *Star* on 6 January. There is some reason, however, to doubt Patterson's passive role in her appointment. Patterson was one of the women elected by the TLCW to represent it in its lobby for a female replacement for Colonel Denison.⁴⁷ One month later Patterson withdrew from this committee. No reasons are given for her removal from the delegation, but perhaps her claims to having no idea that she would be selected for the magistracy and her insistence that she did not seek out the position are less credible in light of this withdrawal. Indeed, Patterson was nominated for president of the council that same year, and she withdrew her

name from that nomination as well. In 1921 Patterson was chosen by the TLCW as its recommendation for the Women's Court bench. No reasons are given for this selection. The minutes tell us only that the TLCW considered three women for the position: Margaret Patterson, Charlotte Whitton, and Mrs. (Emma?) O'Sullivan: "After much discussion, Dr. Patterson was chosen as our nominee."⁴⁸ She did not withdraw her name from that competition.

Dorothy Chunn has argued that Patterson's appointment was the product of political pragmatism.⁴⁹ Pointing to a host of external factors, including a UFO government that was "unencumbered by legal knowledge," a premier and attorney general intent on enforcing the *Ontario Temperance Act*, and a constituency of rural men and women for whom Patterson's links to the Department of Agriculture's Women's Institutes, made her "not only the darling of urban, Protestant, middle-class women but also of farm women."⁵⁰ Chunn concludes that Patterson benefited from being "the 'right' woman in the 'right' place at the time."⁵¹ Chunn's argument, however, is based on her premise that it was not Patterson who initiated the process. That is, Chunn argues that because Patterson did not seek the position, it behoves historians to examine who did decide to appoint her and why. The evidence presented above may indicate that this premise is in error and suggest, instead, that Patterson had grander designs than she admitted in public. This possibility does not necessarily detract from Chunn's overall arguments about the constellation of events that made Patterson's appointment a "timely coincidence of interests," but it does indicate that Patterson herself may have been one of those interests.⁵² Unfortunately, the lack of historical records about how it was that Patterson came to be the TLCW's and the government's nominee makes it difficult to know with any certainty her own agency in the process. However it transpired, by 5 March 1922 Patterson was presiding over the Women's Court. For the next twelve years, Deputy Magistrate Doctor Margaret Norris Patterson would hear approximately two thousand cases per year, until she was removed from the bench in November 1934.

The "Right Sort of Woman"

"I am pleased," announced Doctor Augusta Stowe-Gullen upon hearing the news of the appointment of her colleague and friend to the magistracy, "because I feel Doctor Patterson to be so eminently fitted for the position. It is so necessary to have a woman to work among the women and children who

come within the jurisdiction of the court, but more necessary that it be the right sort of woman.”⁵³ This sentiment was echoed by many reform-minded individuals, who similarly commented on the unique suitability of Patterson for the post. Upon learning of her appointment, Dr. R.R. McClenahan, director of the Venereal Diseases Division of the Board of Health, wrote to Patterson to congratulate her and told her, “[Y]ou are especially well qualified for it. Personally, I am very well pleased that you are a physician because I realize that you will be better qualified to handle girls who are brought up for vagrancy and who are found to be infected with venereal diseases.”⁵⁴ Ethel Chapman, writing for *MacLean’s*, opened her article on Margaret Patterson within the same framework of the new magistrate’s compelling credentials: “Just the matter of getting a woman appointed to the office of police magistrate might not be such a forward step. The thing that matters is that she be the right woman. If a woman could be appointed to such a place by virtue of her social prestige or her political influence or her marriage the result might amount to almost a tragedy. When she *grows* into it as Dr. Margaret Patterson has done, the work may be said to be fairly safe in her hands.”⁵⁵ Patterson herself shared these beliefs about securing the right women for the work. Prior to, and then immediately after, the establishment of the Women’s Court, she spent many hours organizing, and then monitoring, women volunteers for the court: “The women were rather carefully chosen – [Patterson] wanted no sensation-mongers in the court room and if any woman could not keep her appointment, instead of having her send a substitute, the doctor filled the vacancy herself.”⁵⁶ Clearly, Patterson’s qualifications for the magistracy did not flow from her essential qualities as a woman. To the contrary, it was her own experiences and political philosophies that qualified her for the job.

