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THE UNIVERSITY OF ALBERTA

ORIGINS OF VAGRANCY LAW

- a critique -

by

 TRENHOLME ALLAN EDWARDS

A THESIS

SUBMITTED TO THE FACULTY OF GRADUATE STUDIES AND RESEARCH

IN PARTIAL FULFULLMENT OF THE REQUIREMENTS FOR THE DEGREE

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FACULTY OF GRADUATE STUDIES AND RESEARCH

The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research, for acceptance, a thesis entitled "Origins of Vagrancy Law, - a critique - " submitted by Trenholme Allan Edwards in partial fulfillment of the requirements for the degree of Master of Arts.

Supervisor

Date 17th October 1977

ABSTRACT

Professor William Chambliss in a study of vagrancy law set out to destroy the "myth" that the criminal law is representative of public opinion. On the basis of data derived inter alia from early English statute law Chambliss concluded that the criminal law generally was simply an expression of the interests of an economically powerful elite.

The individual statutes cited by Chambliss are re-examined seriatim and the legislative patterns of medieval English vagrancy law are reviewed as a whole in order to assess the utility of the Conflict Perspective in better understanding the origins and the nature of criminal law. In the course of this examination Chambliss's data is subjected to a "test of singular suitability".

The examination clearly indicates that Chambliss's data provide no unique support for the conflict explanation of the origins of criminal law. The data are equally supportive of a value consensus explanation of criminal law. There is clear evidence of a general

concern in medieval England over lawlessness and potential crime. In addition, Chambliss appears to have misread and miscited a number of early English statutes. This in turn has led to Chambliss's confusing the origins of vagrancy law with the early English law found in labour and poor law statutes.

The conflict perspective in Chambliss's h has been found to have failed to provide any new insights into the nature of the law of vagrancy and thus it has provided no better explanation of the nature of criminal law. Chambliss's attempt to provide a general theory of criminal law from the studies made of one particular law is rejected as contributing little to our understanding of the relationship between law and the social order.

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TABLE OF CONTENTS

CHAPTER 1

ORIGINS OF VAGRANCY LAW

- a critique -

THE CONCERN:

The present study is concerned with the validity and the utility of a sociological explanation which claims that specialized rules of group conduct are engendered and imposed by an interest structure in which an unequal distribution of power and influence is an inherent characteristic. Such are purportedly exemplified by "law," with the criminal law being a particularly pertinent example of specialized regulations involving selective application.

In support of this explanation Professor William Chambliss published a revised study in 1973 entitled, "Elites and the Creation of Criminal Law."[1] (Chambliss 1967, pp. 430-444) The inclusion of this analysis in a number of widely used readers and anthologies has left the impression that Chambliss's explanation concerning the origins and the growth of the law of vagrancy has received

[1] The original version of this article first appeared in 1964 under the title of "A sociological Analysis of the Law of Vagrancy." (Chambliss 1964, pp. 67-77)

the approbation of his peers. This apparent acceptance without question by many North American sociologists is significant when one is reminded that his explanation is specifically structured and advanced within the framework of the "Conflict" perspective in criminology.

Chambliss offers his analysis, first, as evidence of and authority for the position loosely referred to as the Conflict Theory of Special Interest. Second, it purports to be an authoritative socio-historical assertion that the criminal law generally has its origins and its patterns of development in the particular concerns of those who are politically and economically able to impose their views on others, in order to advance their own special interests. Put more simply, Chambliss has apparently marshalled historical evidence in support of the general proposition that criminal law is a mirror of the actively espoused special and vested interests of an elite who have the power to impose its own interpretation of the social order on others. The research question, then, is addressed to the validity of Chambliss's test of a particular hypothesis and the generality of that hypothesis.

THE CHAMBLISS HYPOTHESIS:

In his analysis, Chambliss holds the criminal law to be representative of specialized rules of group conduct

which are engendered and imposed by an interest structure of the politically or economically powerful elite. He states categorically insofar as the criminal law is concerned, that:

> it does not reflect "a history of public opinion or public interest";
>
> legislation and appellate-court decisions reflect the interests of the economic elites";
>
> it is a reflection of "the direct involvement in law making process" of those who control the production and distribution of the major resources of the Society.
>
> elite interests have "influence and control over the law enforcing bureaucracies";
>
> it reflects "the mobilization of bias" of the economic elite. (Chambliss 1973 p. 430)

In support of these propositions Chambliss has taken the development of the laws of vagrancy in England between 1274 and 1571 as proof of the influences exercised by elite interests on criminal legislation. He identifies land owners and other commercially powerful people during the late Middle Ages as the original advocates of vagrancy legislation in England. The data advanced by him in support of this explanation appear to have been accepted by western sociology as accurate with regard to the historical genealogy of the law of vagrancy.

This hypothesis and legislative analysis has generated a great deal of interest because of its political acceptability among those who emphasize class conflict[2] over social conflict as the generator of crime and legal sanction. It has been enthusiastically adopted by some in preference to those explanations which are based on theories involving group conflict because the admitted aim of his analysis of vagrancy laws is to destroy the "myth" that criminal law represents public opinion and public interest:

> The degree to which the interests of these changing elites were reflected in the law of vagrancy is a good illustration of the mobilization of bias which characterizes the historical process of criminal-law legislation." (Chambliss 1973, p. 430; emphasis added.)

ANOTHER HYPOTHESIS

As the admitted aim of the Chambliss hypothesis is to destroy the "myth" that criminal law is representative of public opinion and public interest, the issue, then, is whether a competing hypothesis such as the consensual explanation of genealogy of law might not be as well supported. In other words, vagrancy law might more likely and more logically be a recognition by the community that

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[2] The term class conflict is restricted to that conflict which results from conflicting class interests as opposed to the more general and inclusive term social conflict which refers to conflict resulting from any group interaction.

such regulations are necessary for its social health and well being. The resulting growth and persistence of criminal laws such as vagrancy law may reflect general public support and acceptance, thus lending credence to a consensual explanation of criminal legislation. Thus, an explanation and interpretation consistent with the evolution of vagrancy statute law might be developed in support of the proposition that criminal law may be an attempt to give effect to the greatest totality of interests in a society in which such laws were promulgated and enforced. (Pound, 1943., p. 39)

In order to test the validity of Chambliss's hypothesis, this paper re-examines the supporting research. The historical material which Chambliss has presented is re-assessed in terms of its relevance and adequacy.

My concern is that some "elements of validity" may be deficient. For example, the legal processes by which the law of vagrancy may have been shaped have not been accurately reported or fully described by Chambliss, while the historical context in which the law of vagrancy has allegedly evolved is open to debate. Much of the legislation cited by Chambliss as "vagrancy" may well be more accurately identified as antecedents of present day labour legislation and poor laws. This paper therefore questions

the validity of the explanations advanced by those who use vagrancy laws as representative of rules and regulations passed by special interest groups. Not only is this paper concerned with the scholarship behind the "sociological" explanation of the development of laws of vagrancy and with the empirical evidence which has been used; it is also concerned with the hazard of researching the origins of law and the reasons for its evolution by focusing on the study of one particular law.

THE ANALYSIS & TEST

These concerns have led to an analysis of the data cited by Chambliss in terms of their historical accuracy and applicability to those social conditions which are identified as extant at the time of the historical records. Of particular interest is the antecedent legislation which Chambliss identifies as the specific precursors of our 20th-century vagrancy laws.

The analysis includes the following:

(1) Examination of the methodology employed by Chambliss.

(2) Appraisal of the accuracy and applicability of the citations which Chambliss uses to support his explanation of the laws of vagrancy.

(3) Evaluation of the conditions which Chambliss attributed to those epochs for which the citations are applicable.

To this end the data have been retested with regard to:

- the singular suitability of his explanation to the historical circumstances in order to determine whether vagrancy legislation was indeed a unique response to such circumstances;
- the suitability of the methodology whereby a microcosm of the law has been selected for analysis in support of a hypothesis of wide general application;
- the accuracy and applicability of his citations;
- the adequacy of its social historical antecedents.

My test of this version of the "conflict hypothesis" becomes a test of singular suitability. For any set of facts to be appropriate as supporting one particular hypothesis, it must not be equally supportive of any other competing hypothesis if any significant weight is to be attached to those facts. Such a test is particularly appropriate to historical studies where circumstantial data are used to support a causal allegation. If, for example, a set of historical circumstances applies equally well to labour legislation as to vagrancy legislation, one might seriously question any conclusion which suggests that the vagrancy legislation was a unique response to such circumstances. One might then proceed to question the premise that such legislation was indeed the response of special interest groups to the existing social conditions

and particular historical circumstances, as opposed to being a product of "the greatest totality of interests" in a society.

THE PROCEDURE

This testing procedure involved gathering and synthesizing historical material from the inception of the laws of vagrancy as identified by Chambliss and from those eras which he considered relevant to the development of this law. To this end, historical texts, reported English cases, and library documents served as the primary sources of information. Because Chambliss relies almost solely on a discussion of statute law, a history text, and an article from a legal publication, this re-examination of the Chambliss data is essentially a library study. All the English statutes cited by Chambliss are examined to ascertain whether or not they correctly reflect the provisions attributed to them. These statutes are compared with additional statutes which have been ignored or overlooked by Chambliss although they are clearly pertinent to the growth and development of the laws of vagrancy. This comparison has been structured so as to determine whether or not the omissions of relevant citations seriously detract from the validity of the conclusions which Chambliss based on legislative antecedents.

The English statutes have been scrutinized for particular provisions which indicate whether they are pertinent to Chambliss's assertions, or whether they are indicative of a different connotation.

The stated purpose of the law which was appended to the legislation by the English Parliament at the time the act was passed serves as a useful guide. Each epoch involved has been researched for legislation which may be considered germane to the development of the laws of vagrancy. Thus accuracy and relevance of those English statutes which Chambliss has cited have been tested to determine whether his inferences with regard to the development of vagrancy laws and therefore to the development of the criminal law in general are justified.

IMPLICATIONS:

If the legislative references and citations supporting Chambliss's hypothesis are found to be inappropriate or inaccurate, then the validity of his conclusions may be questioned. His method of analysis whereby a detailed historical description of the origins of one law serves as a basis for a generalization on the origins of all criminal laws may not be suited to the extrapolation of sociologically relevant conclusions. His methodological approach

may be found to be fraught with hazards which detract from the utility and validity of such micro-studies.

If this proves to be the case, then those who have used the Chambliss article in support of their own contempary conflict explanations may wish to give serious consideration to a re-assessment of their positions. They may even be encouraged to examine other laws of very general application in order to determine whether the growth of such laws reflect a recognition by the community that such regulations are necessary for its social health and well-being. They may be stimulated to examine the competing hypothesis that holds that the growth and persistence of criminal law in Western countries indicates a general acceptance and support of its objectives, rather than involuntary acceptance.

Therefore, the questions to be answered are (1) whether the evidence used by Chambliss is pertinent to the conclusion which he identifies as supporting his "Conflict Theory" and (2) whether Chambliss's research contributes to our understanding of the development of law as a social phenomenon.

In fine, it is not the goal of this dissertation to present a definitive analysis of the origin and development of the laws of vagrancy. This particular body of

law is so difficult to define with regard to its antecedents that such a task would vastly exceed the available resources of this researcher. Rather, this paper is restricted to the question of whether Chambliss's evidence justifies his conclusion that the genesis of a particular criminal law supports a "Conflict" explanation.

CHAPTER II

THE RE-EXAMINATION

As previously stated, Professor Chambliss relies in the main on a discussion of statute law. His citations are therefore dealt with seriatim and in the order in which they appear in his treatise. Each statute is analysed in terms of the significance attributed to it by Chambliss as well as in the terms of the data's validity and utility to the 'Conflict Perspective.' In order to provide a summary means of reference and a direct basis of comparison, the propositions and data advanced by Chambliss have also been arranged in tabular form in parallel with results of my re-examination. These are appended to the discussion of the statute.

TRANSLATION DIFFICULTIES

Although Chambliss has cited his quotations as coming from the original statutes, they are in fact set forth in modern English. In the present research, sections or phrases used for a comparative analysis of Chambliss material are reproduced as they were published in

"The Statutes of the Realm"[3] which is generally recognized as the most complete and authoritative compendium of English legislation. Some difficulty was encountered when making comparisons between the spelling and archaic wording found in "The Statutes of the Realm" with the modern English translations used by Chambliss.

The early English statutes were often published in French or in Latin. Many of these statutes were subsequently translated into colloquial English by legal scholars down through the years for the use of practising lawyers. Thus the wording found in the "The Statutes of the Realm" is often only a translation of an original even though worded in archaic English and written in an archaic style. A further difficulty is presented by the fact that the full text of many of the original English statutes were not available because of the tendency of legal scholars to synopsize acts which had been repealed and which therefore were of no further practical interest to the legal profession. This may account for some of the incomplete and inaccurate wording used by Chambliss.

Since Chambliss did not identify the source of the translations used by him it has not been possible to check his sources or to identify the reasons for the many apparent discrepancies between that which was cited by

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[3] The translations of acts set out in The Statutes of the Realm have been checked wherever possible against translations appearing in Statutes at Large (Tomlins 1811)

him and that which is ordinarily available in courthouse and legislative libraries. All of the material attributed to Chambliss has been taken from his article "Elites and the Creation of Criminal Law" as it appeared in his reader "Sociological Readings in the Conflict Perspective". As noted this is a revision of "A Sociological Analysis of the Law of Vagrancy" which first appeared in Social Problems 12, Summer 1964, pp. 67-77.

IMPRECISION OF KEY TERMS

In analysing Chambliss's discussion of the statutes some difficulty was experienced because of his lack of precision in defining key terms. He is not clear on what constitutes an "act of vagrancy", and there is nothing to indicate what is meant by "criminal law legislation." The application of the labels 'vagrancy' and 'criminal' to law does not necessarily mean that the legislation referred to is concerned primarily with vagrancy or crime. In analysing this legislation it would have been of assistance if these terms had been defined by Chambliss in order to insure a reasonable consistency in the categorization of the subject matter of the various acts. Comparisons may also be distorted because of the terms "beggar" and "vagrant" in the

statute which often have a number of qualifying adjectives attached to them such as "stout", "valiant", "impotent", "sturdy", which may denote varying degrees of concern on the part of the community.

