

The Emergence of Habitual Criminals in 19<sup>th</sup> Century Britain:  
Implications for Criminology

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## Abstract

This paper describes the rise of an influential concept that posited the 'habitual criminal' as a distinct being in 19<sup>th</sup> century Britain. Drawing on primary sources, it charts the discursive contours of this entity and its direct emergence out of three underlying discourses. The latter defined, respectively, images of the criminal class, criminal character and criminal habits. In concert, these discourses fixed a narrow formulation of the habitual criminal that served as the basis of scientific criminology directed to the 'criminal'. Critically reflecting on several problematic implications of this insight, the paper concludes by calling for a politics of justice centred not on the supposed neutral scientific identification of 'criminals', but on the initiating criminal accusation processes from which all criminalization processes ensue.

## Biographical Note

George Pavlich is a Professor of Law and Sociology at the University of Alberta. He has published widely in the areas of socio-legal studies, social theory and law, criminological theory, governance studies and

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## The Emergence of Habitual Criminals in 19<sup>th</sup> Century Britain: Implications for Criminology

It is an almost instinctive response on the part of those who are not criminals to look upon those who are as being different. From there it is a short and easy path to the assumption that this difference originates in characteristics peculiar to the transgressor's individuality alone (Radzinowicz and Hood, 1990: 3).

This intriguing passage signals a paradox underlying much criminological thinking. On the one hand, even if 'instinctive response' goes too far, the quotation suggests that social responses create consequential differences such as the contingent, historical creation of the 'habitual criminal'. On the other, it takes the 'short and easy path' to reify that contingent identity as an existing being (e.g., 'those who are [criminals]', or 'the transgressors'). Elsewhere, Radzinowicz and Hood assert that transportation was 'flushing large numbers of criminals to the antipodes' (1990: 231), '...the number of criminals involved was far greater' (256), and 'Between 1922 and 1928 only 31 criminals, on average, were sentenced to preventative detention...'

(287). Notwithstanding the offensive derogation of the first, these examples appear to hypostatize the 'criminal,' even as they offer a comprehensive historical analysis of the contingent ways in which various versions of this identity (the 'habitual criminal', 'juvenile delinquent' etc.) surface in different epistemes. Not without considerable influence, ontological slippages of this kind enable vast industries – from popular crime scene investigator television shows, reality TV on criminals, detective fiction, criminal identification with associated forensic sciences, and, of course, criminological thought directed to the 'criminal'.

Against the pre-determined ontological commitments of such tendencies, this paper focuses on the contingent, discursive lineage that produced the 'habitual criminal' in nineteenth century Britain. Unlike Radzinowicz and Hood's emphasis on the regulatory reasons and responses (e.g. indefinite detention) surrounding this identity, one could highlight key discourses that produced the 'habitual criminal' as a meaningful construct in the first place. Such discourses founded criminal anthropology's object (the *homo criminalis*), and versions of this object remain a focal point of several subsequent criminological approaches.<sup>1</sup> Even if policy failures did accompany its emergence (see

Radzinowicz and Hood, 1990: 261ff), the successful enunciation of 'habitual criminals' as discrete beings cemented the idea that certain kinds of individuals are inherently different from everyone else, thereby marking out specifically criminal from non-criminal individuals. This provided a major boost for attempts to delineate the 'criminal' as a fixed and contained object, amenable to scientific criminological study.

With this in mind, the following analysis selectively highlights various systems of thought that were central to the discursive production of the habitual criminal as a distinct being in 19<sup>th</sup> century Britain. It proceeds through three related sections. The first examines selected influential British texts that enunciated the 'habitual criminal' as a being per se. The second focuses on three thought systems that provided a base for enunciations of the habitual criminal as a discrete entity. These systems provided various elements that could be, and were, combined to form: a specific class of people was isolated as distinctly 'criminal'; members of this class were described as having uniquely depraved individual characters; and, they were imbued with degenerate habits that purportedly led to criminal acts. In other words, late 19<sup>th</sup> century images of the 'habitual criminal' drew on, and

gained support from, previously developed ideas about a 'criminal class', 'criminal characters' and 'criminal habits.' The final section discusses the overlap between the discursive achievements that posited the 'habitual criminal' as a distinct entity and the rise of 'scientific criminology' directed at the 'criminal'. By pointing to the lineage of the habitual criminal as the basis of criminology's oft asserted 'criminal individual', the paper calls for a politics of justice and a logos of crimen that directs itself to 'criminal accusation' rather than to such pre-defined objects as the 'individual criminal'.<sup>ii</sup>

### The Habitual Criminal Surfaces

"There is a population of habitual criminals which forms a class by itself. Habitual criminals are not to be confounded with the working or any other class: they are a set of persons who make crime the object and business of their lives; to commit crime is their trade; they deliberately scoff at honest ways of earning a living, and must accordingly be looked upon as a class of a separate and distinct character from the rest of the community"  
(Morrison, 1891: 141/2 crime and its causes in Tobias 59)

Given the date of this quotation, one might be tempted to accept the usual view that the habitual criminal was a product of later nineteenth

century thinking (Radzinowicz and Hood, 1990; Pratt and Dickson, 1997). However, formative traces of the basic idea were already apparent in previous texts. In 1833, for example, Wontner offers a classification of prisoners that begins with "Habitual Offenders who have all their lives been engaged in crime" (1833: 286).<sup>iii</sup> He also asserts that there is but a slim chance of reclaiming 'these characters': "Let us, therefore, first make laws for these men!" (1833: 216). Similarly, in 1838 a Select Committee's evaluation of Transportation as a suitable form of punishment made reference to "habitual criminals" who "compose what is properly called the criminal population of this country" and who "gain their livelihood by the repetition of offences, and who consequently have lost all feelings of moral aversion to crime, and can only be restrained by fear" (1838: xx). Evidence from John Ward to that Committee extolled the importance of determining, "whether the criminal belonged to the class of habitual criminals," or was a victim of a "moment of temptation," an "accidental criminal" (5<sup>th</sup> Feb, 1838, 5). One year later, the Royal Commission's Report separated out "habitual depredators" from "other criminals", calling for detailed information to be obtained on 'habitual delinquents'. It reasoned that without such information, there "...can be no observation and none of that most efficient, economical, and

constitutional kind of prevention, which consists in the direct watching and guarding of persons known or suspected bad character" (Shaw-Lefevre, 1839: 7).