Knowledge of Patterson’s personal background and diverse activities, therefore, is necessary to understand her appointment to and practices as magistrate in the Toronto Women’s Court.⁵⁷ By 1922 Patterson had amassed considerable experience in a variety of works that led her supporters to believe that she was the right sort of woman for the post. In addition to being, as one newspaper reporter described her, a “wife, a mother, a doctor, and a trained nurse,”⁵⁸ Patterson had an extensive work history and background as a missionary, loyal imperial subject, teacher and author, social service worker, police court observer, patriotic war worker, and effective activist for women. It was all of these experiences that made her such an enthusiastically supported choice for magistrate.

Born Margaret Norris in 1874 to parents James and Sarah and into “one of the well-known Scotch farming families in Perth county, Ontario,” she completed one year (1898) at the University of Toronto’s Women’s Medical Centre and then attended Northwestern University in Chicago, where she received her Master of Surgery degree.⁵⁹ After doing a one-year internship at the Detroit Women’s Hospital, she joined the American Presbyterian Women’s Mission Council and, in 1900, was sent to India as a medical missionary. There, she enjoyed an illustrious and “unusually interesting” career.⁶⁰ From 1900 to 1907, she was the director of the Seward Memorial Hospital in Allahabad, during which time there was an outbreak of the bubonic plague, and “she distinguished herself by organizing a system of plague relief camps, isolation camps and inoculation stations.”⁶¹ For this work she received the Kaisar-i-Hind Medal from King Edward VII at his coronation. Between 1903 and 1905, she acted as medical adviser to Lord Kitchener in an investigation of the social and moral conditions of the army in India. Her noteworthy activity was to open and supervise a rescue mission for camp followers. Additionally, between 1903 and 1910, she was a professor of obstetrics at the North India College of Medicine, and she wrote a textbook, used in public schools in India, on physiology and hygiene. On 1 January 1906, she married physicist John Patterson, a fellow Ontarian working as an imperial meteorologist for the Indian government. They had two children, one of whom died due to “the trying climate of India.”⁶² Because of John’s ill health, the Pattersons – Margaret, John, and their infant son, Arthur – returned to Toronto in 1910.⁶³

For reasons unknown, Margaret Patterson did not practise medicine again. She did, however, put her medical knowledge to use in her commitment to social service. During the war she garnered considerable respect for organizing Red Cross work, lecturing to St. John’s Ambulance trainees, and taking charge of nursing at a convalescent hospital for returning soldiers.⁶⁴ After the war, an outbreak of influenza created a public health crisis and Patterson again rose to the occasion: merging her medical knowledge with her social service orientation, she became a member of the Ontario Emergency Volunteer Health Auxiliary and gave lectures to women volunteers at Queen’s Park on how to treat people in their own homes. As one contemporary observer approvingly wrote, “[d]uring these years she was on duty practically day and night, training and organizing some thousand girls for voluntary aid work – going here and there to give instruction in practically every branch of Red Cross work.”⁶⁵

More broadly, Patterson devoted herself to Toronto's reform politics and became almost immediately one of its more energetic figures. She joined the Toronto Local Council of Women and the Presbyterian Social Service Council shortly after her arrival and quickly became involved in some of their central activities, including leading her self-sacrificing committee into the police courts.⁶⁶ In 1912 Patterson was elected as the convenor of the TLCW's Committee on Laws for Women and Children and as the council's vice-president.⁶⁷ In January 1913 she was elected as convenor of the TLCW's Committee for an Equal Moral Standard and the Prevention of Traffic in Women (EMS Committee). She served as the council's EMS Committee convenor only until 1915, when she was nominated by her council for, and won the position of, EMS Committee convenor for the National Council of Women of Canada, a position she held until 1920. Patterson ensured continuity on the EMS Committee in Toronto by nominating one Mrs. Woods as her successor. When Mrs. Woods could not attend TLCW meetings, Patterson spoke in her place. Patterson would maintain a keen interest in the work of this committee for almost as long as she was active with the council.⁶⁸