Furthermore, it is essential to distinguish between civil and criminal law if Chambliss's hypothesis is to be tested. To say that private or civil legislation reflects the concerns of an elite is an entirely different matter from saying the criminal law is such a reflection.

In order to assist in determining the validity of Chambliss's assertions, a number of operational definitions have been adopted regarding the type of legislation with which he is concerned:

> Criminal act: one that consists of behavior that is believed to be repugnant by the community as a whole or the continuation of which will come to be considered detrimental to the community as a whole:
>
> Criminal law: one enacted with the express purpose of suppressing or punishing the commission of criminal acts:
>
> Crime of vagrancy: an offense by anyone who is found loitering about or wandering abroad without lawful excuse or any visible means of support. The essential element is "without lawful excuse" and implies suspicious circumstances involving possible criminal activities. Thus vagrancy becomes a crime only because the probable result of loitering or wandering abroad without lawful excuse or visible means of support is likely to lead to the commission of some other criminal act.

Economic legislation: civil ordinances designed specifically to alter or vary existing economic conditions. These acts are not primarily designed to alter or control individual behavior. The law is replete with economic legislation which may be said to reflect the interests of the economic elite who control the production or distribution of the major resources of society. Such laws run the gamut from anti-inflation legislation as we presently know it to combines and tariff legislation. These acts are specifically designed to regulate manufacturing, trade and commerce with the control of the individual being ancillary. While such laws may regulate the elite as well, they are seen as being imposed for the ultimate general benefit of that elite.

Labour legislation: laws which are concerned specifically in the first instance with the terms and conditions under which those who work for a wage are varied, altered, or regulated. These are laws which specifically affect the conditions and actions of people, notwithstanding any secondary or ancillary economic effects.

Poor laws: laws designed to assist the impotent poor or to alleviate the conditions of those in social distress or need through no fault of their own. In modern parlance they might be termed "social welfare" legislation. Indigenous to such laws are provisions which will alter or vary both existing economic conditions as well as regulate individual behavior. Economic legislation and labour legislation may have secondary effects insofar as the impotent poor and the working poor are concerned.

Mobilization of bias: implies specific action designed to augment a concern or interest in order to confer a particular benefit on an economic or political elite and which concern or interest is not shared by the community generally.

Public interest or public concern: implies a matter which is important and relevant to elite and non-elite alike, and which is considered to confer a benefit on the community at large.

These definitions are necessarily arbitrary in order to distinguish roots of the criminal law of vagrancy from the civil roots of labour law and poor law. These civil and criminal roots are often closely entwined in the same section of the same statute which creates some difficulty in identifying the relevant legislation. In order to construct a pattern of development, the statutes marshalled by Chambliss in support of his perspective have been segregated according to the reign of the monarch responsible; beginning with King Edward the First.

THE REIGN OF KING EDWARD THE FIRST

Chambliss commences his analysis with legislation passed in the year 1274 which is identified as the "most significant forerunner to the 1349 vagrancy statute." This statute 3 Ed. I C.1 is held out by Chambliss as being "solely designed to provide the religious houses with some financial relief from the burden of providing food and shelter to travellers." It is inferred that this act is the first to impose restrictions on the travelling public and therefore it may be considered as the earliest antecedent of vagrancy legislation.

However a close reading of this statute reveals that it was concerned only incidentally with travellers or

persons wandering about the realm. The act deals specifically with those who, whether travelling or not, might wish to make a claim against religious institutions for food and shelter. As noted by Chambliss the act contains no reference to vagrancy or to any restriction on movements of persons from place to place. Presumably the reason that this statute is cited as being the well-spring of an elitist concern with vagrancy legislation is because of the provisions protecting the parochial interests of the church.

The only evidence from which one might obtain some indication of the 'raison d'etre' of the statute is to be found in its recitals. These recitals clearly state that the statute was designed and directed to protect certain religious institutions from abuses which were apparently prevalent in the land at the time. While the statute might be characterized as being of particular benefit to a narrow segment of society, it is not compatible with the suggestion that institutions requiring such protection constituted an economically or politically powerful elite. Rather, a reading of the statute reveals that such protective legislation was necessary because the religious houses were <u>not</u> sufficiently powerful to look after themselves. Thus such legislation might have

been necessary for the common good of the realm having regard to the important social and economic roles played by such institutions in medieval society.

Chambliss holds that this staute contributed to "a climate favourable to" the passing of the first "full fledged vagrancy statute." It is difficult to identify any association with any subsequent legislation dealing with vagrancy because the statute contains no prohibitions directed at any particular class of persons. There is no reference to vice or idleness which are the expressed concerns of all subsequent vagrancy legislation. There were no prohibitions against the giving or receiving of alms or against begging.

The prohibition against the taking of food or lodging in houses of religion, unless so invited or required, was not the sole concern of the statute. It was but one of many prohibitions which dealt inter alia with the breaking of doors and windows, the wrongful taking of grain, and the number of horses which might be boarded in such institutions by "sheriffs." These prohibitions were expressly held to be acts of trespass against either persons or property.

This specific reference to both civil and criminal acts of trespass may well support a contention that this

act was one of the precursors of the crime of trespass as well as of the tort of trespass rather than an antecedent of the crime of vagrancy. In arguing that this statute is a good illustration of the "mobilization of bias which characterizes the historical process of criminal law legislation," Chambliss would have been on safer ground if he had associated it with criminal offences involving the property of certain vested interests, rather than with "travellers" and the giving of "alms."

The act is presented by Chambliss in support of an essential tenet of the conflict perspective, namely, that it is an example of legislation reflecting the changing interests of an elite. It is difficult to find any justification for this position when the act itself clearly implies restriction of an elite identified as "great men."

> And because that abbies and houses of religion have been overcharged and sore grieved, by the resort of great men and other,...."

The recitals and preambles specifically refer to "common Right" being done to all "as well Poor as Rich, without respect of Persons." The expressed purpose defined in the act is a desire "to redress the State of the Realm." The act further states that it was "intendeth to be necessary and profitable onto the whole Realm."

The statute reflects the principle that "none, at his own Costs, shall (enter) and some to lie (there) against the will of them that be of the house," a principle with which elite and non elite can readily identify and sympathize. It also reflects the principle that, "none from henceforth do Hurt, Damage or Grievance to any Religious Man, or Person of the Church...." Again, this is a position which would undoubtedly find support amongst a non elite as it is expressly directed against "great Men."

Chambliss links this statute to a "drastic change" in the philosophy that religious houses were to give alms to "the poor and to the sick and to the feeble..." However, there is nothing in this statute that in any way restricts the giving of such alms to those in need. This act provides in effect that none shall claim charity or alms unless invited so to do. This admonition is specifically tempered by the statement, "and by this Statute the King intendeth not, that the Grace of Hospitality should be withdrawn from such as need, nor that the Founders of such Monastries should over charge, or grieve them by their often coming." Although the statute may be linked to the next statute to be discussed because both deal with religious institutions, there is no identifiable

link insofar as alms or begging are concerned, nor does it contain anything which links it with the substance of any other citation which Chambliss subsequently labels as a "vagrancy statute."

Thus this statute is not relevant to nor supportive of Chambliss's hypothesis. It is not an antecedent of vagrancy legislation and there is nothing in this statute or in Chambliss's discussion of it that negates its expressed intention of being for the common good of the realm. While we may be entitled to entertain suspicions concerning the motives of an autocratic King and his parliament, we are left with nothing more than this because the statute is equally supportive of a contradictory proposition. It may very well have been passed as stated to protect and give assistance to religious institutions whose charitable and educational functions were vital to all in the social structure. It may well have been passed to provide protection for such institutions from an economic and powerful elite as exemplified by the landed aristocracy. It may well represent a consensus of the populace at large that such institutions were deserving of such protection. Therefore 3 Ed. I C.1 fails to pass the test of singular suitability.

Thirty two years later the next statute mentioned by Chambliss and cited as 35 Ed. I C.1 was also passed in the reign of King Edward the First. He credits this statute with a change in attitude leading to "the establishment of the first vagrancy statute in 1349." However the basis for Chambliss's assertion is to be found in a quotation which has been wrongly attributed to this statute. The quotation cited and identified as belonging to this statute was actually taken from legislation passed in 1349 during the reign of Edward the Third. Although his footnote #6 clearly refers to 35 Ed. I C.1, undoubtedly Chambliss meant to refer to the Statute of Labourers passed in 1349 as 23 Ed. III C.1. Nevertheless, it is linked by Chambliss to the preceding statute 3 Ed. I C.1 by way of evidencing that the philosophy of alms giving was "to undergo a drastic change in the next fifty years." Like its predecessors, 35 Ed. I C.1 is concerned solely with religious institutions. Contrary to initiating a change in philosophy, this statute confirms, rather than changes, the philosophy of alms giving. It states:

> ... and that sick and feeble Men might be maintained, Hospitality, Almsgiving, and other charitable Deeds might be (done, and that in them Prayers might be said) for the Souls of the said Founders and their Heirs";

This act like its predecessor contains no reference to vice or idleness. There is no prohibition against travelling or wandering about the country, nor is there any prohibition against any particular class of persons. It lacks any of the hallmarks which might be attributed to vagrancy legislation. There is no suppression of charity and any reference to alms giving is an oblique one.

As in the preceding statute, the thrust of this legislation was against an elite. In order to protect religious institutions, it specifically prohibited religious authorities from sending rents, profits, or other benefits out of the country or to alien religious authorities.

It is difficult to understand why Chambliss cites this statute unless in error or as the result of some confusion with the subsequent Statute of Labourers which is the correct source of the quotation attributed to this statute. One would be justified in concluding that it was not Chambliss's intention to include this particular piece of legislation notwithstanding its apparent association with the preceding statute 3 Ed. I C.1. This statute might more correctly be categorized as an antecedent of foreign exchange regulations or, if one prefers, of legislation which mitigates against foreign ownership

and foreign control of resources, or against foreign influence on culture and education. It might also be identified with the development of poor laws. But however it is categorized, this statute is not supportive of Chambliss's hypothesis. Like the preceding statute, this legislation may be indicative of a contrary proposition. Rather than reflecting the changing interests of a particular elite, this statute may indeed have been passed for the common good of the realm. The strengthening of the financial position of monasteries and religious houses in order to undergird their charitable social functions and educational functions was undoubtedly of importance and concern to the whole community. As with the preceding statutes, this legislation fails to pass the test of singular suitability and we are left with little besides uncorroborated speculation as to the reasons why the statute was passed.

Finally, the significance of both this act and the preceding one is seriously compromised by Chambliss's failure to cite the intervening statutes from this period of history which specifically contain references to vagrants or which contain the traditional elements of vagrancy statutes. These statutes clearly express a concern with the association between the commission of crime and persons who go about without lawful excuse.

In the thirteenth year of the reign of Edward the First, a "Statute for the City of London" was passed which dealt specifically with persons found wandering about the streets of that city. This act also recites, in its preamble, phrases of which variations are found in most subsequent statutes dealing with vagrancy:

> First, Whereas many Evils, as Murders, Robberies, and Manslaughters have been committed heretofore in the City by Night and by Day, and People have been beaten and evil intreated, and divers other Mischances have befallen against his Peace; It is enjoined that none be so hardy to be found going or wandering about the Streets of the City, after Curfew tolled at St. Martins le Grand, with Sword or Buckler, or other Arms for doing Mischief, or whereof evil suspicion might arise; ... And if any be found going about contrary to the Form aforesaid, unless he have cause to come late into the City, he shall be taken..."

In the same year "Statute Wynton" contained provisions for the apprehension of strangers and suspicious persons providing as it did that:

> And if any Stranger do pass by them, he shall be arrested until Morning; and if no Suspicion be found, he shall go quit;..."

This reference to "suspicion" may be directly traced through subsequent statutes passed in the reign of Henry VII, Richard II and Edward VI and which are specifically identified as vagrancy statutes.

One is left to speculate, therefore, why statutes dealing specifically with suspicious or evil persons wandering about were ignored or overlooked while two statutes which have only the most tenuous association with vagrancy law are identified and discussed as being the antecedents of the criminal law of vagrancy. Perhaps the answe may lie in the fact that the "Statute Wynton" and "Statutes for the City of London" are expressly concerned with the common good and the public at large as opposed to reflecting any particular parochial interests.

SUMMARY COMPARISON

3 Ed. I C. 1

Chambliss	Re-Examination
1 This "most significant forerunner...was in 1274." Chambliss 1973 p. 430	1 The statute was actually passed in the year 1275 A.D. at Westminster in England during the first year of King Edward the First.
2 The statute was designed to provide the religious houses with some financial relief "from the burden of providing food and shelter to travellers." Supra p. 431	2 There is nothing in the statute referring to "travellers" or like persons. 2i The prohibition involving food and shelter was not the sole concern of the statute which dealt inter alia with: - the opening up or breaking of doors, locks, and windows; - the wrongful taking of food and grain.
3 Chambliss quotes from the statute: "Because the abbies[4] and houses of religion have been overcharged and sore grieved, by the resort of great men and other, so that their goods have not been sufficient for themselves,	3 Chambliss has omitted a qualifying sentence in the paragraph, which tempers any repressive interpretation ie. "And by this Statute the King intendeth not, that the Grace of Hospitality should be withdrawn from such as need;

[4] The Actual quote should begin; "And because that Abbies and Houses..."