Though variously nuanced, these references formulate versions of the habitual criminal as a distinct being.<sup>iv</sup> By mid-century, Mayhew's (1956: 88) classic study of London's poor suggests that the 'habitual' (at times 'professional') criminal is widely assumed to comprise a category of people distinct from 'occasional' or 'accidental' criminals.<sup>v</sup> He insists that these categories (rather than the legal taxonomies of criminal law) offer more reliable ways to approach crime and its causes. Against the undifferentiated categories of criminal law, he extols the virtues of discriminating between criminal types, noting each type's unique reason for committing crime. Therefore, if one is,

"...to learn something as to the causes of the crimes, and consequently as to the character and passions of criminals themselves, he must begin *de novo*; and using official facts, but rejecting the official system of classification, proceed to arrange offences into two classes, according as they are of a professional or casual character, committed by habitual or occasional offenders" (1856: 88).

Just over a decade later, this call to new classifications of criminal types appears more as an incontestable fact. For example, reporting on Parliamentary discussions dealing with statutory proposals to regulate 'habitual criminals', The Times editorial (10<sup>th</sup> March 1869) declares as 'ludicrous' the "hesitations and uncertainties of Parliamentary debate" when compared with the "absolute practical convictions of the police." The editors of the paper pause to reflect on whether "there is any test of Habitual Criminality" but quickly reject it as beside the point given that the "police have got the names, haunts, character, and abodes of these practitioners all on record" (p9, col. C).

They continue:

"You want to know what a professional criminal is. Take a walk with the police, and they will show you in the class all the varieties as easily as you could be shown the animals in the Zoological Gardens." (op cit)

These are, so the article alleges, "the enemies of society of which we wish to rid ourselves" (op cit).<sup>vi</sup>

Continuing this line of thought, and mounting a specific 'defence' of society, new regulations for habitual criminals were statutorily enacted through the Habitual Criminals Act of 1969 (32 &33 Vict) c.99.

With an overtly stated aim to regulate recidivism, this Act defined the habitual criminal as any person who,

“...is convicted on indictment of any offence specified in the first schedule hereto in England or Ireland, and in the second schedule hereto in Scotland, and he be proved to have been previously convicted of any offence specified in the said schedule...” (Part III, 8).<sup>vii</sup>

In this ‘two strikes and you’re out’ ethos, the habitual criminal was singled as an identity that should be,

“...subject to the supervision of the police as herein-after mentioned for a period of seven years or such less period as the court shall direct, commencing from the time at which he is convicted, and exclusive of the time during which he is undergoing his punishment.” (op cit)<sup>viii</sup>

With such projections of difference came concerted attempts to distinguish, accuse and identify uniquely habitual criminals, as well as to subject them to intensive regulation. The Prevention of Crimes Act, 1871, for instance, mandated the identification, surveillance and supervision of habitual criminals, and required a ‘habitual criminal register’ and a ‘register of distinctive marks.’<sup>ix</sup> Of necessity, such

regulatory prescriptions enlisted new methods – beyond personal recognition<sup>x</sup> – for the identification of habitual criminals.<sup>xi</sup> As E.R. Spearman, a retired senior civil servant, lamented, “Personal recognition is, however, the main thing on which the English detective or prison warder relies” (1894: 257), before reiterating the Home Office’s ambitions:

“What is wanted is a means of classifying the records of habitual criminal, such that as soon as the particulars of the personality of any prisoner (whether description, measurements, marks, or photographs) are received, it may be possible to ascertain readily, and with certainty, whether his case is in the register, and if so, who he is” (in Spearman, 1894: 257)

Such aspirations suggest that a subtle but consequential change was afoot: the habitual criminal’s contingently fashioned identity was now fixed through absolute images. A Home Office Committee Report specifically directed to the ‘Identification of Criminals’ confirms the point by assuming the existence of identifiable criminals, seeing its task as one of deciding the virtues of two rival identification systems – Bertillon’s anthropometry versus Galton’s classification system for finger printing (Troup, 1893-4). Touting the findings of this committee,

Lee's *A History of Police in England*, echoes Spearman's concern with the unreliability of 'the memories of policemen and prison warders' (1901: 359), but unequivocally heralds the new criminal identification procedures:

"...since the introduction of photography, and especially since the recent adoption of the system of anthropometry which is associated with the name of M. Alphonse Bertillon and Mr Francis Galton, the chance of any miscarriage of justice, due to mistakes in identification has been reduced to a minimum" (1901: 359).

However dubious such claims might have been, they indicate the degree to which the habitual criminal had by then become a distinct category of being. The question shifted from an ontological one (does something like an habitual criminal exist?) to one of identification (how do we identify an habitual criminal?). Even Herbert Gladstone's Committee (1894) on Prisons – struck for different purposes<sup>xii</sup> – noted the difficulties of distinguishing between professional criminals,<sup>xiii</sup> but it held firm on the idea that the habitual criminal existed and required special regulatory consideration. The image of the habitual or professional criminal here also fades almost imperceptibly into bolder visions of the criminal at large, but all these related conceptions

uphold the view that the criminal has a unique, ontological being. This formidable – if contingent – discursive achievement is enabled, as I shall argue in the next sections, by the prior institution of three supporting discourses – on ‘criminal class,’ ‘criminal character’ and ‘criminal habit’.

### Tracing the ‘Habitual Criminal’: Criminal Class

“One central fact dominated nineteenth-century writing about crime – contemporaries were convinced of the existence of a separate criminal class, different in its ideas and behaviour from the honest poor” (Tobias, 1972: 29)

Tobias’ collection of original sources from different moments in the century helps one to appreciate the degree to which this idea of a criminal ‘class’ was often assumed to exist as a discrete group.<sup>xiv</sup> In many crime-related discussions, this supposed group of criminal characters was deemed a clear threat to ‘descent’ society (Tobias 1967: 59). These sentiments dovetailed with continental images of the ‘dangerous classes,’<sup>xv</sup> but in Britain, more emphasis was placed on developing specific taxonomies of various groups of people who survived by criminal action.<sup>xvi</sup> For example, ‘prostitutes’, ‘vagabonds’, and ‘vagrants’ were pervasively singled out as habitually supporting

crime (Walkowitz, 1992; Mahood, 1990). However, with the abolition of the Bloody Code,<sup>xvii</sup> heightened quests to govern differently and more efficiently required the identification of new governmental targets and 'enclosures' to be disciplined (Foucault, 1977: 141). In such a regulatory ethos, the criminal class became a more general conceptual enclosure that by the 1830s was described in the Fraser's Magazine in these precise terms:

"The character of one is the character of the whole class; their manners and notions are all of one pattern and mould, which accounted for by their general acquaintance with each others, and their habits of association. They have a peculiar look of the eye... the development of their features is strongly marked with animal propensities...They form a distinct class of men by themselves..." (anonymous author in Tobias, 1972: 39-40<sup>xviii</sup>).