Patterson was also an active member of the newly formed Women's Institutes, a government-sponsored organization for rural women whose mandate was to foster an acknowledgment of women's contributions to family farming and, thus, to national prosperity.⁶⁹ Loraine Gordon notes that between 1916 and 1919 alone, Patterson gave forty-one lectures to the Women's Institutes.⁷⁰ From 1920 to 1930, Patterson served as convenor of the Women's Institutes' Standing Committee on Health and Child Welfare, and from 1928 to 1930 she was the provincial chair of this same committee.⁷¹ Indeed, in 1927 Patterson attended a special meeting of the TLCW as a representative of the Women's Institutes. She also once attended a TLCW meeting as a representative of the Social Service Council in 1917. Patterson was also affiliated with the Canadian Purity Education Association and the Young Women's Christian Association, for which she established a Department of Moral Health.

Patterson's appointment to the Women's Court bench on 4 January 1922 did not bring an end to her commitment to the council and its work. In that same year, on the recommendation of the TLCW, she was sent as one of Canada's representatives to the Pan American Criminology Conference in Baltimore, a trip that delayed her taking the Women's Court bench until May.⁷² In 1923 she became the convenor of the Committee on Mental Hygiene, a position she held

until 1932. By 1926 Patterson was being celebrated by the council members as an exemplary member. In that year the Provincial Council of Women moved that Patterson be made an honorary member of the National Council of Women.⁷³ In 1927 members of the TLCW moved that they would “recognise the work of our woman magistrate, Dr. Patterson, and give a luncheon in honour and appreciation of her work.”⁷⁴ This luncheon was to be organized by the EMS Committee. In January 1929, in the midst of a scandal over her court (see Chapter 6), Patterson again received the full support of the council, which “tender[ed] to Dr. Margaret Patterson their thanks and appreciation of her wonderful work during her seven years on the bench.”⁷⁵ It was not until 1932 – two years before Patterson’s forced removal (at the age of fifty-eight and after twenty-two years of active social service work in Toronto) from the Women’s Court bench – that Patterson disappears from the council meeting records.

Margaret Patterson’s Court

In addition to her long career in reform politics, Patterson managed to effect some significant changes to the Women’s Court during her twelve-year tenure on its bench. To appreciate her achievements, it is important to recognize that Patterson inherited quite a different court from the one established by her predecessor, Colonel Denison. As an incoming magistrate, Patterson was assigned a broad-based jurisdiction that encompassed “[a]ll women accused of crime and men jointly charged with women. All sexual offences in which a woman was in any way involved. All prosecutions under the Venereal Diseases Act. All Domestic Relations Cases.”⁷⁶ This mandate was distinct from the one that Denison had undertaken in two ways. First, this mandate swept more men into the Women’s Court, focusing as it did on women as accused *and* as victims. Second, Patterson’s jurisdiction over domestic relations cases expanded her reach and allowed her to “try all cases of domestic infelicity, from a bad temper to bigamy.”⁷⁷ Thus, immediately upon taking the bench, Patterson effected what Denison would, or could, not: she made the court a site of redress for women as well as the venue for the hearing of their criminal cases.

More important than the fact of her jurisdiction, however, was the way in which Patterson followed through on this mandate. She reorganized the Women’s Court into two parts: the first continued the practices of her predecessor, that is, trying criminal cases that involved women; the second served as an informal domestic mediations court in which women complainants could bring

cases of “domestic infelicity” to a sympathetic judge. Patterson signalled her feminist intentions by making it clear that domestic cases were her priority as an incoming magistrate. In all of the newspaper interviews about her appointment, she iterated that she did not see her mandate as “bench work only”; rather, she repeated, “I shall want quiet office hours that I may be consulted.”⁷⁸ The domestic mediations court was the result of these private consultation sessions: “The Court was always cleared of both spectators and press before hearing Domestic Relations cases as any publicity is detrimental to re-establishing the home.”⁷⁹ If Colonel Denison had been the living embodiment of the law in Toronto, then Margaret Patterson was the living embodiment of feminized law in Ontario.

