Clerks of Courts:
Power and Change in the Victorian Magistrates' Courts, 1948 - 1989

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Thesis submitted in fulfilment of the requirements for the degree of
Doctor of Philosophy
July 2021

Contents

Student declaration

I, Elizabeth Wade, declare that the PhD thesis entitled **'Clerks of Courts: Power and Change in the Victorian Magistrates' Court, 1948 - 1989'** is no more than 80,000 words in length including quotes and exclusive of tables, figures, appendices, bibliography, references and footnotes. This thesis contains no material that has been submitted previously, in whole or in part, for the award of any other academic degree or diploma. Except where otherwise indicated, this thesis is my own work.

I have conducted my research in alignment with the Australian Code for the Responsible Conduct of Research and Victoria University's Higher Degree by Research Policy and Procedures. All research procedures reported in the thesis were approved by the Low Risk Human Research Ethics Committee (HRE17-094).

Elizabeth Anne Wade

26 February 2021

Acknowledgements and genesis of project

The thesis you are about to read was prepared on the country of the Wurundjeri people of the Kulin Nation. I pay respect to Elders and ancestors and their lands and waters.

This project was arrived at over the course of decades. As a newly minted Honours graduate, I was recruited by the Victorian Law Department to work in the Personnel Unit (part of 'Head Office') in 1983. It was at a time when graduates, some of them female, were beginning to find their way into responsible positions in the public sector, though I was unaware of the previous rarity of our type.[1] The Director of Personnel at the time was Sally Gilbert, not yet in her thirties and the most senior woman in the state public service.

Through various interesting roles I met some of the people I would interview for this project some thirty years later. The ranks of court administrators were full of distinctive characters and one could not help but hear some of the stories. Suburban clerks of courts received the work experience students I sent them and were keen if critical participants in the generic training programs we were developing and running. By the mid-1980s promotion by merit had replaced the dead men's shoes queue of the clerks' seniority system,[2] and I served on innumerable selection panels.[3] From this vantage-point clerks' jobs seemed to carry a significant level of responsibility in relation to the remuneration they attracted. There were always skilled and experienced candidates for any position; it could be nearly impossible for an outsider to decide between them.

It was not unusual to have relatives in the courts, although in my case it was coincidental. My grandfather, Herbert Barton ('Bertie') Wade, had been a clerk of courts who after serving in World War I rose through the ranks to become a magistrate, and eventually Chief

[1] An interviewee remarked that some believed 'young women with degrees were just a passing phase' (2017. Interview #33).

[2] A clerk could reasonably predict the pace of his progression up the ranks by perusing the seniority lists, and seniority - determined by the dates of successive appointments and promotions - was of vital interest to anyone with ambition or desirous of a better salary. The pace could be very slow because there were fewer senior positions than junior, and there was a bottleneck at the higher levels of the hierarchy. The introduction of the merit system introduced keen competition for vacancies. A restructure could throw many positions open at once, and this is what occurred in the 1980s.

[3] Under the Commonwealth *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*, all 'relevant employers' were required to develop Affirmative Action plans to promote equal opportunity for women in employment. Under the Law Department's Affirmative Action guidelines, a woman was required on every panel.

Stipendiary Magistrate. His father Thomas Barton Wade, son of a saddler in Creswick, had also been a clerk and magistrate. They were both at one time examiners who set the curriculum and marked the examination papers of those seeking to qualify as clerks of courts. They served on various boards and tribunals and as coroner. Theirs had been careers fairly typical of ambitious and hard-working clerks of the time, although unusually they were not Catholic.[4] They retired respectively in the 1930s and 1960s after long careers working in both country and city postings. Thomas Wade co-wrote a handbook for the guidance of Justices of the Peace that was in print for many years.[5]

Some of the senior clerks working in Head Office at the time knew of my family connection and occasionally one would come into the office hoping to boost Equal Opportunity statistics: 'We need smart young women in the courts! Elizabeth, how would you like to be a clerk of courts?' It was tempting. My boss would laughingly wave him away, and tell me, 'You're better off here and you'll get promoted more quickly!' She was probably right; promotion in the courts was notoriously slow, and this was the moment of the Courts Management Change Program under John B. King. Head Office - once a place of rules, controls and stultifying formality and chronically disconnected from the coalface - became a locus for rethinking and revitalising court operations and mobilising the capability of staff.

Many years later, after a career that took me out of the state public sector and back again, I worked with Professor Kathy Laster on a chapter for a judicial administration publication and in the process, discovered intriguing information about the history of the clerks.[6] The curiosity sparked by this, along with the interest I had never lost have, with the encouragement of Dr Laster, evolved into the doctoral research I am now presenting. Life experience has modified the view of the courts I formed when I was working there and sharpened my interest in the increasing complexity and seriousness of court business in this, the lowest tier of the courts' hierarchy. A more precise and detailed understanding of the important and influential role played by the people who provide magistrates' court services is invaluable and overdue.

[4] Thomas, however, had married a Catholic, Catherine Kinnane, in 1862. 'Mixed marriages' were frowned upon and this may have been why they chose to be married in the city by renegade celebrant Nathaniel Kinsman instead of in a church.
[5] Wade, TB and Dixon (1919).
[6] Laster, McKinna and Wade (2013).

It is fair to say that even having begun with a degree of awareness of this subject, I feel myself to be essentially an outsider given privileged access to insiders' knowledge, the product of decades of working, learning and life experience. Numerous people have made documentary and oral history contributions that I would have been unable to locate otherwise or even known about, and I acknowledge their insightful and generous assistance.[7] Thanks to members of the magistracy and the Clerk of Courts Group past and present for insight into the culture of the cohort, and for the Group's bestowing on my early efforts the John Leaf Award. Although I have undertaken to preserve the anonymity of contributors, I would like them to know that I am immensely grateful for the time and trouble taken by each interviewee to share their knowledge, stories and expertise - often so frankly. It has been a fascinating and enlightening experience as a researcher. I'm sure they know that their contribution has added something to the sum of human understanding on a subject that often confounds it.

I can however name my supervisors - Dr Kathy Laster and Dr Simon Smith - and take this opportunity to thank them formally for their skilful and pragmatic guidance, their sharing of knowledge and contacts, and for the moral support that a project of this nature constantly requires. I am grateful to Victoria University librarians, especially Murray Greenway and Cameron Barrie, who provided a wealth of information, and to Dr Lesley Birch who was always available with sensible and informed advice. I thank Victoria University for making this research possible by the granting of a Research Scholarship.

For close and critical reading of drafts, I thank Dr Karen Crook and subject matter expert Greg Enticott. Friends and family helped sustain me with their patience, humour and vitality: my sister Dr Catherine Watson and friend Dr Miranda Shehu-Xhilaga, who have also trodden this path, provided wisdom at key points. My father's encouragement was readily available. And not least, Hugo, Georgi, Axel and Noah - my household family - have moved on from various stages of school and university during these four eventful years which have included a thesis, a pandemic and so much more: we arrive, we keep travelling. Thanks for being fantastic fellow travellers.

[7] Clerks, registrars and magistrates have had history buffs in their ranks.The late William Cuthill (who began his career as a Clerk of Petty Sessions in 1925 and was Chief Magistrate from 1969 to 1974) was an active and prolific historian. Many clerks contributed articles on the history of the court and its characters in editions of the *Chronicle* over time and for some years the clerks' resident historian was senior clerk, the late Brian Mansbridge.

Abstract

Clerks of Courts in Victoria (today's Court Registrars) occupied a relatively subordinate position within the public sector hierarchy. Despite the limited role envisaged for them by the Law Department and the statutory and administrative guidelines that framed their work, these court administrators exerted considerable influence within the busy summary jurisdiction.[8] This thesis explores the nature of clerks of courts' formal and informal discretionary power, and how such power evolved in the context of organisational, legal and social change culminating in the 1980s. Semi-structured interviews with registrars, former clerks, magistrates and judges were conducted to investigate the counter-intuitive concept of lower-level public servants exerting power and influence. Resulting data was analysed using primarily Michael Lipsky's Street-level Bureaucrat framework.

Findings show that, although flying under the radar, clerks were foundational and forceful actors in the provision and ongoing development of the summary court jurisdiction in Victoria. Their influence derived from a striking combination of factors: their nexus with the judiciary, their court craft and detailed knowledge of statute law, their community connections and status, and their sustained endeavour to self-organise and maintain a strong culture in the face of challenges to their role. These elements also influenced how clerks as a group and as individuals chose to employ discretion in delivering justice to citizens. At their best, they humanised and made procedurally fairer what could have been experienced as an alienating and inequitably weighted justice system.

[8] The Law Department became the Attorney-General's Department in 1987.

Chapter 1:

Introduction

This chapter outlines the nature and purpose of this research and why it is important to consider the role that court administrators, in this case those in the Victorian summary jurisdiction, have played and continue to play in the administration of justice.

The Magistrates' Court, the summary jurisdiction and its clerks

The Magistrates' Court of Victoria operates within the summary jurisdiction, one of those areas of law allowing the 'summary' or less formal hearing of law and fact, with cases determined - with a view to relative brevity - by an independent judicial officer in the absence of a jury.[9] The court hears cases concerning summary[10] and less serious indictable offences,[11] as well as committal proceedings[12] in respect of more serious indictable offences. The tiered court structure places the summary jurisdiction below the State's Supreme and County Court jurisdictions.[13] In Australia the judicial officer presiding over lower court matters is legally qualified and in Victoria, usually a magistrate, although in other states the title of judge is accorded.

Before 1971 Victoria's courts of summary jurisdiction were known as Courts of Petty Sessions (*Justices Act 1958* (Vic) Part IV). Courts of Petty Sessions had been formally established in the Colony of New South Wales and their powers defined in successive legislation.[14] Between 1971 and 1989 they were Magistrates' Courts (*Magistrates' Court Act 1971* (Vic) Part I); s 4 of the *Magistrates' Court Act 1989* (Vic) established the single entity of the Magistrates' Court of Victoria as a stand-alone court.

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[9] The summary jurisdiction derives from fifteenth-century Tudor Britain when Justices of the Peace were formally authorised to hear without a jury cases involving misdemeanours or petty crimes (Ward 2013, p. 37).

[10] 'An offence not punishable on indictment or for which no procedure is specified.' *Encyclopaedic Australian Legal Dictionary* 2021, summary offences entry [accessed 4 June 2021]. Summary offences heard in the Magistrates' Court of Victoria include disorderly behaviour, some assault offences, driving offences and wilful damage to property (see the *Summary Offences Act 1966*).

[11] 'An offence that can be prosecuted on indictment … in Victoria whether an offence is indictable depends upon the penalty prescribed ((VIC) Sentencing Act 1991 s 112) ... An indictable offence is typically tried before a judge and jury although some jurisdictions permit trial by judge alone.' *Encyclopaedic Australian Legal Dictionary* 2021, indictable offences entry [accessed 4 June 2021].

[12] 'A hearing to determine whether there is sufficient evidence to warrant the person charged with an offence being required to stand trial or whether the person should be committed for sentence.' *Encyclopaedic Australian Legal Dictionary* 2021, committal proceedings entry [accessed 4 June 2021].

[13] See Thomas, James Burrows (1997, p. 195).

[14] The brief *Justices Summary Jurisdiction Act 1825* (NSW) authorises justices 'in a summary way to take cognizance of all crimes and misdemeanors committed by and of certain complaints made against such persons and the same to punish ...'.

Why this research?

The People's Court, as the Magistrates' Court of Victoria has traditionally been known, is often a locus of fast-paced, high-pressure, real-life drama.[15] The metaphorical space between summons and appearance, or issue and execution, is a potent one, full of nervous energy. In a charged environment where the professional and personal empowerment of parties is briefly suspended, combative players meet to do battle or treaty. The clerk of courts or registrar, as the custodian of that small but significant zone at the counter or online, is the captain of first impressions. Even before the court user submits to the formal process of the court and progression of the case to arbitration or judgement, formal and informal power in the hands of a clerk or registrar can impact the course of justice.[16]

Although we can sit in court and watch how the bench clerk operates, or observe the pressure-cooker triage of the 9.30 am pre-court moment, much of the work of registrars is behind the scenes. This is even more so at the time of writing in mid-pandemic 2020 when the court has pivoted to online delivery. What is also invisible to the general public - especially in respect of the larger, busier courts - is the real nature of the body of people whose influence, history, traditions and culture are at the heart of our court system.

When this research began it was evident that insufficient scholarly attention had been paid internationally to court administrators. There is specific comment on the dearth of it: 'It is as if the justices' clerks have no public image and no part to play in the criminal justice system' (McLaughlin, Hugh 1990, p. 358).[17] With few exceptions, justice-related research has ignored their contribution or at best, given them cursory mention.[18] Scholarly and indeed public interest is bestowed preferentially on the more conspicuous judiciary (particularly in the higher jurisdictions), police and prisons. But as Parker (1998) argues, 'For a more

[15] Victoria, Legislative Assembly, 1980: 7932. In the USA, magistrates' courts were also known as 'poor men's courts' and 'tribunes of the people'. Kross and Grossman (1937, p. 133).
[16] The court has been pictured as 'the legal version of a casualty ward, where treatment must be immediate and the magistrate … [tries] to wade through the mundane, the tragic, the dangerous and the bewildered. These are the cases that are rarely reported - they are not newsworthy to the wider world - but to the victims, witnesses and those charged, they can be life-altering'. Silvester (2018), 20 April [accessed 26 November 2020]. Over 2018-19, 660,000 criminal matters were heard and 40,000 civil complaints issued; there were over 81,000 family violence and personal safety matters. Magistrates' Court of Victoria (2019, pp. 4,7).
[17] See also Holvast (2016).
[18] See however Wallace, Mack and Anleu (2014) as a welcome exception that discusses work allocation arrangements between Australian court staff and judiciary.

balanced picture of modern courts, we need to add in a bottom-up perspective and look at their routine and unexceptional work'[19].

The summary jurisdiction is the origin of at least 90 percent of court business in the State: for most Victorians their only experience of court is here. Much of its work may indeed be seen as 'routine and unexceptional', or simply not seen at all. Yet as Willis (2001, p. 133) explains, there is something close to disdain in the historical discounting of the third tier of our court system,[20] especially when compared to the impressive ritual of the criminal jury trial with its wigs, gowns and solemnity:

> It is easy to see the full-blown jury trial as real justice and the summary hearing as a paler, scaled-down version of the real thing. The term 'summary justice' … conjures up images of a 'justice' that is dispensed speedily and without all the formalities. The term can also be used to describe a justice that is 'rough and ready' - Kingswood rather than Rolls Royce.

The term 'clerk' implies a paper-pusher or court usher, a low-impact support function without great influence for good or ill. Although providing facilitation of court operations and a liaison point with other government authorities, it lacks the visible muscularity of police and corrections and decisive power of the judiciary. In the physical court, a magistrate on the bench 'appears' only when the court is in session, separate from the public and usually elevated above the rest of the court as a demonstration of the dignity and impartiality of the judicial process; the registrar or clerk sits below the bench or off to the side.[21]

Court whisperers

A well-run court does not showcase the role of its clerks or registrars. They are 'court whisperers' behind the scenes and in the shadow of the bench.[22]

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[19] Parker (1998, p. 9).

[20] 'The judicial system is organised in layers, like Dante's Hell, and for much the same reasons.' Spigelman (2001, p. 6). When an article was commissioned on this research, I was asked to 'bring along a clerk of courts in their uniform'. No-one wears a uniform in the magistrates' court except the police.

[21] There is now a more informal setup in some courts, especially the Koori Court, where all present will sit around a table at the same level. The Koori Court serves Aboriginal and Torres Strait Islanders who have taken responsibility and pleaded guilty to a criminal offence, and who choose to have their matter heard here. Magistrates' Court of Victoria (2020b).

[22] This term was used by an interviewee who had worked as a clerk of courts (2017. Interview #46).

'Courtcraft' is the term the research cohort has used to describe how a skilful clerk or registrar works within the system, and sometimes outside it when guidelines are lacking, inadequate or ambiguous.[23] It describes the production of formal proceedings, orchestrating the quotidian skirmish of court business: continuous monitoring and adjustment of systems, managing court users' expectations and working around obstacles.

Management of judicial workload is a key component. Registrars pride themselves on their ability to run an efficient court, supporting the magistrate to make the best use of judicial time (Wallace, Mack & Anleu 2014). Parties know where they should be and how they should behave, and the magistrate is confident she or he has the documentation and systems required to support decision-making.

The court's 'gatekeepers', as court administrators have also been called,[24] also manage the competing demands of police prosecutors and legal counsel. Registrars decide how they might assist a person with advice, services, referral or something as simple but important as a more private spot within the crowded space to discuss a matter in confidence. They problem-solve under the pressure of the sheer volume and changing nature of court business, the public nature of the work, competing interests of parties and the emotional state of court users. Bench clerks are often the most junior court administrators and they run the court for the magistrate and public, calling in parties, swearing in witnesses, keeping court records and issuing documentation.[25] More senior staff manage court listings and triage of cases and parties, and help co-ordinate the allocation of magistrates.

Clerks of courts: a small but significant cohort

Court administrators in the Victorian magistrates' courts are now called Court Registrars. Clerks of courts, as they were known prior to 1989, were relatively low-level public servants within the Law Department and the greater Victorian Public Service, and few in number.[26] The role is less well-known today than it was forty years ago, and even then was more

[23] 'Courtcraft', according to the Merriam-Webster dictionary, is an American term defined as 'the art or craft of conducting the affairs of a court: skill at improvising and implementing policy' (https://www.merriam-webster.com/dictionary/courtcraft) [accessed 23 November 2020].
[24] For example, in Hartman and Belknap (2003).
[25] Who are the courts' 'public'? Stephen Parker in his seminal report *Courts and the Public* (1998) 'could find no concerted attempt in the Australian literature to identify and list the relevant publics exhaustively … much of the literature focuses on a *litigant's* needs and expectations. While obviously an important group, there are many others, including legislatures, executive governments, jurors, witnesses (expert or otherwise), the media and the legal profession' (p. 13).
[26] The cohort was never larger than 350 during the focus period of this research.

prominent in country areas than in the city and suburbs. Yet court administrators were and are the accessible face and first impression of the justice system - both in court and at the counter of the court office, and now to an evolving extent as an online presence.

The local courthouse was traditionally a community hub.[27] Clerks' position, network of contacts, access to legal knowledge and expertise in court processes made them useful to know and gave them access to a range of formal and informal powers. Their services often extended significantly beyond running the court and processing court business.[28] The 'poor man's lawyer' was not expected to have a law degree (though some did), but his or her knowledge of state and commonwealth legislation relative to the summary jurisdiction was extensive. Insight developed in working daily with the law and court process placed clerks in a position of trust and respect with the community.

Much of clerks' work was not prescribed in their work manual.[29] There were no job descriptions until the mid-1980s, and none but the most abstract standards of customer service. Service standards were often locally determined. Distance both geographic and cultural from the centralised authority of the Law Department (the parent organisation of the court for 150 years) inferentially conferred substantial discretion in the use of these powers. Conversely, clerks' work was chronically constrained by lack of resources.

Scope of the research

Temporal

The temporal focus of the thesis is 1948 - 1989, a period of fundamental change in the courts, the public sector and society at large. The court's role and the clerks' perception of themselves as independent officials of the court,[30] the poor man's lawyer and as future magistrates came to be acutely challenged by external and internal forces over these forty years.

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[27] 'The court was the heart of the community' (2018. Interview #18).
[28] 'It is in the provision of our quality service that we can all take pride.' Dinsdale 1993. 'A message from the president'. *Chronicle: Journal of the Clerks of Courts*, 32, 4, Summer p. 5.
[29] This was *Instructions for Clerks of Courts*, first published in 1869. It was updated via periodic circulars and a new edition printed approximately every twenty years. Instructions are now published online.
[30] 'Independent' was understood as clerks being 'placed in the centre of the scales having no personal or beneficial interest in the final outcome of the matters which come before you officially, but alone the desire for fair play'. 1948. 'Editorial: Do We Take Pride?' *The Chronicle: Journal of the Clerks of Courts*, 1, 2, February p. 1.

1989 marked the end of a phase of momentous reform in the courts and the public sector. It also saw the formal cessation of the term 'clerk of courts' in favour of 'court registrar' with the *Magistrates' Court Act 1989* (Vic). This research is timely since much of the cohort that lived through the period of focus is still alive to reflect on it. The principal mode of research employed was semi-structured interviews: the late 1940s is as far back as the oldest research participants can remember, although older stories have been preserved by those whose forbears worked in the courts: oral tradition is strong in the cohort. Reference is made to developments prior to 1948 and after 1989 for contextual and comparative purposes.

Jurisdictional and geographical

The Magistrates' Court jurisdiction was the principal area of the clerks' operation. In the period under study it included the Children's Court and the Coroners Court.

Although clerks were required to have a sound knowledge of the legislation and rules under which the jurisdictions operated, very few designated clerks' positions existed in the higher jurisdiction courts. In larger regional areas clerks worked across the jurisdictions because of the multi-jurisdictional facilities operating there and the local judicial visiting arrangements. Until the 1990s, it was a requirement for a trainee clerk to have experience in the higher jurisdictions (County and Supreme Courts), but many clerks gained limited, if any, experience there once qualified.[31] The research focuses therefore on clerks' work in the magistrates' courts.

Overview of the thesis

In considering the paradox of a low-level employee with significant scope for exercise of discretion[32] and the effects of existential challenge to a long-established legal culture, the research is framed by this central question:

[31] Multi-jurisdictional experience was considered to confer competitive advantage on an applicant for a clerk's position. Jostling for positions in regional areas where such experience could be more readily obtained was keen, but these positions were few and incumbents, once appointed, tended to remain: see Douglas, R (1992, p. 73). This took some such opportunities out of circulation. One interviewee reported for instance that he had taken up a position in Bendigo with the intention of gaining Supreme Court experience, but was disappointed because the long-term incumbent there chose not to share these duties and never felt obliged to do so (2018. Interview #30). Today there is no formal requirement for registrars to move between jurisdictions.

[32] Evans and Harris (2004) define discretion as 'a series of gradations of freedom to make decisions' (p. 871).

What was the nature of the agency, influence and discretion exercised by clerks of courts as subordinate officers in the Victorian magistrates' court system during the period of rapid transformation of the courts and the public sector 1948 to 1989?

This question has significant sub-elements:

- What were clerks' formal and informal powers, and how did they use them?
- What factors facilitated, moderated and challenged the scope of clerks' influence (e.g. the clerks' own culture; heroes and villains; the ambit of their official roles; work conditions; public sector, legislative and social change)?

Chapter 2 locates the study in its thematic and historical context, outlining the developments that created the unique cohort that is the centre of this research.

The role of Clerk to the Bench predated the establishment of the summary jurisdiction. Enmeshed as clerks of courts were with the emergence of the justice system in its earliest colonial forms, an appreciation of their origins is essential to understanding their rich and multi-layered culture, the nature of the difficulties that beset it, and its living legacy. For the purposes of thematic discussion I have identified five thematic phases are in the clerks' history. It is the fifth - 1948 to 1989 - that is the subject of this thesis.