Such markers concretely enunciated a 'distinct class' and compared it – albeit unfavourably – to vocational or professional clubs with a common purpose.<sup>xix</sup>

Essentially, this class was said to offer refuge for criminals<sup>xx</sup>, helping them to hone necessary skills and providing them with an agreeable community. In context, the differences between such sub-groups as the 'honest poor' and the 'criminal class' assumed particular

significance. Thus, the Royal Commission on Constabulary Forces (Shaw-Lefevre, 1839) found it perfectly appropriate to use pioneering sociological methods<sup>xxi</sup> to capture diverse elements of this class – its size, ‘habits’, practices, and types of member (Appendix 6 entitled ‘Practices of Habitual Depredators’).<sup>xxii</sup> Such descriptions had the effect of marking this ‘class’ from non-criminal (and petty criminal) people, and attributed a common essence to that group.

Indeed, by mid-century, the Edinburgh Review would assert unequivocally the difference between those who ‘commit crime’ and those who ‘become criminals’ to form a kind of ‘criminal race’ (in Tobias, 1967: 63). Similarly, Symons’ (1849) *Tactics for the times* clarifies the nature and best remedy (Christian education) for reducing the ‘dangerous classes’, just as Mayhew (1956, 1968, 1998)<sup>xxiii</sup> depicts the criminal class as having a fixed essence amenable to careful and precise taxonomy.<sup>xxiv</sup> In yet another example, Thomas Plint (1851 – a Leeds Reformer) isolates the criminal class as the prime cause of crime, rejecting earlier metaphysical/moral speculation about crime. This analysis’ overt allegiance to science drew him to (Quetelet’s) statistical methods, and to available crime rates by decade, from 1801 to 1848. His argument held that crime rates had trended downward

between 1831 and 1845, but he is convinced that this 'happy effect'<sup>xxv</sup> is sadly offset because the,

"...portion of all crime committed by the dangerous – the criminal – class must have been on the increase, relatively to the population, throughout the period under review, in densely crowded seats of manufacture" (1851: 140).

That he could so securely make this speculation in the absence of any evidence – statistical or otherwise – serves to highlight just how far the 'criminal class' had entrenched itself in the discourse of the day.

Plint's view of this criminal class<sup>xxvi</sup> is one increasingly shared by others – Mary Carpenter (1857), Jelinger Symons (1849), Matthew Davenport Hill (1857) and, of course, Henry Mayhew. Like them, he regarded the 'criminal or dangerous classes' as a product of rapid population growth within cities, and included not only the "professional thief or burglar", but also the, "rabble of the vagrant and dissolute classes, who labour by fits, and eke out subsistence by pilfering, and who are ever on the verge of a more serious breach of the laws" (Plint, 1851: 144). Moreover, their

"daily subsistence is so much lawlessly abstracted from the earnings of industrious members of society. They contribute

nothing to the common stock, but they must take something out of it" (1851: 146).

Resembling contagion then understood, he worried that criminals might morally infect members of the 'operative classes' by 'vicious contact', creating "ducts by which the virus of moral poison circulate through and around them" (1851: 146). In his eyes, the criminal class may have been 'in the community', but were, 'neither of it, nor from it' (1851: 153). Even if a diverse class, he sensed uniformly deleterious effects on moral sensibilities, and in unequivocal terms described it as a,

"pestiferous canker in the heart of every locality where they congregate, offending the sight, revolting the sensibilities, lowering, more or less, the moral status of all who come into contact with them" (1851: 146).

As an expanding 'evil', he saw this group as a matter of enormous concern; "...it is not surprising that speculation has been busy on the question of the origin and natural history of the criminal class" and, moreover, "...probably on no other social question has so much been written within the last ten years as this" (1851: 147).

Underscoring the importance he places on this identity, Plint betrays how the seemingly nominal designation of a 'criminal class'

was reified into a being with an 'origin' and 'natural history'. Where once there was no more than a vague reference to amorphous 'dangerous classes', Plint defined an absolute, fixed and determined being. Foreshadowing the later Habitual Criminals Act, he argued that,

"The first step to the effectual correction...of this evil...will be the recording with more accuracy and minuteness whatever information can be elicited respecting the criminals who pass through the courts of justice" (1851: 156/7).

Through such formulations (and others like it) we countenance examples of a distinct criminal class, foreshadowing attempts to enunciate the habitual criminal as a definite identity.

### Characters 'Depraved'

Alongside visions of this 'criminal class' one finds contemporaneous discussions on the purported 'discovery' of a 'criminal character,'<sup>xxvii</sup> ambiguously framed around notions of the 'character of crime' as well as the 'character of the criminal.' Though sometimes connected, the latter is most directly related to our discussion, because here a type of criminal being was posited as a distinct entity. If talk about this type framed the idea that habitual criminals were responsible for most crime (Wiener, 1994: 46ff), it also

positioned 'character' as a root cause of most crime (Tobias, 1967). It is important to grasp the profound implications of this approach. As Weiner succinctly notes, in the early nineteenth century,

"It was less the actions than the characters of offenders on which attention came to focus...crime was essentially seen as the expression of a fundamental character defect stemming from a refusal or inability to deny wayward impulses or to make proper calculations of long-run self-interest" (1994: 46).

Further evidence of this claim may be found in the criminal trials at the Old Bailey, where character played a crucial – if often unannounced – role.<sup>xxviii</sup> As Hitchcock and Shoemaker's analysis shows:

"Trials at the Old Bailey were in part about establishing the facts of the case. Almost as important was the character of victim, defendant and witnesses...all evidence was judged in light of the character of those who gave it" (2006: 130).

Validating the point, Edward Christian's words in his charge to a grand jury at the Isle of Ely are clear: "The judgements ought to be proportioned to the character and former conduct of the prisoner" (1819: 287).