	Chambliss	Re-Examination
	whereby they have been greatly hindered and impoverished, that they cannot maintain themselves, nor such charity as they have been accustomed to do; it is provided, that none shall come to eat or lodge in any house of religion,[5] or any other's foundation that of his own, at the costs of the house, unless he be required by the governor of the house before his coming hither." Supra p. 431	nor that the Founders of such (Monastries) should overcharge, or grieve them by their (often) coming".
4	"...the mobilization of bias which characterize the historical process of criminal-law legislation." ie. vagrancy legislation Supra p. 430	4. There is nothing relating to vagrancy in the statute. All prohibitions are concerned with acts of <u>trespass</u> either to persons or property. "And they that offend against these Acts, and thereof be attained, shall be committed to the King's Prison, and after shall make Fine, (and be punished) according to the quantity and manner of the <u>Trespass</u> ..."

[5] There are no commas after the word "religion", and the next word should be "of" instead of "or". The phrase should read; "...or lodge in any House of Religion <u>of</u> any other's Foundation than that of his own..."

Chambliss	Re-Examination
	"And it is to be known, that if they to whom such Trespass was done, will sue (for Damages, ...)"[6]
	"...and shall make grievous Fine after the manner of the Trespass."[7]
5 Chambliss offers this quotation as an example of legislation being a reflection of the changing interest of an elite. Supra p. 430	5 The act clearly implies a concern for the common good and a restriction on an elite.
	"...Abbeys and Houses of Religion (of the Land) have been overcharged, and sore grieved, by the resort of great Men..."
	"...none, at his own Costs, shall (enter and) come to lie (there) against the Will of them that be of the House."
	"...none from henceforth do Hurt, Damage, or Grievance to any Religious Man or Person of the Church, or any other, because they have denied Meat ~~or~~ Lodging unto them..."

[6] Damages are normally associated with the tort of trespass.

[7] Fines are normally associated with the criminal of trespass.

Chambliss	Re-Examination
	"...and that common Right be done to all, as well Poor as Rich, without respect of Persons."
	"Because our Lord the King had great zeal and desire to redress the State of the Realm..."
	"...the King hath ordained and established these Acts underwritten, which he intendeth to be necessary and profitable unto the whole Realm."

35 Ed. I C.1

1	Although the statute is cited in note #6 by Chambliss as having been passed in the thirty-fifth year of the reign of King Edward the First by the citations 35 Ed. I C.1, it is also identified as having been passed in the year 1349.	1	The footnote is in error. 35 Ed. I C.1 was passed in 1307. This discrepancy in historical arithmetic has been perpetuated in succeeding reprints of Chambliss's article.
2	This citation is linked by Chambliss to the previous act of 3 Ed. I C.1 as evidencing that the philosophy of alms giving was "to undergo	2	Although this act was passed only 32 years after the preceding act, it may certainly be associated with 3 Ed. I C.1 as it is concerned with providing

drastic change in the next fifty years."
Chambliss 1973 p. 431

financial relief for monasteries, priories, and religious houses. It may be distinguished from its predecessor in that it does contain provisions relating to alms, but it does not provide any evidence of any change in the philosophy of providing such charity. It states:

"...and that sick and feeble Men might be maintained, Hospitality, Almsgiving, and other charitable Deeds might be (done, and that in them Prayers might be said) for the Souls of the said Founders and their Heirs;"

3 Chambliss attributes the following quotation to this statute:

"Because many valiant beggars, as long as they may live of begging, do refuse to labor, giving themselves to idleness and vice, and sometimes to theft and other abominations; it is ordained, that none, upon the pain of imprisonment shall, under the colour of pity or alms, give anything to such which may labour, or presume to favor them towards their desires; so that thereby they may be compelled to labour for their necessary living."
Supra p. 431

3 This quotation is wrongly attributed to this statute. Its proper citation is 23 Ed. III Ch.1. This inappropriate citation has undoubtedly contributed to the confused discussion of the antecedents of vagrancy law.

THE REIGN OF KING EDWARD THE THIRD

As previously noted Chambliss has erred in attributing the provision against the giving of alms to "valiant beggars" to 3 Ed. 1 Ch. 1. This particular provision has actually been taken from chapter seven of legislation passed in the 23rd year of the reign of Edward the Third, otherwise known as the Statute of Labourers, 23 Ed. 3 C. 7. One suspects that the error was typographical although it does appear to have been repeated in a number of republications.

Unlike the preceding statutes, 23 Ed. 3 does attempt to regulate persons and their movements, although such restrictions are limited to labourers. This type of restriction is perpetuated in subsequent statutes dealing with fleeing labourers, and it appears to have been confused by Chambliss with similar restrictions in vagrancy statutes. However, Chambliss's subsequent reference to 23 Ed. 3, in his footnote #7 is incomplete because of his failure to designate any particular chapter. However his discussion is concerned with this famous Statute of Labourers.

As with those concerns now being vehemently expressed about the able-bodied in our society who choose to take unfair advantage of social services or welfare legislation,

we find this English statute concerned in its preamble with;

> And some rather wilding to beg in idleness
> then by labour to get their living;...

Anyone familiar with the monetary concerns of organized labour, and of those in the lower social or economic brackets who are gainfully employed, will know that these segments of society are most vocal in their concerns over economic dislocation and the failure of the able-bodied to fend for themselves.

So this particular statute is exactly what it purports to be which is to say a statute regulating labourers. It does provide for certain categories of people to remain in the service of their master, imprisonment if the workman leaves before his term is up, wages to be fixed, employers to be penalized for paying more, the cost of food stuffs to remain at reasonable prices, and for any who profits unduly to refund the profits.

There is no reference in this statute to vagrancy as such. Interestingly enough, the statute prohibits the giving of alms to beggars but it does not legislate against the receipt of such alms. In fact, an examination of the statute indicates that it is nothing more than it purports to be: legislation which was obviously directed

at unstable economic conditions in England resulting from the Black Plague whereby occupations are frozen, wages are controlled, prices of goods are fixed, "excess profits" must be refunded. This statute makes no reference to idleness as an offence.

Furthermore, reference to "beggars" cannot be construed to have the same meaning as that which we attach to vagrants in present day parlance. At the time in question, the English country-side was subjected to harassment by bands of lawless men who were commonly referred to as "beggars." That this somewhat obvious historical fact was the concern of the law abiding populace in general is readily apparent to anyone who is familiar with Mother Goose:

> Hark, hark the dogs do bark
> Beggars are coming to town
> Some in rags
> Some in jags
> Some in velvet gowns
>
> (Mother Goose 1962)

Having regard, then, to the suggestion that the Statute of Labourers is a full-fledged vagrancy statute one can only conclude that one paragraph in a three page statute indicates that the emphasis is really on labour legislation which is obviously the forerunner of many similar legislative provisions in force today and which are in no way connected with the criminal offence of vagrancy.

Therefore the Statute of Labourers may receive two interpretations. It may be categorized as conceived for the common good rather than a mere reflection of the interests of an elite, or it may be interpreted as showing the influence of an economic or politically powerful elite insofar as civil legislation is concerned. But even if this act can be said to be supportive of an allegation that labour legislation per se is enacted at the behest of, or represents the will of, an influential and economically powerful minority be it management or labour, that is not the premise under discussion. Therefore, this act is of dubious value as an indicator of such influence where the criminal law is concerned. The essential element of a vagrancy statute is lacking for there is no restriction against wandering at large without lawful excuse. The act fails to pass the test of singular suitability and something more is required by way of corroboration if one view or the other is to prevail.

The validity of Chambliss's conclusion that this was "the first full fledged vagrancy statute" is further compromised by his failure to include or discuss an act passed in the fifth year of the reign of Edward the Third, which confirmed the provisions of the "Statute Wynton" previously discussed. Chapter 14 of the act 5 Ed. III

states:

> Whereas in the Statute made at Winchester in the Time of King Edward, Grandfather to the King that now is, it is contained, That if any Stranger pass by the Country in the Night, of whom any have suspicion, he shall presently be arrested and delivered to the Sheriff, and remain in Ward till he be duly delivered: And because there have been divers Manslaughters, Felonies, and Robberies done in Times past, by People that be called Roberdesmen, Wastors, and Draw-latches;...
>
> It is accorded, That if any (may) have any evil Suspicion of such, be it by Day or by Night, they shall be incontinently arrested by the Constables of the Towns;

It is submitted that the foregoing is more closely akin to vagrancy legislation than anything contained in 23 Ed. 3.

Chambliss goes on to observe that the Statute of Labourers was strengthened two years later by the passing of 25 Ed. 3. As with the preceding statute, this statute is expressly concerned with excessive wages and with labourers and craftsmen who refused to work in order to obtain higher salaries. There is no prohibition against idleness per se or against wandering about. As with the 'Statute of Labourers' there is confusion between what might be properly termed labour legislation and the criminal law of vagrancy because there is nothing in the

statute which deals specifically with vagrants or with lawless persons. It too, should be more properly classified as a progenitor of present day labour or economic control legislation. While this may reflect the concerns or interests of the economic and political elite, it is a reflection based in civil law as opposed to criminal law. Thus while the statute may be a creature of elitism and identified with economic control or labour legislation, it has no demonstrable association with the development of the criminal law of vagrancy. It contains none of the elements of vagrancy legislation other than a restriction on movement and such restriction is also to be found in 'poor laws' and as well as in labour legislation. Other than the four line reference to restricted movement taken from this three page statute, it contains no demonstrable association with the development of the criminal law of vagrancy. Therefore, it fails to meet the test of singular suitability.

Chambliss concludes his discussion of the legislation passed during the reign of Edward the Third with a reference to 34 Ed. 3 1360. This statute as cited by Chambliss is evidence of increasing punishments for vagrancy described in 25 Ed. 3 (1351). Unfortunately he

does not specifically compare the various offenses and punishments which are found in this and the preceding statutes. In particular, there is no comparison of punishments which relate to offenses involving movement, vice or idleness. Unlike the preceding acts which have been cited by Chambliss in support of his perspective, this one may truly be classified as containing material pertinent to vagrancy legislation. However, Chambliss does not identify it as such prefering to restrict his discussion to the labour aspects of the act. He either ignores or has overlooked the provisions of Chapter 1 which specifically identifies vagrants for the first time in English legislation. Instead he has relied on Chapter 9 which specifically refers to and confirms the "Statute of Labourers of Old Time Made."

This act contains a multitude of legislative pronouncements on such diverse subjects as purveyors of royalty, the conduct of inquests, weights and measures, jurors, seizure of lands and the Statute of Labourers 1349. The physical location of the four line reference to vagrants in Chapter 1 and the reference to the Statute of Labourers in Chapter 9 is a clear indication that a distinction was being made between labour legislation and vagrancy legislation.

It is unfortunate that Chambliss does not choose to discuss the provisions of Chapter 1 which argue persuasively in favour of a concern for the common good of the realm.

> ... and also to inform them, and to inquire of all those that have been Pillors and Robbers in the Parts beyond the Sea, and be now come again, and go wandering, and will not labour as they were wont in Times past; and to take and arrest all those that they may find by Indictment, or by Suspicion, and to put them in Prison; and to take of all them that be (not) of good Fame, where they shall be found, sufficient Surety and Mainprise of their good Behaviour towards the King and his People, and the other duly to punish; to the Intent that the People be not by such Rioters or Rebels troubled nor endamaged, nor the Peace blemished, nor Merchants nor other passing by the Highways of the Realm disturbed, nor (put in the Peril which may happen) of such Offenders: ...

This statute lends credence to the concept that any sanctions involving vagrants were quite separate and distinct from those dealing with labourers. If one is prepared to distinguish between labour legislation and the criminal law legislation there is no evidence in this statute of any elitist influence having regard to the crime of vagrancy. Neither this act nor any discussion of it by Chambliss appears to be relevant or supportive having regard to his conflict perspective if the test of singular suitability is applied.

SUMMARY COMPARISON

23 Ed. 3

Chambliss	Re-Examination
1 In note 7 to his article Chambliss cites the authority for his quotations as 23 Ed. 3 without identifying the pertinent chapter or chapters. Chambliss 1973 p. 431	1 The correct citation for the quotations attributed to this act should be shown as 23 Ed. 3 C. VII, I and II respectively.
2 The quotation used by Chambliss to illustrate a "drastic change" in the philosophy of giving alms to the poor and to the sick and feeble has been taken as well from Chapter VII of this statute, notwithstanding his note #6 attributing it to 35 Ed. 1 C. 1. Supra p. 443. "Because that many valiant beggars, as long as they may live of begging, do refuse to labor, giving themselves to idleness and vice, and sometimes to theft and other abominations; it is ordained, that none, upon pain of imprisonment shall, under the color of pity or alms, give anything..." Supra p. 431	2 Chapter VII is only one paragraph in the three pages which comprise this statute. It contains no reference per se to restrictions on alms. The restriction in this Chapter is the giving of anything "...under the colour of Pity or Alms" to valiant beggars. This particular paragraph is attributed in error by Chambliss to 35 Ed. 1 C.1. Unfortunately this typographical error has been repeated in a number of subsequent publications.

Chambliss

3. This statute is offered by Chambliss as evidence of the desires of a changing elite being reflected in law. Supra p. 431

Re-Examination

3 The preamble to the statute leaves no doubt that what was of specific concern was the common good of the realm:

"Because a great Part of the People, and especially of Workmen and Servants, late died of the Pestilance, many seeing the Necessity of Masters, and great Scarcity of Servants, will not serve unless they receive excessive Wages..."

And again:

"...We, considering the grievous Incommodities, which of the Lack especially of Ploughmen and such Labourers may hereafter come..."

4 The second quotation has been taken from Chapter 1 of the statute;

"...every man and women of what condition he be, free or bond, able in body, and

4 It should be noted that his quotation is incomplete by reason of the deletion of the provision regarding wages. The underlined portions appear in the original;

Chambliss

within the age of three-score years, not living in merchandize, nor exercising any craft, nor having of his own whereof to live, nor proper land whereon to occupy himself, and not serving any other, if he in convenient service (his estate considered) be required to serve, shall be bounded to serve him which shall him require ...And if any refuse, he shall on conviction by two true men, ...be committed to gaol till he find surety to serve."
Supra p. 431

Re-Examination

"THAT every Man and Women of our Realm of England, of what condition he be, free or bond, able in body, and within the age of threescore years, not living in Merchandize, nor exercising any Craft, nor having of his own whereof he may live, nor proper Land, about whose Tillage he may himself occupy, and not serving any other, if he in convenient Service, his estate considered, be required to serve, he shall be bounden to serve him which so shall him require; and take only the Wages, Livery, Meed, or Salary, which were accustomed to be given in the places where he oweth to serve, ..."