FIGURE 1: FIVE THEMATIC PHASES (SUMMARY)

Phase	Characteristics of era	Size of cohort
One: 1837 - 1850	Beginnings: frontiersmen/colonialists	3 clerks (1840)
Two: 1851 - 1861	Establishment and expansion	17 (1850)
Three: 1862 - 1914	Codification, consolidation, careers	121 (1860) 69 (1880)
Four: 1915 - 1947	Leadership: uniting the cohort	129 (1918) 179 (1934)
Five: 1948 - 1989	Fundamental challenge and change	153 (1952) 329 (1989)

Sources: *Victoria Government Gazette*; *Chronicle: Journal of the Clerks of Courts* (various editions).

Although based on ancient roles in England and Wales, the role of clerk of courts - known initially in the colony of Port Phillip (Victoria) as Clerk to the Bench or Clerk of Petty Sessions - evolved quickly to adapt to the needs of fast-developing settlements and the demands of magistrates. Privations, isolation and lack of supervision bred resourcefulness and independence in the early period.

In the second phase the need to work with and advise lay magistrates and assist unrepresented litigants built a substantial legal knowledge base. Courts proliferated to cater for demand in gold rush towns and the numbers of staff increased. Governmental inquiries in the third phase and attempts to rationalise the public service resulted in the role of clerk becoming more regulated, and a discrete career structure was established for staff, which included both clerks and magistrates. The number of courts was rationalised after the gold rush era, and the ranks of clerks also. Their nexus with the bench as virtual apprentices to the magistracy, however, fuelled career ambition and sustained lifetime careers in the court system.

Phase Four saw a drive towards professionalisation as a means of improving clerks' poor remuneration and working conditions; the diffuse body of clerks developed a more acute sense of itself as a discrete cohort and formed its own Association. This was to become the powerful Clerk of Courts Group. Clerks became more confident in asserting authority and engaging with local communities as key representatives of government. Differences had evolved between court cultures in suburbs, country and city, but the clerks used the medium of their inhouse journal, the *Chronicle*, as a means of cohort unification.[33] A growing sense that legislative, governance and administrative change would affect the business of the court and undermine careers ushered in Phase Five, the period of turbulent change that is the subject of this research.

Methodology

In Chapter 3 the choice of grounded theory is explained and justified as the most appropriate qualitative methodology for an idiographic study of court administrators at a key moment in their history. The research framework is shown to address the key methodological challenge of locating and accessing authentic and authoritative sources.

[33] In the body of this thesis, the publication *Chronicle: Journal of the Clerks of Courts* and the earlier *Clerks' of Courts Chronicle* [sic] will usually be referred to as the *Chronicle*.

Semi-structured interviews with an 'insider' cohort presented the most effective method for the generation of data (Schwandt, Lincoln & Guba 2007b). This facilitated flexible and wide-ranging discourse and the drawing out of themes considered significant by knowledgeable and deeply experienced interviewees (Kvale 1983). The success of such an approach would be in large part determined by a cohort available and willing to co-operate, and capable of responding to the terms of the research. The application of ethical practices and validating mechanisms that underpin the credibility, integrity and rigour of the research are explained, together with the data analysis techniques employed.[34] Quantitative data (though often problematic and difficult to obtain) were used where available.

The voices of clerks of courts have seldom been heard in the public sphere. The long memories and reflectiveness of those who took part in the study were the most important resource available (Yilmaz 2013). Some of the cohort had worked in the courts for forty years or more, either entirely as clerks, or first as clerks and later as judicial officers. Many express pride in having had fathers or other family members as clerks, or clerks and magistrates before them. This strength is also a limitation: insiders' views tell the story with the authority of intimate knowledge but also, innate and unavoidable bias. Examination of external effects and ramifications is not intrinsic to this methodology.

The periodical produced by the Clerk of Courts Group since 1933, *Chronicle: Journal of the Clerks of Courts*, provided an alternative 'voice'. Clerks would look forward to reading the news and educational articles shared in each new issue. The journal was also used to unite colleagues in embracing service values, provide a forum for venting grievances and to generate ideas. In at least three pivotal points in the clerks' history, the *Chronicle* was employed to campaign for action or change. The journal has proved an invaluable contemporaneous record and source of data. Apart from constructing an autobiography, as it were, of the evolving concerns and motivations of a uniquely skilled and specialised group, it resonates with and reflects the themes arising in the interviews. It also serves as a source of triangulation and cross-referencing against interview-derived data (Hammersley & Atkinson 2007).

[34] For the purposes of this section on methodology, I favour the definition of integrity as 'the aim of making decisions that best support the application of methods'; the application of appropriate methods justifies confidence in the 'trustworthiness' of the research. Levitt et al. (2017, p. 9).

Clerks' discretional scope and unofficial authority

Chapters 4, 5 and 6 report on research findings. Three major aspects of the effects of change in the People's Court from the perspective of key actors from the 1950s to the 1980s are considered:

- operational challenges and clerks' responses during a time of profound and wide-ranging legislative and administrative reform;
- the effect of unprecedented disruptions including industrial unrest and internal dissonance against the background of the clerks' deeply entrenched workplace culture; and
- the entry of women into an all-male domain as a prism through which to view major operational and cultural challenge and change.

The changing business of the courts

Clerks worked with the public as officials of the court, but also, unofficially, as 'the poor man's lawyer'. Before the introduction of formalised duty lawyers in the 1980s (and after this date where duty lawyers were unavailable), clerks assisted litigants to understand legal issues and court processes, and often lent an ear to people trying to resolve problems in their lives.[35] In Chapter 4 we examine clerks' traditional ways of operating and the growing challenge to their habits of service.

Legislation and regulations were numerous, voluminous and complex, and few court users knew as well as the clerks how they applied in practice. Though every courthouse was furnished with at least one book of clerks' *Instructions*, the level of detail in these texts seldom extended beyond basic procedure; it did not and could not provide guidance in dealing with ambiguities, ethical dilemmas or the plethora of personalities, behaviours and problems presenting daily at the counter or in court.[36]

Interviewees often described their work as 'running a small business'. Service, however, could be patchy, depending on the disposition of an individual clerk or the culture in each

[35] 2018. Interview #20, and see Pilgrim, L 1980. *Chronicle: Journal of the Clerks of Courts*, 20, 1, March p. 133 and Bedohazy 1976. 'Do We Take Pride?' 19, 7, December pp. 1,2. This was a reprise of the 1948 article with the same title.

[36] As expressed in Frederickson (2015, p. 61), 'The basis of bureaucratic power is assumed to derive from the discretionary decision-making authority that, as a practical matter, has to be granted to them because not all implementation and enforcement scenarios can be conceived of and accounted for in statutes'.

court: discretion could be abused in a context of limited accountability. Many clerks experienced a tension between their sense of justice and the official parameters of their role. Although their positioning in the system implied independence and they were not responsible for the ultimate outcome of the justice process, they often felt very strongly about what that outcome should be.[37] In addition, their advisory role to lay justices (Justices of the Peace) was open to criticism by the legal profession and police prosecutors.

The 'Coombs' and other inquiries urged modernisation and rationalisation of government apparatus for Australia in the 1970s. The Victorian government also implemented some substantial changes in the lead-up to 1982, a year that marked the start of an intensive period of public sector reform in the first term of the Cain government (Coombs 1976).[38] Halligan and O'Grady argue that although until that time Victoria may have 'lagged behind the other states', this partially accounts for the dramatic nature of the reforms when they did occur (1985, pp. 35, 6, 44, 5).[39] For some in judicial circles, the shock of change was seen as 'gales of destruction that have swept through the traditional public service' (Spigelman 2001, p. 9). Ultimately the clerks of courts themselves were drafted into the reform agenda with the introduction of the Courts Change Program in the 1980s and along with magistrates, made substantial contributions to its success.[40]

Sociality and solidarity

The clerk of courts cohort, never more than 350 staff state-wide, was small compared with, say, the several thousands of police.[41] Clerks were distributed across the State, often in small teams; prior to the late 1970s, some courts were single-person operations. Chapter 5 focuses

[37] 2018. Interview #22; 2019. Interview #58.
[38] The 'Coombs Report' was instigated by the reformist Whitlam Government in an atmosphere where 'critics believed that a public service which had served the Liberals for 23 years could not be trusted to support the reform agenda of the newly-elected government'. In turn, the Report's recommendations 'seemed to fall on stony ground. By the time RCAGA reported, the government which commissioned it had fallen, and the Fraser Liberal/National coalition was keen to distance itself from the actions of the Whitlam government'. Colebatch (2002, pp. 95,7).
[39] 'Reform of government processes has been high on the agenda of both federal and state governments but has not been tackled anywhere with such fervour as in Victoria since the election of the Labor government in 1982.' Bryson (1987, p. 260).
[40] The Courts Change Program initiated a series of radical innovations and reform in the Victorian courts, especially the magistrates' jurisdiction. The eight principal projects undertaken included the state-wide restructure of the service, courthouse maintenance and building, information technology and administrative systems, human resource management, communication and consultation, trust fund and Poor Box administration, and reform of the licensing function. Restructure led to regionalisation. Law Department Victoria (1985b, p. 3).
[41] In 1986-7 there were 8,980 sworn police officers in Victoria and 146 reservists. Victoria Police (1986-87).

on the internal sources of the clerks' resilience and the strategies they employed in the face of existential threats to this stability.

The ideal and practices of camaraderie were frequently discussed in research interviews. Clerks of courts had an unusually strong and enduring sense of themselves as a discrete professional grouping. Their elected leadership, the Clerk of Courts Group, fostered an intentional culture through advocacy of service values, prosecution of mutual interests and actively promoted sociality. This was strengthened, if anything, by the clerks' consciousness of the implacable authority of the Law Department whose 'Head Office' employed them, controlled their working conditions, moved them around the state, and issued non-negotiable and often unpalatable instructions. The Law Department was in turn at the mercy of the Public Service Board that controlled the staffing establishment and employment policy, the Department of Treasury that held the purse strings, and the Department of Public Works that determined the state and fate of court buildings.

A tension between the public interest (an oft-iterated core value) and internal and external pressures highlighted the self-preservation of clerks as a group, particularly during the 1970s and '80s. Against the background of changes outlined above, the relationship between clerks and the Law Department suffered major disruption as clerks became increasingly frustrated with departmental economising and stonewalling. Unprecedented mass action to bring matters to a head achieved qualified success.

Nexus with the magistracy

Chapter 5 identifies the breaking of the nexus between clerks and the magistracy from 1978 as a major factor in forming the Victorian court system we know today. Until well into the 1990s, most magistrates had once been clerks, and many clerks aspired to be magistrates: their 'closed shop' system of qualification and promotion enabled this and almost completely excluded would-be candidates from the legal profession.

The complexity and scope of the summary jurisdiction had broadened and become more complex since World War II. By the 1970s it was no longer seen as credible for magistrates without law degrees, however competent they might otherwise be, to adjudicate on complex cases that could involve representations by barristers and Queen's Counsel. The threat and actuality of change to qualifications for the bench and allowing 'outsiders' into the job was experienced by clerks as undermining status and career options in an already slow-moving

career. It set in motion an evolution in the status of magistrates, 'the Crown's most trusted servant' (Rangelov 2005, p. 319), towards becoming 'judges in all but name' (Lowndes 2000, p. 509) - and for clerks a profound rethinking of their role and career aspirations.[42]

Clerks were also experiencing dissension and disquiet amongst themselves. Their camaraderie, so important to them, was expressed in a love of sport and drinking; it was an essentially masculine culture. Was this a culture that could adapt to the changing norms of society, including the evolution of its own demographic to accommodate women and in general, greater diversity? Could it survive the rise of alternative forms of leadership?

Women as a litmus test of cultural adaptability

As seen in Chapter 6, female clerks started late in the courts - in 1975 - and were obliged to establish themselves in an overwhelmingly male cohort that was unprepared for their arrival. It is unsurprising that women's entry into the career stream was resisted by some in the cohort as part of a suite of discomfiting, unwelcome changes. It coincided with a challenging moment in the clerks' history when eroding career expectations led them to describe their prospects as 'bleak'.[43]

Female trainees and junior clerks experienced treatment that ranged from protective to predatory to hostile. The reflections of both female and male former clerks show that in the absence of training or experience, the arrival of women wrought no automatic improvement in the delivery of services to women and families. Yet according to their male colleagues, women brought a different sensibility to the cohort, and their presence altered behaviour. Leadership interventions by influential people, including both male clerks and senior women new to the scene, were key in enabling the cohort to mature, develop and cohere. Many women stayed to make successful careers in the courts.

Theoretical questions

Clerks have been characterised as skilful conductors of court process, defenders of the underdog, energetic community leaders, vindictive gatekeepers, and petty-minded

[42] As the Hon Justice J. B. Thomas (Queensland) explains, 'The professionalisation of the magistracy [in Australia] has been one of the most notable changes in legal professional life over the past two decades. That is the period over which the magistracy has been transformed in substance from a body of persons largely public service trained to a body of professionally trained and legally qualified practitioners. From 1985, *all* new appointments to Magistrates' Courts throughout the Commonwealth have been qualified legal practitioners' (1991, p. 389).

[43] 1978. 'Editorial'. *Chronicle: Journal of the Clerks of Courts*, 19, 5, September p. 37.

bureaucrats with a love of red tape and too much power. Research interviews brought forth each of these notions, sometimes within the one conversation. Could they all be accurate at once? Clearly there was no 'patent' or standard clerk of courts, even given the official nomenclature and the often-passionate affiliation of clerks and ex-clerks with their role ('despite everything, I will always be a Clerk of Courts').[44] Nor did there appear to be a standard set of expectations beyond the legislative framework and a rather mechanistic book of instructions. What then determined how clerks carried out their roles? From what authority formal or informal did they derive the leverage they exercised? Why was being a clerk of courts apparently so enjoyable and engaging? How did this alter during the period of radical managerial and legislative reform that led up to 1989? The role of clerk of courts was more complex and layered than its title suggests.

The dimension of discretion arose as a common thread in the research interviews. This flexibility - even autonomy - of operation had its roots in the clerks' early history as described in Chapter 2. Michael Lipsky's concept of the 'street-level bureaucrat' (Lipsky 1969, 1971, 2010; Weatherley & Lipsky 1977) is used as the primary theoretical framework for analysis since distance from authority, operational discretion, and pressurised decision-making at the point of service delivery aptly characterise the work of the clerks. Analysis of the impact of change draws mainly upon the work of Schein et al (Schein 1996; Schein 2009; Schein 2011; Schein & Schein 2016). The debate about 'the big questions and real-world puzzles about gendered power inequalities in public and political life, mechanisms of continuity, and the promise and limits of gendered change' (Mackay 2011, p. 31) is addressed via a range of sources (Alkadry & Tower 2014; Kanter 1977, 1987; Stivers 2002, 2003, 2018). The examination of women's belated beginning as clerks in this thesis provides empirical data as a new contribution to this line of enquiry.

The thesis ends with a discussion about the legacy of the clerks of courts and the significance of the research.

[44] 2018. Interview #20. The interviewee is referring to transformations in the role since he began as a trainee, including the change of title from Clerk of Courts to Court Registrar. The attachment to the title reflects more than personal sentimentality since the cohort's inhouse publication is still subtitled *Journal of the Clerks of Courts*.

Conclusion

This research has successfully engaged with the insights of former clerks, and those who worked closely with them, to examine this little-known but immensely important cohort, its culture and the context surrounding the provision of justice services in the Victorian 'People's Court' during a pivotal moment in its history.

Clerks in their courts were positioned as the lynchpin upon which the summary jurisdiction system turned. More than ghosts in the machine, they were a significant but largely unmonitored delivery point of legal and administrative policy. Clerks exercised a degree of unregulated discretion in managing court process, providing advice and welfare services, and leveraging resources. Their everyday resourcefulness, adaptability and responsiveness to stakeholders were critical both to the perceived fairness of the system and to the courts' implementation of government policy and legislation.

Until now, scholarly attention has been focused primarily on the judiciary who publicly determine the fate of many citizens. This thesis presents a case study of a (self-described) conservative,[45] deep-rooted cohort whose often unobtrusive exercise of power has been tested and transformed by unprecedented change. Clearly the magistrates' court system could not have operated successfully in the absence of the strong and sustained role played by clerks. Court administrators are the secret soul of a little-examined part of our living legal culture, and their role merits closer attention.

[45] 2018. Interview #12.

Chapter 2:

Frontiersmen to apprentice magistrates: contextual background to the research

From my earliest days in the courts, it was evident to me the Clerks of Courts Branch was quite different from most other branches of the Victorian Public Service, and I have always counted myself fortunate that chance appointed me to it... Everyone seemed imbued with a sense of duty to get things ready on time, and there was an added responsibility at an early age, especially when acting as clerk in a court. That, of course, was the most interesting part of the work, and I contrived to get more than my fair share. The court is the law in motion, and the clerk makes an important contribution to its operation. He organises the court, swears witnesses, takes depositions if necessary, untangles hitches, calms crises and generally assists the court. He is quite indispensable...

Supreme court justice and former clerk of courts Sir Kevin Anderson (1986, pp. 21,2).

Introduction

In this chapter I contextualise the research by identifying and explaining the significance of the historical episodes, themes and individuals that informed the development of the distinct, unique and important role played by clerks of courts.

The colonial Police Court (based on the English model) was, in the state of Victoria, to evolve into magistrates' courts. The role of its clerks was carved out by localised exigency and uncertainty as much as by mother-country traditions.[46] New appointees commonly lacked the legal experience and training of their British counterparts and were operating besides in a vastly different, often perilous, under-resourced and quickly-developing society.[47]

[46] The generic term 'clerk of courts' is used in this thesis to describe qualified or trainee administrative officials of the court. The term had no statutory recognition for most of its life but before 1989 could be used interchangeably with the term 'registrar'. The term 'Clerk of the Bench' or 'Clerk to the Bench' was also used in the first half of the nineteenth century alongside the term 'Clerk of Petty Sessions'. The last mention of 'Clerk of the Bench' in the *Victorian Government Gazette* is in 1859, but it was used in newspaper reports for many years after this (references can be found up to about 1925 in country newspapers).

[47] Golder (1991), Weber (1980), Lowndes (2000) and Ward (2013) draw attention to a combination of geographical and practical issues (primarily convict management and policing of a lawless and dispersed populace) that made a smooth transition impossible: the unique circumstances in Australia made demands on magistrates and their staff quite unlike those encountered in England and Wales. Compounding this,

In order to attract to this role and retain in it 'a very superior class of men', many things had to change.[48] The salary level of each clerk had to sustain his respectable status as an official of the court, skill levels needed augmenting and standardising, and a career path established. In view of this and also to sideline political patronage, the government designated the role of clerk of courts as the principal pathway to the stipendiary Bench so that for more than a century, the clerk was seen as an apprentice to the magistracy.[49] This protected path, laid out in successive Victorian Public Service Acts, implicitly conferred power and status on clerks as heirs apparent to the bench.

The introductory quotation above expresses the essential role clerks played in court. Professional magistrates depended on them to triage and allocate cases, run the court, keep records and produce paperwork to action judicial decisions.[50] Lay justices, with their lack of legal training, leant upon the clerks' legal and procedural knowledge in court, while clerks were often obliged (if covertly) to manage them.[51] Communities also came to depend on their clerks as a font of knowledge and courts as their portal to government services.

'Instructions from the authority precincts in Sydney, Melbourne and Hobart Town were always weeks, if not months away'. Rangelov (2005, p. 144).

[48] The term 'very superior class of men' is taken from the report of the Civil Service Commission (1859, p. 94). The elevation of clerks' skills and social standing was seen as essential to support the sustainability of a combination of paid and unpaid magistrates as the juridical model of the summary jurisdiction 'for wise and impartial administration of the law'.

[49] An editorial in the *Clerk of Courts Chronicle* describes clerks as 'magistrates in the making' and speaks of clerks 'serving their apprenticeship for the magistracy' (1948. 1, 2 February, p. 1). A study of clerical work in the USA reveals an interesting parallel in that clerks in nineteenth-century offices often came to be treated as apprentices. 'Before 1870 relations between employer and employee were quite personal. That a clerkship was often seen as an apprenticeship meant that the employer often took a paternal role vis-a-vis his clerks. The small size of offices and the lack of codified bureaucratic procedures allowed an employer's personal idiosyncrasies to have a very large effect on the tenor of office relations.' Davies (1982, p. 164).

[50] 'A police magistrate was almost invariably a highly trained career public servant, who had qualified for appointment by prescribed courses of study and many years' service as a clerk of courts.' Anderson (1986, p. 28). It was possible for practising lawyers who were not clerks to attain magisterial positions, but between 1870 and 1970 such appointments were exceedingly rare. Anderson recalls one exception, James Wilson Kerr Freeman, who had been a solicitor, Inspector-General of Penal Establishments, then Assistant Crown Solicitor before becoming a police magistrate (p. 14). In the Law Department establishment of 1958, there were no externally appointed magistrates amongst the 42 listed, though two of these ex-clerks had law degrees; in 1975, seven of the 57 magistrates had law degrees but all were former clerks of courts.

[51] Justices were 'appointed to "keep the peace", … [and] were not required to possess any formal qualifications … no formal experience in the law is required. … In remote parts of the State where the visit of the police magistrate was infrequent, two or more justices, *under the paternal eye of the clerk of courts*, would constitute the court to punish petty offenders and give judgement in modest civil disputes'. Anderson (1986, pp. 28-30) [my italics].

Five phases of the clerks' history

Historical literature establishes some factual and contextual bases for this research, although little of it deals specifically with the lower courts and even less with court administrators.[52] Studies concerning magistrates are useful because of their historical linkages with clerks as co-workers and in the unique master-apprentice relationship between the two.[53] Institutional histories provide contextual material. Two institutions of similar age to the magistrates' courts, also within the State of Victoria and at one time under the auspices of the Law Department, are the Titles Office and the Supreme Court.[54] Their histories have both recently been published (Grow 2013; Smith, S 2016). For the purposes of discussing a long history not previously canvassed, I have identified five general phases that introduce significant shifts and themes particular to the clerks.

The first encompasses the mere thirty years that saw Victoria's foundation and institution of courts and court sittings. This took place alongside land-grabs and the founding of cities, displacement and devastation of the original population, severe economic depression, catastrophic floods and fires, waves of immigration, population growth and then, with the second phase, pushing out of frontiers with the gold rush (Blainey 2013; Macintyre 2016). At state level the political scene was one of 'chronic instability' over the century before

[52] Contextual and incidental details about early clerks of courts and the history of the courts are found in some texts such as Geoffrey Blainey's 2013 history of Victoria and Garryowen's flamboyant narrative (Finn 1888) that draws upon the author's life as a journalist (including time spent reporting on matters before the Court of Petty Sessions) in early Melbourne. Legal historian Simon Smith (2014, pp. 17-50) includes a chapter on Horatio Nelson Carrington, who was briefly and colourfully a clerk of petty sessions in early Melbourne; writer Robyn Annear (2005) offers a speculative historical reconstruction featuring Carrington and another early clerk, Benjamin Baxter. See also Flannery (2002) on early Melbourne.