Not surprisingly then, discourses directly concerned with describing and identifying a unique 'criminal character' assumed increasing prominence. In these discourses one detects the framing what would later become a key assumption of criminal anthropology – namely, that as societies become increasingly 'civilized', they bring unprecedented individual emancipation, but they also require concomitant self-restraint and effective self-governance of animal, brute passions. Specifically 'criminal characters' could now be said to lack internal control, and to possess 'defective self-management' (Wiener, 1994: 49). This basic attitude was developed and inflected in various ways, but let us focus on two approaches: reasoned morality and a science of character.

First, an early commentator, Jeremy Bentham, offer reasoned-based, moral calls for crime prevention based on two related forms of governance: direct governance from a legislator who operates in the open where "...the evil is attacked in front" (1962: 533); and, indirect governance where, "...he does not announce his designs: he opens his mines, he consults his spies; he seeks to prevent hostile designs, and to keep in alliance with himself those who might have secret intentions hostile to him" (1962: 533). Bentham here counsels legislators to concern themselves with the 'logic of the will' (1962: 538), and to

shape the inclinations of the will to produce pro-social behaviours. Good characters are those who govern themselves responsibly, that restrain their wills as a duty to secure the interests of the common good.

Following Bentham, several early nineteenth century commentators related ideas of will and character to notions of the 'responsible' and 'moral' individual' (see Wiener, 1994: 11).<sup>xxix</sup> For example, in 1819, William Roscoe argued for the prevention of crime in these terms:

"Undoubtedly, the best preventative for the commission of crimes is a correct sense of moral duty, so strongly enforced [sic] by the precepts of Christianity ... It is only when these feelings are deeply impressed on every individual of the community that society is safe" (1819: 21).

The call to educate a correct sense of moral duty followed from a sense, espoused earlier by John Thompson, that, "...it is chiefly education which determines the human character" (Thompson, 1801: 13). Thus, a recurring call is found in crime-related discourses to reform 'criminals' and 'juvenile criminals' through moral education to reshape characters.<sup>xxx</sup> As well, by mid-century, Alexander Maconochie (who served as a superintendent at Norfolk Island) proposed a "Mark

System” of prison discipline that correlated punishment and with character improvements, measuring sentence duration ‘by labour and good conduct combined’ – a sort of early indefinite sentence. “The purpose of this,” he observed,

“is to make a man’s liberation, when he is once convicted of a felony, dependent on subsequent conduct and character evinced by him, rather than on the quality of the original offence. It is in the first that society really has an interest, and on which depends the security with which he can again be released”  
(Appendix M in Symons, 1849: 232)

Such calls for criminal justice policy to emphasize character over ‘original offence’ did not involve a simple repudiation of utilitarian free will,<sup>xxx</sup> and discussions of character often included notions of will. Individuals were regarded as free to choose whether to build character, to develop good habits, or to fall prey to base character traits. In this schema the responsible, reliable, and moral individual chooses to develop a character that restrains animal passions – the latter being clearly evident in the ‘uncivilized’ human condition (e.g. children and ‘savages’). Ungoverned, as noted, these passions were said to generate immoral and criminal actions.<sup>xxx</sup> This perhaps explains why the illustrious legal historian F.W. Maitland should proffer

a 'preventive theory' of crime that simultaneously emphasized character and the need for punishment: "That a criminal's character is one particularly prone to evil is plainly a reason for punishing him severely" (1880: 261).<sup>xxxiii</sup> Wiener (1994: 49) rightly observes that, "the aims of deterrence and moralization seemed by no means incompatible," by virtue of the posited relations between will and character.<sup>xxxiv</sup> In effect, such approaches enabled a dualistic image of crime as simultaneously caused by individual free will (hence ideas of individual responsibility and deterrent punishment) and by 'defective self-management' (with related ideas of a shaping character to be reformed through education – especially moral education – and other forms of 'character building').<sup>xxxv</sup>

A second, science-based approach to individual criminal character borrowed from Lavater's (1800) earlier physiognomic formulations. Here, a person's character (akin perhaps to personality) was taken to be discernable from physical traits. The point was developed by Spurzheim and Gall in their 'science' of phrenology that tried to decipher character from the shape of a skull.<sup>xxxvi</sup> Matthew Davenport Hill, the Recorder of Birmingham, was reported by The Examiner (19<sup>th</sup> October, 1850) to adopt this position in his assessment of depraved characters:

“The habits of depredation communicate a character to the countenance, and not improbably to the motions of the body, and an experienced police officer becomes so well acquainted with the criminal physiognomy that he can feel satisfied of the nature of a man’s avocations when he sees him...” (in Hill, 1857: 224)

Similarly, Mayhew and Binny infer character from physical appearance in their revealing declaration,

“It did not require much skill in detecting character to pick out the habitual offender from the casual criminal, or to distinguish the simple, broad brown face of the agricultural convict from the knowing, sharp, pale features of the town thief” (1862: 148).

It is important to recognize that such discourses were not marginal, and their influence made it quite feasible to separate out uniquely criminal characters on the basis of physical attributes (Rafter, 1997).

Marmaduke Sampson’s (1841) and George Combe’s (1854) phrenology-inspired formulations, for instance, explicitly pointed to physical makeup as the determinants of criminal character and behaviour. Interestingly, they also – supporting Foucault’s (1977) analysis of disciplinary power – championed prison discipline to correct (treat) criminals, and rallied against punishment, especially capital

punishment. For Sampson, "a person may be fully convinced that he is doing wrong, and yet be unable to resist the tendency" (1841: 9). He alludes to the nature of insanity, and quotes a Mr Woodward to the effect that many people are 'under the influence of uncontrollable propensities' because of their mind and brain functioning. For his part, Combe was occupied with the shape of criminals' heads, and explicitly linked crime to "unfavourable natural dispositions and talents, acted upon by adverse circumstances" (1854: 49). But he went further to argue that, "A defective or ill-balanced brain is thus, according to our view, the primary, and a defective or vicious training and instruction is the secondary cause of criminal action" (1854: 48/9). Combe also noted that people could be retrained, especially if they are not 'mentally unsound,' through methods that encourage moral restraint and break the habits of the past:

"The object of prison discipline is to discover the minutest elements of individual character, to develop [sic] the good and suppress the evil...to produce self-reliance and the capacity of virtuous individual action" (1854: 91).<sup>xxxvii</sup>

Breaking the habits of bad character imply restraint, inner control or self-governance to live in a morally virtuous way. An individual who

did not develop character, and giving in to the passions of baser instincts, could be expected to commit criminal acts.