4a In addition Chambliss has omitted from this paragraph a specific restriction on an elite. ie. —

"...so that nevertheless the said Lords shall retain no more than be necessary for them;..."

Chambliss

5 His third reference is from Chapter II;

"(And) If any Reaper, Mower or other workman or servant, of what estate or condition that he be, retained in any man's service, do depart from the said service without reasonable cause or license, before the term agreed on, he shall have pain of imprisonment. And that none under the same Pain presume to receive or to retain any such in his service." Supra p. 431

Re-Examination

5 The quotation used by Professor Chambliss appears to be an abbreviated translation of the statute. It would have been helpful if there had been some indication of the modern published source. The underlined portions were omitted by Chambliss. The word (And) does not appear in the original.

5a The original contains a provision which precludes an employer from hiring such person. Thus a reading by Chambliss could lead one to the conclusion that it is repressive only insofar as working men and servants are concerned, when in fact it is repressive on employers as well as employees.

It is a full fledged labour act. Consideration of the following Chapter headings which appear in this statute clearly identify the statute's concerns.

Chambliss

within the age of threescore years, not living in merchandize nor exercising any craft, nor having of his own whereof to live, nor proper land whereon to occupy himself, and not serving any other, if he in convenient service (his estate considered) be required to serve, shall be bounded to serve him which shall him require ...And if any refuse, he shall on conviction by two true men, ...be committed to gaol till he find surety to serve." Supra p. 431

Re-Examination

"THAT every Man and Women of our Realm of England, of what condition he be, free or bond, able in body, and within the age of threescore years, not living in Merchandize, nor exercising any Craft, nor having of his own whereof he may live, nor proper Land, about whose Tillage he may himself occupy, and not serving any other, if he in convenient Service, his estate considered, be required to serve, he shall be bounden to serve him which so shall him require; and take only the Wages, Livery, Meed, or Salary, which were accustomed to be given in the places where he oweth to serve, ..."

4a In addition Chambliss has omitted from this paragraph a specific restriction on an elite. ie.

"...so that nevertheless the said Lords shall retain no more, than be necessary for them;..."

Chambliss	Re-Examination
	(1) "Who shall be bound to serve, when required; The Rate of Wages fixed; Persons refusing to serve, shall be imprisoned."
	(2) "Labourers departing from their Service imprisoned."
	(3) "The old Wages, and no more, shall be given to Servants."
	(4) "Lords of Towns or Manors offending shall forfeit Treble Value."
	(5) "Wages of Artificers; Offenders shall be imprisoned."
	(6) "Victuals shall be sold at reasonable Prices; Penalty for selling otherwise."
25 Ed. 3	
1 Chambliss cites this statute as being passed in 1351. Chambliss 1973 p. 431	1 The statute is correctly cited as 25 Ed. 3 and so it was probably passed in the year 1350.

Chambliss

2 Chambliss attributes a strengthening of the famous Statute of Labourers by the following quote.

"An none shall go out of the town where he dwelled in winter, to serve the summer, if he may serve in the same town." Supra p. 432

Re-Examination

2 The stated purpose of this act was to strengthen a labour statute. It was concerned principally with wages. The preamble to the statute states:

"WHEREAS late against the Malice of Servants, which were idle, and not willing to serve after the Pestilence, without taking excessive Wages, It was ordained by our Lord the King, and by Assent of the Prelates, (Earls, Barons,) and other of his Council, That such manner of Servants, as well Men as Women, should be bound to serve, receiving Salary and Wages, accustomed in Places where they ought to serve;,,"

The following words which have been underlined are missing fro the sentence which Chambliss has quoted:

"and that none of them go out of the Town, where he dwelleth in the Winter, to serve the Summer, if he may serve in the same Town; taking as before is said."

Chambliss

Re-Examination

These additions in the original change the meaning of the sentence attributed to it by Chambliss. The pronoun them has as it's antecedent only threshers who;

"be sworn Two Times in the Year before Lords, Stewards, Bailiffs, etc..."

The act does not apply, as Chambliss suggests, to all those who live in a town. Far from applying to the population at large, it applies only to certain categories of people. For example, Chapter II specifically states that;

"...People of the Counties of Stafford, Lancaster, and Derby, and people of Craven, and of the Marches of Wales and Scotland, and other Places, may come in Time of August, and labour in other Counties, and safely return..."

There is no provision in this statute against idleness, vice, or wandering about. It is specifically directed against certain classes of labourers and thus

Chambliss

3 Chambliss suggests that the punishment for offending the statute was less than 15 days imprisonment when he states;

Re-Examination

more properly belongs in the category of labour legislation as opposed to vagrancy legislation.

The various Chapters deal solely with labour problems providing only a strengthening of those provisions which regulate the performance of labour as opposed to idleness, begging and vagrancy. The act specifically deals with the following;

Chapter I - carters, ploughman, drivers of the plough; [illegible], etc.

Chapter II - [illegible] threshers of wheat, [illegible] barley, beans, pease and oats.

Chapter III - carpenters, masons, tilers and other workmen of houses.

Chapter IV - cordwainers, shoemakers, goldsmiths and sadlers.

3 In actual fact this act provides for a variety of punishment;

Chapter II - "...shall be put in the Stocks...

Chambliss

"By 34 Ed. 3 (1360) the punishment for these acts became imprisonment for fifteen days." Supra p. 432

Re-Examination

Three Days or more, or sent to the next Gaol, there to remain, till they will justify themselves."

Chapter IV -"...shall be punished by Fine and Ransom, and Imprisonment after the Discretion of the Justices."

Chapter V - "...to be commanded to Prison, there to remain till they have found Surety, ..."

Chapter VII - "...shall be grievously punished..."

There is no punishment per se for idleness, vice, or wandering abroad. The punishments were for those who failed to take oaths, who encouraged a breach of the Statute by taking or demanding excessive wages, etc.

A more pertinent reference might have been one from Chapter VII of the act dealing with servants fleeing from one country to another.

Chambliss

Re-Examination

But like the quotation from Chapter II, it is clearly designed to support and enforce economic restrictions and controls and applies only to a specific category of labouring persons.

34 Ed. 3

Chambliss states:

"By 34 Ed. 3 (1360) the punishment for these acts became imprisonment for fifteen days..." Supra p. 432

"The substance of the vagrancy statutes changed very little for some time after the first ones in 1349-1361 although there was a tendency to make punishments more harsh than originally." Supra p. 434

This provision is found in Chapter IX of the statute which substituted 15 days imprisonment for "Fine and Ransom" and does not relate to the vagrancy provisions of Chapter 1.

Chapter X states the fugitive labourers and artificers may be imprisoned and "burnt in the Forehead, with an Iron made and formed to this Letter F."

Chapter IX and X specifically identify classes of working men and they do not refer in any way to beggars or idleness or to the giving of alms.

Chambliss

Re-Examination

While the increase in punishment may be identified as a growth of repressive measures, the laws which were being strengthened or varied were clearly labour laws and not the antecedents of vagrancy.

2 There is no reference or discussion of Chapter 1 which specifically deals with vagrants and which argues for the common good of the realm.

2 "...and also to inform them, and to inquire of all those that have been Pillors and Robbers in the Parts beyond the Sea, and be now come again, and go wandering, and will not labour as they were wont in Times past; and to take and arrest all those that they may find by Indictment, or by Suspicion, and to put them in Prison; and to take of all them that be (not) of good Fame, where they shall be found, sufficient Surety and Mainprise of their good Behaviour towards the King and his People, and the other duly to punish; to the Intent that the People be not by such Rioters or Rebels troubled nor endamaged, nor the Peace blemished,

Chambliss

Re-Examination

nor Merchants nor other passing by the Highways of the Realm disturbed, nor (put in the Peril which may happen) of such Offenders:..."

Clearly the concern expressed is not for the limited benefit of any elite, and it is a concern for actions clearly characterized as criminal.

THE REIGN OF KING RICHARD THE SECOND

The confusion that has now become apparent between labour legislation and vagrancy legislation is readily apparent in Chambliss's discussion of legislation passed in the twelfth year of Richard II. His discussion is limited to the labour sections of one act 12 R. II (1388) and it excludes those sections of the act which specifically refer to vagrants. His quotations are taken from Chapters III and V of the statute and they are concerned with servants and labourers wandering about without testimonial letters, and with apprentices and husbandry. Overlooked or ignored is Chapter VII which is concerned with the punishment of wandering beggars and the maintenance of impotent beggars, and Chapter VIII which deals with testimonial letters to be carried by "travelling beggars." These provisions in Chapter VIII are quite separate and distinct from those in Chapter III.

Thus Chambliss has not acknowledged the distinction which the statute makes between servants and labourers on the one hand and vagrants and beggars on the other, nor did he choose to discuss those provisions of this act which relate specifically to vagrancy. This act, which deals with various categories of persons including

both labourers as well as vagrants, clearly recognizes the distinction made between these ordinances concerned with labourers and those which are concerned with beggars and vagabonds. Chapter IX confirms this recognition in stating:

> "It is ordained and assented, That the Ordinances aforesaid of Servants and Labourers, Beggars and Vagabonds, shall hold place and be executed as well in Cities and Boroughs,..." (12 R. II 1388)

In addition, Chambliss states that 12 Richard 2 further protected land owners with its provision that children after the age of 12 should not be required to serve as an apprentice or at any labour other than in the service of husbandry. This might more appropriately be classified under child labour legislation wherein it was to the child's advantage to enter into service as an apprentice before the age of 12.

This act clearly makes a distinction between these various categories of persons. The advantage conferred on any elite because of regulations involving labourers, servants, or children should not be confused or tied in with the regulations involving vagrants and beggars. Just as Chapter III is labour legislation so Chapter IX contains some legislation which applies specifically to vagrants. However, there is no explanation why reference

was not made by Chambliss to the specific sections of this act which deal with vagrants and beggars. The statute as cited contains nothing which might advance his hypothesis.

Neither this act nor Chambliss's discussion of it is indicative of any elitist influence in criminal law. While the provisions cited by Chambliss may well favour an agricultural elite they are not provisions which may be categorized as part of the law of vagrancy. In addition these labour provisions are equally supportive of an attempt to bring some stability to the countries agricultural economy for there is no sanction imposed on those labourers who leave a particular service but still remain engaged in some way in agriculture. The provision relating to children in agriculture might also be interpreted as being the forerunner of child labour legislation.

Therefore this statute not only fails to meet the test of singular suitability, it is clearly in part an antecedent of some branch of the law other than criminal law.

Finally the utility of this act as evidence of the direction that the growth of vagrancy law was taking may be compromised by Professor Chambliss's failure to include

any discussion of legislation passed five years earlier which established a positive link with various vagrancy statutes and indicated a concern for the common good. This statute, which specifically confirms the previous statute of 5 Ed. 3, chapter (14) and which Chambliss has overlooked or ignored, is 7 Rich. 2 chapter 5. It states:

> "It is ordained and assented, That the Statutes made in the Time of King Edward, Grandfather to our Sovereign Lord the King that now is, of Roberdsmen and Drawlatches[8] be firmly holden and kept; and moreover it is ordained and assented, to refrain the Malice of divers People, Feitors and wandering from Place to Place, running in the Country more abundantly than they were wont in Times past, that from henceforth the Justices of Assises in their Sessions, the Justices of Peace, and the Sheriffs in every County shall have Power to enquire of all such Vagabonds and Feitors, and of their Offences, and upon them to do that the Law demandeth;..."

---

[8] The terms Roberdsmen and Drawlatches appeared previously in 5 Ed. 3 C. 14 as Roberdesmen and Draw-latches.

SUMMARY COMPARISON

12 R. 2 C. 3

Chambliss

Chambliss cites the statute as an example of a tendency toward harsher punishment whereby the offenders could be put and kept in stocks until "... he find surety to return to his service."

Chambliss implies that this was to support a restriction on persons moving freely about. Missing are those portions of the clause which explained that there was no restriction if a mans service was properly completed.

Re-Examination

1 This punishment was not for the offence of vagrancy. It was punishment for any labourers who departed "...out of his service" before "...the End of his Term..."

2 The actual provision reads;

"and also if any Servant or Labourers be found in any City or Borough or elsewhere coming from any Place; wandering without such Letters, he shall be maintenant taken by the said Mayors, Bailiffs, Stewards or Constables, and put in the Stocks, and kept till he hath found Surety to return to his Service, or to serve or labour in the Town from whence he came, till he have such Letter to depart for a reasonable Cause: And it is to be remembered, that a Servant or Labourer <u>may freely depart</u> out of his Service at the End of his Term, and to serve in another Place..."

Chambliss	Re-Examination
3 Chambliss states that the statute punished vagrants.	3 This statute contains provisions in Chapter VII and Chapter IX relating specifically to beggars and to vagabonds. Chapter VII distinguishes between able bodied beggars and impotent beggars. The offense proclaimed by the statute is that of a person living by begging when he is able to work. The act specifically recognizes impotent beggars as being exempt from this provision.
4 Chambliss neglected to mention that the punishment of being placed in stocks had nothing to do with the original Statute of Labourers. This statute provided inter alia for imprisonment.	4 Chapter IX recognizes different categories of servants, labourers, beggars and vagabonds previously identified by this statute. It then specifies how provisions of the ordinances affecting these categories are to be put in execution.
5 Chambliss quotes from this statute in support of his contention that this legislation was to provide landowners with labor.	5 This clause differs in time of translation. The words underlined below do not appear in Chambliss's citation.