[53] A montage commissioned by the Magistrates' Court of Victoria provides an overview of the history of the People's Court (The Magistrates' Court of Victoria 2013) but otherwise aspects must be pursued piecemeal, theme by theme. The historical gap is most evident in the first two thirds of the twentieth century. A well-researched, anecdotal approach is offered however in Michael Challinger's extensive survey (2001) of historical court buildings in Victoria up to 1945. In describing each court building he presents aspects of its history within social, community and national and local economic contexts (such as the gold rush, bushrangers, the Depressions and the two world wars). He documents notable characters, some of whom were of course magistrates and clerks of courts. Apart from the inherent interest of these accounts, they demonstrate the centrality of the magistrates' court in local communities. Michael Ward, an Australian ex-magistrate, claims that historical British and Australian administration of justice would receive a poor scorecard if judged against today's human rights standards (2013). Similarly to other writers, he makes scant mention of clerks of courts, but if read with the understanding that the magistrates discussed in the book were likely to have been clerks of courts for many years, one must ask to what extent the values of the judiciary (i.e. how they saw fit to use their power) had been formulated during their 'apprenticeship'. Thus the issues canvassed by Ward resonate with themes and findings in this research.

[54] The few clerks in higher jurisdictions performed very different work to the magistrates' or petty sessions court clerks; they had less to do with the public and more with the legal profession and the ceremonial aspects of the court. There is an intriguing glimpse into the life of an engrossing clerk who 'worked until he was ninety, preparing the certificates issued by the Supreme Court authorising newly admitted solicitors to practise' offered by Carolan, J. M. *In*: Smith, S (2016, p. 51).

1950.[55] Clerks and magistrates were amongst those who built the foundations of the colony's sprawling network of government services in those uncertain times.

The 1859 review into the public service, eight years after the establishment of the separate colony of Victoria, ushered in the third phase.[56] It recognised that the home-grown habits of remuneration and recruitment were flawed, inconsistent, inadequate, and not conducive to the development of probity and professionalism among government workers. The commissioners' argument against the false economy of skimping on salaries laid the groundwork for consistent, appropriate and properly structured remuneration levels for clerks and other public servants. Importantly, the report also acknowledged the significance of the clerks' role in civil society.

Subsequent government reviews triggered legislation that furthered a discrete career stream for clerks of courts and a path to the bench. These, along with improved systems of management in the Law Department, engineered greater accountability of clerks and court services to executive and public. During this early period clerks became trusted members of their local communities, useful because of their knowledge of the law as 'bush lawyers' (Dunderdale 1898) and their connections with government.

An important feature of the cohort late in the nineteenth century was its developing capacity to self-mobilise; this is seen to mature in the fourth phase. The interregnum between the two world wars with the 1930s Depression awoke in clerks a sense that job security alone, valuable as it was, could not sustain the slow wait over decades to achieve their career goals. The revitalisation of their professional association, the Clerk of Courts Group, enabled a cohesive approach to the long-running issues of inadequate pay, forfeited leave and primitive work conditions as well as operational issues that hampered the delivery of justice. Their inhouse journal, the *Chronicle*, was used to amplify this agenda both amongst and beyond the cohort. Activism by the cohort (highly unusual behaviour in the public sector) was catalysed by a series of influential leaders and notable personalities, some of whom are listed in Figure

[55] 'Victorian politics from the mid-nineteenth century until 1955 had been highly unstable, with governments forming and falling regularly. There were 39 separate parliaments and 60 premierships between 1857 and 1955, with some lasting for only days or weeks. Unlike other states, Victoria did not see majority government from 1917 to 1952.' Harkness (2013, p. 27).

[56] The purposes of the review were, inter alia, 'To enquire generally into the clerical strength and efficiency of the several departments of the Public Service: And especially as to the numbers, age of admission, rules of advancement and promotion, and remuneration of the several Clerks and higher Officers of the said departments: And to report such improvements in the organization of the same, by way of consolidation or otherwise, as may … promote efficiency and economy'. Civil Service Commission (1859, p. 5).

2 below. These foundational influences can be seen to have unfolded in distinct phases of varying duration identified for the purpose of developing this thesis.[57] Phase Five (1948 - 1989), is the focus of the qualitative investigation that follows from Chapter 4.

FIGURE 2: FIVE PHASES OF THE HISTORY OF THE CLERKS OF COURTS TO 1989

Phase	Characteristics of era	Notable clerks of the era	Time as a clerk
One 1837 - 1850	Beginnings: frontiersmen/ colonialists	William Redmond Belcher* Edward Eyre*	1842 - 1860 1841 - 1851
Two 1851 - 1861	Establishment and expansion	George Dunderdale Arthur Akehurst*[58]	1857 - 1886 1836 - 1865
Three 1862 – 1914	Codification, consolidation and careers	Frederick Hill Harold Le Plastrier Jackson* Charles McLean*	1898 - 1930 1909 - 1934 1909 - 1930
Four 1915 – 1947	Leadership: uniting the cohort	John Meehan* John (‘Jack’) Dillon* William Cuthill*[59] Kevin Anderson* William (‘Johnno’) Johnston Leo Froude*	1906 - 1933 1925 - 1947 1925 - 1948 1929 -1935 1924 - 1972 1934 - 1958
Five 1948 - 1989	Research focus: fundamental challenge and change	Jack Caven* Kevin Kean* Bryan Clothier* John (‘Darcy’) Dugan* John Denahy[60] Barbara Allen Louise Grose	1945 - 1971 1935 - 1959 1961 - 1979 1956 - 1971 1956 - 1992 1975 - 1975 1976 - present[61]

Note: Asterisk* denotes progression to the magistracy.
Sources: *Victoria Government Gazette*, *Chronicle: Journal of the Clerks of Courts* (various editions), Trove website, *Australian Dictionary of Biography*.

[57] ‘… the temporal ordering of events or processes has a significant impact on outcomes … Analyses attentive to sequence can bring important aspects of the social world into greater focus, highlighting a key contribution of historically sensitive inquiry’ (Pierson 2004, pp. 54,5). John Willis identifies three phases in the history of Australian magistrates: the early colonial period, the public service period and the modern period, the focus being on judicial themes (2001, p. 130).
[58] Arthur Purssell Akehurst was a controversial character. Accused of murder for his role in suppressing the Eureka Rebellion as an 18-year-old clerk of courts in Ballarat, he escaped committal by what was thought by some a technicality. He was promoted to the bench at the age of only 29, and after a successful career elsewhere in the public sector was appointed Secretary to the Law Department in 1890, where he ruled with a firm, some say despotic, hand (Dunstan 2005).
[59] William Cuthill, who along with John Dugan was a former clerk and Chief Magistrate, wrote a history of the early development and legislative context of the Magistrates’ Court system in Victoria (1788 to 1843). It is rich in historical detail derived from archival sources (Cuthill 1973). He had a summary of this history distributed to courts across the state.
[60] Seconded to the Workcover Authority before retirement.
[61] On 2 March 2021 Ms Grose completed 45 years as a court administrator. 2021. ‘Members Milestones: Celebration: Louise Grose’. *Chronicle: Journal of the Clerks of Courts*, May p. 13.

Phase One. Beginnings: 1837 - 1850

A pragmatic fit to local conditions (Golder 1991), the summary jurisdiction was established in Port Phillip (Victoria) while it was still part of the colony of New South Wales.[62] The first mention of Clerks of Petty Sessions in colonial legislation occurs in the *Offenders Punishment and Summary Jurisdiction Act 1832* (NSW).[63] Clerks were to be 'fit and proper persons' (s 17) whose duties included keeping records of 'felons or offenders' and submitting returns: a fine of five pounds could be imposed on the clerk for non compliance (ss 32,33).

Few of those appointed in Victoria during the 1830s and '40s to the rather grandly titled role of Clerk to the Bench of Magistrates[64] stayed long to perform the office and the growing list of roles attached to it.[65] There were nine clerks in seven years at Melbourne - some only remained a matter of months, and one less than a month.[66] Ambition, frustration, inadequate pay, poor fit and hardship played their part in the rapid turnover of staff. Yet many careers of

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[62] On 17 July 1838 Melbourne was appointed as a place where a Court of Petty Sessions could sit. The Police Court and Court of Petty Sessions were the precursors of today's Magistrates' Court; clerks working in this jurisdiction were known as Clerks of Petty Sessions until the jurisdictional name change in 1970. The *Offenders Punishment and Justices Summary Jurisdiction Act* 1832 (NSW), which determined the system to be adopted in the colony, 'defined the powers and authorities of the Courts of Petty Sessions and regulated the summary jurisdiction of the justices of the peace. Under the Act, two or more justices sitting together could convict people on charges of theft, drunkenness, disobedience of orders, neglect of or running away from work, abusive language to his or her master or other disorderly or dishonest conduct … [and] also allowed the appointment of a clerk at each location where Petty Sessions was held' (Cuthill 1973, p. 37). Courts of Petty Sessions only dealt with criminal matters initially: charges against convicts or cases where the law required a hearing before a bench of magistrates.

[63] ' … it shall and may be lawful for the Governor for the time-being by any notice published in the Government Gazette to appoint places at which Petty Sessions shall be holden and to nominate one fit and proper person to be Clerk to every such Petty Sessions who shall attend to discharge the duties of his office' (s 17). As a result of the transferral of duties from Benches of Magistrates to Justices of the Peace, they were authorised to perform duties similar to Clerks to the Bench (s 26).

[64] The job was conceived along the lines of the British legally qualified Justices' Clerk and carried similar expectations of running the court, producing court documents and advising lay justices. It was however difficult to attract an attorney or keep one long in the job; lawyers in the new colony were expensive and few. Early clerks therefore often lacked relevant legal knowledge or experience; those few who were legally qualified (such as Horatio Nelson Carrington and Richard O'Cock) did not tarry in such a lowly-paid and poorly resourced role. See Appendix 1 for a summary of early appointees.

[65] Court sittings did not become regular until 1839, and as personnel were scarce, an expectation to multi-task was normalised. In a government report of 1859 it is reported that 'A large proportion of the present [Births, Deaths and Marriage] Registrars are medical men, and a considerable number of Registrars hold the office in conjunction with other functions devolving upon them as public servants, as, e.g. Clerks of Petty Sessions, Postmasters, Telegraph Station Masters, &c.' Civil Service Commission (1859, p. 32).

[66] In 1855 English barrister Thomas Saunders affirmed the importance of the Justices' Clerk: 'no Bench could possibly act for a single day without the assistance of such an officer. To this functionary appertains the duty of seeing that the entire machinery of the Court of Petty or Special Sessions is kept in due working order. To him will the justices naturally look for advice upon all points involving either difficulties of law or practice; and to him also will the suitors apply in most of those instances where the proceedings are merely of a formal or routine description'. Saunders (1855, pp. 3,4). The Australian version could not fail to disappoint if such were the expectations of Clerks of Petty Sessions, yet since the need was there, the role inexorably developed along similar lines, even without suitably qualified incumbents.

long duration were to be born in the courts; for some it would become a lifetime commitment, even a vocation.[67]

The first Clerk of the Bench, E. J. Foster, was formally appointed in 1837 'as a person to perform the duties of Clerk at Port Phillip'.[68] Until dismissed less than eight months later, he undertook the dual roles of Clerk to the Court in Melbourne and Deputy Post Master.[69] Some clerks operated from a building that was both family habitation and office. Pay was inadequate, particularly for men with families. The underpayment of clerks became an important theme because it undermined the status and credibility of the office, and adversely affected retention of staff.

Some clerks did, however, make solid Law Department and public service careers. Dublin-born William Redmond Belcher occupied the clerk's position at Melbourne from 1842 with confidence and authority.[70] Garryowen describes him as 'a thorough man of work[71] … He held the office of Chief Clerk of the City Court for many years, from which he was deservedly promoted to a Police Magistracy …, and an efficient and impartial Magistrate he made' (Finn 1988 p. 98). One of the longest tenures was that of William Rain - at Learmonth Court from 1869 to 1929 (sixty years).

[67] Source: *Victoria Government Gazette*.
[68] Letter from E. Deas Thomson, 24 February 1837, cited in Cuthill (1973, p. 31). Foster was imported from Sydney at five shillings per day: the amount originally offered had been doubled since a suitable local applicant could not be found.
[69] Foster's performance appears to have been found unsatisfactory; in October 1837, the year of his appointment, he wrote a letter to Lonsdale protesting that difficult work conditions and lack of a proper workplace compromised his competence: 'I feel it a duty encumbent on myself before tendering my resignation to you to express in its proper light the extreme inconvenience I have been subject to and the consequent delay in my clerical duties which I feel the more as it has always been my wish to please and if unfortunately I have failed in so doing I assure you it is not through my wilful negligence but a want of accommodation whereby I could carry on the duties with dispatch and convenience' (Letter to W. Lonsdale Esq., 12 October 1837 *In*: Cuthill 1973, p. 35).
[70] Belcher, like many colonialists at the time, had suffered insolvency after the crash of the land boom, and a civil service job offered some financial security. His confident demeanour had probably been earned in his previous role as an auctioneer (see his profile in Appendix 2). He was appointed Assistant Police Clerk in 1842 to replace George Wise, who had been dismissed by the Police Magistrate for 'improper conduct in the theatre' (1842. 'Semi-weekly Abstract'. *Port Phillip Gazette*, 12 October p. 2). At least two of the early clerks (or ex-clerks) - Wise, John McLauren and one ex-clerk, Charles Wentworth - are reported to have caused trouble in the theatre. This was one of the few places available for public entertainment - apart from the court itself, which early Melburnians attended in droves.
[71] Articulate and well-argued letters penned by Belcher would appear to support this assertion. Although undigitised, they may be viewed in the Correspondence Book at the Public Records Office (PROV).

Initially established at Geelong, self-assured Australian-born Alfred John Eyre is believed to have been the first clerk of courts to be promoted to (Acting) Police Magistrate, in 1851.[72] Belcher and Eyre carved out substantial careers in the courts and public sector in city and country, exemplifying the possibility of a respectable public sector trajectory for men with talent and drive, but little material means.

Procedural and legal support to the magistrates

The summary jurisdiction used both lay and paid justices and they had a broad commission.[73] Clerks were constants in the developing court system, supporting both professional and unpaid judicial officers and running courts according to the differing needs, demands and capability of benches. Tasks evolved, diversified and multiplied according to demand, geography, environment, demography and the competence and character of incumbents.[74]

Police Magistrates were public servants like their clerks. Justices of the Peace (JPs), who initially outnumbered professional magistrates, were not public servants but part-time, unpaid community members from diverse occupations.[75] They were appointed, usually under

[72] In 1848 Eyre is reported to have refused in open court a solicitor's request for copies of depositions because he had 'too much to do to write out fresh depositions.' The solicitor was kept waiting until the close of business and then refused again by the magistrate, Mr Addis. 1851. *Geelong Advertiser and Intelligencer*, 23 December p. 2. With ten years' experience in the courts Eyre was given the role of Acting Police Magistrate and Assistant Commissioner for Crown Lands at Ballarat and Buninyong: 1851. *Victoria Government Gazette* 25, December 24 p. 880; the following year he was Justice of the Peace at Geelong, and then Deputy Sherriff at Buninyong in 1853: 1852. *Victoria Government Gazette* 5, February 4 p. 123; 1853. *Victoria Government Gazette* 13, March 9 p. 365.

[73] The office of stipendiary or paid magistrate had originally been established in late eighteenth-century England to replace corrupt lay justices (some of whom were served by equally corrupt clerks). A body of constables was attached to each office: 'Side by side with the new police, stipendiary magistrates were the primary instruments of public order in Victorian London' (Davis, 1984 p. 309). See also Barrie and Broomhall (2012) and Paley (1983). For economic reasons the deployment of unpaid Justices of the Peace in the lower courts was however to be the blueprint for the Australian justice system, but political and logistical imperatives eventually rendered this unfeasible (Golder, 1991). Salaried professional magistrates with their careers rooted in the civil service came to dominate (Lowndes 2000, p. 514). Neal (1985), Golder (1991) and Ward (2013) describe how the early Australian magistrates were conscious of the heritage of the English Justices of the Peace and keenly sought similar prestige and power. However, 'Although traditionally justices of the peace stood at the pinnacle of local authority in England … the economic, political and class patterns of England found no counterpart in New South Wales. The new order had to be negotiated - admittedly with familiar tools - over unknown terrain'. Neal (1985, p. 46).

[74] One of many examples of this role fluidity and preparedness to pitch in is a story about Frederick Marsden, clerk of courts at Wangaratta, who travelled by train to assist authorities at the Siege of Glenrowan. While there he was asked by police to mind Ned Kelly's gun. 1881. *Argus*, 26 July p. 10.

[75] Chief Justice William a'Beckett in his preface to *The Magistrates Manual* in 1852 delivers a vote of encouragement to the JPs: 'Such a class deserves all the respect and encouragement which their position prima facie invites; and without any disparagement to the services and efficiency of the stipendiary magistrates, it is to be hoped that the unsalaried holders of commissions of the peace will always form a considerable portion of the Victorian magistracy'. He also, however, refers to the likelihood of justices making errors in the absence of 'all access to books or professional assistance, especially in the country districts' (a'Beckett, W 1852, pp. iii,iv).

patronage of the influential (often politicians) to 'keep the peace' by adjudicating on summary benches.[76] Saving the support of their subordinates, the clerks, they exerted their power with little by way of either guidance or accountability, and sometimes the prescribed legal process was ahead of arrangements to effect it.[77]

Qualifications and background in the law were not mandated for Victorian Police Magistrates or JPs in this early period.[78] For lay part-time justices in England and Wales, this was also the case, but authoritative advice (both legal and operational) had been provided by justices' clerks and other clerical staff who were knowledgeable in law and in legal procedure.[79] Little thought seems to have been given to setting up a similar system in the antipodes, and as mentioned above, legally qualified candidates were at any rate scarce and expensive.

The Clerk to the Bench organised judicial rosters, but justices of the peace could sit on any bench at whim within their bailiwick. They were known to appear when their private interests were at stake[80] and could inflict arbitrary or overly harsh penalties and

[76] 'Magistrates controlled the local police just as their English counterparts did. Their power to direct and deploy the police - often close to their own properties - provided them with a small force of private retainers at government expense.' Neal (1985, p. 69).

[77] 'Alberton was gazetted as a place for holding Courts of Petty Sessions, and Messrs. John Reeve and John King were appointed Justices of the Peace for the new district. Then Michael Shannon met James Reading on the Port Albert Road, robbed him of two orders for money and a certificate of freedom, and made his way to Melbourne. There he was arrested and remanded by the bench to the new court at Alberton. But there was no court there, no lock-up, and no police; and Mr. Latrobe, with tears in his eyes, said he had no cash whatever to spend on Michael Shannon.' Dunderdale (1870). 'How Government Came to Gippsland' (no pagination).

[78] 'To arm him with the legal knowledge necessary to undertake his role as sole governmental representative, the Colonial Secretary in Sydney sent Lonsdale a set of *Government Gazettes*, assuring him that a set of the *Acts of Council,* from 1825 to July 1835, would be sent once they were printed. The Colonial Secretary also sent Lonsdale a copy of Plunkett's *Australian Magistrate*. This was the magistrate's key text.' Rangelov (2005, p. 206). We do not know how widely the text was distributed amongst the magistracy or how conscientiously they might have read it. A copy of this book inscribed by Foster Fyans, the first magistrate of the Geelong district, exists in a private collection.

[79] The publication of Australia's first legal text by ex-barrister and Solicitor-General, J. H. Plunkett (1835), however comprehensive, could hardly have substituted for the lack of ready assistance from clerks with legal and procedural knowledge. Plunkett was the first Irish Catholic to be appointed to high civil office in the new colony and his formative publication 'had great importance in effecting uniformity in the procedure of the inferior courts' (Suttor 1967).

[80] The 'miserable, corrupt and packed little benches' attending some country courts won derisory mention in historical parliamentary debates. See McCann (Victoria, Legislative Assembly, 1866: 24). In 1896 a government commission found accusations of bribery and corruption and proved against several Justices of the Peace 'to the degradation of said office': ('Lormer Board's Report' 1896, p. 3). 'Many men are very anxious to be appointed justices of the peace, but if a person is arrested, say, on a charge of drunkenness and the police call a local J.P., he will say, "I shall not sit on the bench. The man deals with me, and if I go on the bench he will not come to my store any more."' Comment in Parliament, reported in the *Don Dorrigo Gazette and Guy Fawkes Advocate* ('J's.P.' 1918, p. 6). Once the JPs had lost their judicial powers, clerks could be more overt with their criticisms: 'The J.P. is seen by his/her fellow Victorians as a wealthy, semi-educated, middle-class defender of the establishment and of yesterday's values.' Ryan, K 1984. 'The Passing of Js P'. *Chronicle: Journal of the Clerks of Courts,* 24, 2, August p. 7.

punishments.[81] When police officers were brought in from time to time to act as bench clerks in court the power balance might be further skewed.[82] Into the widening gulf between the juridical competence of justices of the peace and that of the stipendiary magistrates stepped the clerks. Their optimal competencies and characteristics - organisational skills, resourcefulness, legal and procedural knowledge - were developed experientially, often under adversity and despite haphazard, or entirely absent, training and supervisory guidance. Although the calibre of appointees was uneven,[83] from this early period clerks began learning a role as backstop of justice.[84] In attempting to manage the whims and excesses of the less able and principled of their judicial masters they honed a skillset that sometimes seemed at odds with their position, but would serve the justice system well in the future.

Phase Two. Establishment and expansion: 1851 - 1861

Victoria became a colony independent of New South Wales in 1851, the same year the gold rush commenced. Clerks of courts and magistrates helped to provide stability and accessible government services in communities that sprang up around the state and clamoured for justice services during this prosperous decade.[85] As the gold rush abated, court business in some once-busy localities waned, but communities still valued their clerks.

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[81] Willis (2001) comments that their powers were often exercised with 'considerable brutality' (p. 130). Neal (1985, p. 50) argues that although Australian magistrates were initially given the same powers as their English counterparts, it was the context in which these powers were used and abused that led to growing differences: 'Unlike their English counterparts, they were not men of leisure but pioneers striving to establish themselves on the land, or men who held posts in the military or civil departments of the colony's administration'.