Patterson’s domestic mediations court was never a formally constituted court. Rather, it should be viewed as a streamlined caseload. Dorothy Chunn has written extensively about Patterson’s approach to this caseload, noting that the informality, the closed courtroom, and the increasing use of supervision and follow-up work with troubled households were all consistent with, and offered concrete ground for experimentation with, socialized justice.⁸⁰ The movement for domestic relations courts was growing at a rapid pace by the early 1920s and emerged as one of the central demands of the national and local social welfare movements across North America. On 16 May 1922, at its regular monthly meeting (and shortly after Patterson had begun her work in the Women’s Court), the TLCW passed a motion that indicated its inclusion in this movement: “Resolved: ‘That a Court of Domestic Relations be established in all large cities in Canada.’”⁸¹ In February 1923 an article that appeared in the journal *Social Welfare* described exactly what the term *court of domestic relations* was to mean: “[T]he term is used to denote a court established to deal with cases of non-support and difficulties between man and wife. Such a court implies the consideration of the family as a unit ... The Court of Domestic Relations exists ... not for the purpose of preventing families from becoming a public charge ... but for the purpose of rendering active assistance to families in order that they may find their own normal place in the community.”⁸² This reform impulse focused on switching family court matters to “the attitude of *Rex pro* the accused, and not *Rex vs.* the accused.”⁸³ Relying heavily on non-legal experts, such as social workers, probation officers, and psychiatrists, those who advocated domestic disputes mechanisms hoped to uphold and make it possible for even poor and working-class families to achieve the middle-class model of the nuclear family as loving, interdependent members working together toward a

unified goal.⁸⁴ Not surprisingly, one of the most committed proponents of this ideal was Margaret Patterson, whom Chunn describes as “a vocal proselytizer for socialized police court work.”⁸⁵

Although domestic relations courts are rightly seen as progressing out of the juvenile courts of the 1910s and 1920s, Patterson’s practices in her own, informal, domestic relations court also advanced the cause of socialized justice.⁸⁶ Patterson described her work to the readers of *Social Welfare* in 1925: “Some idea of the extent of the work in this Court may be gained from the fact that during the past year over sixty thousand dollars was collected from husbands who were trying to shirk their duty. The chief object of this Court, however, is not to collect money, but to re-establish homes, and much valuable work has been done in this connection and many families re-united.”⁸⁷ Domestic relations cases were also those that were most amenable to an explicitly feminist world view. In the domestic relations side of the Women’s Court, women could seek sympathetic legal protection, even when the legal and social status of wives placed them at a considerable disadvantage. As a magistrate, Patterson was able to put into practice her own ideas about marital equity:

Perhaps the greatest cause of domestic unhappiness is the economic position of the wife. As long as the wife and mother is regarded as non-productive in a commercial sense and dependent upon the charity of her husband for her food and clothes, to say nothing of any spending money she may receive, it is surely an unbusinesslike partnership. The wife is in partnership with her husband in the conservation if not the production of the wealth that supports the home, and as such is entitled to some part of the profits of that partnership ... At his death she is entitled to one-third of his property, why not during his life?⁸⁸

For those women in search of legal remedies for husbands who either failed to support or deserted them, the existence of a domestic mediations court, with a feminist magistrate on the bench, must surely have been a welcome innovation.

Given her commitment to the practice of hearing cases of a domestic nature and her pioneering work in this regard, Patterson was all the more insulted when, in 1929, the province announced that it was removing her jurisdiction over domestic relations cases and, instead, formally establishing a separate Domestic Relations Court (DRC) in which Patterson was, at best, to play a minor part. Judge Hawley S. Mott (formerly of the Juvenile Court) was appointed to the bench of the new court, and Margaret Patterson was offered a position

in the court, but one that would be under the direction of Mott. Even worse, in its original guise, the DRC was planned as a substitute for the Women's Court. Members of the TLCW were outraged and passed the following resolution:

Whereas the reasons for the creation of the Women's Court still exist, namely: *First* – that there is need for a place where women wronged by men may give their evidence before a woman magistrate and unembarrassed by the presence of men not connected with the case. *Second* – There is need for a place from which men not necessary to the trial are excluded to prevent the likelihood of such men annoying them later. *Third* – There is need for a place where the court has sufficient time to enter into all the detail necessary to settle satisfactorily Domestic Relations troubles, And, whereas a woman who has been wronged is more worthy of consideration than the man who has wronged her ... Therefore be it resolved that this meeting of the L.C. of W. – representing 63 organizations of women in the city of Toronto – expresses its appreciation of the work done by the Women's Court and strongly protest against any curtailment of its power and scope.⁸⁹