Chambliss

"...and he or she which use to labour at the plough and cart, or other labour and service of husbandry, till they be of the age of 12 years, from thenceforth shall abide at the same labour without being put to any mistery or handicraft: and any covenant of apprenticeship to the contrary shall be void." Supra p. 431

Re-Examination

"...; that from thenceforth they shall abide at the same Labour, without being put to any Mystery or Handicraft; and if any Covenant or Bond of Apprentice be from henceforth made to the contrary, the same shall be holden for none."

The prohibition may well favor an agricultural elite to the detriment of any mercantile elite. The more probable explanation is that this provision was an attempt to bring some stability to the agricultural situation. There does not appear to be any sanction imposed on those labourers who leave a particular service but who remain in agriculture of some form. If that is the case the small agriculturist would benefit equally as well as the agricultural elite.

These provisions might also be interpreted as being a forerunner of child labour legislation because of the

proviso that children may leave farm labour and apprentice in some other occupation before they are twelve years of age.

Chambliss indicates that 12 Richard 2 increased punishment by providing for stocks. In fact, the punishment of stocks applies only to those who are wandering abroad without a particular letters patent "containing the Cause of his going, and the Time of his Return, if he ought to return, under the King's Seal, ..."

THE REIGN OF KING HENRY THE SEVENTH

Chambliss proceeds to link the labour legislation of Richard the Second with vagrancy legislation passed in the 11th year of the reign of King Henry the Seventh of England. This statute 11 Hen. VII C. 2 specifically entitled "An Acte agaynst vacabounds and beggers" is certainly one of the major links in the chain of actual vagrancy acts. Not only did it modify and extend previous acts but it was itself the object of repeal or modification of provisions in a number of succeeding acts. It is the first statute to be cited by Professor Chambliss which specifically refers to vagabonds, idle, and suspected persons. Chambliss cites this statute as being evidence of an increase in the severity of sanctions which had previously been enforced and then he proceeds to draw comparisons with sanctions in the preceding labour legislation. Rather than discussing this act in the context of the preceding acts which specifically dealt with vagrants, Professor Chambliss has tied this act to the preceding labour legislation. This may account for his error in attributing both "an increase" and a decease in punishment to this act.

Of greater significance is the failure to recognize that the real importance of this act may lie in the fact

that this statute formally associates sturdy beggars and suspicious persons with vagabonds.

There is nothing contained in this act to indicate that it was a reflection of the interest of an elite. It clearly states in its opening paragraph:

> "FOR ASMOCHE as the Kyngis g'ce moost entierly desireth amonges all erthly thingis the pspite and restfulnes of this his land and his subgettis of the same to (leve) quietly and (surefully) to the plesure of God and according to his lawes,..."

Thus the act fails to pass the test of singular suitability. Any variation in punishments attributed to it by Chambliss is a result of mistakenly comparing this vagrancy legislation with preceding labour legislation. The act 2 Hen. VII C. 2 specifically moderates provisions of 7 Ric. 2 C.5 which in turn deals explicitly with roberdsmen and drawlatches.

As for Chambliss's contention that the interests of an elite are reflected by a 'period of dormancy', there is nothing in this statute that indicates this to be the case. The act's confirmation of previous vagrancy statutes and the association of idle vagabonds with suspicious person is really evidence to the contrary. The concept of a period of dormancy being applicable to vagrancy law is further negated by the fact that several acts dealing with the type of crime

were promalgated during the reign of Edward IV, Richard II, and Henry IV. However it may well be that Professor Chambliss is correct in attributing a period of dormancy to the harsh provisions found in labour legislation.

SUMMARY COMPARISON

11 Hen. VII

Chambliss	Re-Examination
1 Chambliss cites the Act as 11 H & C 2 (1495) Chambliss 1973 p. 444	1 The citation 11 H & C 2 (1495) could not be located. The correct citation is probably 11 H VII c.2. This act was passed a year earlier in 1494, the eleventh year of the reign of King Henry the Seventh of England.
2 According to Chambliss "The next alteration in the statutes occurs in 1495 and is restricted to an increase in punishment." Supra p. 434	2 The statute does not deal with any increase in punishment insofar as any of the statutes previously cited by Chambliss are concerned. In fact the express purpose as stated in the act is to moderate a previous vagrancy act passed in the reign of Richard II. "FOR ASMOCHE as the Kyngis gace moost entierly desireth amonges all erthly thingis the pspite and restfulnes of this his land and his subgettis of the same to (leve) quietly and (surefully) to the plesure of God and according to his lawes, willing and

Chambliss

Re-Examination

alweiss of his pitie intending to reduce theym thereunto by softer meanes then by such extreme rigour therfor prveied in a Statute made in the tyme of King Richard the second,..."

Previously a vagrant could suffer imprisonment. Now the vagrant is to be kept for a specified time and to be sent out of the town:

"and take or cause to be taken all suche vagabundes idell and suspecte psones lyvyng suspeciously, and theym so taken to sette in stokkes, ther to remayne by the space of iij daies and iij nyghtes...and then to be comaunded to avoide Towen;..."

3 In his discussion Chambliss suggests that the act reflected a changing interest of elites;

"During this period the vagrancy statutes appear to have been fairly inconsequential ..." Supra p. 35

3 The act specifically makes reference to:

"...the pspite and restfulnes of this his land and his subgettis of the same to (leve) quietly and (surefully) ..."

Chambliss

"...a period of dormancy in which the statute is neither applied nor altered significantly."
Supra p. 435

Re-Examination

"...considering also the great charges that shuld growe to his subgettis for bringing of vagabondes to the Caoles ...wherby likelehede many of theym shuld lose their lives..."

Far from being inconsequential, the provisions respecting vagabonds in this statute are more specific then in previous statutes.

This statute was, however, specifically altered by a number of statutes which were either overlooked or ignored by Professor Chambliss.

5 & 6 Ed. 6 c.25
1 Jac. 1 c.9
21 Jac. 1 c. 28

The real significance in the statute is found in the inclusion of 'suspected persons' which is now one of the hallmarks of present day vagrancy law.

	Chambliss	Re-Examination
4	"... there was a tendency to make punishments more harsh..." Supra p. 435	This act provides for the offender to be put in stocks for 3 days and to leave town. Previously such an offender could suffer imprisonment and could be kept in stocks indefinitely. This is hardly an increase in severity of punishment.
5	In considering the provision of 11 Hen. VII c. 2, it is paradoxical that Chambliss should attribute both an increase and a decrease in punishment or sanctions to the same statute.	Chambliss himself refers to "a lessening of Punishment in the Statute of 1503", supra p. 435. The statute to which he refers must be 19 Hen VII c. 12. This statute repeats almost verbatim the moderating provision of 11 Hen. VII c. 2 thereby confirming rather than lessening the sanctions enacted seven years previously.

THE REIGN OF KING HENRY THE EIGHTH -

The next statute 22 Hen VIII to be singled out by Chambliss was passed in the 22nd year of the reign of King Henry the VIII of England. Chambliss identifies it as being a shift from an earlier concern with labourers to a concern with criminal activities because it specifically deals with begging and vagrancy as a crime. Up to this point Chambliss has been discussing labour statutes to the almost complete exclusion of numerous statutes dealing specifically and explicitly with vagrancy. To attribute "a shift in focal concern" at this point is to ignore those previous vagrancy statutes which expressed a very real concern with the connection between idleness and vice. In fact, if there ever was such a shift, it must have occurred many years previous.

Contrary to what Professor Chambliss states, the concern for the criminal activities of idle persons was recognized in a number of earlier statutes. All of the antecedents below have either been overlooked or ignored in Chambliss's discussion of the law of vagrancy.

13 E: 1. Wynton C. 4
13 E. St. Civ. Lond 1
5 E. III c. 14
5 E. III St. 1 c.7
34 Ed. III 10, 11
7 R. II c.5
12 R. II c. 8,9,10
4 Hen. IV c. 27

23 E. III c. 7
25 E. III St. 1 C. 7
11 H. VII c. 2[9]
19 H. VII c. 12[10]

Failure to discuss several preceding statutes dealing specifically with vagrants and beggars, coupled with Chambliss's statement that there was a focal shift from labour to crime, clearly indicates a confusion between labour legislation and vagrancy legislation. Legislation concerned with sturdy beggars and valiant vagabonds has been confused with legislation dealing with fugitive labourers.

So once again, while Professor Chambliss might have been justified in stating that labour legislation might reflect the interest of a changing elite, there is no basis in this statute nor in his discussion of it to justify such a statement having regard to the criminal law of vagrancy. As in the preceding statutes under discussion, the preamble to this act clearly indicates a concern for the peace and prosperity of the realm as a whole:

> WHERE in all places throughe out this Realme of Englande, Vacabundes & Beggars have of longe tyme increased & dayly do increase in great & excessyve nombres by the occasyon of ydelnes, mother & rote of all vyces, wherby hathe insurged

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[9] Chambliss may have meant this statute when he cited 11 Hen. & C.

[10] Chambliss may have meant this statute when he refers to legislation in 1503.

& spronge & dayly insurgethe and spryngeth contynuall theftes murders & other haynous offences & great enormytes to the high displeasure of God the inquyetacon & damage of the Kings People & to the marvaylous disturbance of the Comon Weale of this Realme."

This continued concern for the lawless acts of beggars and vagrants is just as indicative of the reflection of a commonly held concern as it is of elite interest. Therefore the statute fails to meet the test of singular suitability.

Nevertheless, Chambliss goes on to deal with the next statute 27 Hen. VIII C. 25 which was passed five years later in 1535 and which expressly deals with the crime of vagrancy. It is cited by Chambliss as reflecting a change in interest or attitude of an elite because of provisions which increase or add to punishments not previously set out in other vagrancy statutes. 27 Hen. VII C. 25, however, was concerned with the manner in which poor people and vagabonds were to be sent to their home counties. The punishment provisions of 22 Hen. VIII C. 12 were confirmed by 27 Hen. VIII C. 25. The only increase in punishment was for those persons previously convicted of vagrancy.

27 Hen. VIII C. 25 reveals that it has little if anything in common with the labour statutes previously cited and represents little if any change in focus.

Chambliss's conclusion that there was a change in focal concern is probably the result of a continuing confusion of vagrancy legislation with labour legislation.

What occurred was a reinforcement and explanation of the previous "vagrancy" statutes. In fact this statute did not significantly increase punishments for vagrancy per se, but rather confirmed that repeated acts of vagrancy could constitute a felony and thus result in certain circumstances in punishment by death.

Chambliss also finds evidence of a changing interest with the addition to the statute of the category of 'ruffian'. Chambliss states that with this statute, vagrancy laws were:

> "...refocused so as to include ruffians... (who) shall wander, loiter or idle use themselves and play the vagabond,..."

He may have erred in his use of the term "ruffian". The original word was the middle English term "ruffeler" and the quotation which Chambliss appears to have translated improperly reads,

> "...if any of the aforesaid ruffelers sturdy vacabundes and valiant beggers..."

There is no addition in the statute of any category labelled 'ruffian'. The antecedents for "aforesaid" is to be found in Section III, "...all and evy idell psonne, and psoones ruffelers calling themselffes svyngman...".

The addition of the word ruffeler to the categories of persons contemplated by the statute adds nothing to the operative part of the offense. The essential ingredients or elements of the charge remains the same. The prohibition is still against anyone who is found "wandering, loftering in idleness or playing the vaca-bond." It would not have been necessary to establish that the accused was a 'ruffian' per se in order to gain a conviction under this act.

Chambliss's translation of the term "ruffeler" into "ruffian" is a curious one for the terms are not generally taken as synonymous. The word "ruffian" had been adopted from a French word in use at the time meaning pimp. It carried the general connotation of a tough, lawless or brutish person. (Oxford p. 776) On the other hand "ruffeler" had originally been derived from the low German word ruffeler referring to activity that is vexatious and disturbing. When this act was passed, the verb ruffeler meaning to swagger (Klein p. 1363) appears to have had a distinct connotation of its own. The noun had a independent existence in standard English and this statute marks its earliest appearance as a category of criminal types. Awdeley in 1562

as quoted by Partridge defined a ruffeler as one who;

"...saying he hathe bene a Servitor in the wars, and beggeth for his relief. But his chiefest trade is to robbe poore wayfaring men and market women." (Partridge p. 581)

Thus from the archaic word "ruffeler" meaning "to swagger" there came a class of vagabonds. (Oxford p. 776)

Chambliss cites this act as evidence of a new development in the law whereby suspected felons could be apprehended. As previously noted a number of earlier statutes contain provisions dealing with "suspicious persons." See 5 Ed. VI; Wynton C. 4, 12 Rich. II c.8,9,10 13 Hen. VII.

Like the other statutes cited by Chambliss, 27 Hen. VIII C. 25 may be used in support of a conclusion that represents continued recognition of a serious social problem afflicting the whole county. Without something more to corroborate the alleged influence of an elite, one is left with no alternative but to accept the statute at its face value as evidenced by the purposes expressly stated in it. As such, this statute adds no significant support for the conflict explanation as to how criminal law develops.

SUMMARY COMPARISON

22 Hen. VIII C. 12

Chambliss	Re-Examination
1. "It is significant that in this statute the severity of punishment is increased so as to be greater not only then that provided by the 1503 statute but the punishment is more severe." Chambliss 1973 p. 436	1 No statute passed in 1503 is specifically identified, or cited by Chambliss and so there is no means of establishing the offense and the punishment with which Chambliss is comparing the punishment provision of 22 H. VIII C. 12. He might have been referring to 19 Hen. VII C. 12, which is described as: "An act touching the punishment of vagabonds for their first offence, and for their second offence and of them that do relieve them. A remedy to provide for beggars not able to work. Which officers and persons may punish vagabonds, and their penalty if they do not." (Tomlins 1811 p. 95)
2 Chambliss identifies a shift in focal concern from labour to crime.	2 The preamble to this act clearly indicate a continuing concern for the peace and prosperity of the whole realm.