[82] Police Courts and police stations were often co-located. The close association between the courts and the police rang alarm bells for some commentators (see Willis 2001, p. 135). On the English prototype of the Police Court Magistrate H. T. Waddy was moved to comment: 'There are two unfortunate impressions as to the police court which exist widely in the minds of the working classes. One is that the policeman is both witness and prosecutor, and the other is that the magistrate is the creature of the police' Davis (1984, p. 332). Benches could call upon police officers assist in court procedures; colonial resourcing restrictions overcame concern for the appearance of procedural impartiality. 'Every Chief Constable, Sergeant, Cadet and Constable, shall attend on the Justices of the Peace, at their several General Sessions, and also at their Petty Sessions, which shall be held at the respective places where such Chief Constable, Sergeants, Cadets, or Constables may be stationed, and shall obey and execute all the lawful summons, warrants, executions, orders, and commands of such Justices, at such Sessions, in all cases, civil and criminal' (*An Act for the Regulation of the Police Force* 1853 (Vic) s VIII). This provision was insufficiently clear to some. In one story there is an altercation between the police magistrate and an Inspector of Police who refuses to be directed by the magistrate in the clerk's absence (1859. 'The Bench and the Police: Scene in Ballaarat Police Court'. *The Age*, 9 June, p. 3).

[83] Clerks could be openly criticised in the newspapers. *The Argus* reports in 1849 that the Clerk of the Bench at Geelong has a 'wondrous aptitude for blundering'. 1849. *The Argus*. Melbourne, 9 January p 2.

[84] This concept was first used by Aristotle in respect of justice (Engle 2008, p. 3).

[85] 'Only if a place could show long-term prospects did it acquire a proper court house … In pastoral or agricultural districts, once a township attained any sort of size and permanency, it too pressed for a court to be established. … As soon as a court was gained, the residents called for a court house.' Challinger (2001, p. 18). Clerks, like magistrates, could travel on circuit to serve small, isolated or shifting populations, but there was more often a permanently residing, multi-tasking clerk than a resident magistrate in town.

Unencumbered by 'oppressive regulations'

Along with the exponential growth in Victoria's population and wealth, makeshift and more permanent court sittings proliferated, as did the number of clerks to support them (see Figure 3 below). Since many magistrates were peripatetic, clerks were often the only, or most senior, resident or regularly-visiting government representative in these outposts. During the ensuing period of rapid growth of the colony and post separation from New South Wales, the role of clerk of courts was crucial in adapting the inherited legal system to the realities of the Australian context. During this period many new clerks were hastily installed as the operational scope of the jurisdiction expanded. Appointees were sometimes insufficiently prepared for the requirements of the job, but a core of competence was continuing to develop.

FIGURE 3: COMPARISON OF CLERK NUMBERS OVER THREE DECADES

Year	Number of court administrators	Number of sitting locations	Era
1840	3	3	Commencement
1850	17	14	Establishment
1860	121	118	End of gold rush

Sources: *New South Wales Government Gazette*, *Port Phillip Gazette*, *Victoria Government Gazette*.

Clerks still often worked under minimal supervision and in the absence of other authorities. The memoirs of George Dunderdale, appointed Clerk of Petty Sessions at Colac in 1857, show that the relationship between clerk, justices and police could nonetheless function informally and harmoniously. As a country clerk Dunderdale enjoyed freedom from bureaucratic and even legal constraint: 'Our courts were small, but our jurisdiction was wide, extending half way to Warrnambool, half way to Geelong, half way to Ballarat or Buninyong, through the forests to Apollo Bay, Cape Otway, and the Southern Ocean. ... The civil service

was not then encumbered with oppressive regulations, and in those happy days we administered justice with little law and with absolutely no lawyers.'[86]

Genesis of the 'poor man's lawyer'

A government review at this time recognised that the lay justices 'must be dependent upon the clerk for information as to the laws they have to administer and the forms they should observe in their administration.' Recognition of the clerk's importance went further: 'An inefficient clerk and an unskilful or careless bench of unpaid magistrates may, together, perpetrate acts of the grossest folly and injustice, against which there is practically no protection beyond the capricious expression of public opinion'. A conscientious clerk might in fact be the only buffer between citizens and 'a power which, within certain limits, is absolutely despotic'.[87]

There was little recourse to the Law Department on matters legal; the Crown Solicitor indeed was reluctant to advise magistrates as it was believed they should be seen to adjudicate authoritatively on the information before them, and without excessive delay.[88] Dunderdale's memoirs describe the capacity of the experienced clerk to provide legal and almost any other kind of advice. On occasion he was approached by a senior policeman to ascertain the jurisdiction of a perplexing issue: 'He wanted me to advise him, and give my opinion on the matter, … as by this time my vast experience of Justices' law entitled me to give an opinion on any imaginable subject'.[89]

A path to 'clerical strength and efficiency': the 1859 Commission

Since the slowing of the gold rush, the eye of the government had been upon effecting further economies.[90] Having established that there were gold-era courts and other government

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[86] Dunderdale, G. 1896. 'The Law and the Land'. *In: Camperdown Chronicle*, 10 November 1896, p. 2. Edward Manning, a third-class Clerk of Courts earning £485 per annum but acting temporarily as a magistrate, reported in 1873 that the work of the western district courts (Heywood, Portland) had fallen off considerably in the previous seven years or so due to the removal of the circuit court to Belfast (now Port Fairy). a'Beckett, TT (1873, p. 230).

[87] Civil Service Commission (1859, p. 94).

[88] Law Department 1856. 'Circular to Benches of Magistrates: Cases for opinion', 28 April. This circular was reprinted in the clerks' *Instructions* books until and including the 1915 edition.

[89] Dunderdale (1870), no pagination.

[90] 'An impression seems to have for some time existed in the public mind that the Civil Service of the Colony is in an excessive degree over-numbered and over-paid. Under this impression, it has been assumed that a very large reduction in the numbers and salaries of the service members of the Civil Service may be safely effected. We believe, however, that those who have come to this conclusion have not borne in mind the fact that the public service has been the subject of careful and constant reduction during three years by four successive Ministries'. Civil Service Commission (1859, p. 7).

offices in the country where staff were now under-employed, it saw an opportunity to reduce staffing numbers and costs.[91]

Towards the end of the 1850s, the state government took stock of its purported 'expensive officialdom'.[92] In response to criticism of public service excess, Governor Sir Henry Barkly (in conjunction with the Executive Council) commissioned a report on the 'clerical strength and efficiency of the several departments of the Public Service', including 'the numbers, age of admission, rules of advancement and promotion, and remuneration of the several Clerks and higher Officers of the said departments'. The commissioners were instructed to 'report such improvements in the organization of the same', so as to 'promote efficiency and economy'.[93] Their extensive report found the government workforce to be rather more skeletal than bloated - but in need of revitalising, restructure, better targeted recruitment and proper management.

Systemic and structural issues in the staffing of the courts

The commissioners identified that many of the untrained, unsupervised and under-resourced clerks working in the colony's courts, especially those far from executive authority, were inept.[94] Further, there were allegations that some clerks were covertly in receipt of

[91] 'Has not this consolidation of country offices been going on for years?' - 'It has been partially, but not so much as the Minister would like.' B. C. Harriman responding to one of a series of questions along these lines put to him at the 1873 Commission (a'Beckett T.T. 1873, p. 253). Harriman had formerly been Chief Clerk (from 1870) and became Secretary in 1872 (Woods 1972).

[92] Letters to editors of newspapers and editorials followed this line of criticism. An editorial in a regional newspaper bemoans 'a civil service - that is, a large body of officials, which costs a very large sum of money to the country in salaries and etcetera a sum utterly disproportioned to the revenue, and still more to the population of the colony. This expensive officialism had its origin in the extravagant gold fever days of the colony when one man received a salary for holding a situation and another was paid to do the work' (1859. *Bendigo Advertiser*, 4 October p. 2). Another newspaper opined: 'It must be remembered that the old lavish days are now gone by. The salaries which were fixed in the midst of the gold fever, when efficient men required to be tempted to take office, are far too high for the present financial condition of the colony, and indeed are unnecessary. In the vast influx, which has taken place, of a better class of men - from home, such offices could now be efficiently filled at a much less cost' (1859. *Mount Alexander Mail*, 3 October p. 2).

[93] The report provides an insightful and detailed snapshot of the state of the nascent public service in Victoria, noting 'the imperfect stage of political development that pertains to a very young country'. It lays out evidence of widespread patronage (in terms of appointments) and work being performed poorly by inappropriately deployed employees. The establishment of structural and governance protocols is recommended (Civil Service Commission 1859, p. 8). Other such inquiries were carried out in 1856, 1870, 1917 and 1926 and 1973 (the 'Bland Report' that resulted in the *Public Service Act 1974*).

[94] 'Complaints have been frequently made of their inefficiency … That some of these clerks are not only incapable of instructing the unpaid magistrates but are ignorant of their own duties, is a matter of public notoriety, and it has been given in evidence that if the correctness of documents drawn up by them, as a class, were tested, two-thirds of them would be found worthless.' Civil Service Commission (1859, p. 94). Clerks could also be accused of arrogance: 'Mr Duigan, the Clerk of the Fitzroy and East Collingwood Courts, [had been heard to] abuse professional men in a most scurrilous manner', causing a member of the bench to leave court in protest. See McKean (Victoria, Legislative Assembly, 1866: 56).

supplementary incomes. Although the report did not directly name systemic corruption, it provided evidence to suggest the basis for it.[95]

Clerks' salaries were declared to be insufficient to sustain the position they were expected to occupy in society.[96] Like the magistrate, the clerk embodied the dignity of the law in the eyes of the populace and was expected to comport himself as a 'gentleman', but most clerks received less than half of a magistrate's salary; their remuneration was at the level of workers engaged in menial rote work.[97] More broadly, the commissioners identified a lack of parity between work value and pay across the service and a lack of care taken in the selection of appointees (Civil Service Commission 1859, p. 94).[98]

At the time of the investigation into the state's civil service, all 27 Victorian police magistrates received £800 per annum, except for the Magistrate of Melbourne who was paid £1000, and the St. Kilda magistrate £900 per annum. For comparison, the 83 Clerks of Petty Sessions were paid as shown in Figure 4 below.[99]

[95] 'The Clerks of Petty Sessions receive large sums for fees, fines, and licences, and also have charge of suitors' moneys, under the new Act for recovery of small debts; and they have, as is well known, opportunities of furthering or facilitating applications to the bench. Several cases of defalcation have been discovered, and an impression seems to exist that the good offices of the clerks can, without difficulty, be secured by those who consider such assistance valuable.' Civil Service Commission (1859, p. 94).

[96] The Commissioners opined that the Victoria's civil servants 'as a body, bear favorable comparison with the public service of any other country. But the system under which, their labors are conducted is in many respects defective'. They elaborated, '… we would observe that [the clerks' salaries] are not sufficient at the present rate, to enable their recipients to maintain their stations as gentlemen, and that the deficiency must be made up by private income or by some other means. … the existence of a class of men, supposed to be well educated, and maintaining the appearance and occupying the position of gentlemen, whose official income is manifestly inadequate to the maintenance of their social status, naturally leads to the opinion, that they have pecuniary advantages connected with their office other than those derived from their official salaries' (Civil Service Commission 1859, p. 94).

[97] 'Third class clerks', the lowest-paid office workers in the public sector, were those employed in filing, sorting, running messages and if they could write passably well, copying out documents in triplicate.

[98] One such hasty appointment was that of Frank Hasleham (1856. *Victoria Government Gazette* 123, September 30, p. 1649), a journalist who had been wounded by a trouper at the Eureka Stockade. The appointment was part of a government compensation package, but Hasleham was dismissed three months later due to mismanagement of the court's accounts. He had received no pay up to this time, had no book-keeping knowledge and had not even been supplied with a cash box (Challinger 2001, p. 49). The commissioners would have been puzzled to see Frederick Cope, Clerk of Petty Sessions at Heathcote, in court on charges of misappropriation of public funds; he had narrowly escaped charges of embezzlement in his previous position at Moyston (*Mount Alexander Mail*, 11 August p. 3). Staffing had, up to that time, been the domain of individual departments; there were no service-wide standards for appointment, pay, promotion, dismissal or working conditions.

[99] Civil Service Commission (1859, p. 92).

FIGURE 4: SALARIES OF VICTORIAN CLERKS OF PETTY SESSIONS IN 1859

Salary (£) p.a.	Number of clerks receiving salary
600	4
500	3
400	12
350	11
300	44
250	6
200	1
100	1
70	1

44 of Victoria's 83 clerks were receiving £300, substantially less than half the magistrates' salaries, but the mean wage was £189, less than a quarter.[100] A very large gap between the remuneration of the highest and lowest-paid officers suggests lack of career structure, and as the commissioners stated, there was not always a correlation between the work value of positions and the salary they attracted.[101]

The commissioners recommended that in future 'great care should be taken in the selection of persons to fill the office of Clerk of Petty Sessions, and … their salaries should be higher than those now paid'. The commissioners argued against the false economy of skimping on civil servants' salaries at the expense of fostering conditions for integrity, efficiency and

[100] 'Notwithstanding the great importance of their duties, the salaries attached to their offices are, for the most part, on a par with that of a third class clerk, and do not exceed that given, in a great number of cases, to persons whose duties are little more than mechanical' (1859, p. 93). Clerks servicing smaller courts could receive much less: in 1866 Mr Gilcrest, Clerk of Petty Sessions at Leigh-Road (near Geelong) resigned because he could not make ends meet on £25 per annum and was being asked to do more for the money. 'The salary attached to the office is only £25 a year, less premium for policy of guarantee. Mr Love promised me he would get the salary increased, and I have been waiting for months; and as the bench now intend to hold the Court fortnightly, instead of monthly, as before, and the prospect of increase of salary being as remote as ever, I have thrown up the appointment.' Gilchrist, D 1866. *Geelong Advertiser*, 8 September p. 3.

[101] William Redmond Belcher benefited from an intervention by the Mayor and Chairman of the Melbourne Bench, Cr Palmer, to have his salary increased: 'his duties which are extremely arduous are performed with great punctuality and efficiency … his present Salary [is] wholly inadequate to maintain himself and young family'. Belcher's salary was less than that of the previous incumbent and of other clerks in the District. (Source: handwritten copy of a letter from J F Palmer, Mayor of Melbourne, to 'His Honor, The Superintendent, Melbourne' (Charles Joseph La Trobe), undated but probably 1845, *In*: *Letter Book*. PROV, VPRS 50 P000, 'Letters Outward 1843 – 1862'). In 1846 Belcher was accorded a pay rise of £91.17.1; by 1850 his salary had risen to a more respectable £250.

professionalism.[102] They reasoned that 'With a liberal remuneration attached to the office, thoroughly competent persons could be found to fill it' (p. 94).

Significantly, the authors further considered that 'the Clerks of Petty Sessions should, if qualified,[103] be entitled to preferment to the office of Stipendiary Magistrate. 'Were it generally understood that this preferment would be open to them, a very superior class of men would be willing to accept the inferior office' (p. 94). With this came the understanding that an intelligent young man of good character, even without family, connections, qualifications or relevant experience, could take on a junior role in the courts with the hope of bettering himself.[104] In time, if he studied to qualify and worked hard and well, he might achieve a respected position in society. This remained an incentive for recruits and a tacit contract between clerks and the Law Department until well into the twentieth century.[105]

Phase Three. Codification, consolidation, careers: 1862 – 1914

As a result of the comprehensive appraisal by the 1859 Commission, new legislation - *An Act to regulate the Civil Service 1862* (Vic) - was passed to regularise the Victorian public sector and clarify the rights and responsibilities of public servants. Each department was now to have its establishment of positions classified according to work value; stepped salary ranges were set for discrete classifications. Entry to the service, including to the courts, now

[102] 'The cause of much error regarding the cost of the Civil Service seems to be the assumption that the public expenditure consists mainly, if not entirely, in the remuneration of the public servants.' Civil Service Commission (1859, p. 7). Speaking in terms that are as applicable today as in the middle of the nineteenth century, the reasons given by the commissioners to upgrade the system and practices of employment and management of clerks of courts were attraction and retention of employees with the requisite skills and capacity; maintaining probity and ethical standards; the perception of the court by the public; and development of a capable, dependable and sustainable workforce. They explained in some detail how capital and operational, rather than administrative costs, comprised the bulk of public sector expenditure in 1859. Even with the expected expansion of Victoria's population, they suggested, the actual numbers of staff need not increase substantially over the next few years if more efficient work practices and staffing systems were implemented (1859, pp. 93,4).

[103] In England, a similar Commission had recently advocated 'the selection of persons for junior situations in the Civil Service by competitive examination, combined with the proper conditions as to age, health and character, and with the check of a period of probation, and with promotion by merit from class to class' as 'the best mode of providing for the public service'. Civil Service Commission (1859, p. 15). The proposal had been met with favour by the British House of Commons in 1857.

[104] 'The standard of examination adopted by the Civil Service Commission varies with the different offices, but we are assured that, as respects nine-tenths of the junior situations, no candidate need fear rejection who possesses a good acquaintance with arithmetic, writes a plain hand, and can spell properly' (1855. *Argus*, 27 December p. 7).

[105] This consideration was still uppermost in the minds of many recruits, or more particularly their parents, in the 1950s and '60s (2017. Interview #3; 2018. Interview #7; 2018. Interview #12; 2018. Interview #56).

required passing a formal examination.[106] From 1862, the job of clerk of courts (previously a governor-in-council appointment) was formalised as a career. By the mid-1860s the pattern of promoting magistrates from the body of clerks of courts was established.[107]

The executive attempted to redress the uncontrolled growth of the goldrush period by curtailing court services in some locations, but the report of a further commission in 1873 gives insight into how difficult this would be politically. When asked whether it might be expedient to redeploy clerks from some of the quieter courts, the Secretary to the Law Department replied, 'such a course as you mention might be very desirable, and I know from experience that the department would be very glad to do it' but, he cautioned, 'the instant you have a man visit a court where the people think they ought to have a person resident, you have that instant a hornet's nest around your ears' (a'Beckett, T.T. 1873 pp. 252,3).[108] Communities were determined to keep their clerks, and this conflict was to play out over the course of the subsequent century.

The *Public Service Act 1883* (Vic) addressed many of the issues identified in foregoing governmental inquiries by increasing the transparency of appointments and comparability of pay levels, and establishing an entrance standard for recruits into the generic Clerical Division (fifth class).[109] To qualify as a clerk of courts (fourth class and above), one sat a

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1 [106] Ss VII, VI and XVIII. This was for potential probationers of both the Ordinary and Professional divisions. Clerks fell into the Ordinary division (*An Act to regulate the Civil Service 1862* (Vic), s VIII, p. 292). The 'Ordinary' division later became the 'Clerical' and 'Non-Clerical' divisions. Doubt is cast from some quarters on the success of the Victorian reforms: 'In 1862 an Act was passed for the regulation, appointment, and classification of the civil servants. Its provisions were, however, evaded on a Under the Commonwealth *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*, all
'relevant employers' were required to develop Affirmative Action plans to promote equal opportunity for women in employment. Under the Law Department's Affirmative Action guidelines, a woman was required on every panel.
n enormous scale, and the offices were filled by the friends and relatives of politicians. Those who had no political influence, if they were in the service, could obtain no promotion, and if they were not in the service, could obtain no appointment' Hamilton (1902, p. 20).

[107] Similarly in New South Wales, under the *Metropolitan Magistrates Act 1882* (NSW), 'Sydney courts were to be conducted by "skilled and trained" stipendiary magistrates. Unfortunately, "skilled and trained" was not interpreted to mean "legally qualified", but in practice translated to clerks of courts, who had to undertake some studies and to pass examinations' (Ward 2013, p. 167).

[108] Harriman had frequently organised workarounds by sending lower-paid clerks to these places or using constables to act as clerks.

[109] 'The Governor in Council may subject to the provisions of "The Public Service Act 1883" appoint a clerk for every court of petty sessions; and such clerk shall attend to discharge the duties of his office at the place or places for which he is appointed' (s 66). Alfred Agg, Audit Commissioner, states under questioning by the 1873 Commission: 'I feel quite certain … that the men … who have entered under the examination system will be

series of examinations.[110] For clerks there was now a codified progression structure along the lines of 'the traditional "telegraph boy to Director-General" bureaucratic career' (Colebatch 2002, p. 98) and the certainty of annual pay rises (increments) for six years within a given classification level.[111] A further suite of examinations was required to qualify as a magistrate under s 40 of the *Public Service Act 1890* (Vic). Until the introduction of the competitive merit system abolished seniority as a key criterion for promotion, this became the basis of career progression in the courts for almost a century.

Accountable to the bureaucracy

The cynicism evinced by clerks of courts over many decades in respect of the distant and hierarchical 'bureaucracy' evidently began early in their history. Clerks' contact with their Law Department employer being limited, the relationship was, understandably, less than collegiate.[112]

Along with the newly mandated investments in personnel, however, the accountability of the clerks moved increasingly into focus. From the Department's point of view there was the perennial problem of how to supervise staff in far-flung locations: what exactly were they doing, did they have enough work, and what was the value of employing them relative to the cost? How could they be properly managed from such a distance? More organised and regular accountability interventions from the executive bureaucracy were to be expected, but by that time the clerks were confidently established in their habits of autonomy.

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superior in all respects to the men who were in the service before the Act passed; I think it has been most beneficial. I should not like it known by those young men, but they will certainly be the best servants we have' (a'Beckett 1873, p. 103).

[110] 'All new appointments to the Clerical division shall be made to the fifth class.' *Public Service Act 1883* (Vic) s 31, p. 422. Candidates for qualification as clerks of courts at the time were examined on these statutes: Acts Interpretation, Audit, County Courts, Crimes, Employers and Employés, Evidence, Factories and Shops, Justices of the Peace, Licensing, Marriage, Mines, Neglected Children, Police Offences, Public Moneys and Stamps, and the texts *Brooms Legal Maxims* (Chapters 8 - 10) and Irvine's *Justices of the Peace*. Matthew Byrne, Secretary to the Law Department. Reported in Abbott (1899, p. 303).

[111] Auditor Agg felt that officers should earn their increments rather than receive them automatically: 'I think promotion should take place more by merit. You get a man in the service at forty or fifty, he stays there some years, and gets by increment a large salary, and is perfectly useless when he grows old. I have found it so even in my own office. A man was put there who got an increment up to £350 a year - he is not in the office now; if I had to employ him, I would not give him £150' (a'Beckett 1873, p. 103).

[112] As a recent employee noted, 'Up bush there was not only the geographic distance, but there was psychological distance' (2018. Interview #44).