This threat to the court and the potential demotion of Patterson also engendered the opprobrium of other Toronto reform groups, including the Ontario Liberal Party Women, the Ontario Conservative Party Women, the Toronto Ministerial Association, and the Bloor Street United Church. The Toronto Board of Control and Mayor McBride soon added their voices to the outcry.⁹⁰ So vigorous was the protest against replacing Patterson and the Women's Court altogether that, when the Domestic Relations Court opened on 15 June 1929, the attorney general, Colonel Price, spoke about it during the dedication ceremony: "Right here, I would also like to clear a little misapprehension. Magistrate Dr. Patterson had a chance to come here, but she preferred to stay in the Women's Court. She believes there is work there for her to do, and there is."⁹¹ Patterson herself was notably absent from the opening ceremonies.

But for all that the adjudication of domestic mediations cases was innovative, explicitly feminist, and publicly proclaimed as a chief virtue of Patterson's magistracy, this was only one aspect of the work of her Women's Court. Patterson was still responsible for trying the criminal cases that involved women. Loraine Gordon's survey of Patterson's decisions reveals that her "reputation for being somewhat harsher than her male counterparts in Toronto was at least partially true. Her sentences appear to be similar to those meted out by Police Magistrates in a number of cities and towns outside of Toronto, suggesting that

she agreed with the prevailing norms of small-town Ontario.”⁹² Overall, Patterson attempted to implement a policy in which she was lenient with first-time offenders and strict with repeat offenders and with men who harmed women. Although the practices and philosophies relating to women charged with a criminal offence will be discussed in greater detail in the chapters to follow, it is important to recognize the relationship between Patterson’s two jurisdictions, the separation of which facilitated her larger vision of feminized justice. Importantly, in the domestic relations court, women could come to Patterson for aid as victims of legally constituted inequalities based on their sex. That is, when women complained about the various inadequacies of their husbands and marriages, Patterson could point to the man-made legal structures that patently discriminated against women and for which she, *as a woman*, could offer sympathetic redress. Conversely, those women who found themselves before Patterson because of a criminal charge tended to be viewed with suspicion about their agency. Patterson seldom questioned the assumption that women’s arrests arose from some act or behaviour that fell outside the norm and, thus, brought them to the attention of the police. Rather, she understood her job to be a process of offering them aid *after* the fact. This aid, of course, could also be denied.

The experiences of George A. and his (unnamed) wife, who appeared in both parts of Patterson’s court in 1925, illustrate this point. George and his wife had a troubled marriage marked by infidelity and violence. George’s wife had previously laid a complaint against her husband for assault, and this charge had been heard in the domestic court. True to her ideals about trying to keep families together and the utility of supervised release, Patterson had instructed the couple to try again, with the proviso that a police officer would monitor their relations. But during the “one exception” in which the policeman was absent, George assaulted his wife “as a result of which she is now in the Western Hospital.” In this case the police laid charges against George, and he appeared in the women’s police court, where he was remanded in custody to await trial. Patterson admitted that George had a decent defence, declaring “that George had a certain amount of right in adopting summary measures when he found Mrs. A. kissing a man on their verandah.” Mrs. A., obviously not present in court, was thereby denied the sympathy of a magistrate well versed in the unequal position of the wife in marriage. Her own actions placed her outside the realm of victim. Rather, this “case of *in flagrante delicto*” resulted in the weight of magisterial sympathy shifting toward the husband. The concrete organization

of the Women's Court into domestic cases and criminal cases thus also acted as a material and institutionalized manifestation of the distinctions that Patterson made between women as victims and women as agents and upon which her vision of feminized justice depended.⁹³