Chambliss

Re-Examination

"Where in all places throughe out this Realme of Englande Vacaboundes & Beggers have of longe tyme increased & dayly do increase in great & excessyve nombres by the occasyon of ydelnes, mother & rote of all vyces, wherby hathe insurged & sprongе & dayly insurgethe & spryngeth contynuall theftes murders & other haynous offences & great enormytes to the high displeasure of God the inquyetacon & damage of the Kings People & to the marvaylous disturbance of the Comon Weale of this Realme."

22 Hen. VIII C. 12 distinguishes between the poor and impotent from sturdy vagabonds and valiant beggars. The severe punishment only relates to the latter two categories which are now clearly distinguished as criminal.

What Chambliss identifies as a shift in focal concern appears to be the result of mistakenly identifying early labour statutes as vagrancy statutes.

Chambliss	Re-Examination
	This statute is clearly concerned with categories of persons who have been subject of much previous legislation e.g. vagabonds, beggars and suspicious persons. The categories of potential criminals appear to have been confused with fugitive or fleeing labourers. This act does not express a new concern with the criminal activities of idle persons. Chambliss has either overlooked or ignored a number of antecedents of this statute.

27 HEN. VIII

1 Chambliss submits that the introduction of the death penalty in statute is a reflection of the interests of a changing elite. "Only five years later, we find for the first time that the punishment of death is applied to the crime of vagrancy." Chambliss 1973 p. 436	1 The change in the statute was the provision that repeated offenses could constitute a felony and consequently the death could apply. The act expressly states that such provisions were for the common good, and there is nothing else in the statute nor in Chambliss's discussion of it to indicate otherwise.

Chambliss

2 Chambliss concludes that this type of legislation was revived for the "control of persons preying upon merchants transporting goods" (Supra p. 437) and thus reflecting the interests of a changing elite.

3 Chambliss concludes that;

"It is significant that the statute now makes persons who repeat the crime of vagrancy a felon." Supra p. 437

Re-Examination

"...to suffer peynes and execucion of dethe as a felon & as enmies of the Comen Welthe,..."

2 There is no reference or evidence in this statute to give support to that proposition. This act does nothing more than reflect a concern of long standing. It specifically states that it was passed in order to expand and clarify the vagrancy statute passed five years before.

3 The felony specified in this act was that of offending against the act for a third time, and of disobeying the court order to work.

"...any ruffeler or sturdy vacabund or valiaunt begger not havyng the upper parte of the right eare, (penalty for a second offense)...wandering in idelnes...or they haunt ydelnesse and hath not applied nor doth applie suche labours as he or they have been assigned..."

Chambliss

4 Chambliss also concludes that;

"During this period, the focal concern of the vagrancy statute becomes a concern for the control of felons, and is no longer concerned with the movement of labourers."
Supra p. 437

Re-Examination

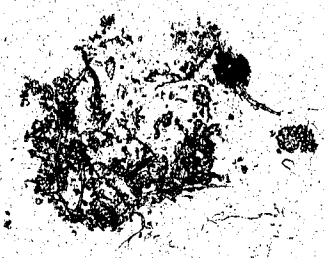
27 Hen. VIII C. 25 confirmed the provisions of the vagrancy act passed five years before. As seen previously in its preamble, the statute 22 Hen. VIII C. 12 (1530) was concerned with well being of the whole realm because of a social problem of long standing. The preceding act stated:

"WHERE in all places throughe out this Realm of Englande, Vacabundes & Beggars have of longe tyme increased & dayly do increase in great & excessyve nombres by the occasyon of ydelnes, mother & rote of all vyces..."

4 The concerns of this act are exactly the same as those of the preceding vagrancy act. In fact this same concern is reflects in most of the preceding vagrancy legislation. That there is no evidence of any change in 'focus' may be seen in the phrase;

Chambliss

Re-Examination



"...shalbe entreated used and ordered in evy behalff and to all intentes as is conteyned and especified aswell in the aforesaid formar acte as in this psent acte, ..."

The act is not concerned with the movement of labourers because none of its antecedents were so concerned.

As stated this act applied to anyone who might;

"...wandre loytre or idelly to use them selfes and playe the vacaboundes..."

5 This Statute is cited as evidence of a new development in the law whereby suspected felons could be apprehended.

"Persons who had committed no serious felongy, but who were suspected of being capable of doing so could be apprehended and incapacitated." Supra p. 437

5 Again it is significant that while various terms are used to identify the types of people contemplated by the vagrancy statutes there has been no reference to labourers per se as in previous labour statutes..

As previously noted a number of earlier statutes contained

provisions dealing with the "suspicious person": Thus there was no new development in the law as such at this time. 13 Ed. 1 C. IV, Lond. C.1, 13 Ed. 1 Wynton C.4, 5 Ed. III C. 14, 7 Ric. II C. 5, 11 Hen. VII C. 2, 19 Hen. VII C. 12.

Vagrant is synonymous with vagabond emphasising the idea of worthless living, often by trickery, thieving or other disreputable means.

Vagabond - an idle wanderer without a permanent home or visible means of support.

Rogue - a tramp or vagabond.

THE REIGN OF KING EDWARD THE SIXTH

A trend clearly evident in those preceding statutes which specifically deal with vagabonds is confirmed in 1 Ed. VI C. 3. It notes again the increase of vagabondry and its adverse effect on the whole realm. Stringent regulations are made even more stringent in what appears to be an attempt to contain a wave of lawlessness and unemployment. However, Chambliss cites this statute only in support of his contention that there was a change in focal concern. What is significant is the absence of any discussion by Chambliss of those provisions labelling persons 'slaves', allowing for the sale of children, providing for child beggars as young as five years old to be taken as apprentices, describing the use of neck irons, detailing exhaustive provisions for the charity of impotent beggars, lepers and bedridden persons.

What is cited by Chambliss is notable only insofar as it illustrates an attempt to tidy up the legislative definition of 'vagrant', and nothing is really added to nor is anything taken away from the definitions. In addition to repealing the previous vagrancy statutes and re-defining the crime of vagrancy I Ed VI increased the severity of punishment for vagrancy convictions.

Contrary to the conclusion of Professor Chambliss, this act exhibits no new focal concern. Its explicit definition of vagabondry in 1 Ed. VI does not enlarge upon the nature of the offense as expressed in previous statutes. What is of significance is the length of the statute and the nature of the punishment, both of which indicate an increasing concern for a condition that was seriously affecting the whole realm. The expressions of intent used in the preamble to the statute are in the same vein as many of the preceding statutes which expressly referred to vagrants. These references clearly distinguish this statute from those which were expressly concerned with labour, and they should not be confused with them.

The statute 1 Ed. VI does little, if anything, to evidence a development of early labour statutes into criminal statutes. If anything, this statute appears to reflect a general concern which only coincidentally affected any political or economic elite. Therefore, it is not singularly applicable to Chambliss's hypothesis.

It is unfortunate that Chambliss did not choose to assess the significance of the other vagrancy acts passed during the reign of King Edward the Sixth. In the third

and fourth years of Edward's reign the statute 3 & 4 Ed. VI C. 16 confirmed the old focal concern[11] by reviving the vagrancy act of 22 Hen. VIII C. 12. Two years later in 1552 the old focal concern[11] with the lawless unemployed was re-confirmed by 5 & 6 Ed. VI C. 2. The act 3 & 4 Ed. VI C. 16 is particularly interesting because it specifically refers to farm labourers being labelled vagabonds if found "loytering and refusing to worcke for suche reasonable wage;." In this regard the act 3 & 4 Ed. VI C. 16 clearly recognizes two classes of offenders:

> ...the ydle loytering of comen Laborers of Husbandrye...shall be punyshed as stronge and mightie Vacabounds, in suche manner and fourme as is declared in the saide Acte of xxijth against Vacabounds."

[11] This is in opposition to the shift in focal concern advocated by Chambliss.

SUMMARY COMPARISON

1 Ed. VI

Chambliss

1 Chambliss states that "the new focal concern" with respect to suspected felons was continued and in fact is made more general so as to include:

"whoever man or woman, being not lame, impotent, or so aged or diseased that he or she cannot work, not having where on to live, shall be lurking in any house, or loitering, or idle..."

[redacted] ss 1973 p. 437

Re-Examination

As in previous statutes the language of the preamble confirms a concern of longstanding:

"FORASMUCHE as Idlenes and Vagabundrye is the mother and roote of all theftes Robberyes and all evill actes and other mischiefs and the multitude of people given therto hath allwaies been here wthin this Realme verie greate..."

The preamble specifically indicates that this is not a new focal concern:

"Kyngs highnes noble progenito Kings of this Realme and this highe Courte of Parlament hath often and with greate travaile goon abowte and assayed wth godlie Actes and Statutes to represse, Yet until this or tyme it hath not had that successe which hath byn wisshed,..."

Chambliss

Re-Examination

"...Statutes hither-
to hath had small
effecte, and Idle and
Vagabounde psons being
unprofitable membres
or rather ennemyes of
the Comen wealthe
hath byn suffred to
remayne and encrease
and yet so doo,..."

This statute repeals all previous legislation and the quotation used by Chambliss is nothing more than part of the statutory definition of vagabound and neither adds to or subtracts from the previous reference to "all and evry idele psonne."

"First that all Statutes and Actes of plament heretofore made for the punishment of vagabounds and sturdie beggers and all articles comprised in the same shalbe from hensfurth repealed voyde and of none effecte: Secundlie that who so ever after the first daie of Apryll next following man or woman being not Lame Impotent or so aged or

Chambliss

Re-Examination

diseased wth sicknes that he or she can not worke, not having Landes or Tents, Fees Anuityes or anny other yerelie Revenues or Proffitts wheron theie may fynde sufficientlie their Living, shall either like a srvinge man wanting a maister or lyke a Begger or after anny other suche sorte be lurking in anny howse or howses or loytringe or Idelye wander by the highe waies syde or in Stretes in Cities Townes or Vyllages, not applying them self to some honnest and allowed arte Scyence srvice or Labour, and so do contynewe by the space of three dayes ..."

Of note is the absence of 'ruffeler' even though this act is more comprehensive and much more stringent.

Nothing in this statute indicates any new focal concern but rather shows an increase in the original focal concern by specifying additional and more severe punishments for the same old offense.

Chambliss

Re-Examination

"...to be marked with an whott Iron in the brest the marke of V."

"...onelye giving the saide Slave breade and water..."

"...to be marked on the forhed or the ball of the cheke with an hote Iron with the Signe of an S. that he may be knowen...to be the saide Mrs Slave for ever;..."

"...to suffer paynes of death..."

"...Or yf anny childe above thage of five Yeres and under thage of xiiij yeres go Idelie wandering abowt as a vagabounde,... to be srvants or apprentices..."

"...it shalbe lawfull... to kepe and punishe the said child in chaynes or otherwise,..."

2 Chambliss states;

"And in 1571 there is modification of the punishment to be inflicted, whereby the offender is to be 'branded on the chest with the letter V."
—Supra p. 438

2 This punishment was introduced in 1547 and not 1571.

"...that it shalbe lawfull...to putt a ryngе of Iron abowt his Necke Arme or his Legge for a more knowledge and suretie of the kepinge of him;..."

THE REIGN OF QUEEN ELIZABETH THE FIRST

In the 14th year of the reign of Elizabeth the First, Chambliss finds that the shift in focal concern from labourers to a concern with criminal activities "is fully developed." In support of this contention he cites a statute of 14 Eliz. C. 5 passed in 1571. This is a lengthy and cumbersome act which is chiefly distinguished by its attempt to define categories of persons who could be classed as vagabonds. Nevertheless, it is a true vagrancy statute which was passed in an attempt to revise and consolidate those vagrancy laws which had come into force during the preceding 400 years. The act does not appear to add to or vary the essential ingredients of the criminal offense of vagrancy. The concern of the statute remains much the same as those of its predecessors. This is evidenced by the similarity in the preamble of this act to those of other statutes which have already been cited.

> "WHERE all partes of this Realm...be psentlye with Roges Vacabonds and Sturdy Beggers excedinglye pestred, by meanes wherof daylye happeneth in the same Realm horryble Murders Thefts and other greate Outrags, to the highe displeasure of Almightye God, & to the great annoye of the Comon Weale;..."

Chambliss notes the act sets out long lists of persons who are to be treated as vagabonds together with a change in emphasis having regard to punishments. As Chambliss observed, the statute expressly excludes "cookers, or harvest folk, that travel for harvest work ...." This exception emphasizes the distinction which the early English statutes made between those committing the criminal acts of vagrancy and those fleeing labourers or agricultural workers who were in breach of labour or economic legislation.

Indeed, the thrust of this act again appears to be the suppression of criminal acts for the benefit of the common good rather than a reflection of the interests of an elite.

Therefore, this act fails to pass the test of singular suitability because it is equally supportive of the alternate explanation that the country as a whole was greatly concerned about the possible association of lawlessness with "ydle psones goinge aboute... using subtyll, craftye and unlawfull Games or Playes...."

Indeed it is difficult to identify anything in this legislation to justify a finding of a shift in focal concern although there is a shift in emphasis as punishments are slightly moderated. There is really nothing

in the act itself nor in any discussion of it by Professor Chambliss which lends credence to this being a reflection of any change in the interests of any elite. The act is expressly concerned with the 'Comon Weal' and it cannot be said to be singularly supportive of the conflict explanation of law.

Chambliss concludes his discussion of the English statutes with the statement that statute 14 Ed. C. 5 was "seen as being significantly more general than those previously." This reference is identified in footnote number 27, and the statute is identified as emphasizing the "criminalistic" aspects of vagrancy. In his discussion of this statute, Chambliss associates it with the year 1571. Normally the first figure reference preceding the monarch's name indicates the year in which the statute was passed. However, in this case there was no English monarch by the name of Edward in or about the year 1571. The lack of a figure reference immediately following the monarch's name prevents a positive identification of which King Edward is involved. In or about this period in history, five monarchs by the name of Edward reigned for a period of 13 years or more. A check of the legislation

passed during the reign of these monarchs has failed to disclose the quotations or references mentioned by Chambliss and attributed to 14 Ed. Ch. 5. Very probably this citation was meant to read 14 Eliz. Ch. 5 (1572) and the comments attributed to 14 Ed. C. 5 should be considered as forming an integral part of the discussion set forth in the analysis of the preceding act cited by Chambliss as 14 Eliz. C. 5.