With formal instructions and job descriptions not yet in place for clerks of courts, a circular in 1866 from the Secretary of the Crown Law Department announced the introduction of a system of inspections.[113] Clerks were responsible for various kinds of returns and were sent terse, often admonitory memoranda and circulars by a Department impatient to receive this information.[114] Clerks also regularly rendered monies and statements of revenue and were hounded if these did not arrive at the appointed time. Occasionally clerks would be visited by an auditor, and once in a rare while might be honoured by a visit from travelling government dignitaries, as in George Dunderdale's wry account.[115]

[113] 'It is therefore expected that on such inspection all your books shall be written up to date, and your bank-book be ready for inspection, that the past records of your Court shall be carefully laid by and yet accessible, that the stock of stationery shall be carefully placed, and your office clean and in order; that you shall also be prepared with an inventory of furniture in the Court House. No further notice than this will be given, and attention to the foregoing will be required.' The circular was addressed to 'The Clerk of Petty Sessions, or Clerk of Courts' working in 'the different country Courts, including the Courts of Mines, the General Sessions, the County Courts, and Courts of Petty Sessions' (Chomley A W, Secretary to the Law Department 1866. *Circulars to Clerks of Courts from Law Department*, PROV, VPRS 7609/P0001/1). A survey of the *Victoria Government Gazette* shows the appointment of Roderick Bruce McIver as Inspector, Courts in 1922, the first mention of such a role in the publication (1922. *Victoria Government Gazette* 66, June 14 p. 1498). Though formerly a clerk of courts (appointed in 1892), McIver's penultimate position had been Inspector-General of Penal Establishments. Inspections came to be an inhouse affair (as opposed to Law Department or external officials performing the role). A clerk or former clerk would know his way around the intricacies of court management and the laws, rules and regulations that govern court business; inspectors were senior in rank and often next in line for appointment to the bench. A visit from the auditor would nonetheless have better promoted an impression of objectivity.

[114] These included case statistics, granting of many kinds of licences, requests for information about the numbers of and categories of convictions committed by certain classes of person, and counts of persons listed on the electoral roll. One request was for Clerks of Petty Sessions to 'have the goodness … to send in a list of Justices of the Peace dead, or removed from his Petty Sessions District … None should be removed as "dead", unless the Clerk of Petty Sessions is absolutely certain; but doubtful cases should be specially noted' (Law Department 1891. *Circulars to Clerks of Courts from Law Department*, 'Circular No. 125'. PROV, VPRS 7609/P0001/1). By 1910 there were 29 regular returns to be sent at specific intervals, and by 1915, 35 returns (Law Department 1910, pp. 44-6; 1915, pp. 44-6).

[115] He wrote, 'the Minister and Secretary made an official pleasure excursion through the Western District. They visited the court and inspected it, and me, and the books, and the furniture. They found everything correct, and were afterwards so sociable that I expected they would, on returning to Melbourne, speedily promote me, probably to the Bench. But they forgot me, and promoted themselves instead'. Dunderdale (1870), no pagination.

Limited guidance, consequent scope: Instructions to Clerks of Courts

The production of the *Book of Instructions to Clerks of Courts* in December 1868 was not before time.[116] Outlining broad tasks and summarising the clerks' legislative canon and behavioural expectations, it was the first of several editions of *Instructions* that came to be nicknamed 'the Manual' and sometimes 'the Bible'.[117]

In an acknowledgement of the difficulties in supervising the diverse and widely-distributed cohort of clerks, they were reminded that 'Clerks of Courts are … placed in trustworthy positions, and any breach of that trust will be regarded more seriously than a similar offence committed by an officer under direct and regular supervision' (Williams, Galagher & Wheelhouse 1958, p. viii).[118] The Audit Act, they were warned, 'should be constantly kept in mind'.[119] Clerks were required to be 'thoroughly conversant' with 'the relevant' legislation and regulations and to keep up to date with any amendments, drawing the attention of magistrates to these;[120] further, 'In giving legal advice [to the public] they should be careful to confine their opinions to matters that come within the scope of their duties'.[121]

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[116] 1868. *Book of Instructions to Clerks of Courts*, 31 December. Prior to this time, the Secretary to the Crown Law Department would send circulars to the Bench of Magistrates and occasionally to clerks, all of which the clerks in each court were expected to read. Circulars were pasted into leather-bound court register books for safekeeping and annotated whenever rules, statutes, procedures or policies changed (the register used for this research was once kept at Heidelberg Court). Copies of *Instructions*, particularly those from 1958, are thick with pasted-in supplementary pages and hand-written notes.

[117] The first page of the *Instructions* stated that 'The legal duties of a Clerk of Courts are prescribed by Statute and are also governed by the rules of Practice of the various Courts' (the statutes in question were not specified: see note 119 below). Editions were printed in 1868 (23 pp), 1890, 1910 (76 pp), 1915 (84 pp), 1939 (139 pp), 1958 (159 pp) and 1968 (183 pp: a loose-leaf edition); it is therefore quite feasible that one volume would 'see you out'. In England there is an equivalent publication for the Justices' Clerks, which like the Victorian clerks' *Instructions*, has burgeoned over the years: 'The sheer growth in size of *Stones Justices Manual*, the clerk's bible, has an Alice in Wonderland quality about it'. Astor (1984, p. 65).

[118] Although this warning was placed under the anodyne heading 'Attendance and punctuality', the authors would have had in mind occasional but well-publicised defalcations.

[119] *Audit Act 1957* (Vic) and *Audit Act 1958* (Vic).

[120] The *Instructions* explain, without explicating: 'Many Acts of Parliament contain special provisions relating to the functions of Clerks of Courts. It would be impracticable to enumerate … all the Acts and sections referring to such duties, but … [Clerks'] endeavour … should be to ascertain and thoroughly understand all legislation relating thereto'. Williams, Galagher and Wheelhouse (1958, p. vii). Memoranda from the Department continued to exhort each clerk to ensure that justices were aware of pertinent legislation: 'Every exertion should be made to bring the Act under the notice of all Justices, and no delay should result from a want of information on this subject' (Harriman 1885. *Circulars to Clerks of Courts from Law Department*, 'Circular No. 84, 15 July'. PROV, VPRS 7609/P0001/1). An interviewee who began working as a trainee clerk of courts in 1979 estimated that by this time there were some 60 Acts of Parliament across the jurisdictions to memorise (2017. Interview #28).

[121] There were specific chapters on the husbandry of court buildings and furniture, correspondence and postage, accounts, management of witnesses and jurors, and duty stamps. The content and tone of the Preface changed little from the first edition to the last.

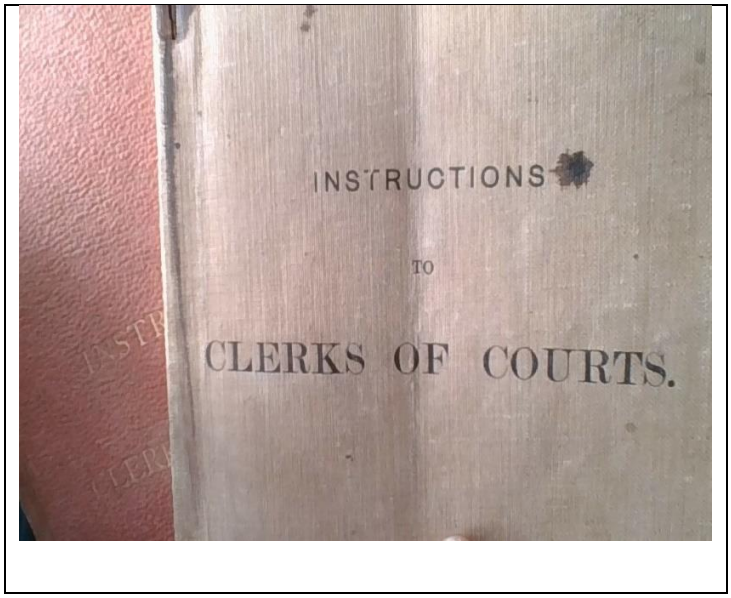

FIGURE 5: COVERS OF INSTRUCTIONS TO CLERKS OF COURTS, 1910 AND 1915.

The 1868 edition listed 89 strictures within its 23 pages. Number 33 must have been carefully noted by its readers. 'Record of Omissions: Clerks of Courts will do well to remember that a book is kept in the Crown Law Offices, which contains a permanent record of all cases in which each clerk may be reported for neglect or omission in the payment of moneys, the transmission of returns or other documents, and for any other default in relation to his duties' (*Book of Instructions to Clerks of Courts*).[122] Despite this warning, clerks must have known that the Department's access to such information was limited.

The term 'instructions' implies clear-cut and specific tasks with little room or requirement for nuance of interpretation, but the Secretary to the Law Department Mr Harriman, himself a former Chief Clerk, had difficulty being precise when quizzed by the Royal Commission in 1873 as to exactly what clerks' duties were.[123] In fact, as the following chapters will show,

[122] To my knowledge the Record of Omissions, which would be a wonderful resource, has not been saved for posterity. Until the 1980s, however, records of a personal nature were kept on personnel files in the Law Department that the officers concerned would have been surprised and probably displeased to find, had they ever been granted access. It was common practice across the public service not to allow individuals' access to their personal files and in 1978 this matter was taken up by the Victorian Public Sector Association. 1978. 'Editorial'. *Chronicle: Journal of the Clerks of Courts*, 19, 4 July p. 18.
[123] a'Beckett, TT (1873, p. 253).

there was still much room for the exercise of discretion in clerks' daily work, as well as ample scope for ambiguity and confusion.[124]

Towards the end of this period, recognition of the clerks' expertise was demonstrated when the Honorary Justices' Association commissioned a book for the guidance of JPs. Authored by magistrate and former clerk T. B. Wade and clerk A. W. Dixon, the *Justices' Manual* contains detailed explanations and instructions relating to matters that could be dealt with by justices under the *Justices' Act 1915* (Vic), together with summaries of relevant case law.[125]

Phase Four. Leadership: uniting the cohort, 1915 - 1955

Promising career, poor conditions

The costly turnover of staff had been attenuated; for many, the job was now a calling. Irritations remained however to trouble the relationship of clerks with their employer, the principal issues being quantum of pay, deferral of leave and slow promotion. Clerks were unhappy with departmental lack of responsiveness and what they perceived as penny-pinching on their expenses, especially those incurred when living and travelling in the country.[126] The practice of transferring officers from place to place also continued, often with very little notice or consultation, and no right of appeal.[127] Tensions between central administration and the clerks became increasingly apparent.

The Law Department, with power to hire, pay, promote, progress, dismiss, punish, grant or withhold leave and relocate staff, and with its tight grip on the purse-strings, was a seemingly implacable force.[128] Clerks of courts however, although they worked alone or in small groups, had begun to develop a sense of themselves as professional men with a purpose and

[124] The *Oxford English Dictionary* (2018) provides these alternative senses of the word: 'A direction or order… Directions to a solicitor or counsel, or to a jury … Detailed information about how something should be done or operated … Teaching, education'.
[125] Justices were also referred to the established authority, *Justices of the Peace* by Irvine and Wanliss, but they were advised above all to read the legislation; it is doubtful if many did.
[126] For details on the colourful life of George Dunderdale (1822 - 1903), schoolteacher, gold miner, historian, and clerk of courts from 1857 to 1886, see Morgan (2001). Dunderdale's own collection of articles in *The Book of the Bush* (1898) contain a wealth of reminiscences, including a sardonic description of the impact of governmental 'meanness' with respect to its employees. The profile of Robert McPherson (Appendix 2) also describes such parsimonious treatment.
[127] 'The sun of wisdom shone on a new ministry. They observed that many of their officers were destitute of energy, and they resolved to infuse new life into the service, by moving its members continually from place to place. But officials live long, and the most robust ministry dies early, and the wisdom of one cabinet is foolishness to the next.' Dunderdale (1870), no pagination.
[128] Public servants could appeal to the Public Service Board if they felt they had been passed over for promotion, but transfers were subject to appeal neither from the transferee nor anyone else who might have wanted a transfer.

values in common.[129] With this consciousness came the desire to advance an agenda for improvement in court operations, pay, conditions and training; achieving this as a small and dispersed cohort would be an ongoing challenge.

Camaraderie and mobilisation

Many of the state's clerks worked alone in isolated places, but others worked in teams. According to former clerk and retired Supreme Court justice Kevin Anderson, the City Court was staffed by 'a happy family'. He describes a workplace with a cheerful, hard-working spirit: 'everyone seemed to be imbued with a sense of duty to get things ready on time, and there was an added responsibility at an early age, especially when acting as clerk in a court' (Anderson 1986, p. 19);[130] a junior clerk could 'be solely responsible for his own court one or two days a week' (pp. 21,2). It was in the collegiate environment of the state's busiest court that the clerks had begun to self-organise and form what was to become the Clerk of Courts Group. Its primary purpose, reports Anderson, was to give 'some cohesion to the 150 clerks scattered thinly throughout Victoria' (1986 p. 12).

Efforts by clerks in the 1890s to form an Association for the advancement of their interests had been of limited success but another, successful attempt was made in 1923. When the Association was renewed after the disruptions of World War I, the energetic support of a sympathetic solicitor, William Warrington Rogers, was secured.[131] Through him the Association gained 'a valuable spokesperson as he could speak on behalf of Clerks with impunity'.[132] The Law Department had been either very slow to respond to communications from the clerks or did not respond at all, and the Association found it necessary to voice its extensive agenda - which included demands for improvement of conditions of employment

[129] Sir Kevin Anderson's memoir of his career in the courts affords a rare glimpse into some of the early twentieth century characters of the Court of Petty Sessions, the clerks' keen sense of justice and their role in facilitating access to it. His comments about the jurisdictional scope of the court show the beginning of a transition towards the handling of greater complexity and breadth. 'Until 1928, the civil jurisdiction of the court of petty sessions was virtually limited to the recovery of small debts … the limit of the amount was fifty pounds, except in the case of income tax and council rates, where the amount was unlimited … By the *Justices Act* 1928, a court of petty sessions was given jurisdiction to hear and determine actions for breach of contract and of tort.' Anderson (1986 p. 31).

[130] 'There was no time for relaxing; early morning starts were not uncommon, occasionally as early as 7.30 am on a Wednesday or Friday, to make sure all was ready for the court at 10 o'clock. There was no paid overtime; and of course, we worked on Saturday mornings as well' (p. 19).

[131] Clerk of Petty Sessions Frank House was the first president in that revival year, but only for little over two months. Rogers then served in this capacity for over seven years. The Group has since always been headed by clerks but retained (in a voluntary capacity) the advisory services of a solicitor. There was a similar professional organisation in New South Wales for the Clerks of Petty Sessions.

[132] 1983. 'Formation of the Group'. *Chronicle: Journal of the Clerks of Courts*, 23, 1, April p. 12.

and for reform of legislation and court procedures - in the press. Articles appeared under such loud headings as 'SCANDALOUS!', 'COURT CLERKS COMPLAIN' and 'YOUNG MEN RESIGN'.[133] This was to be the first of many Group campaigns. The Group would later become 'vociferous and powerful' in challenging times under the leadership of committed clerks.[134] It was to play a major role in cementing the cohesion and activist power of the cohort, supporting members, promoting professional values, and celebrating the group's heritage and consequence in the community.

Leaders arise. John Meehan: mentor and father figure

John Francis Meehan (appointed as a clerk in 1906) was Secretary to the Group from 1925 and president from 1930 until 1933, when he became a magistrate.[135] He was known as 'the father of the clerks', recalls Anderson, 'because of the manner in which he always concerned himself with their welfare and advancement' (Anderson 1986, p. 12). Meehan is quoted as saying on his promotion to the bench, 'It has given me great satisfaction to work with you in the preservation of our opportunities for mutual advancement. I have always felt that in every action that had to be taken, every clerk felt that nothing was over done for any individual, but that everything was urged for all of us'.[136]

Kevin Anderson: respected elder

Concern about discrimination against Catholics in society and in the workplace led many Catholic parents to encourage their young men into the public sector (Murray, R 2005). Kevin Anderson, as a Catholic boy from a single parent family, came face to face with effects

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[133] The Association's extensive platform in 1925 included reclassification of courts, appointment of additional relieving officers, presence of a police magistrate at all sittings of larger courts, provision of a permanent police magistrate in the Children's Court, regrouping of suburban courts, cessation of the use of police constables as bench clerks, two years' mandatory experience before juniors could be promoted as fourth class clerks of courts, enlargement of the summary jurisdiction to relieve congestion in the County Court, construction of rental premises for clerks of courts in country areas, payment of expenses for officers travelling to do their exams, an amendment to the *Marriage Act 1915* (Vic) (including powers to be given to clerks to issue a warrant for payment of arrears of maintenance), advertisement of all vacancies in the *Gazette*, and some operational improvements (1925. 'Clerk of Courts' Association. Many Reforms Suggested'. *Age*, 16 June p. 14). Most of these ideas did in fact come to be adopted, though the first two proved the most difficult to achieve.

[134] 2018. Interview #7. No doubt the events of Black Wednesday 1878 when the Victorian Government summarily dismissed a swathe of senior public servants were remembered by many (Strangio 2008).

[135] 1983. *Chronicle: Journal of the Clerks of Courts*, 23, 1, April p. 25. The story is told of John Meehan, aged twelve in about 1898, seeing 'a landau drawn by two greys' arriving in the main street of Ballarat. Uniformed police stood to attention. 'Who's that?' asked the boy, awed. 'That's the Police Magistrate!' 'I'm going to be one of them,' said Meehan (2018. Interview #6).

[136] 1983. 'John Francis Meehan'. *Chronicle: Journal of the Clerks of Courts*, pp. 14,5. Meehan (1886 - 1949) was a mentor to many. He deployed his advocacy skills on behalf of clerks, magistrates and, claims the article, in his earlier days the Labor Party (as a spruiker on the banks of the Yarra). Four Meehan sons - Gregory, Russell, Wallace, and Brendan - became clerks of courts and Greg became a magistrate.

of the Depression while processing applications for old age pensions as a young clerk of courts. He showed himself to be keenly aware that having to claim the pension was an acute source of shame for some applicants. The Depression shadowed the 1930s, and Anderson comments, 'We counted ourselves fortunate to be employed' (1986, pp. 20, 23). His personal history and experience as a clerk are likely to have fostered the values he brought to his later work as barrister and Supreme Court justice.[137] Anderson was largely responsible for the creation of the *Chronicle* and was its first editor in 1933.[138] He continued to take an interest in it, contributing letters, legal opinions and articles, long after he had ceased to work as a clerk of courts.[139]

Editorship of the Chronicle: A powerful platform

From its beginning as a friendly, informative paper with pages of legal opinions and case notes, peppered with jokes and social and sporting gossip, the *Chronicle* became a key means of influence for the clerks. Maintaining the journal was a demanding task.[140]

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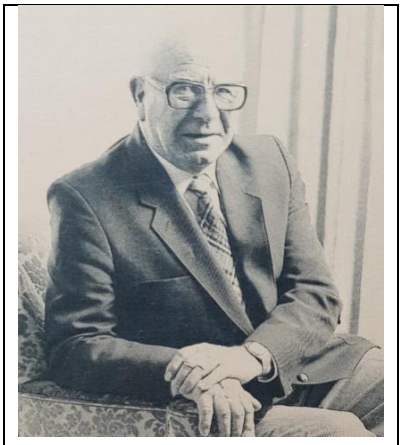
[137] Anderson was a Supreme Court justice (1969 to 1984). To my knowledge three other clerks of courts became judges: Sir Frederick Mann, 1919 (Supreme Court); Bill Martin, 1947 (County Court) and Lance Pilgrim, 1999 (County Court). Martin, like Anderson, had not waited his turn in the ranks but had resigned and completed his law degree later. He became famous for the wrong reason in February 1978 when notorious criminal Chopper Read gate-crashed an appeal hearing and put a gun to his throat. Read was overpowered by a tipstaff and police (Silvester 2012).

[138] 'Realising that there were … very few channels through which Clerks of Courts could gain information of moves, promotions, vacancies and the activities of their fellow clerks, it was decided … that we publish a Clerk of Courts Chronicle, so that clerks could be kept posted with an intimate, semi-confidential epistle, which would keep them interested and active.' Anderson (1986, p. 12). The earliest editions were painstakingly roneoed. (The roneo printer, also known as a spirit duplicator or Ditto machine, was an antecedent of the photocopier. Although it must have created revolutionary efficiency gains in Victorian government offices, it was cumbersome, messy and could be capricious to use, if the monster I encountered in the basement of the Law Department in 1983 at Queen St was any indication. A description of such machines can be found in https://en.wikipedia.org/wiki/Spirit_duplicator [accessed 10 November 2020].)

[139] In a letter from WWII Manila, he wrote, 'I am glad that the *Chronicle* has started again, because I have always considered it performed a most important function in keeping Clerks of Courts in remote districts more or less abreast with legal development. It also served an important social purpose, as it kept the fellows in touch with one another's movements thereby providing an additional service to the "bush telegraph"'. Anderson, K. 1942, reprinted *In:* 1983. *Chronicle: Journal of the Clerks of Courts (Jubilee Edition - 1923-83)*, 23, 1, April p. 11.

[140] The *Chronicle* continually sought contributors from the ranks but in effect often had to depend on the work of a few. 'Month after month the Editor has had to appeal to that select few that oblige by contributing the bulk of the matter, which should be spread over the whole body of readers; for there is none who is not qualified to write at least a paragraph on some topic of interest to his fellow officers.' 1939. *The Clerks' of Courts Chronicle: The Journal of the Clerk of Courts Group.* 7, 5, August p. 32. 'Mr. K. V. Anderson is a secret source of consolation for our harrassed Editor. No demands made upon him are too great; no request has ever been refused. Only the Editor knows the extent to which appeals have had to be made to Mr. Anderson, but it has been evident to our readers by the number of articles that have flowed from his pen' (1940. 'Happy Birthday contd'. *The Clerks' of Courts Chronicle*, 7, 2, February p. 77). 'I PRAY that my contributors will increase from day to day, until with staff and subscribers, with voices uplifted, they may in one mighty shout, heard in the four corners of the globe, proclaim our clarion call.' 1941. 'The Editor's Prayer'. *The Clerks' of Courts Chronicle*, 8, 12, March p. 87.

FIGURE 6: SIR KEVIN ANDERSON



PHOTOGRAPH BY RICK DE CARTERET. ANDERSON (1986). BACK COVER.

The *Chronicle* became a vehicle for the creation and cultivation of a unique and enduring culture. A highly effective voice for and to the clerks, it helped to mould their professional (and indeed vocational) group persona. The journal benefited from a long series of zealous editors and editorial committees led by influential clerks.[141] In 1948 one writer penned what might be seen as a manifesto of the clerks' creed:

> DO WE TAKE PRIDE?
>
> … By this question I do not mean - do you experience a feeling of satisfaction when you have carefully prepared the list or completed your revenue statement without error. What I do mean is: do you appreciate the fact that you occupy an important position in the community and that as a Clerk of Courts you are an ambassador in the administration of Justice and that you occupy a unique position in the rule of Law. You are placed in the centre of the scales having no personal or beneficial interest in the final outcome of the matters which come before you officially, but alone the desire for fair play and that the parties are assisted along the way to obtaining their legal rights. It is through the daily practice of office over the years that develops in a Clerk of Courts that deep sense of justice that is so necessary for him in discharging his duties and later in the administration of Justice as a magistrate.[142]

[141] The editorial committees were senior members of the Clerk of Courts Group executive. Editors of the *Chronicle* and Presidents of the Group, though elected by the membership, were often 'next in line' to ascend to the bench. A comprehensive list of editors from 1933 to 1983 is found in *Chronicle: Journal of the Clerks of Courts (Jubilee Edition - 1923-83),* 23, 1, April p. 24.