In sum, whether commentators endorsed the lesser or greater emphasis on rationalism or science, Jones's overall comment applies:

"The language of character had an important implication which tended to undermine the caricature of rugged and self-reliant individualism. For it insistently highlighted the importance of social circumstances for the prevention of moral qualities, and subtly insinuated into the Victorian consciousness the idea that public agencies had a role to play in creating the sort of environment in which desirable moral qualities might flourish" (Jones, 2000: 31/2).

And it precisely out of such thinking that criminal characters were deemed distinctly different from normal characters, and moreover that they could be reformed through effective prevention and remedial practices. It is a small leap from this position to the idea that habitual criminals comprise unique sorts of beings. If the elaboration of that difference was already achieved through the discursive work on the criminal character, then it was reinforced through allied discourses focussed on 'habit'.

## Criminal Habits

“Offences of every description have their origin in the vicious and immoral habits of the people, and in the facilities which the state of manners and society, particularly in vulgar life, afford in generating vicious and bad habits” (Colquhoun, 1800: 311).

“The changed state of Society, the vast extent of moving property, and the unexampled wealth of Metropolis, joined with the depraved habits and loose conduct of a great portion of the lower classes of the people; and above all, the want of an appropriate Police applicable to the object of prevention, will, after a careful perusal of this work, reconcile the existence of evils which could not otherwise have been credited” (Colquhoun: 1800: 1-2 - emphasis added).

As old as such ideas of habit may be, so too is the association of negative habits with the ‘lower orders’, and the ‘vulgar classes.’<sup>xxxviii</sup> Yet this concept is related to the idea of an enduring habitual criminal who is in principle malleable. Colquhoun (1800), an early protagonist of the view that crime is the product of ‘bad’ habits, pointed to immorality, idleness, insobriety, pilfering, profligacy, vagrancy,

defrauding, gambling, and so on. And how do these habits lead to crime? He noted the relation between different behaviours and crime, including the way that gamblers in 'vulgar life',

"...are led, step by step, to the point where they loose sight of all moral principle; impelled by a desire to recover what they have lost...till at length this species of peculation, by being rendered familiar to their minds, generally terminates in more atrocious crimes" (Colquhoun, 1800: 154).

His call to establish a Metropolitan Police force conveys a sense that good habits of industry, sobriety, and morality need to be instilled through effective law and regulatory policy.<sup>xxxix</sup> This theme recurs, and through it the concept of 'habit' integrates both the previously discussed notions of character and criminal class. Good character formed through disciplinary restraints on natural passions was appended to the notion that the force of habit, encouraged by various social and legal initiatives, is the key to self-control. Furthermore, good habit needs to be infused within the 'criminal class' in the interests of wider crime prevention.

From such assumptions, Rev John Burt, who established a prisoner's aid society in Birmingham, offered this assessment of habitual criminals:

"...with habitual offenders there is, from the very fact of habit, a superinduced, and therefore, double depravity. He is accustomed to do evil. If ever a moral revolution is to be effected in the character of such men, there must be time allowed for its completion. Their heads and hearts are filled with licentious ideas and criminal passions. These springs of crime must be dried up by degrees." (quoted in Combe, 1854: 64, emphasis in original)

He also called for the 'infusion of virtuous ideas' to obliterate 'habitual indulgence', and saw crime prevention's task as breaking bad habits and instilling good ones.<sup>xi</sup> This task was to be accomplished by prison discipline, not punishment.<sup>xii</sup> Maconochie, who rejected punishment in favour of disciplinary prison reform, reflected this influential debate, which remains current today:

"Habits of voluntary industry being formed in prison would preserve [criminals] from recurring to it after discharge. Habits of manly self-reliance being also formed would have their similar appropriate results. Character would be improved; and success would take the place of failure which has undeviatingly followed our other devisings in this field" (in Symons, 1849: 234/5).

This line of thinking was also used to promote a special sort of prison discipline – the so-called silent, ‘separate system’ – because, “...it breaks off, so far as it can be broken by human agency, the former habit of thought and feeling” (Burt, 1852: 49).

The concept of habit, thus conceived, embedded itself in discourses that defined the habitual criminal as a ‘depraved character’ from the ‘criminal class’. And towards the end of the century, this identity was attached to social evolutionary frameworks within criminal anthropology and later criminology.<sup>xlii</sup> The habitual criminal here assumed a Lombrosian quality, as the fundamentals of eugenic thinking assembled around it.<sup>xliii</sup> At the cusp of this development, Pike depicted ‘modern habitual criminals’ in explicit criminal anthropological terms:

“With the disposition and the habits of uncivilized man which he has inherited from a remote past, he has to live in a country where the majority of inhabitants have learned new lessons of life, and where he is regarded more and more as an outcast in proportion as he strives more and more to fulfil the yearnings of his nature” (Pike, 1873: 509).

Furthermore, he opined,

“Of a very great number of modern habitual criminals it may be said that they have had the misfortune to live in an age in which their merits are not appreciated. Had they been in the world a sufficient number of generations ago, the strongest might have been chiefs of a tribe” (Pike, 1873: 509).

‘Chiefs of a tribe,’ indeed! But in consequence of the discourses on criminal class, character and habit, the Habitual Criminal Act of 1869 endorsed what had by then become an assumed figure.

As is to be expected, there were voices of disquiet – but they did not necessarily dispute the existence of habitual criminals. For instance, Greenwood (1869) challenged what he regarded as,

“... a growing inclination to treat the habitual criminal as though he had ceased to be human, and had degenerated into the condition of the meanest and most irreclaimable of predatory animals, fit only to be turned over to the tender mercies of a great body of huntsmen who wear blue coats instead of scarlet, and carry staves and handcuffs in place of whips and horns, and to be pursued to death” (1869: 92).

The critique was directed not to the existence of habitual criminals per se, but to the portrayals of such beings. Ironically, then, even

contemporary critiques reinforce the existence of that being; with its position firmly intact, the habitual criminal became the basic premise for an emerging discipline: empirical criminology.

### Ex Parte Deliberations

In sum, I have argued that Radzinowicz and Hood's analysis of the habitual criminal paradoxically pledges allegiance to the identity of the 'habitual criminal' as a being sui generis while simultaneously claiming this identity to be an historical creation of the discourses they examine. Working from the latter approach, I have explored the discursive lineage of the habitual criminal as it emerged in nineteenth century Britain. By pointing to three discursive systems of thought (around criminal class, character and habit), the previous discussion highlights foundational elements from which the habitual criminal surfaced. No doubt, the ensuing identity had effects (surveillance, punishments, etc.), but this in no way rescinds its essential contingency and flux. And the latter provides a way to take a different approach to the politics of crime creation that has profound

implications for the discipline erected around the criminal identity – criminology. I conclude by highlighting four of these.