The inherent instabilities of this vision ultimately cost Patterson her job. Her appointment was not renewed in 1934, when the recently elected Hepburn Liberals, fulfilling an election promise, restructured Ontario's court system.⁹⁴ On 21 November 1934, as she sat on the bench, Patterson was handed a three-line letter that informed her that, although the Women's Court would continue, her services would no longer be required.⁹⁵ Thomas O'Connor, KC, was named to the Women's Court bench (at nearly twice the salary that Patterson had received); Patterson was offered a job as a Justice of the Peace.⁹⁶ The Liberal government insisted that this was not an anti-woman initiative and claimed that, should Patterson accept this position, it would still qualify as "the most important position in the gift of the government enjoyed by any woman in the City of Toronto."⁹⁷ Patterson, rightly seeing this as a demotion, replied: "[A]s you have seen fit to dismiss me as a magistrate, I decline to accept the position of justice of the peace."⁹⁸

Meanwhile, a women's movement that had "fizzled" was unable or, possibly, unwilling to help her.⁹⁹ The Liberal Women's Association could not decide whether to send a deputation to the government in protest: while some argued strongly in favour of defending Patterson and opposing a male replacement for her, others wondered about "the wisdom of sending a deputation at the present time when the appointment had already been made."¹⁰⁰ The TLCW's efforts were considerably less than might have been expected from a once energetic and influential group. It forwarded an emergency resolution to the Provincial Council of Women that was passed at its annual meeting on 6 December 1934. It read, simply: "That the Council petition Government to continue this principle and appoint a woman as Magistrate to preside over the Women's Court in Toronto." Similarly, on 21 November 1935 (one year to the day after Patterson's dismissal), the Provincial Council of Women carried the following emergency resolution: "The Toronto Local Council of Women deplores the dismissal of the first woman Magistrate in Ontario, whose appointment the Council urged for so long, and the renewal of the policy of the exclusion of women from this most important office many of the duties of which women are especially qualified to perform, and appeal to the Provincial Council of Women to continue its efforts and take all possible measures to obtain the appointment of another

competent woman Magistrate.”¹⁰¹ It may be noted that this was no spirited defence of Margaret Patterson specifically. There were no further references to her removal from the bench or to the principle of a female magistrate in either the TLCW minutes or the minutes of the Provincial Council of Women. Margaret Patterson retired to private life, and the ideal of a woman-specific police court, in which women were the principal actors, disappeared as a significant component of Toronto women’s politics.

Conclusion

This overview of the Toronto Women’s Court demonstrates its ideological and institutional significance to the organized women of Toronto. It also illustrates the inseparable relationship between local women’s political strength and police court reform. At the height of its influence, the TLCW, which was linked through political and personal associations with women around the country and around the world, was able to not only imagine but also bring into effect criminal justice reforms that mimicked reforms south of the border. Yet, in some ways the Women’s Court could be considered something of a failure. In its first nine years, Colonel Denison remained intransigently resistant to the reform goals that the TLCW hoped that the Women’s Court would advance. In addition, the Toronto Women’s Court was not a night court like the New York Courts, and unlike the Los Angeles Women’s Court, it did not start out with a female magistrate. Instead, the TLCW had to work hard, and wait almost a decade, before a provincial government sympathetic to social reform and dependent on female voters made this vision possible.

But even if the court was not always what they had envisioned, the members of the TLCW did not see it as a failure. To the contrary, it remained for them a site for experimenting with feminist criminological ideas. These ideas included an informal domestic mediations court, which Patterson began immediately upon taking the bench. As Dorothy Chunn has noted, “[a]dult members of problem families, particularly women, had not been exposed to the horrors of the ordinary police court in Toronto since her appointment to the Bench in 1922.”¹⁰² This was no small accomplishment, and it represented a decisive feminist victory in the local court system. Indeed, although the Toronto Women’s Court shared a great deal with similar developments across North America, including the desire to shield women from the morbid curiosity of unscrupulous men and create a legal forum that allowed women activists to shape the

nature of female justice through a logic of maternalism and female moral authority, it was also unique. Not quite a morals court and not simply a domestic mediations court, the Toronto Women's Court, especially under Patterson's tenure, existed somewhere between these two experiments in feminist jurisprudence. For the organized women's community of Toronto, this was part of its allure and its potential. As they described it, the Women's Court was, limitations notwithstanding, "an untold boon" in the development of more humane treatments of female crime.¹⁰³ The significance of the court to the TLCW's politics of reform should not be underestimated. The next chapter turns to these politics and to a closer examination of the court's material and ideological importance to the TLCW's complex politics of legal, moral, and sexual equality.