[142] 1948. 'Do We Take Pride?' *The Chronicle: Journal of the Clerks of Courts,* 1, 2, February p. 1. The writer (since it was an editorial) is likely to have been the 'pro-tem editor' at the time, senior clerk Cecil Ernest

Clerks believed that the Law Department took advantage of their dedication and professionalism and the fact that they tended to stay in the system.[143] They expressed resentment about continuing poor work conditions and slow promotion.[144] One writer rails against the public sector practice of appointing and promoting at base-level salary and gradually increasing the emolument in year by year increments. He likens the practice to a series of apprenticeships where the worker has already gained the skills and knowledge required for the position - an affront to clerks' dedication, expertise and long years of service. 'What justification can there be for continuing right throughout the existence of every public servant of this archaic and stultifying system of reward? ... What justifies this system to which we have become enslaved as employees of the Crown? We permit to be exercised upon ourselves a cheese-paring economy without objection. … No private employer would be so foolish as to offer such an increase to his most junior office boy.'[145]

Jack Dillon: a seat at the table

This period also marked the beginning of the annual tradition of the Clerk of Courts Dinners, said to have been instituted by Jack Dillon, another important leadership figure.[146] A habit of camaraderie was consciously fostered and celebrated at these gatherings.[147] The Dinner was

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Brenton. Brenton had commenced in the public service in 1924, became a Clerk of Petty sessions in 1931 and was appointed to the bench in 1953. Source: *Victoria Government Gazette*.

[143] 2018. Interview #6; 2018. Interview #20.

[144] During World War II this led to desperate measures. Returned servicemen were given preferential seniority. See *Victorian Discharged Serviceman's Preference Act 1943* (Vic) s 10 and the *Re-Establishment and Employment Act 1945* (Cth). According to the interviewee who related this account, however, when the government realised that the ranks of clerks were being depleted at the cost of service provision, the role of clerk was declared an essential service and clerks threatened with dismissal if they tried to enlist. One well-known clerk, Leo Froude (1915 - 1983), was so desperate to enlist that he 'went AWOL' and slipped over the state border to enlist in Adelaide, but the Victorian authorities caught up with him after his military training in Townsville; he was charged and returned to his job as a clerk (he later became a magistrate). After the war, despite government claims that those who had been prevented from enlisting would not be disadvantaged, preference was again given to returned soldiers above others more senior. This resulted in more than one Supreme Court writ, 'man against man', with Kevin Anderson acting as Counsel. The dispute was 'bitter and nasty', causing 'great disharmony amongst the troops' (2018. Interview #7). See also Bennett J (attrib.) 2000. 'Writs Galore!' *The Chronicle*, Autumn pp. 27-31.

[145] 1948. 'Do We Take Pride?' *The Chronicle: Journal of the Clerks of Courts*, 1, 2, February p. 1. The author adds: 'What can justify increments for Police Magistrates? Are they expected to court Government favour? … Should we also have apprenticed Departmental Heads and Public Service Board members?' (p. 4). We recall that one of the early arguments against increasing the numbers of stipendiary magistrates was that they would be 'far more liable to be controlled by government than were unpaid magistrates' (Willis, J 2001, p. 130). See also Golder (1991, p. 95).

[146] Sir John Vincent (Jack) Dillon, 1908-1992. The Clerk of Courts Dinner (originally called 'The Annual Dinner and Smoke Social') has been an annual tradition, save an interlude during World War II, since 1935.

[147] 'Undoubtedly the harmonious relations existing between Police Magistrates and Clerks, is due in no small degree to the friendly contacts made at these social gatherings [the Dinner and golf tournaments]. Officers from other Departments, housed mainly in Public Offices, have ample opportunity of meeting each other and almost

one of many strategies designed to unite the cohort and to optimise working relationships between clerks and magistrates.[148] According to one custodian of the clerks' history:

> The origin of Clerk of Courts Dinner: Sir John (Jack) Dillon was keen on the races. As … the most senior Victorian public servant he got to supervise the governance of the racing industry. He'd go to the Derby at Flemington racecourse and they'd repair afterwards to the Victoria. That was the site of the first Clerk of Courts Dinner.[149]

Between becoming a magistrate in 1947 and Australia's first Ombudsman in 1973, Dillon had been under secretary and permanent head of the Chief Secretary's Department.[150] His significance to the clerks, however, is of another order. As a result of a determined public-service-wide campaign by the Clerk of Courts Association (of which he had become president in 1937), in 1941 Dillon was appointed as the first general public service representative on the Public Service Board and he served in this capacity until 1954.[151] This appointment provided a line of authoritative communication between the clerks, the Department and the Board. It ensured that at least one representative understood the clerks and their role and that their agenda received attention.

This proved of immense importance in bringing to prominence the clerks' long campaign for sufficient relievers to be appointed so that they could take their annual recreation leave. If there were no relievers available, clerks' annual leave would be refused or cancelled, sometimes for two or more cycles. Clerks were forced to work longer hours travelling between courts that were unstaffed due to sick leave; they were managing growing backlogs

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daily maintaining personal contact. On the other hand, our readers are scattered throughout the State and, if it were not for some such event as the Dinner, would never meet each other.' 1939. *The Clerks' of Courts Chronicle*, VII, 7, October p. 48.

[148] 'There would always be a guest speaker of note, and the Secretary and the Attorney-General would always be invited. Judges, magistrates, barristers, the Chief Justice of the Supreme Court' (2018. Interview #6).

[149] 2018. Interview #7.

[150] Ellingsen (1975, p. 20). 'As one of the highest-ranked public servants in the State, he had diverse administrative responsibilities, including prisons, police, emergency services, and the licensing of liquor, racing, professional sport, gambling, and betting.' He was also a qualified accountant (Wortley 2018).

[151] 'Prompted by a very earnest desire to ensure that at least one member of the new Public Service Board had a practical knowledge of the conditions of our Branch, and the inadequacy of our present classifications ... a special meeting of the Clerks of Courts Group was convened. At this meeting, it was unanimously decided to nominate a candidate for the pre-selection ballot, and, the President of the Group (Mr. Dillon) was unanimously elected as our candidate … this is the chance of a lifetime for Clerks of Courts'. Subsequent editions of the *Chronicle* maintained a vigorous campaign, introducing such slogans as 'Depend on Dillon', 'Dillon depends on You' and 'Dillon for Drive'. All clerks, especially those in the country who were so influential in their districts, were urged to become members of the 'campaign committee' and lobby public servants in all the other agencies to vote for their candidate. 1940. *Chronicle: Journal of the Clerks of Courts*, VIII, 8 November p. 55.

of work. Unable to increase the numbers of clerks because of the establishment ceiling, the Department was faced with the triple dilemma of a mounting annual leave liability, consequent health issues amongst the cohort and the possibility of a real backlash from the clerks.[152]

The matter came to a head in 1952 with a deputation to the Board consisting of the Victorian Public Service Association and the Secretary to the Law Department, Cyril Knight and senior clerks.[153] Knight went on record stating that he had been 'at his wits' end' to manage the staff shortage and that this stretching of resources was a cause of increased sickness amongst the clerks. 'I have been permanent head of this department for over 18 years, it being August, 1934, when I was first appointed, and I have never yet had what I considered even half strength relieving staff', he stated. He reported that he only had two relievers available amongst the now 179 clerks of courts on the establishment. Dillon, as a Board member, added his endorsement of the verity of the presentations.[154]

The deputation, which was favourably received, demonstrates a breakthrough in another sense: successful teamwork between the Clerk of Courts Group, the Department and the union. For the first time, even if briefly, the three were on the same page. Effecting changes, however, proved to be problematic.[155] The chapters that follow explain how in Phase Five of the clerks' history up to 1989, many other elements were thrown into the mix at a time of social, political and workplace change in and around the courts and across the public service.

[152] Expressed bluntly by the Secretary: 'If we are not going to break down in a serious way in the next few years, the only way we can prevent it is by getting adequate relieving staff in order that the staff may enjoy their annual leave' (1952. *Chronicle: Journal of the Clerks of Courts*, 5, 4, November p. 6).
[153] The deputation was arranged by the Victorian Public Service Association and took place on 19 September 1952. The Secretary to the Law Department (C. F. Knight ISO) appeared to assist the Board, and the Clerk of Courts Group was represented by its President K. A. McDonald and Secretary A. K. Brown (1952. *Chronicle: Journal of the Clerks of Courts*, 5, 4, November pp. 2-8).
[154] 'For 16 years I was a Clerk of Courts who was relieved, while for six years I was a clerk who did the relieving. I can only agree with the comments made by the Association and Mr Knight, that this position does require rectification.' 1952. *Chronicle: Journal of the Clerks of Courts*, 5, 4, November pp. 7,8.
[155] In 1957 the PSB approved a gratuity to officers who had forfeited leave in 1953 - 55 (1957. *Chronicle: Journal of the Clerks of Courts*, 8, 4 June p. 3).

Conclusion

Clerks were both the Poor Man's Lawyer and an informal power behind the bench. Their work, coherence as a group and relationship-building across the justice system were foundational in the development of the Victorian court system's administrative and quasi-judicial functions. Early court staff, always visible to the people - resident in towns or travelling between settlements - established through their efforts (failures and successes) many of the key features of the summary jurisdiction as it is today.

Although sparsely provisioned and short on guidance, this subordinate role mutated quickly and pragmatically to meet the needs of a society very different from that of its British origins. The historical sources consulted in this chapter reveal that the everyday face of the People's Court became a key community resource across the state. The intense era of change, challenge and disruption that is the focus of this thesis was still to come, yet as we have seen in this chapter, challenges and disruption featured abundantly up to this time.

The following chapters are built upon the contributions of living actors whose lively and intelligent reflections provide new insights into a singular period of change in and around the courts. The qualitative methodology employed in this research, as described in the next chapter, explicitly seeks to build knowledge of the period 1948 to 1989 using the richest resource available, the voices of those who have lived through it and have intimate experience of the People's Court.[156] Those within the system have their own knowledge and perspectives, and this research is designed to engage with their understandings and complement these with contextual information and relevant theory. In uncovering such important empirical data, we add substantially to a field of knowledge until now largely neglected.

[156] The earliest first-person recollections available to the research come from an interviewee who began his career in the late 1940s. Second-hand accounts of older generations of clerks (e.g. from colleagues and family members) reach further back in time.

Chapter 3:

Methodology

Introduction

The context of the research strategy is the Victorian court system, and the research itself is focused on its largest sector, the summary jurisdiction.[157] The temporal scope reflects the span of living memory of the people interviewed for this research: 1948, as World War II drew to its end, is about as far back as the oldest of the cohort remember, and in 1989 clerks of courts became registrars of the Magistrates' Court of Victoria.[158] Significant changes occurred in the jurisdiction over this half century. As seen in the previous chapter, some earlier history is included for contextual purposes.

This chapter outlines the methods by which interviewees were recruited and constituted to undertake this qualitative research. The application of ethical practices and validating mechanisms that underpin the credibility, integrity and rigour of the research are explained, followed by the data analysis techniques used.[159] Finally I show how the application of the selected methodologies and techniques have resulted in a unique and important contribution to our knowledge of the People's Court and its staff.

Research design

Quantitative options

Contemporary scholars and judicial officers alike point out that there is historically little or no empirical data on many important aspects of the Australian judicial system.[160] There are, at least, reliable statistics on numbers of clerks, magistrates and courthouses; some indicative numbers are shown in Figure 7 below. These show the size of the cohort at key points and resonate with the comments of older informants who expressed regret at what they saw as the diminishing level of service to regional and suburban communities.

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[157] The Magistrates' Court of Victoria (MCV) hears more than 90% of all cases that reach court. Magistrates' Court of Victoria (2019, p. 2).
[158] This was legislated in the *Magistrates' Court Act 1989* (Vic).
[159] Hammersley (1992) comments on the lack of universal agreement amongst grounded theory scholars as to what constitutes methodological rigour and reliability, leading to the view that transparency of the decision trail and triangulation may serve as a diagnostic.
[160] Chief Magistrate Ian Gray wrote in 2003, 'One reason why the Executive Government may be prone to rely on inappropriate measures of judicial performance is that the courts themselves have done so little to develop worthwhile measures of workload and output' (Gray 2003, p. 6). See also Wallace, Mack and Anleu (2014).

FIGURE 7: INDICATIVE COMPARISON OF NUMBERS OF CLERKS AND REGISTRARS WITH SITTING LOCATIONS.

Year	Number of court administrators	Number of sitting locations	Comment/context
1840	3	3	Commencement
1850	17	14	Establishment
1860	121	118	Gold rush
1880	69	235	Economic boom in Victoria
1975	306	85	Court rationalisation
2018/19	521.6	51	Staff numbers have continued to increase overall but are now concentrated in court complexes rather than small satellite communities

Sources: Victorian 'Blue' books and Yearbooks; editions of the *Chronicle*; CSV *Annual Report 2018-19*.

A quantitative method involving the collection of secondary data might focus on:

- a longitudinal study of jurisdictional caseloads as an indicator of the work performed by clerks to indicate the significance of their contribution to the operation of justice system and impact within the Victorian community;
- numbers of clerks and magistrates present over time in the cities, suburbs and regional areas and numbers of courthouses;
- size of the population in each district, presented as a ratio with caseloads and numbers of court staff;
- the fluctuation of these numbers, graphically presented, compared with those of parallel 'feeder' services such as police; and/or
- contrast with the larger jurisdictions in New South Wales and others such as Western Australia, a state occupying a larger geographical area but with a smaller population.

Such a study would provide immediately comparable quantum and trends of quantitative change but beyond supplying a numerical context, would not materially assist in the exploration of the multilayered *effects* of change on the interplay of the clerks' culture and their exercise of discretionary power. For this level of complexity and capture of nuance a qualitative approach is required (Yilmaz 2013).[161]

The reliability and internal consistency of other data is variable. In the 'Blue books'[162] and *Victorian Yearbooks* (1873 to 2002) we find that:

- although state-wide statistics for civil cases are available from 1870, there are no parallel figures for criminal cases.
- changes in legislation affect the classification of cases and the jurisdiction in which they are heard. This creates artificial fluctuations in the case numbers and makes it difficult to gauge real workloads or compare data accurately from year to year over an extended time. For example, in 1936 the caseload rises from 88,828 to 101,024 but by 1942 (in wartime) it has fallen to 52,786 while at the same time the numbers of courthouses, clerks and magistrates continue to rise steadily.
- from 1915 comprehensive data on civil cases are collected, but the categories alter as legislation is drafted or redrafted, society's preoccupations change or for political reasons: the presentation of these figures is not value-free.[163]
- from the 1970s alternative dispute resolution, tribunals, Consumer Affairs and ombudsman services began diverting an increasing number of cases from the courts.

[161] After considering the definitions offered by scholars over more than two decades, Yilmaz offers this description of qualitative research: 'an emergent, inductive, interpretive and naturalistic approach to the study of people, cases, phenomena, social situations and processes in their natural settings in order to reveal in descriptive terms the meanings that people attach to their experiences of the world' (2013, p. 113). The author notes that many previous definitions have used quantitative concepts to explain qualitative research, as if it existed only in the *absence* of quantitative research. Contemporary researchers are likely to favour 'mixing the methods' rather than stopping at a line that cannot be crossed for the sake of methodological purity (Leech et al. 2010). My own data are overwhelmingly qualitative in nature, but where relevant and helpful material that lends itself to quantification is collected in the spirit of Glaser's 'all is data': Glaser (2007).

[162] The *Civil establishment of Victoria 1863-1867*, also known as the 'Blue book', includes lists of governors, ministers, members of Parliament, judges, senior offices in the police force, officers of the defence forces, most public servants and senior government officials.

[163] 'In the 19th century colonial governments followed their imperial models in the collection and publication of official statistics of justice - these "moral statistics" would provide an index of the state of progress of the growing society. The statistics provide us with some imperfect measures against which to measure claims about the dangers of the modern city, or the growing threat to law and order.' Finnane (2008). The numbers of 'persons alleged to be lunatics' are collected from 1915 to 1945; appeals against municipal ratings are collected between 1915 and 1965; neglected children cases are shown only in 1935 and electoral revision cases only in 1915; data on show-cause summonses commence in 1945 and stop at 1975; applications under Landlord and Tenant legislation begin in 1955 and cease in 1975.

- the historical figures available to us were compiled in the main from raw data provided by clerks, who were not known for their diligence in keeping such records.[164] Concentrated efforts to collect accurate and comprehensive workload statistics began only in the 1980s with the employment of a professional statistician and the committed interest of a growing number of clerks and magistrates.[165]

Constructivist grounded theory

Constructivist grounded theory was chosen because of its capacity to:

- respond flexibly to the yet-unknown data in the absence of an established hypothesis;[166]
- entertain possible theories as part of a long-term analytical process in which ideas were weighed and tested against the emerging information: a fixed hypothesis rigidly applied from the beginning may have resulted in evidence being missed or conclusions distorted (Caldamone et al. 2016);[167] and
- insist on close attention and fidelity to the 'what' of the data.[168] It facilitates methods that are 'integral and self-correcting during the conduct of inquiry itself' (Morse, Janice M. et al. 2002, p. 1).

[164] Court case statistics were not seen by clerks as core business; recording statistics was perceived rather as a nuisance or to serve at best a short-term end. Clerks were chided for 'sloppiness' in paperwork and tardiness in submitting returns; some clerks were known to have 'fudged' the figures to make their courts look busier (see Chapter 4). In the early years of the settlement the *Annual Returns of the Colony* provide data on case workloads, but as late as 1859 the Commissioners appointed to examine the state of the Victorian public service report for example that 'no returns have been received' from the courts at Richmond, Prahran, and St. Kilda (Civil Service Commission 1859, p. 93). The estimate of caseloads is therefore of relative rather than absolute value.

[165] 2016. Interview #2; 2018. Interview # 11; 2018. Interview #14. The importance of statistical data for funding and reporting purposes in courts management is today undeniable, and rigor more likely to be built into collection methodologies as established business practice.

[166] One of the key benefits of using constructivist grounded theory (CGT) is seen as 'viewing data as co-constructed with research participants, puncturing deeply held methodological preconceptions, and subsequently fostering a heightened methodological selfconsciousness' (Charmaz 2017, p. 1).

[167] Caldamone et al. are paraphrasing Conan Doyle, Arthur, 1915. *The Valley of Fear* (Chapter 2).

[168] The process of critical reflection was facilitated by best practice methodologies of interviewing, transcribing and reflecting on those interviews, noting themes as they arose and comparing how the themes were addressed by individuals. The approach was guided by contemporary concepts of constructivist grounded theory and the qualitative interviewing principle that a greater degree of active involvement on the part of the person interviewed creates more reflective, nuanced and content-rich data.

This led to methodological considerations:

- the initial absence of a concrete hypothesis (Charmaz 2006; Charmaz 2011, 2016; Glaser 2010, 2012; Glaser & Strauss 2017; Mills, Bonner & Francis 2006) - 'where is this research leading?'[169]
- the openness of grounded theory-based research calls for a methodological framework rigorous enough to support and make sense of the discoveries to follow.[170]
- the importance of building appropriate verification strategies into research methods.[171]

Getting the data: qualitative semi-structured interviews

Semi-structured interviews[172] were conducted with 61 experienced informants (40 males and 21 females);[173] most were registrars and/or had been clerks of courts and others were family members or had worked closely with clerks. All were 'insiders' to some degree.[174] Written sources both primary and secondary were also used.

The semi-structured interview format was chosen as consistent with a grounded theory framework.[175] Although I have used the term 'interviews', they can as well be called

[169] Classical grounded theory advises avoiding theoretical reading and the formation of theory prior to data collection. Yet 'generating a concept is very exciting' (Glaser 2002, p. 2). This can mean relinquishing the prospect of a clear sense of the initial direction of one's research, an uncomfortable position rarely discussed in the literature; accounts of the experiences of PhD students are the exception (Elliott & Higgins 2012), and see also Morse, J. M. (2001), who speaks of the researcher being 'mired in data' (p.9).
[170] Schwandt, Lincoln and Guba (2007a, pp. 16,8) posit 'trustworthiness' as an alternative to the term 'rigor' as a portmanteau term to parallel the '"scientific" understandings of conventional notions of internal validity (credibility), external validity (transferability), reliability (dependability), and objectivity (neutrality)'.
[171] See Madill, Jordan and Shirley (2000, p. 3). Information provided by interviewees could usually be corroborated and expanded via the contemporaneous record of the *Chronicle* and by data provided by other interviewees, thus providing a degree of triangulation even in the absence of a related body of literature. Occasional discussion of other members of the cohort by an informant yielded insights. In several interviews significant new information was provided about the career of a colleague who had, it appeared, been rather modest in discussion - or occasionally the opposite. An interviewee might make comments at variance with those of their contemporaries. Sometimes colleagues' reputations were impugned, but more often they were protected and names not mentioned. See also Seale and Silverman (1997), Guba and Lincoln (1991), Cypress (2017).
[172] Qualitative interviews can bear the descriptors 'depth', 'exploratory', 'semistructured', or 'un-structured' (Brinkmann 2014).
[173] Charmaz (2016) recommends that we 'focus on individuals and emphasize the individual level of analysis without excavating the structural contexts, power arrangements, and collective ideologies on which the specific analysis rests' (p. 34). The apparent gender skew in the interview demographic for this research reflects that women only started as trainees in 1974, whereas most of the cohort were men who had commenced many years earlier.
[174] 'Qualitative research, as contrasted with quantitative studies, places more emphasis on the study of phenomena from the perspective of insiders'. Lapan, Quartaroli and Riemer (2011, p. 3).
[175] Another approach might involve sending surveys to prospective interviewees. A survey might provide hard data on, for example, career length, courts worked at, and the cohort demographic. It would however be unlikely that responses of depth, nuance or complexity could be generated in this way. At the very least some individual

'research conversations' since the interview framework was used as a guide rather than prescriptively (Clandinin & Connelly 2000). This format functioned at a variety of levels:

- fostering immediacy, openness and flexibility whilst maintaining the required sense of purpose (with the interview framework as a guide);[176]
- intensifying accountability and authenticity for both interviewee and interviewer through face to face interaction;[177]
- generating original, rich empirical data that was unlikely to be generated from impersonal, purely quantitative methods;
- allowing greater possibility for emotional engagement than a more rigid, arms-distance process might have achieved;[178]
- making available access to long, sometimes multi-generational memories; and[179]
- maximising the scope and reach of the inquiry: interviewees discuss issues from their unique perspective. Legal, procedural, personal, sociological, cultural, political and professional preoccupations can be canvassed in some depth.[180]

Many informants had achieved substantial standing in their chosen professions beyond the role of clerk or registrar and were able to contribute knowledge and insights gained though practice as legal practitioners, magistrates, consultants, judicial registrars, administrators and

follow-up would be needed, as in a study where Australian sitting magistrates were surveyed and then selectively approached for follow-up interviews (Roach Anleu & Mack 2007). Surveys are relatively quick to set up and tend to work better when there is an established cohort data base to work with, but in this project it had to be built individual by individual.