First, criminology tends to hone in on the individual ‘criminal’ as its object of analysis; it offers a logos of crimen understood as a ‘criminal’. Yet, as discussed above, the idea of a distinctive ‘criminal’ being was developed over the course of the nineteenth century, and most proximally in relation to enunciations of an habitual criminal.<sup>xliv</sup> During this time, discourses on the criminal exceeded classical conceptions (Becarria, Bentham) of one who harms society by actions that transgress the common law’s changing definitions of felony.<sup>xlv</sup> The habitual criminal, by contrast, embodied successful enunciations of the criminal as an identity sui generis, as someone intrinsically different from others – not simply a rational being whose choices had led to a criminal action. Through discourses that isolated the ‘criminal class’, a ‘criminal character’ and ‘criminal habits’, the habitual criminal provides founding contours for the ‘criminal man’ that became the object of criminal anthropology and later criminology.<sup>xlvi</sup>

Consequently, criminology’s object is constitutively conditioned by the founding discourses of the habitual criminal. Its self-accounting, approach, theoretical trajectories, methods, etc. are similarly conditioned. This recognition cautions against autochthonous, internal

histories of criminology's emergence – the shifting tides of criminal identity depended on external discourses (c.f. Rock, 1994). Beccaria and Bentham, for instance, may be championed *ex post facto* as pioneers of criminological thought, but their writing on crime does not centre on the criminal – they emphasize a *logos* of civil legislation, and an analysis of juridical processes that define felony. Their discourses, that is, are directed to legislators and jurists; not to the 'criminal' as a fundamentally different sort of human being.

In this respect, Beirne (1992) usefully argues that criminology's early development is incorrectly described as a triumph of positivist science over classical reason (i.e., positivism's determined individual criminal in need of disciplinary correction, or social reform, replaced a classical free will deterred by rationally calibrated punishment.) For one thing, as our analysis shows, free will and determinate character sometimes co-appeared, licensing concurrent calls for punishment and disciplinary or social reform. For another, representatives of the so-called classical school were dealing with an incompatibly different object – the legislator. Perhaps then, the complex genealogy of criminology is better understood as a Foucaultian (1972, 1977) tale of rupture between epistemes (or even involving Kuhnian (1968) revolutions and 'gestalt' paradigmatic switches), than a continuous

story of progressive science evolving to an empirical criminology directed at the criminal.

Secondly, discourses on criminal class, criminal character and criminal habit founded the 'habitual criminal' that was to become one of criminology's key objects. These discourses are, in many ways, what Nietzsche might have framed as criminology's 'lowly beginnings'. So, discussions on criminal class defined a unique segment of the 'lower', 'vulgar' or 'working' classes and singled it out as a different, unified grouping. As Emsley (referring to Chadwick) suggests, images of the criminal class managed to "...identify a criminal group within the working class, a group which possessed those habits which, to his mind, were the worst habits of the class as a whole. These habits were then offered as the causes of crime." (Emsley, 1996: 56). As noted, the point applies more generally; images of the habitual criminal were constitutively conditioned by prejudices such that the derogation of bad habits like idleness, profligacy, were used to isolate criminal habits amongst the poor and not the rich (e.g., the idle gentry, the debauchery of courtly life, etc.). And to the extent that this class-differentiated criminal forms the object of criminological study, criminology becomes predicated on attendant class prejudice. The same logic applies to the sexist, patriarchal formulations of the

habitual criminal that either ignored women (as in 'criminal man') or fleetingly referred to them in disparaging terms.<sup>xlvii</sup> Equally, the racist imperialism that so flourished in Victorian Britain finds expression in the derogatory castigations of the criminal character, with its purported atavism, 'savage' impulses, 'chiefs of a tribe' mentality, etc.; it also finds 'scientific' expression in the British eugenic movements and social Darwinism behind criminal anthropology and criminology.<sup>xlviii</sup>

Such 'lowly beginnings' distinguished the 'habitual criminal' and provided criminology with a determinate object. The cause of most crime was then attributed to this being and its prevention tied to its reformation or elimination. Criminology's paradigm then sustained this an ever-illusory individual 'criminal' being by differentiating it from other beings. The discursive performances required to sustain this accomplishment keeps much of criminology focused on providing a logos of the criminal; it remains anchored to images of that furtive identity. As Smart (1995) and Young (1990) note, attempts to move critical discussions beyond the 'criminal man' leaves criminology in the awkward situation of having no object, and exposing it to a potential collapse into other – more broadly conceived – discourses. The point here is that so long as criminology paradoxically hypostatizes and contingently analyses versions of the 'criminal,' it is unlikely to unravel

foundational commitments to sustaining discourses that differentiate its key object. In turn, this limits the questions that criminology can raise (see Pavlich, 2000); most of its approaches centre on the individual criminal, thereby eschewing the possibility of raising wider questions of justice (e.g. the prospect of collective justice without creating criminal individuals).

Thirdly, as noted, the successful enunciation of the habitual criminal elicited calls for effective (scientific?) forensic criminal identification (including a Royal Commission – see Troup (1893-4) – on the subject). In many ways, this foreshadowed a vast forensic industry directed to discovering the ‘criminal individual’ in a particular case, and in the form of a more general type. Subsequent scientific searches for that identity are complex, and involve diverse technologies, from intricate DNA manipulations, retinal scans, various fingerprint schemes, Bertillon’s anthropometry, to Galton’s composite photographs of a ‘criminal type’ (Pavlich, 2009). Such approaches are usually understood as attempts to discover a previously existing criminal identity. However, as indicated above, that identity is an historical product of complex discursive processes, including the role played by criminal identification technologies. As a result, one might argue that criminal identification practices are less discoveries than

creations of particular criminal identities. As such, changes from character-based to scientific assessments of criminal identity that spanned the nineteenth century were directly implicated in creating, as opposed to discovering, the contours of the new 'habitual criminal' identity. No doubt, this observation challenges the privilege granted to forensic science in current criminal justice arenas, the cultural obsession with identifying criminals (which is related to burgeoning prison populations), and the ways in which science is used to 'detect' criminals.<sup>xlix</sup> Recognizing the contingency of criminal identities opens the door to a politics that publicly reflects on the justice of creating criminals rather than burying such discussions under the ruse of neutral scientific discovery.