While the quotations used by Chambliss could not be identified or located they are obviously concerned with vagrancy. Interestingly enough, these quotations taken at face value appear to reinforce the concept that the criminal law was an expression of common concern as the first quotation attributed to 14 Ed. Ch. 5 states;

> the common gaols of Everyshire are like to be greatly pestered...and heretofore hath been, for that the said vagabonds and other lude persons..."

and the second quotation refers to;

> ...diverse licentious persons wander up and down all parts of the realm...to the great terror of Her Majesty's true subjects...and the disturbance of the peace and tranquility of the realm..."

It is difficult to attribute to these quotations anything more than what they expressly state without some further

corroboration. Therefore, these citations attributed to 14 Ed. C. 5, whether correct or not, do little to advance the conflict perspective.

No other English statutes are specifically discussed by Chambliss although he does allude to legislation passed in the year 1743. According to Chambliss, "vagrancy statutes have now apparently and sufficiently been reconstructed by the shifts of concern so as to be more a useful instrument in the creation of social solidarity." This statement indicates again Chambliss's early confusion of labour law legislation with the criminal law of vagrancy. Chambliss has finally succeeded in divorcing labour legislation from what may be fairly categorized as vagrancy legislation.

Each of the statutes identified by Chambliss as a reflection of the changing interests of an elite has been found to be inaccurately cited. Having considered the individual inadequacies in Chambliss's interpretations it may be useful to consider the pattern of this legislation as a whole.

SUMMARY COMPARISON

14 Eliz. C. 5

Chambliss

Chambliss cites the following punishment as evidence of the shift in focal concern being fully complete.

"...he shall be grievously whipped and burnt thro the gristle of the right ear... for the second offense, he shall be adjudged a felon..." Chambliss 1973 p. 438

Re-Examination

The punishments set out are, if anything, more moderate than those of the preceding statute of 1 Ed. VI C. 3 Slavery, branding and the selling of children have, for example, been eliminated.

The act is a turning point marking the start of a gradual modification of the law whereby the crime of vagrancy eventually becomes a misdemeanor.

The focal concern remains the same. This is evidenced by the similarity in the preamble of this act when compared to the preamble of the preceding acts.

"WHERE in all partes of this Realme...be prsentlye with Roges Vacagonds and Sturdy Beggers excedinglye pestred, by meanes wherof daylye happeneth in the same Realme horryble Murders Thefts and other greate Outrage, to the highe displeasure of Almightye God, & of the great annoye of the Comon Weale;..."

Chambliss	Re-Examination
2 This statute is cited by Chambliss in footnote 27 as 14 Ed. C. 5 (1571)	2 This citation is incorrect. There was no monarch by the name of Edward in that particular year.
3 Chambliss attributes the following provision to 14 Ed. C.5 (1571) "And whereas by reason of this act; the common gaols of every shire are like to be greatly pestered with more numbers of prisoners then heretofore hath been..." Chambliss Supra p. 439	3 The correct reference is probably 14 Eliz. C. 5 (1572) or 14 Ed. VI although no similar provisions were located in those statutes.
"It seems, a priori, that a "rogue" is a difference social type than is a "vagrant" or a "vagabond;" Supra p. 439	The term "Roges" is found in the preamble of the preceding statute 14 Eliz. Ch. 5 (17) as previously noted. The term included the meaning of "vagrant" and vice versa. There is probably no significance to this addition other than it was done by way of an additional description of the categories of persons contemplated by vagrancy prohibitions.

Chambliss

4 The second quotation attributed to this statute is set out as follows:

"Whereas divers licentious persons wander [illegible] down in all [illegible] of the realm, [illegible] tenance their [illegible] wicked behaviour; [illegible] do continually assemble themselves armed in the highways, and elsewhere in troops, to the great terror of her majesty's true subjects, the impeachment of her laws, and the disturbance of the peace and tranquility of the realm; and whereas many outrages are daily committed by these dissolute persons, and more likely to ensue of speedy remedy be not provided."
Supra p. 439

Re-Examination

4 The original source of this quotation could not be located.

CHAPTER III

AN ASSESSMENT OF LEGISLATIVE PATTERNS

Taken individually the statutory deficiencies discussed in Chapter II may not detract from the general thrust of Chambliss's argument. However, a review of the legislative patterns of vagrancy law taken as a whole during the time frame adapted by Chambliss clearly does not warrant his conclusion that:

> Shifts in changes in the law of vagrancy show a clear pattern of reflecting the interest and needs of the groups who control the economic institutions of the society. The laws change as these institutions change.
>
> What is true of the vagrancy laws is also true of the criminal law in general. (Chambliss 1973 p. 430)

The two earliest laws cited by Chambliss from the reign of Edward I clearly do not come within the category of legislation designed to control the movement of people or to provide a source of labour for the economic elite. The statutes 3 Ed. I and 35 Ed. I contain no provisions which can be construed as specifically affecting labour. More importantly, there is nothing in the two statutes that can be construed as

legislation involving vagrancy except in the most tenuous way. The two statutes provide for the protection of religious houses with the expressed intent of better serving the poor. In all fairness the two statutes may be better categorized as being early antecedents of English poor laws.

In the reign of Edward III the statutes cited by Chambliss were intended both expressly and by implication to stabilize the country's economy. Both prices and wages were fixed. The provisions were confined primarily to labourers and their employers applying as they did to both masters and servants. The statutes passed during the 23rd year of the reign Edward III reinforced the previous legislation relating to the giving of alms. Presumably this was to better protect both the donor as well as any recipient who was truly in need of charity. While the giving of alms was prohibited, it was not an offense to beg, and there was no restriction on the movement of people, nor was there any legislation either expressly or impliedly designed to control the "valiant beggar" or "sturdy vagabond."

Chambliss's apparent confusion as to the roots of vagrancy law may have originated in his interpretation

of the Act of 1349 in which two distinct pieces of legislation are brought into juxtaposition. Chapter I of this law deals with fixing of wages and prices while Chapter VII deals quite separately and distinctly with the problem of alms giving. The legislation in 1350 again dealt with the problem of farm labour and the control of prices and wages. It is important to note that there is no discussion or any provisions for dealing with vagrants or beggars.

Chambliss has apparently overlooked, or chosen to ignore, a series of statutes in the reign of Richard II which specifically dealt with persons wandering about the country and committing crimes, or associating in bands and overawing the authorities. These legislative provisions did not overrule or vary the previous legislation enacted for the control of prices and wages nor did they affect those statutes which gave protection to the religious houses or dealt with the giving of alms. Rather these statutes legislated against an entirely new concern.

The concern with "Roberdsman and Drawlatches" is set out in such a way as to leave no doubt that these laws were passed in order to alleviate a situation that

was of a general social concern and not something that was the prerogative or preserve of some economic elite. The only statute in this period that Chambliss chose to discuss was a statute passed in the 12th year of the reign which contains no provisions dealing with labour or vagrancy. Indeed, this statute may be properly identified as one of the antecedents of present day poor laws because it distinguishes between the impotent poor and the able-bodied poor. Some confusion may have resulted when Chambliss considered this statute because Chapter 10 (not cited) refers to labourers and servants. This legislation dealt with a separate and distinct problem which admittedly may have been of great concern to the economic elite, but as previously indicated, it was the earlier and uncited statutes in the reign of Richard II which clearly created the concept of trying to control the probable criminal.

Legislation passed during the reign of Henry IV and Henry V is again either overlooked or ignored by Professor Chambliss. The only statutes selected by Chambliss are clearly labour statutes which reinforce provisions previously passed relating to labour, and obviously of special interest to particular economic groups. Finally

In 1503 during the reign of Henry VII a statute appears which relates specifically to the punishment of vagrants. These provisions may be related directly back to those earlier acts of Richard II which dealt with persons about to commit a crime, and they may be related also to the punishment of those able-bodied poor who were classified as vagrants because they refused to work, a classificiation distinct from that of fugitive labourer. The punishment provisions in this legislation were applicable to earlier legislation which was not discussed by Chambliss.

When considering the statute passed by Henry VIII in 1530, Chambliss apparently failed to recognize its connection with earlier uncited vagrancy law as well as its connection with labour and poor laws. The latter may be considered social legislation and as such these acts were quite distinct from the crime of vagrancy. In the reign of Henry VIII the impotent poor were to be, for the first time, licenced. Presumably this was for their protection and to prevent abuses by the able-bodied poor. Confusion with the vagrancy provision was spawned, however, by this particular act which contained severe penalties for any able-bodied poor who might be considered

vagrants or "strong beggars." It is in this act that the strands from the earlier labour legislation and the earlier social legislation become inextricably interwoven with earlier vagrancy legislation. 22 Hen. VIII introduced the concept of licencing into poor law legislation. Labour legislation in turn was reinforced by more severe penalties for fugitive labourers and the vagrancy legislation was reinforced by a more comprehensive definition of those who might be considered as "criminally vagrant."

During the reign of Queen Elizabeth the First, the severe penalties which became associated with the laws of vagrancy arrived coincidentally with the more precise definition of those persons to whom the crime of vagrancy was applicable. The generic term "vagrant," first used to describe idle and suspicious persons, was widened until it eventually included such diverse categories of persons as fugitive or fleeing labourers, run-away slaves, scholars from Oxford and Cambridge, Egyptians, actors, rogues, ruffelers, strong beggars, etc. When Parliament attempted to control the probable criminal by applying the simple criterion of work or be treated as a criminal, the legislation relating to economic

stability and the problem of the impotent poor became associated with the criminal law and with promotion of the peace and welfare of the whole realm. Vagrancy law legislation then became more specific, more searching, and more stringent, as authorities became more vigorous in their attempt to suppress crime. At this juncture in history three distinct categories of legislation have been loosely jumbled together to continue on three very separate and distinct routes.

But the emergence of poor law legislation and labour law legislation was only coincidental with criminal law vagrancy legislation. Chambliss apparently had difficulty in properly determining which was which because of the multiple effects of those laws. The criminal law concerns itself primarily with the prohibitions of acts that are "believed to be" generally repugnant to the community as a whole. Although criminal law may have secondary effects relating to economic conditions, social assistance, and the control of labour, Chambliss failed to recognize this source of confusion with other types of legislation.

This in turn has defeated any attempt to identify the bias which was allegedly mobilized by the elite.

If Chambliss had ranked various effects of converging legislation and catalogued them into primary and secondary effects, the thread of vagrancy law could have been distinguished from the other categories of legal ordinances. What is to be considered primary or secondary is a matter of definition which depends on the researcher's priorities, his indicia of bias, the type of law being studied, and its latent and manifest functions. Chambliss's failure to define what he meant by "mobilization of bias" and to identify the criteria he uses to identify "bias" is significant in a paper that specifically claims to deal with a "mobilization of bias."

THE NECESSITY OF HISTORICAL CORROBORATION

In the final analysis any ranking of effects of vagrancy law can only be determined from the historical record of the legislation being considered: Chambliss is certainly correct in suggesting an historical analysis of the emergence and devolution of "the law of vagrancy" as a particularly promising method of determining how law acquires its form and substance. And so it should be, if such a study is related to the actual social and economic conditions extant when the law was enacted.

Obviously, the validity of any such relationship must be based on facts which accurately reflect the attitudes and manners of the parent society as supported by historical records. These records should be as accurate as circumstances permit, and they should be fairly reported and fully described. Not only did Chambliss fail to properly categorize the law of vagrancy but he was unable to provide an historical analysis that would permit such a categorization.

Chambliss's historical matrix can only be generally correlated with the specific law of vagrancy. There is no demonstrated association between the social situations described by Chambliss and the legislation under consideration. Notwithstanding the basic problem of trying to analyse a single criminal law by looking at sources hidden in the misty past, Chambliss relies almost solely on an obscure history text (Bradshaw, 1954) and an article from the Pennsylvania Law Review (1956 p. 615) in determining the raison d'etre of early vagrancy law.