[176] Merriam (2014) explains: 'Qualitative researchers are interested in understanding how people interpret their experiences, how they construct their worlds, and what meaning they attribute to their experiences' (p. 5).

[177] 'Authenticity rather than reliability is often the issue in qualitative research … and it is believed that open-ended questions are the most effective route towards this end.' Seale and Silverman (1997, p. 379).

[178] Merriam argues that 'rigor in a qualitative research derives from the researcher's presence, the nature of the interaction between researcher and interviewees, the triangulation of data, the interpretation of perceptions, and rich, thick description' (Merriam & Tisdell 2016, pp. 165,6). Marx also: 'qualitative data and their subsequent representation in text should reveal the complexities and the richness of what is being studied. Although it is never possible to comprehend all dimensions of a phenomenon, the qualitative researcher seeks to understand what is being investigated as deeply as possible and to situate it within the context of time and space rather than in isolation'. Marx (2012, p. 2).

[179] The scope for researchers using qualitative interviews has been described as reaching 'areas of reality that would otherwise remain inaccessible … The interview is also a very convenient way of overcoming distances both in space and time'. Peräkylä and Ruusuvuori (2011, p. 202).

[180] It is a fallacy to conduct research as if 'only the impersonal, disinterested, socially anonymous representatives of human reason are capable of producing knowledge' (Harding 2016, p. 273). Some oral history techniques were employed to gain access to insiders' accounts and insights; collecting stories may be less obtrusive than formal interviewing and invite thicker and more complex descriptions of work decisions and working life (Halliday et al., 2006). This is no doubt true although, as the authors note, the distinction between story collection and qualitative interviewing can be blurred (2006, p. 27).

judges.[181] Women in all categories were sought out for their experience, centrality and perspective, and to balance what was historically a male outlook.[182]

Some features of the demographic (summarised below in Figure 8) are:

- 48 were or had been clerks or registrars; 16 had had careers of 20 years or more.
- 17 had worked on the Clerk of Courts Group executive, some as president.
- 25 were or had been judicial officers (4 women); 17 of these had previously been clerks.
- 8 had practised at the Bar after ceasing to be clerks (6 men, 2 women).
- 6 became CEOs/directors of law-related bodies after working as clerks (4 men, 2 women).
- 7 were from a non-Anglo-Saxon or diverse background (1 of these was born overseas).[183]

Informants' careers as clerks ranged from 9 months to 48 years (1,431 total years of experience as clerks); the mean career duration was 28.4 years; 317 magisterial years were represented (time spent as a judicial registrar or judge is not included in this figure).[184]

[181] Valuable and sometimes confronting insights were provided by interviewees who had moved out of the career stream, sometimes many years ago, and could appraise their experience as clerks from a different vantage-point. Most of these viewed their former career with a certain fondness, but this did not stop them from critically appraising aspects of it.

[182] Three women were self-referred; the rest were recruited. There is an important methodological consideration here in terms of interviewing women (Oakley 1981, 2016): 'the masculinity of the "proper" interview' (p. 40) and the risk of objectification of the interview subject in a mechanistic process. Like Oakley herself however (2016, p. 197), I found that interviewees were keen to participate and not conscious of being affected by a power differential. Unstructured interviews tend to be more organic than mechanical.

[183] The (largely older and Anglo-Saxon) cohort does not mirror the current, more diverse court staff demographic. In Australia, one in four people were born overseas, 46% have at least one parent born overseas and 20% speak a language other than English at home (Human Rights Commission 2021). During the timeframe addressed by this study there were no indigenous staff recorded as working in the magistrates' courts. By contrast the 2017-18 *Annual Report* of Court Services shows 46 staff who identify as Aboriginal or Torres Strait Islander or 2.09% of the CSV workforce (2019, p. 19).

[184] For those clerks who had moved into the judiciary, their experience in the courts was obviously even longer, in some cases by as much as 25 years.

FIGURE 8: COHORT STATISTICS AT TIME OF INTERVIEW

	Male	Female	Totals
Working	20	19	39
Retired	20	2	22
Former clerk of courts or registrar	37	11	48
Current registrar	1	4	5
Clerk who became a magistrate	15	2	17
Clerk who became a legal practitioner	6	4	10
Judicial registrar	2		2
Current magistrate	5	3	8
Retired or former magistrate	12	1	13
Judge or former judge	1	1	2
Legal practitioner current or past	9	6	15
Academic or former academic	2	2	4
Managerial	3	7	10
Other professional	4	6	10
Family member of subject[185]	2	2	4
Catholic (known)	17	7	24
Anglo-Saxon	42	15	57
Number of years' experience as a clerk represented	1190 (mean 31.3)	241 (mean 16)	1,431 (+ 103 proxy) (mean 28.4)
Number of magisterial years represented	298	19	317 (+ 22 proxy) (mean 16.1)
Total number of interview subjects	40	20	**60**
Total number of interviewees	40	21	**61**

[185] Where a family member (clerk and/or magistrate, deceased) is the main subject of the interview ('proxy').

Recruitment

Those informants not self-referred were actively recruited by:

- using my own network initially;
- snowballing: asking informants or contacts to suggest other contacts from their networks;[186]
- seeking introductions to key players;
- publicity and word of mouth: the *Law Institute Journal* published an article about the research; this generated some primary and secondary contacts (Derkley 2017). I used LinkedIn and published an article on the research in the *Chronicle* (Wade, E 2018); and
- attending events where I would meet registrars, former clerks and magistrates.[187]

Letters introducing the research concept and seeking permission to engage staff in research discussions were sent to the Chief Magistrate, Chief Justice, Chief Executive of Court Services Victoria and the Chief Executive Officer of the Magistrates' Court of Victoria to create an authorising environment.[188]

Cohort engagement and generation of rapport

Establishment of trust and rapport was essential for generating a fruitful research conversation; as participation was voluntary, Ann Oakley's 'gift' mindset felt appropriate.[189] Each interview was preceded by a combination of phone call, email with information about the project and signing of the anonymity agreement. Indicative interview questions were provided. Face to face, it was important to establish credibility, with materials at the ready and professional presentation. Interviewees would be looking for some level of knowledge of the business and culture of the courts in the researcher, and they were keen to understand the

[186] The amount of data collected from sixty-one interviews was substantial, yet due to the diversity of interviewees' experiences and viewpoints and probably the length and depth of their experience, 'saturation' did not eventuate.
[187] Since the research concerns phenomena from thirty years or more ago, one issue was locating key people from that time; many would have moved on, retired or died, so this was a key strategy. I was invited to a 'Past Players' (retired ex-clerk magistrates and retired senior clerks) event at the old City Court and to a Clerk of Courts annual dinner. These were opportunities both to meet more potential interviewees and further publicise the research.
[188] See example in Appendix 3.
[189] She argues that 'some aspects of the researcher-researched relationship remain insufficiently acknowledged and explored, and … more attention should be given to the roles of time and memory in qualitative longitudinal studies and to the notion of the "gift" as a framework for research participation' (Oakley 2016, p. 2).

nature, level and purpose of the proposed research. My family connection with the courts was helpful as it resonated culturally; acquaintance with some of the cohort assisted in overcoming barriers natural in a close-knit group. My genuine interest was certainly an important factor also.[190]

Any exploration of an individual's professional and life experience takes time, requiring respectful approach and skilful questioning. The 'right questions' cannot always be prepared; they feed on verbal and non-verbal cues and are best informed by rapport supported by a sound interview protocol. I drew upon experience conducting interviews over many years.

Contact with the cohort was not only via interviews. Some former clerks felt comfortable in a pub environment where 'old war stories' could be exchanged,[191] and I was invited to informal gatherings where they could jog each others' memories while socialising.[192] These were not data-gathering exercises, but resulted in invitations to interview members of the group. Artefacts such as certificates, photographs and editions of the *Chronicle*, which would otherwise have been difficult to access, were shared.

[190] Burns and Stalker in their influential study on the management of change advised making the relationship between researcher and informant 'real'; 'it is not enough to demonstrate interest or even sympathy; … an informant will get to the point of formulating and presenting his experience, beliefs, opinions, anxieties, and criticisms only when there has been established a relationship which is reciprocal in some genuine sense' (1994, pp. 13,4). This is taken further in Oakley (1981, 2016) who describes interviews as being 'like marriage' (1981, p. 31); 'everybody knows what it is, an awful lot of people do it, and yet behind each closed front door there is a world of secrets'. An interview, she argues, should not be 'depersonalised' nor the interviewee treated like 'an object or data-producing machine' (p. 37).

[191] Considerable depth of engagement was evident at these events as people plunged into impassioned debates about courts, the law, people and issues. Feelings would run high about events in the 1970s, '80s and even earlier. It helped to be familiar with names, incidents and issues under discussion, but those present did not mind being interrupted with questions. Much of the discussion appeared to be aimed at assisting the research, as a speaker would pause to explain things from time to time.

[192] 2017. Interviews #4; 2017. Interview #6. I was conscious of what had certainly been, up to the 1980s, a 'boys' club' with a 'drinking culture' as a dominant aspect of the clerks' work life, and expected to experience an interesting and perhaps problematic dynamic in their domain. In the event, I was made to feel at ease. Of course, if the cohort were happy to share their experiences with the alcohol freely flowing, there was a need to operate in accordance with ethical boundaries. As Charmaz points out, 'Methodological self-consciousness means examining ourselves in the research process, the meanings we make and the actions we take each step along the way'. Charmaz (2016, p. 36). In her anthropological study on the Victorian Land Titles Office, Evie Katz provides another perspective: 'Being a woman meant not being permitted access to certain social events … [and] meant being apologised to when males swore in my hearing … Being unfamiliar with pubs, and unable to drink beer to any great extent, made fieldwork a little difficult. Being in a pub felt unnatural to me … Consequently, talk was undoubtedly different from what it might have been had I been able to blend in more easily'. Katz, E (1996, p. 4).

Interview framework and methodology

Where not self-selected or referred, interviewees were recruited based on their knowledge and experience, their positioning within the cohort and the credibility they could bring to the research.[193] Interviewees expressed the following reasons for getting involved:

- a belief in the importance of the clerks' role;
- a wish to preserve and perpetrate their legacy;
- desire to ensure accuracy of the record;
- strong ongoing personal and professional identification with the institution of the court and its people; and
- nostalgia and a desire to revisit significant career experiences.

Addressing the terms of the research questions

Guided by the research questions, the intent underlying each interview was to:

- gain a deeper sense of the experience and actions of clerks of courts working in the magistrates' court system and the culture that underlaid it;[194]
- explore the perspectives of individuals within the cohort on key issues and events;
- investigate how clerks used power and exercised discretion in the workplace; and
- understand how institutional, temporal, geographical and social context, especially during the changes that intensified in the late 1970s and decade of the '80s, impacted on the cohort and its sub-groupings (such as the Clerk of Courts Group, female clerks and country clerks).

The main themes explored in the interviews were:

Career decisions

- motivations for joining 'the courts'
- career trajectory and key career milestones

[193] As oral historian Grele argues, 'Interviewees are selected, not because they present some abstract statistical norm, but because they typify historical processes … The real issues are historiographical, not statistical'. Grele (1996, p. 3).

[194] Culture (for instance) is implicit - woven into the DNA - and may not be clearly perceived or expressed by those who live within it. An understanding of culture was both sought directly and intuited via questions about behaviour, events, stories, heroes, villains, cultural indicators such as sociality and traditions, and peoples' experience of change.

Socialisation and acculturation

- early training and the range of tasks performed
- involvement with cohort leadership (e.g. membership of the Clerk of Courts Group)[195]
- mentors and influential people, and why and how they were important
- the clerks' culture and camaraderie
- relationship between clerks and the executive
- attitudes towards magistrates, police, the legal profession and the public
- engagement with local communities

Formative experiences

- career highlights and 'black spots'
- city, regional and suburban experience
- change and innovation, e.g. women in the courts, regionalisation, computerisation, the changing of qualifications for the magistracy, court closures, poor box/court fund, court security

Exercise of initiative and use of leverage

- management, supervision and attitude to the 'rules'
- key events and issues where clerks exercised influence
- problem-solving and working with ambiguity
- use of specialist knowledge and know-how
- industrial issues.

[195] The topic of the Clerk of Courts Group ('the Group') asserted itself strongly in research interviews. I had not originally framed a question around this aspect of the clerks' history, but following the lead of the first few interviewees it was included from then on and became a central theme.

Stimulating the discussion

A list of indicative questions was provided to interviewees beforehand, along with information about the project and the consent form.[196] Individuals were informed that the list of topics was not intended to corral the discussion but to assist with reflection.[197]

Logistics

Interviewees were interviewed at times and locations of their choice, as long as the venue was not too noisy or distracting.[198] There were several follow-up telephone conversations with people previously interviewed, often initiated by them, to provide further information, suggest contacts or clarify information.[199]

Interview techniques

Use of a variety of questioning techniques was productive.[200] Broader, exploratory questions would usually elicit excellent coverage of a person's account of their history and their reflections on events and issues, challenges and problems, personalities and stories, but a closed question or statement could prompt further discussion and clarification.[201] 'Vocal

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[196] The research interview framework is attached as Appendix 5. Three versions of the set of questions were developed: one for people whose career had mainly taken place in the courts, one for those who started in the courts and moved on some time ago, and one for interviewees who worked in the court system but had never been clerks (academics, administrators, police or judiciary recruited from outside the public sector). I also constructed an interview guide for my own use that contained notes, prompts and avenues for further exploration, but ceased to need it after the first few meetings, as predicted in Olson and Brinkmann (2016, pp. 35-44).

[197] Some interviewees, upon seeing the topics, requested time to prepare ('I have a notebook, and when I think of something I jot it down'). 2019. Interview #56. People brought notes and artefacts to the meetings.

[198] A quiet office was often provided by the Sir Zelman Cowen Centre. Some of the more senior interviewees had access to private offices and would offer this option; others felt more comfortable in a café. Occasionally I would travel distances by car or train to meet an interviewee who was regionally based (e.g. Geelong or Benalla), but more often they would combine a planned trip to Melbourne with their interview. Three interviews were conducted by phone due to geographical constraints.

[199] As elimination of interruptions was important, it seemed to be difficult to find a good time to have the telephone conversation, and it was undoubtedly more challenging to establish rapport with an unseen person. The lack of visuals was an issue because cues may have been missed. Before the 2020/21 pandemic, Zoom and video calls were not common practice.

[200] Saldana (2013) and Trochim (2006) distinguish between two streams of questioning, dividing them between exploratory (open-ended) for qualitative research and confirmatory (closed-ended) for quantitative approaches. The first stream is argued to be suited for ontological exploration as well as epistemological study (p. 84).

[201] 'Doubt involves having reservations about what is happening or happened, defining uncertainty, and interrogating ready explanations' Charmaz (2016, p. 34). A 'plan B' is often useful: 'The informants had smoothly slipped the punch of the feeble first question. Only with an outrageous second strategy did the researchers manage to initiate a productive exchange' (Kirk & Miller 1986, p. 26). From time to time an interviewee's comments or perspective would seriously challenge or upend nascent understandings. There could be widely different 'takes' on recurring themes, even from people with parallel career paths and from similar backgrounds. Transcripts would then be reviewed to locate corroborating or contradictory information or identify factors indicative of a subcultural worldview. Interviewees were not invited (but nor did they ask) to

continuers' rather than visual indicators (such as nodding) signify interest in the narrative and encourage the speaker (Voutilainen et al. 2018).[202] On several occasions an interviewee requested a further meeting, and this always yielded additional relevant data. Many interviewees felt comfortable with what might be called 'yarning'.[203] They would offer anecdotes to illustrate a point or convey the context and background of matters under discussion. These proved useful, especially where they were told in different ways by several people. Some of these stories appeared to be apocryphal, and therefore offered insights into the viewpoints and pathways of the clerks' culture.

Adaptable structure

An open-minded and vigilant stance was required in the conduct of these interviews. The invitation to 'Please tell me about how you started your career in the courts' was often the most direct route to an informative discussion in which the interests and understandings of interviewees could be engaged.[204] A key aim was to minimalise the inhibiting strictures of a conventional interview situation.

read over transcripts in view of the warning that it might signify the interviewee having 'more authority than the researcher' (Morse, J. M. 1999, p. 717). See also Morse, Janice M. et al. (2002, p. 1).

[202] Time was sometimes required before an interviewee was ready to 'warm up'. Some of the prompts used were derived from the de-identified comments of other interviewees. The capacity to 'read between the lines' (interpreting facial expressions, silences, tones of voice and body language) was key to capturing nuance and picking up indicators for further inquiry. An unusual inflection on a word or phrase might invite a query. Pauses might be allowed to hang as they could be the precursor to a new line of discussion or time taken for a person to collect their thoughts or decide to reveal something new. Factors such as an interviewee's background, life experience, gender, personality and allegiances could suggest variances in meaning or intent.

[203] I use this word with the understanding that it is employed with specific meaning in Indigenous studies (Barlo et al. 2020).

[204] Frequently the list of questions provided little more than the backbone to the discussion, the substance being fleshed out by following up on the answers and comments, so that a conversational mind-map was created. There were usually several paths that could have been taken simultaneously, so reminder notes were used to return the conversation back to a book-marked topic. David Rennie (1996) writes, 'when conducting research interviews I prefer to be as open-ended as possible, while having a clear sense of what it is I am attempting to understand. Within this framework, I find that I do not need to develop a schedule of prepared questions, and instead can rely on interviewing skills to keep the interviewee on track' (no pagination).

Recording

Interviews were voice-recorded with permission, via a smartphone application.[205] Comprehensive notes were taken by hand as a fail-safe; this also demonstrated listening and according importance to what was being said.[206]

Length of interviews

A two-hour interview was not unusual (some were longer). Accommodating this generosity was important since some informants had had careers of 30 or more years in the courts and were able to contribute extensively on the discussion topics.[207]

Other sources and perspectives

The paucity of data relating to employees in subordinate positions has been identified as an epistemological omission in research to date (Bozeman & Feeney 2014; Green 2019; Pettigrew 1990). Complementary sources and methods were therefore required to construct a longitudinal context and generate multiple perspectives, building on and triangulating primary and secondary data Charmaz (2016, p. 38).[208]

[205] 'Compared to field notes of observational data, recordings and transcripts can offer a highly reliable record to which researchers can return as they develop new hypotheses.' Seale and Silverman (1997, p. 380).
[206] 'For those who tape their interviews, the process of identifying themes probably begins with the act of transcribing the tapes' (Bernard & Ryan 2010, p. 88). Records were written up in denaturalised form (as recommended in grounded theory approaches) but with sufficient accuracy to provide for the use of (de-identified) verbatim quotations. Although this was time-consuming for a 26-page discussion, the process of listening to the recording yielded insights and realisations that might have been missed due to the demands of managing the conversation. Transcribing the text oneself or using voice-assisted recognition software can 'enhance reliability and validity, and thus enhance the authenticity of the transcript' (Alcock & Iphofen 2007, p. 16). It is also a strategy to enhance confidentiality. Interviewees' words used verbatim in this thesis have been elided where necessary (as indicated by ellipses) to focus on the specific topic under discussion, but are not otherwise altered. Punctuation used reflects the expressiveness and rhythm of the original spoken word.
[207] There were close to 180 hours of discussion recorded.
[208] Prior to, during and after interviews, academic and 'grey literature' was surveyed for relevant material. 'Analyzing text involves several tasks: (1) discovering themes and subthemes, (2) winnowing themes to a manageable few (i.e., deciding which themes are important in any project), (3) building hierarchies of themes or code books, and (4) linking themes into theoretical models': Ryan, GW and Bernard (2016, p. 85). Also, 'Document analysis is a systematic procedure for reviewing or evaluating documents - both printed and electronic (computer-based and Internet-transmitted) material. Like other analytical methods in qualitative research, document analysis requires that data be examined and interpreted in order to elicit meaning, gain understanding, and develop empirical knowledge'. Bowen (2009, p. 27).

Archive

Research was conducted at the Public Records Office to develop a framework for the capturing of key events and points of interest, as well as theme identification and a sense of patterning within the history. Some of the oldest available records of court activity from the 1830s and '40s were examined.[209] Early hand-written governmental returns are a useful source of information about the staffing of the courts, providing names of appointees and the officers being replaced, positions, dates of appointment, salaries, and useful footnotes.[210] Court registers, correspondence files and circulars issued to clerks of courts were located. Artefacts from other governmental authorities also helped build understanding of the context.

Newspapers

Newspaper and magazine articles (as 'the first draft of history') were sourced at the National Library's Trove website. Such accounts can be fresh and immediate, offering multiple perspectives. Articles and letters to the editor are often written from a partisan viewpoint and may refer to the beginning of events whose outcome it has not been possible to determine, as interest in the matter faded or the trail disappeared. At times a scan or its original can be blurred, damaged or difficult to read. Not all publications have been digitised, and there are few newspapers online as yet from 1960 onwards.

Chronicle

The 'industry' journal produced and written by the Clerks of Courts (the *Chronicle*) was a key resource (see Figure 9 below).[211] The National Library and the State Library both house limited collections; the only complete collection is held in the Magistrates' Library at the Magistrates' Court of Victoria in Melbourne (this is not open to the public and has been subject to lockdown during the pandemic).[212] The available editions provided useful

[209] '… with contemporary organizations and work groups, it is possible and fruitful to begin culture analysis with historical analysis.' Schein and Schein (2016, p. 6).
[210] I used the Ancestry.com.au website (as a member) to access these; they are otherwise accessible by microfiche in the State Library of New South Wales.
[211] Kevin Anderson writes that the journal is modelled on the NSW *Petty Sessions Chronicle* (copies available in the National Library of Australia), also now a long-lived publication (1986, p. 6).
[212] The State Library's collection, which may be ordered in from offsite in batches, stretches from October 1964, with a gap until March 1965, and subsequently there is a range of editions to 2000. Listing at the State Library: http://search.slv.vic.gov.au: vol. 9 - vol. 18 (incomp.). 1965-1975, V.18 (1975: 5), V.18 (1975: 5), V.25-32 (1985-1993), vol. 33, no. 1 (1994 Winter) - 2000 Autumn (incomp.). The collection in the Magistrates' Library

information on issues of importance to clerks, including obituaries, historical notes and editorials on matters of professional concern.

The journal has been written and circulated by the Clerk of Courts Group Executive almost continuously for nearly ninety years, with varying regularity,[213] and is a valuable historical, institutional and sociolegal record. Comments made by interviewees could often be explained, contested and corroborated throughout this thesis by reference to the *Chronicle.* It was also useful to stimulate interviewees' memories and to add a reflective dimension to discussions. It also helped bring to life the voices of people who were not interviewed. Apart from building an autobiography, as it were, of the contemporaneous concerns and motivations of a unique cohort, themes arising in the interviews can be contextualised and therefore better understood.

Kevin Anderson, its creator and first editor, explains: 'It became very popular, and was a regular institution until well into the war days when it necessarily lagged somewhat; but, postwar, it revived and ultimately became a respectable printed periodical' (1986, p. 12).