Finally, from the above, we might note the political and epistemological utility in refusing criminology's elevation of individual criminals (or on settings that yield individual criminals), to reconsider the possibility of justice beyond individual criminals. As indicated elsewhere (see Pavlich 2000a, b), the etymology of the term criminology may be useful in redirecting such a discourse. From this vantage, one need not conceptualize a logos of crimen as necessarily involving 'criminals', since the noun crimen derives from the Greek verb krinein and the relative Latin root cernere (decide) – it meant

'judgment, accusation, illegal act' (Ayto, 1990: 145). One could develop a logos of accusation (or judgement), thereby moving the focus away from the 'individual criminal' to diverse processes of accusation. Such a politicized logos would avoid Radzinovicz and Hood's paradox by understanding the criminal as a contingently framed identity for one accused of a crime. It would also allow for broader discussions of justice centred on shifting accusatorial structures and identities – from character-based accusations to those that privilege science. We could then contemplate justice without immediately evoking exclusionary gestures, focussed on identifying individual criminals. Would this still be criminology? Probably not as we know it; but then again it would re-centre the politics of crime creation, rather than masking that politics under the pall of impartial science. The approach would also explicitly refocus on the justice of criminal accusation procedures, authorized accusers and images of whom, in a given frame, can be legitimately accused. Such thinking may not empty the goals, and nor should it necessarily; but it would at least moderate the extreme dangers of our milieu in which the scientific exclusion of criminals has become virtually synonymous with justice.

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## Endnotes

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<sup>i</sup> See Rock (1994), as well as Beirne's rather more careful attention to the ruptures attendant upon the invention of the homo criminalis (1993: 233-237)

<sup>ii</sup> See, for example, Pavlich (2006, 2007).

<sup>iii</sup> It is perhaps useful to note the allied vision of an 'incorrigible rogue' that in the Vagrancy Act of 1824 named persistent vagrants (see Barrett and Harrison, 1999: 220-223). It is also noteworthy, for the next section, that in 1808, Henry Clavering should speak of 'incorrigible rogues' in this manner: "these offenders are ranked in a lefts criminal class and are only to be punished as rogues and vagabonds" (1808: 131).

<sup>iv</sup> See Emsley (1996: 61-67), Radzinowicz and Hood (1990: chapter 8), Weiner (1994: 300-307, 342-358), Hibbert (2003: part 3), etc.

<sup>v</sup> This classification continues to have purchase in 1870 where it is taken up by Cox and Saunders' (1870: xxiii-xxix) analysis of the Habitual Criminals Acts.

<sup>vi</sup> The significance of this editorial is commented upon, and quoted by, Greenwood (1869: 207-209).

<sup>vii</sup> Giving some sense of its reception, Wetherell's (1871: 12 ) letter to the editor praises the Act for its well calculated effort to "control the

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predatory habit of the dangerous classes." The sentiment is echoed in The Times editorial of the 16<sup>th</sup> April 1870, p9, col B.

<sup>viii</sup> Policy analysts interpreted these sections of the Act thus: "The test of being a Habitual Criminal, as recognized by statute, is that he has been previously convicted" (Cox and Saunder, 1870: XXIV). Or as Edmund DuCane would have it, to ensure, "...that an old offender should on re-conviction, be recognized as such, it is necessary to have a good and complete personal record of the members of the criminal classes, accessible to all police forces and courts of justice" (DuCane, 1882: 40).

<sup>ix</sup> Perhaps ignoring the importance of this formal enunciation for habitual criminal identity, Radzinowicz and Hood argue, "the only tangible success eventually to emerge from the legislation on habitual criminals was the system of registration and identification" (1990: 261).

<sup>x</sup> In this system, as Spearman describes, all those remanded to Holloway prison are "inspected by detectives and warders from other Metropolitan prisons to see if they can be identified as old offenders" (1894: 256). He challenges the costs and ineffectiveness of older 'personal recognition' where 'thirty police officers from various

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quarters of London visit Holloway Prison three times a week,' and calculates about 'ninety hours for each identification' (1894: 257).

<sup>xi</sup> Francis Galton (1879) added his considerable scientific stature to this differentiation through his use of composite photographs that effectively 'morphed' multiple facial images of criminals into what he characterized as a type (see Pavlich, 2000; Broekman, 1995; Sekula, 1986). He also championed a system of fingerprinting in fulfilling this aspiration: "The hope of the criminal anthropologist is to increase the power of discriminating between the natural and accidental criminal" (1890: 66; see also Galton, 1890).

<sup>xii</sup> See Harding (1988).

<sup>xiii</sup> See Radzinowicz and Hood (1990: 266-7).

<sup>xiv</sup> Emsley (1996: 55) elaborates the point further, noting that crime was seen to reside in a section of the 'poorer classes,' and it is from this that a 'criminal class' is excavated.

<sup>xv</sup> This concept was stirred into life by H.A. Frégier's account of the 'dangerous classes' in France (see Radzinowicz and Hood, 1990: 73, at n 73 and Beirne (1992: 93, 98-99 at n 15). See also, Symons (1849) for a contemporary British sense of the dangers at hand.

<sup>xvi</sup> For more detail of this development, see Radzinowicz and Hood (1990: 73-84). See also Beier (2005).

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<sup>xvii</sup> It is worth noting the intensity of the perceived threat, for at its height this Code listed some 160 crimes for which the death penalty might be applied (see Thomas (1998: 5), and E.P. Thompson's (1975) classic study).

<sup>xviii</sup> Excerpt from: 'The Schoolmaster's Experiences in Newgate', Fraser Magazine 1832 (vols v and vi).

<sup>xix</sup> The Times later asserts the following: "Accordingly crime of all kinds is and will remain a recognized vocation, of which the attractions will annually increase in proportion partly to the diminution of its terrors" (Friday, December 5<sup>th</sup>, 1956, pg 6, Col B).

<sup>xx</sup> As Tobias notes, the criminal class provided, "...entry into an association, informal but none the less real, members of which could be found almost everywhere. In gaol or lodging-house or on the road, criminals could find companions in like situation, could exchange experiences and discover common acquaintanceships" (1967: 108).

<sup>xxi</sup> Edwin Chadwick was one of the three Commissioners and drafted the report. Whatever his role (c.f. Emsley 1996: 55, versus Tobias 1972: 58), the qualitative survey questions outlined in Appendix 5 bear traces of his hand and give a sense of the systematic and comprehensive ways in which information was solicited.