Chambliss's study is marred by poor reading of the law and by historical inaccuracies. The volume which he cites as The Social History of England by F. Bradshaw

cannot be located in any list of American, English, or Canadian publications (Books in Print, 1974 and Cumulative Book Index, 1928, 1954, 1962.) Chambliss might have done well to have taken a leaf from Lord

Justice Scott in the leading case of Ledwith vs Roberts (1936) by referring to Stephens Commentaries 12th Edition, Volume 2, p. 234 and to Webb, English Poor Law History, Part I, p.49. On reviewing the history of vagrancy Lord Justice Scott concluded that:

> ...the "wild rogues", so common in Elizabethan times and literature who had been born to a life of idleness and had no intention of following any other. It was they and their confederates who formed themselves into the notorious "brotherhoods of beggars" which flourished in the 16th and 17th Centuries. They were a definite and serious menace to the community, and it was chiefly against them and their kind that the harsher provisions of the vagrancy laws of the period were directed." (Ledwith vs Roberts 1936, p. 594)

Chambliss might have emulated Pollock and Maitland in their History of English Laws (1911) p. xxiii[12] who also acknowledged the scholarship of Sir James Stephen whose History of the Criminal Law of England (1883) deals in considerable depth and detail with the laws of

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[12] These eminent historians concluded that "The philosophical analysis and definition of law belongs in our judgment neither to the historical nor to the dogmatic science of law, but to the theoretical part of politics.... The matter of legal science is not an ideal result of ethical or political analysis; it is the result of facts of human nature and history."

vagrancy. Stephen identifies the vagrancy laws with the poor laws and labour legislation of the times. Recognition is given to the fact that;

> Statute after statute passed (sic) in the reign of Richard II referring to the number of persons who wandered about the country and committed all sorts of crimes, leaving their masters, associating in bands and overawing the authorities." (Stephens 1883, Vol. 3, p. 267)

Also of significance is a reference in Volume 1 by Stephens to provisions in Roman law dealing with vagrancy indicating an ancient concern with the potential criminal. (Stephens 1883 Volume 1, p. 25)

Any discussion of the laws of vagrancy should include not only statutes cited (often in error) by Chambliss but as well it should have reference to the following acts which are just as pertinent;

1 Ric. 2, C. 6 (1377)	2 Ric. 2, C. 6 (1378)
7 Ric. 2, C. 5 (1383)	11 Hen. 7, C. 2 (1494)
19 Hen. 7, C. 12 (1503)	1 Ed. 6, C. 2 (1547)
3 & 4 Ed. 6, C. 16 (1549)	5 & 6 Ed. 6, C. 2 (1552)
2 & 3 Phil. & Mary, C. 5 (1555)	1 Jas. 1, C. 7 (1604)
10 Geo. 2, C. 28 (1737)	12 St. 2, C. 23 (1713)
17 Geo. 2, C. 5 (1744)	13 Geo. 2, C. 24 (1740)
3 Geo. 4, C. 40 (1822)	32 Geo. 3, C. 45 (1792)
43 Eliz. C. 2 (1601)	5 Geo. 4, C. 83 (1824)
	Vagrancy Act (1824) Sec. 4
	39 Eliz. C. 4 (1597)

All of these statutes deal specifically with vagrancy and represent a development or shift in the law. For a summary of statutes on vagrancy see Stephens 1883 pp. 203-206.

For an adequate social and descriptive background of the times one could do worse than consult W. S. Holdsworth whose seven volume A History of English Law deals inter alia in depth with the law of vagrancy.

> ...and in the middle of the Fourteenth Century the economic changes which lead to the rise of the free labourer rendered these institutions and agencies wholly inadequate. The peace and security of the community were threatened by homeless able-bodied vagrants who supported themselves by preying on society, and refused to work for their living." (Vol. 4, 1925, p. 338)

> ...and it is clear from the researches of Harman an Elizabethan justice of the peace for the County of Kent that none of these penalties were successful in ridding the country of troops of disorderly persons which infested it. There were ranks among them. They had a sort of organization and peculiar pattern of their own." (Vol. 4, p. 394)

Further discussion of the general concern with peace and order, as opposed to the protection of an elite interest in cheap labour, may be found in The Common Law of England, W. Blake Odgers, 1911, p. 223-227, 1084, Sources and Literature of English Law, W.S. Holdsworth, 1925, Principles of English Law, Robert Campbell, 1907, and The Kings Peace, F.A. Inderwick, 1895.

HISTORICAL FACT OR HYPOTHETICAL FICTION

If any sociological explanation is to warrant recognition, the factual ingredients of the recipe must be accurate as well as relevant. Those who rely on Chambliss's research of vagrancy law are warned that, aside from any ideological biases apparent in Chambliss's discussion, his data may be inadequate. Not only has the English law used by Chambliss in support of his thesis been inaccurately cited and poorly interpreted, the historical context pertinent to such law is inconclusive as well. In addition much law relevant to Chambliss's contention has been omitted. Obviously Chambliss's data have not been thoroughly scrutinized in the past. This is unfortunate because any article that runs the risk of becoming part of the folklore of sociology deserves something more than slavish repetition.

In contradiction of the conflict hypothesis, the legislative pattern over the centuries under consideration provides no support for Chambliss's contention that these laws were invoked only as a response to elitist concern. To the contrary, there is clear evidence of a general concern with lawlessness and potential crime expressed in the relevant statutes.

This general concern with lawlessness and crime is distinguishable from the legislated regulation of labour and legislation for the welfare of the impotent poor.

These many deficiencies justify asking whether the conflict perspective has provided any insights into the nature of the law of vagrancy.

CHAPTER IV

REBUTTAL

Chambliss would have us believe criminal law springs only from the actions and concerns of special group interests and seldom, if ever, from common interests. In the main, his arguments rest on an historical examination of one law which he confidently asserts demonstrates his argument. But his analysis based on the law of vagrancy is lacking and inconclusive. It may be rebutted on the grounds that:

- key concepts in the conflict theory such as "group interest," "alteration of law," and "mobilization of bias" remain undefined.

- Chambliss's micro study (of vagrancy law) constructed to support a macro-proposition (criminal law is elitist) has been shown to be defective. Therefore the macro-proposition is not proved.

- Chambliss does not recognize the impact of common concerns and of conflict generated by conduct which deviates from generally accepted behavioral norms in the initiating of law. By definition the English common law is based on custom and precedent.

- Chambliss makes no allowance in his discussion for any distinction which might be made between the statutes as worded and the statutes as implemented.

- Chambliss does not account for the apparent persistence, general acceptance and popular support of vagrancy laws. There is no law enforcement machinery now, nor was there in medieval England, which could compel a population to observe any unnecessary or unpopular law for a prolonged period of time.

- Chambliss attempted to interpret the intent of legislation and the motives of legislators with English law that is inaccurately cited and poorly interpreted while ignoring much relevant statute law. In addition, depiction of the social context in which law was written is superficial.

- The conflict perspective in general and Chambliss's study in particular deny that Western criminal law is accorded popular legitimacy. But there is nothing in Chambliss's study which demonstrates that English vagrancy laws were not accorded popular legitimacy. (Recent research shows there is an apparent cross-cultural acceptance of the legitimacy (necessity) of state intervention in response to crimes mala in se (Newman, 1976).

- Chambliss has failed to recognize the situation in which a law characterized as specifically serving the special interests of an economic elite can confer a substantial benefit on a community as a whole thereby achieving consensual acceptance.

Regardless of the foregoing rebuttal the failure of any of Chambliss's data to pass the test of singular suitability is a denial that his data have any special

causal connection with the conflict perspective. The data are equally supportive of other explanations of the origins of vagrancy law.

MULTIPLE APPLICABLE CAUSES

Chambliss's thesis is a causal one. It proposes that the economic interests of a powerful few imposed a criminal law upon a powerless multitude. However, the causal connection has not been demonstrated. The causal bond assumed by the conflict orientation may be questioned because the evidence presented is consistent with other explanations of the origin of English vagrancy laws. For example:

- That such laws were a response to general needs resulting from social and economic conditions induced by the decline of feudalism.
- That such laws dealt with conflicts which were of concern to all levels of English society of the period.
- That the laws cited borrowed the principle of controlling the movement of persons from earlier labour regulations. The stated intent of such antecedent labour legislation was clearly different from the state intent of antecedent vagrancy legislation.
- That the distinction made in the cited legislation between "sturdy vagrants" and impotent beggars demonstrates English concern with protecting the impotent poor while defending society against the known criminality of the "sturdy vagrants."

- That in their final form the relevant vagrancy laws were clearly directed against criminal activity which suggests a support for these laws which was broadly based. Both the expressed intent of the legislation and the historical context deny the conflict assumption that such laws were written only to serve an economic elite.

- That any special interests which may have been advanced were only coincidental to the advancement of a general social interest. Any specific benefits may have been only an adjunct to the fullfillment of a more general social benefit or need.

- That behaviours persistently regulated by law have come to be considered crimes only because of variations and applications in the law which have resulted in a continuing benefit to the whole community.

Whether or not this consistency of the causal bond with explanations other than the conflict perspective may be attributed to the creation of a "false consciousness" is admittedly an open question.

CONSENSUS AND FALSE CONSCIOUSNESS

To the Marxist a possible explanation for the apparent general acceptance of vagrancy law may lie in the concept of "false consciousness". However this possibility was not discussed by Chambliss, although the burden of justifying such an explanation lies with him. In any event his data appear to negative this particular

concept. This particular argument is made doubtful in those instances where the criminal law such as vagrancy has persisted for prolonged periods of time. The engendering of "false consciousness" should apply equally to the revision and the repeal of laws as it does to the initiation of law. However attempts, for example, to amend the provisions of the Criminal Code of Canada have often been strongly opposed. That laws dealing with induced abortion and victimless crime, and which might be considered reactionary and regressive, were 'kept on the books' for so long may be a reflection of public opinion and widespread public support. Is the recent controversy surrounding the retention of capital punishment in Canada to be seen only as indicative of a supposedly elitist attempt at revision of the law being resisted by a non elite?

If Chambliss was implying a creation of false consciousness when he stated that his paper was specifically concerned with "the mobilization of bias,"[13] his discussion is inadequate. He chose to restrict himself to what the statutes contained as opposed to how they were enforced. In so doing he avoided the question of selective application. Surely, the only true indication

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[13] As previously noted this important concept was not defined by Chambliss.

of the degree to which special interests were successful in mobilizing bias is to be determined from studies relating to the administration and application of the law. The ultimate effect of any legislation must be determined from its application, which may in turn reflect a "mobilization of a bias" entirely different from that giving rise to the legislation.

This rejection of Chambliss's data and his accompanying explanation of the origins of vagrancy law should not be construed as a conclusion that completely denies the concept of false consciousness or that totally rejects the conflict perspective.

THERE MAY BE MERIT

Chambliss is not alone in the belief that law is the result of the operation of special interests rather than an instrument that functions in an attempt to reconcile conflicting interest. The conflict school would have us believe that the law with few exceptions incorporates only the interests of specific persons and groups as opposed to society as a whole. (Quinney 1967 p. 25)[14]

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[14] Quinney appears to have accepted Chambliss's data without question.

There may be merit in such a perspective which brings a fresh approach to the analysis of law. It may yet provide a useful vehicle to resolve the questions of whether the prejudices of society can be accommodated by the criminal law and whether public opinion is molded by special interests. It may assist in determining what is meant by public opinion and whether it is homogeneous. So the inadequacies of Chambliss's presentation should not preclude the use of the conflict perspective as a valuable tool with which to gain a better understanding of law. This can only come, of course, from in-depth studies of the socio-historical origins and application of particular laws.

Regrettably the quality of Chambliss's data detracts from what might have been a useful perspective on the origins of law. I am confident that much of our law has been designed to advance special interests; a review of municipal by-laws, the law merchant, maritime law, etc. would disclose any number of examples of parochial legislation. Nevertheless, a close analysis of the laws of vagrancy takes nothing away from Pound's dictum that:

> Looked at functionally, the law is an attempt to satisfy, to reconcile, to harmonize, to adjust these overlapping and often conflicting claims and demands, either through securing them directly and immediately, or securing certain individual interests, or through deliminations or compromises of individual interests, so as to give effect to the greatest total of interests that weigh most in our civilization, with the least sacrifice of the scheme of interests as a whole." (Pound, 1943, p. 39)

Even Sutherland in reviewing the influence of psychiatrists on sexual psychopath laws recognized general social consensus as undergirding criminal law.

> The most significant reasons for this specific content of the proposals of these committees... is that it is consistent with a general social movement.

and again,

> ...the sexual psychopath laws are consistent with this general social movement toward treatment of criminals as patients. (Sutherland, p. 148)

While the abuse or misuse of laws, including distortions in judicial interpretation, might be amply illustrated with the law of vagrancy, clearly it is quite another matter to state categorically that the legislative history of such laws denies Pound's theory of interests or that it is a denial of the "conventional myths."

SOME CONVENTIONAL MYTHS

The legislation and the historical data submitted by Chambliss are equally supportive of law being assumed to be rules which organize social behavior by providing a basis for legitimate expectations (Rawls 1971 p. 235) It is supportive of an explanation which holds that law is a response to internal conditions in a search for a means to translate a society's basic postulates into action, to preserve them and to resolve conflicts of interest (Hoebel 1954 p. 326). There is nothing in Chambliss's research that negates Malinowski's opinion that "the main province of law is in the social mechanisms found at the bottom of all real obligations and which covers a vast proportion of their custom," (Malinowski 1966 C. XII) So whether one accepts the functions of law as the maintenance of a structural continuity in society (Radcliffe Brown 1935 p. 396) or as a social norm enforced by a group possessing the socially recognized privilege of so acting (Homans 1950 p. 174-189), one is able to explain the law of vagrancy on the basis of the data adduced, as something other than the mere imposition of the interests of a powerful elite. It is

here that Chambliss has failed to provide a better understanding of the development of law. In setting out to destroy the "conventional myth," Chambliss has left us with nothing which cannot be comfortably accommodated by a number of other explanations.

CONCLUSION

On the basis of the data presented I am led to the conclusion that the criminal law as exemplified by the laws of vagrancy was engendered out of a genuine and general concern over the anticipated unlawful behavior of "suspicious persons." Undoubtedly this initial concept was varied and expanded by those in positions of power on the grounds that all such extensions were for the peace and good order of the whole realm. Vagrancy legislation as such appears to have been accepted as part of the criminal law when the resulting sanctions came to be clearly identified with promotion of the actual peace and good order of the realm or were believed to serve these ends.

Unfortunately, the 'conflict perspective' has failed in Chambliss's hands to explain adequately the law of vagrancy.

Although Chambliss quoted from Halsbury's Laws of England, he might well have paid greater heed to that digest's discussions of vagrancy law. As noted by the eminent Lord Chancellor[15] the term vagrant is an elastic one and, as ordinarily used, no precise meaning can be attached to it. So by its very nature the law of vagrancy may be too imprecise and too fickle to define. In addition, it is a law which has not enjoyed any consistency in application. (Halsbury p. 606) Perhaps some other law might have provided a more suitable vehicle for Chambliss's contentions, for the criminal law of vagrancy overlaps with labour and poor law. But whatever the vehicle, it is obvious that the law is not a series of water tight compartments to be explained by an analysis of one example taken from the fringe of the criminal law.

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[15] The late Right Honourable Earl of Halsbury Lord was the High Chancellor of Great Britain 1885-86, 1886-92 and 1895-1902 and author of The Law of England Being A Complete Statement of the Whole Law of England.

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