<sup>xxii</sup> See Tobias (1967: 62-63) and Thomas (1998: 1-8).

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<sup>xxiii</sup> See also Mayhew and Binny (1862)

<sup>xxiv</sup> Mayhew (1856: 89) distinguishes between the 'criminal class', the 'pauper class' and the 'wealthy class', providing detailed descriptions of the differences within the criminal class. For a useful description of Mayhew's contribution to the concept of a criminal class see Radzinowicz and Hood (1990: 77-84).

<sup>xxv</sup> For Plint, such evidence "...incontestably shows that some moral element was operative, in the latter cycles, so mighty as not merely to arrest further progress of crime, but actually to drive back the flood, which all the surrounding elements conspired to swell" (1851: 139/40).

<sup>xxvi</sup> For more detail see, for instance, Tobias (1967, 1972: Part two), Emsley (1996: Chapter 3), Thomas (1998: 1-8), and Hibbert (2003: 21-41)

<sup>xxvii</sup> Interestingly, Jelinger Symons insists that character is distinct from class; thus, "Know only ... that a man belongs to a class, and define the rank he holds in it as accurately as you may, and you are as ignorant as ever of his character" (1849: 12).

<sup>xxviii</sup> Starkie (1828: 364), with reference to the U.S., for example, outlines situations where the "moral character and conduct of a person in society may be used in proof before a jury." As well, a

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contemporary edition of Blackstone's commentaries includes his notion that, "...the age, education, and character of the offender; the repetition (or otherwise) of the offence...all of these may aggravate or extenuate the crime" (Blackstone, 1820: Book IV: 400). See also Wakefield's (1831: 57) discussion on weighting the character of a witness.

<sup>xxix</sup> See Lacey's (2001: 363ff) discussion of Wiener's analysis of the refinements of individual will that enable a version of the 'responsible subject'.

<sup>xxx</sup> See, for example, Symons (1949) and Carpenter (1857). Haney (1982) offers a fuller discussion of the basic ideas, though his analysis refers particularly to the US context.

<sup>xxxi</sup> So in the Report of a Select Committee on Criminal Commitments and Convictions, observes that it difficult to assess 'criminal character' but notes that prison officials often class prisoners 'by character and conduct, not by crime' because "the most atrocious character may be sent to prison for a very slight offence" (Great Britain, 1827: 9).

<sup>xxxii</sup> As Pike puts it,

"The history of crime...is a history of the ever-increasing restraint placed upon savage impulses, and an ever-increasing encouragement to the wider play of sympathy" (1862: 510).

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<sup>xxxiii</sup> Maudsley's slight different approach, which insists on the value of cure rather than punishment, nevertheless notes that, "...though the criminal might be compassionated, it would still be necessary to deprive him of no power of doing further mischief" (1876: 27).

<sup>xxxiv</sup> Beirne (1993) notes the ways in which this seemingly paradoxical relation between free will and determinism is very much part of the emergence of thinking on crime and crucial to the development of criminology. It also suggests that the weary classical versus positivism distinction is by no means as clear-cut as most introductory criminology texts would have readers believe.

<sup>xxxv</sup> Thus Wontner (1833: Chapter VI) argues for the combination of both 'prison discipline' and 'secondary punishment', for dealing with habitual offenders (see p 286) before (prevention) and after the commission of offences.

<sup>xxxvi</sup> See Rafter (1997, 2005) and Pick (1989) for overviews of how phrenology tended to view criminals. See Barrett and Hamilton (1999: 317ff) for some original sources on phrenology and crime. Gould (1981) provides a useful overview of phrenology's contributions to 'craniology' and the ensuing 'sciences of man'.

<sup>xxxvii</sup> Burt too justifies Pentonville prison's use of the separate (Philadelphia) system of confinement. He speaks of the 'depraved

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passions and lawless aims which possess the habitual criminal' as meriting 'separate imprisonment' so that 'it breaks off...the former habit of thought and feeling' (1852: 49).

<sup>xxxviii</sup> Colquhoun (1800: 311) articulates the point explicitly when noting that criminal habits are "peculiar to the lower orders of the Community in the great Metropolis..."

<sup>xxxix</sup> As he puts it, if "lower ranks of society could be gradually led into better habits, much benefit would arise to the State..." (1800: 327)

<sup>xl</sup> See Carpenter (1864: 10) for a parallel discussion on the 'formed habit of crime'.

<sup>xli</sup> See Foucault's (1977) classic discussion of such developments.

<sup>xlii</sup> See Pick (1989).

<sup>xliii</sup> See Ellis (1890), and Rafter's (1997) analyses of such developments. As well, The influential and controversial Sir Edmond Du Cane (See Radzinowicz and Hood (1990: 526-531) for more on his life and views), in 1895 formulated the essence of the habitual criminal in these atavistic terms,

"entirely those of the inferior races of mankind – wandering habits, utter laziness, absence of forethought or provision, want of moral sense, cunning, dirt, and instances may be found in which their physical characteristics approach those of lower

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animals so that they seem to be going back to the type of what Professor Darwin calls 'our arboreal ancestors'" (quoted in Wiener, 1994: 301).

<sup>xliv</sup> This claim should be seen in light of Farmer's (2000) superb analysis of a solidly under-researched topic – the codification of criminal law in nineteenth-century Britain. This gradually evolving codification only emphasizes the contingent creation of the criminal identity that the present essay has sought to develop within the context of the habitual criminal.

<sup>xlv</sup> Pike describes the contingent nature of definitions of crime thus: "Crime ... is that which the law declares to be crime, or for which the state recognizes a punishment, at any period over which the history extends. The meaning of the term necessarily varies with the laws at various times, but can at any time be determined by reference to the laws which are in force" (Pike, 1873: 490).

<sup>xlvi</sup> See Ellis (1890) who in Chapter 1 describes the various types of criminal; the habitual criminal is assumed and provides the assumptive framework for his elaborations. The latter draw extensively on images of a criminal class, character (physiognomy) and habit.

<sup>xlvii</sup> See Smart (1989, 1995), Young (1990, 1996) and Naffine (1996).

<sup>xlviii</sup> For example, Galton, Ellis, and Goring – see Beirne (1993: 193-213).

<sup>xlix</sup> See Wetzell (2000) for a comparative analysis of the 'invention' of the criminal in German criminological discourses.