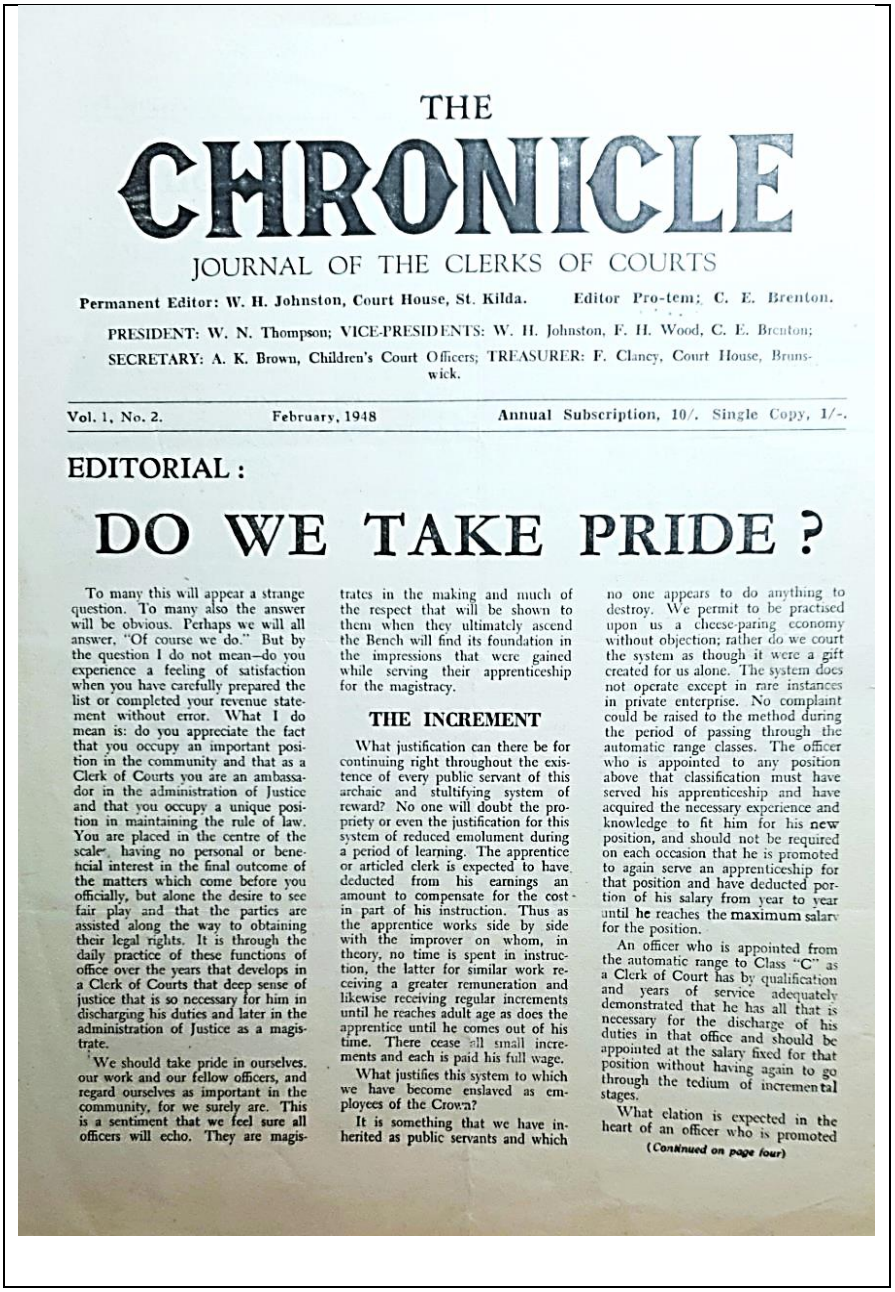
In the *Chronicle*'s first edition several themes that were to become leit-motifs are introduced:

- keeping abreast with the law (both case law and legislation)
- working conditions in the ageing courts infrastructure
- pay levels and disparities, leave and job rotation/transfers
- training and learning, preparing for qualification as clerk of courts and magistrate
- attitudes to the public and to public service
- information about the clerk of courts community (transfers, marriages, births, sporting achievements)
- the importance of uniting to effect improvements for individuals and the cohort.

at the Magistrates' Court in Melbourne had been part of the collection of the Law Library of Victoria and was originally located at the Supreme Court (now the Law Library of Victoria). None of this material is digitised.

[213] During some periods the journal was produced monthly; at other times quarterly. It is presently published annually. The journal's frequency was not regular enough for some in times of accelerated change. In April 1983 the editor notes: 'One difficulty which is evident in recent years is the inability of the publication to serve as a newspaper for Clerks of Courts ... A search through previous issues has revealed that many crucial matters affecting our careers are either absent or inadequately dealt with'. 1983. *Chronicle: Journal of the Clerks of Courts*, Vol. 23, No. 1, April p 7. At that time, the *Chronicle* appeared only four times per year. In comparison, newspapers could be produced as often as twice a day at that time.

FIGURE 9: FRONT PAGE OF AN EDITION OF THE *CHRONICLE*, 1948: 'DO WE TAKE PRIDE?'



THE

CHRONICLE

JOURNAL OF THE CLERKS OF COURTS

Permanent Editor: W. H. Johnston, Court House, St. Kilda. **Editor Pro-tem: C. E. Brenton.**

PRESIDENT: W. N. Thompson; VICE-PRESIDENTS: W. H. Johnston, F. H. Wood, C. E. Brenton;

SECRETARY: A. K. Brown, Children's Court Officers; TREASURER: F. Clancy, Court House, Brunswick.

Vol. 1, No. 2. **February, 1948** **Annual Subscription, 10/. Single Copy, 1/-.**

EDITORIAL :

DO WE TAKE PRIDE ?

To many this will appear a strange question. To many also the answer will be obvious. Perhaps we will all answer, "Of course we do." But by the question I do not mean—do you experience a feeling of satisfaction when you have carefully prepared the list or completed your revenue statement without error. What I do mean is: do you appreciate the fact that you occupy an important position in the community and that as a Clerk of Courts you are an ambassador in the administration of Justice and that you occupy a unique position in maintaining the rule of law. You are placed in the centre of the scale, having no personal or beneficial interest in the final outcome of the matters which come before you officially, but alone the desire to see fair play and that the parties are assisted along the way to obtaining their legal rights. It is through the daily practice of these functions of office over the years that develops in a Clerk of Courts that deep sense of justice that is so necessary for him in discharging his duties and later in the administration of Justice as a magistrate.

We should take pride in ourselves, our work and our fellow officers, and regard ourselves as important in the community, for we surely are. This is a sentiment that we feel sure all officers will echo. They are magistrates in the making and much of the respect that will be shown to them when they ultimately ascend the Bench will find its foundation in the impressions that were gained while serving their apprenticeship for the magistracy.

THE INCREMENT

What justification can there be for continuing right throughout the existence of every public servant of this archaic and stultifying system of reward? No one will doubt the propriety or even the justification for this system of reduced emolument during a period of learning. The apprentice or articled clerk is expected to have deducted from his earnings an amount to compensate for the cost in part of his instruction. Thus as the apprentice works side by side with the improver on whom, in theory, no time is spent in instruction, the latter for similar work receiving a greater remuneration and likewise receiving regular increments until he reaches adult age as does the apprentice until he comes out of his time. There cease all small increments and each is paid his full wage.

What justifies this system to which we have become enslaved as employees of the Crown?

It is something that we have inherited as public servants and which no one appears to do anything to destroy. We permit to be practised upon us a cheese-paring economy without objection; rather do we court the system as though it were a gift created for us alone. The system does not operate except in rare instances in private enterprise. No complaint could be raised to the method during the period of passing through the automatic range classes. The officer who is appointed to any position above that classification must have served his apprenticeship and have acquired the necessary experience and knowledge to fit him for his new position, and should not be required on each occasion that he is promoted to again serve an apprenticeship for that position and have deducted portion of his salary from year to year until he reaches the maximum salary for the position.

An officer who is appointed from the automatic range to Class "C" as a Clerk of Court has by qualification and years of service adequately demonstrated that he has all that is necessary for the discharge of his duties in that office and should be appointed at the salary fixed for that position without having again to go through the tedium of incremental stages.

What elation is expected in the heart of an officer who is promoted

(Continued on page four)

The material was produced largely by the Executive of Clerk of Courts Group, whose views may not have represented those of the entire demographic.[214] Articles by other parties could vary the tone. Clerks were not the only contributors: particularly in the earlier editions, legal opinions were provided on request by a barrister or the Crown Solicitor. Correspondence between the Secretary to the Law Department and the Clerk of Courts Group was published, usually in respect of an industrial issue. The intended readership certainly extended beyond the clerks of courts and registrars, so it was not just a conversation amongst peers.

Ethics, researcher positioning and data curation

My Ethics application, approved on 30 June 2017, was for a low-risk project involving humans, and covered the usual aspects of data management, data security, anonymity and the right of interviewees to withdraw their permission or their data at any time.[215] The consent agreement remained a living presence in every interaction with interviewees.[216]

Identities of interviewees were protected and confidentiality preserved.[217] The act of recording appeared to signal caution to some informants and may have influenced what they were prepared to discuss, but others did not appear overly concerned.[218] Because of the close-knit nature of the cohort, a (de-identified) quotation might still be traced back to its origin; contextual references might need to be removed.

[214] One of the questions to investigate was whether there was a disconnect between the clerks who worked in the regions and those who were located in Melbourne and its surrounding suburbs. I was also interested in whether some trenchant views (for instance, about social issues) expressed in the *Chronicle* from time to time were reflective of the attitudes of the majority of clerks, and/or of younger or female clerks.
[215] See Consent Form and Information for Research Participants in Appendix 4a and b.
[216] People are more likely to respond to a face to face interaction than a more impersonal approach when identity-protecting protocols are in place. Since they are custodians and co-generators of knowledge, interviewees are treated as participants in the study rather than as 'subjects'. As Macfarlane (2008), drawing upon Aristotle and Aquinas, puts it, 'The virtues which I identify - courage, respectfulness, resoluteness, sincerity, humility, and reflexivity - represent some (but not necessarily all) of the excellences of character needed to be a "good" researcher' (p. 5).
[217] One informant declared that most of what he had discussed with me was already on the public record and that consequently he had no concerns about anonymity, but the usual identity-protection standards were applied (2017. Interview #18).
[218] Some had more to say once recording had finished, but anything 'off the record' would not be used without their explicit permission. Similarly, material discussed at social events served only to prompt discussion at interviews.

Data storage and protection

Care was taken to maintain data security as per the Ethics approval. As much as possible, paperless, protected, multi-location digital-storage options were used.[219]

Insider/outsider considerations

Former clerks and registrars, much like police, lawyers, medical professionals, soldiers or emergency workers, talk to each other about their work, but not usually to people they see as outsiders. The subject matter can be complex and nuanced, often confidential, resting on shared understandings, background knowledge and emotional content that is difficult to explain.[220] It is also a possibility that outsiders would not be interested, or could be investigating for reasons of their own.[221] For the cohort, the factors that mitigated my outsider status were a family connection with the courts, some acquaintances amongst the clerks and a general understanding of their role from the years I worked in human resource management at the Law Department/Attorney-General's Department.[222]

Investigation from an insider's standpoint can be rich in information but lacking wider context and independence of perspective (Bernard 2010).[223] An outsider's perspective on an insider's story can provide insights not otherwise available (Harding 2016), but one's status as a commentator from the outside can be contested and ethically problematic (Clifford &

[219] I used a separate hard-drive and hardware as back-up, my Google Drive, the university's One Drive and the further safeguard of emailing important documents to myself and my supervisors. Copies of documents were also stored in Endnote and (to a lesser extent) NVivo. All databases were protected with separate passwords and my home security wifi security system. The research data are stored in such a way that should information need to be revisited, the original source can be located by me.

[220] In his recent PhD study of South Australian police, for example, Andrew Paterson comments 'Police are … loyal to other members of the police 'family' and deeply suspicious of outsiders' (Paterson 2018, p. 57).

[221] A former clerk said that before agreeing to an interview, he had called a colleague to ask 'Who is this person? Do we like her?' (2018. Interview #20). Another interviewee remarked that 'many people' from outside the courts had asked him about an episode in his career, but he had not confided in them (2018. Interview #5). He and I discussed the matter, as I was aware of it and already had some information, but I could see he was still quite reticent. I doubt he would have raised it had he not been asked.

[222] An emic (insider) perspective is one of the hallmarks of qualitative research. The generation of data through qualitative interviews is emic in nature because it allows interviews to tell stories from lived experience (Olson & Brinkmann 2016). My grandfather H. B. Wade and his father T. B. Wade were clerks and magistrates and for some interviewees this was symbolic of insider status; other interviewees saw that my having worked in the administration and knew some of the cohort meant that certain matters could be discussed. For others, this meant just the opposite since 'the Department' was seen as the enemy.

[223] Afterwards, time was needed for reflection and comparison between individuals' responses and appreciation of the context. Is this expression of culture a subset or offshoot of the 'parent' culture or an anomaly? Who shares these views? Are there peculiarities or contradictory aspects?

Marcus 1986). Since most interviewees were keen to participate, a more open discussion would often eventuate with careful handling of the conversation.[224]

A fundamental challenge then was to achieve a reflexive appreciation of interviewees' world view without compromising objectivity, managing the tension between engagement and detachment (Klag & Langley 2013).[225] Working 'from the ground up' using grounded theory involved generation of data in partnership with those who 'own' the information. The work required a certain amount of bonding 'the researcher with the researched' (Charmaz 2016),[226] but not to the extent of the original Weberian positivistic standpoint *Verstehen*.[227]

Avoiding bias[228]

An interviewer's perceived attitude can either create the feeling of a 'safe space' for the interviewee or close doors. Given prior knowledge of both the people and the institution, it was important not to carry pre-formed opinions into the data collection phase. This aspect of achieving rigour was aided by:[229]

- grounded theory's absolute focus on the data,
- the flexible interview framework and a range of representative interviewees to encourage a spectrum of responses, ideas and themes, even if these did not conform to any prior researcher knowledge of the cohort (Charmaz 2010),
- frequently checking in with one's own positioning, and

[224] Harding states that 'what "grounds" feminist standpoint theory is not women's experiences but the view from women's lives … Interviews are a means to 'recognize the resource that the perspective from their lives' [sic] provides'. Harding (2016, pp. 269,70). This ontological viewpoint implicitly embraces the import of exploratory interviews to create a ground for the construction of thought processes leading to critical questions and the construction of theory. It is therefore well aligned with grounded theory.
[225] Another factor to consider is that involvement in a community heightens sensitivity to discrepancies in meaning amongst/between researcher and the interviewees: Kirk and Miller (1986); Patton (2002).
[226] Kathy Charmaz contrasts this with the pragmatist approach from which CGT was originally derived, which 'Unites the viewer with the viewed' (2016, p. 38).
[227] *Verstehen* aims to view the research problem from the point of view of insiders and present it that way in the findings; however, the word itself can be understood as a methodological term and its meaning is therefore epistemologically-dependent (Martin 2018, pp. 2,3); see also Feest (2010).
[228] '"Bias" occurs when there are systematic differences … in the way interviews are conducted, with resulting differences in the data produced' (Oakley 1981, p. 36).
[229] There is a lack of universal agreement amongst grounded theory scholars as to what constitutes methodological rigour and reliability, leading to the view that transparency of the decision trail and triangulation may serve as a diagnostic (Hammersley & Atkinson 2007).

- recalibrating with the approaches of other researchers in interview-based qualitative research.[230]

Working with an older cohort

Time was a factor in the maturation of interviewees' ontological perspective: hindsight and a lifetime's experiences have a way of throwing light upon one's early career and how things were done then. The passing of forty years or more was not necessarily seen by interviewees as a positive; some things are inevitably forgotten. This was compensated for by depth of insight. Often, considerable precision was evident in recollections offered regardless of time elapsed.

Wood et al (2013) discuss the 'many ethical and practical challenges involved in conducting research with older people, which will have contributed to their under-representation in research studies'.[231] Cognitive issues did not appear to be an issue for the keen-minded, independent-living and often still employed older members of the cohort. Any physical limitations such as mobility or hearing issues were catered for as required.[232]

Data analysis: Checking, reflecting, constructing meaning

Emergent themes were coded, analysed and re-coded to allow construction of a theoretical and conceptual framework.[233] Doing these tasks contiguously rather than consecutively facilitated a constant process of reflection, cross-checking and revising.[234]

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[230] Nakata argues that it is 'important for researchers to delve deeper into their positioning, taking their background into consideration … to speculate about their positions at deeper levels, by which they can sense and situate their study within a broad research framework, and thereby take a critical look at their own research, whether qualitative or quantitative' (2015, p. 169).

[231] The authors cite 'difficulty in recruiting older people due to their physical and cognitive impairments, … obtaining consent, … responding to concerns from family members, … and higher rates of attrition from the studies … On the other hand, fewer family and employment commitments of older people may facilitate their participation' (Wood et al. 2013, p. 2).

[232] Meeting people in their homes at their request rather than in a public place was often all that was required. This at times involved a partner 'hovering', but some added helpful comments or prompts. On one occasion, interestingly, a partner cautioned the interviewee against 'saying too much' (2018. Interview #57).

[233] Coding is defined by Johnny Saldaña (2015, p. 4) as 'most often a word or short phrase that symbolically assigns a summative, salient, essence-capturing, and/or evocative attribute for a portion of language based on visual data'. According to Charmaz, 'Coding is the pivotal link between collecting data and developing an emergent theory to explain these data' (2006, p. 46).

[234] Merriam and Tisdell (2016, pp. 166,71) recommend analysing data simultaneously with data collection.

Using NVivo to code

Interview transcripts were coded using NVivo.[235] Grounded theory provided the filter: this involved, at least in the initial round of coding, using interviewees' own words as much as possible.[236]

Appropriate codes and sub-categories to sort information supported the development of key concerns and patterns, making linkages across sources, and ultimately in writing data chapters and naming emergent themes.[237] A quantity of inter-woven themes and categories were identified, defined and delineated.[238] They were preserved in parallel until the maturation process allowed unifying and distinguishing meta-themes to crystallise.[239]

Coding criteria and categories

Initially, texts and interview records were reviewed according to these criteria:

- frequency of mention of a person, place or issue,
- topical issues (women in the courts, court fund/poor box, access to justice issues),
- historic interest (events, characters, stories),
- emerging themes that await definition, and
- something that sparks emotion or resonates.

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[235] Much of the data collected being fine-grained, the need emerged for a correspondingly detailed coding system: the very first interview (with a retired magistrate and former clerk in his 80s) was so rich in historical facts, allusions and opinions that more than fifty promising themes were identified. There was a risk of creating a large and unwieldy number of descriptors that would prove unmanageable, adding complexity without commensurate epistemological value, but the categories continued to be useful. As the project progressed, themes and categories were discarded, introduced, re-evaluated and deepened; one can be both a 'splitter' and a 'lumper' as the task requires. Bernard and Ryan (2010, p. 95).

[236] Saldaña reminds the researcher to remain epistemologically conscious in the coding process: 'What "filter" am I using?' (2010, pp. 6,7). Direct comments and allusions to culture, change and the exercise of power resulted in codes such as 'women in the courts', 'recruitment and training' (a sub-category under 'systems'), 'bullying', 'camaraderie', 'leadership' and 'innovation'. 'Alcohol and the pub' formed a large node, as did 'Catholic-Protestant divide'. 'Career and promotion (narrative, opportunity, factors inhibiting/discouraging career growth)' was a highly-populated node, as was 'Larrikins, miscreants, bad behaviour'. Looking at these codes, I can see how my human resources management background has influenced category identification and acted as a secondary filter.

[237] Textual sources could also be coded but I did not often find this necessary since my Endnote library was organised into parallel groupings. I frequently moved between the databases.

[238] A patient process, grounded theory involves 'the progressive identification and integration of categories of meaning from data'. Willig (2013, p. 70). Corbin (1990) recommends beginning the process by repetitive immersion in the data to identify useful labels or themes.

[239] '… qualitative research is not a linear, step-by-step process. Data collection and analysis is a simultaneous activity in qualitative research. Analysis begins with the first interview, the first observation, the first document read. Emerging insights, hunches, and tentative hypotheses direct the next phase of data collection, which in turn leads to the refinement or reformulation of questions, and so on' (Merriam & Tisdell 2016, p. 165).

Once theoretical insights had begun to emerge, more thematic coding[240] enabled the synthesis of larger amounts of data. This resulted in a structure of conceptual themes that promoted the emergence of the theoretical framework outlined in Chapter 7 and its subheadings.[241] These themes included the passion of clerks for their work and their sense of making a difference to vulnerable court users, their sense of the power inherent in their position and the contradictory frustrations of operating within a bureaucracy, striking generational differences within the cohort, gender considerations with the commencement of women as clerks, and admissions of failure that contrasted painfully with their sense of professional pride.

Limitations of the research

The research gap is substantial, and one doctoral study cannot hope to bridge it. This research generated a vast amount of information and some management of cohort expectations was required. Material that could not be used for the current project will be a catalyst for further research and publication.

Insofar as this work has involved living people, collecting data was not straightforward, linear or predictable. Even well-informed and on-board interviewees may say too little, utter misleading statements, be internally contradictory in their accounts, interpret phenomena idiosyncratically, speak without reflecting, change their minds, or protect some fact or belief from disclosure for their own reasons. Involvement in this kind of research is entirely voluntary, and every step in the investigation process is optional: interviewees may choose to proceed so far and no further. One is constantly aware of information withheld - a silence, an evasion (one aspect of what Azevedo et al. call 'missingness')[242] - but this normal aspect of research with humans also leaves its imprint like the negative space in a picture.

Although every effort has been made to correlate claims and supplement gaps, human memories are fallible.[243] Some of what a person shares may be not be evidence-based but framed by opinion or influenced by someone else's, or derive from shared, perhaps

[240] Charmaz uses the term 'focused' (2014).
[241] With NVivo, one can see at a glance where a node has not been much used and has become a 'ghost town'. If a node remained virtually unpopulated it was usually because another category worked better; its contents can then be relocated there.
[242] Absent data is seen as 'an implicit topic useful for the discussion (as an explanation or as a limitation) that demands further attention' (Azevedo, Martins & Maia 2018, p. 72).
[243] Checking of dates, names, events, sources and locating contextual information was a necessary and time-consuming component this research, a consideration surprisingly absent in qualitative research texts dealing with data analysis. There is by contrast abundant literature on journalistic fact-checking, for example Amazeen (2018).

apocryphal knowledge. Personality, generational, gender-based, status-driven, religious, cultural or political factors may be active as filters or drivers. Yet these effects are also 'data' and important to consider in the process of analysis (Glaser 2007).

This is a conversation with many voices. Amongst the 61 people interviewed were respected key players and influential leaders; there was a sizeable contingent of 'foot soldiers' and there are also some voices from the margins of the group or just outside it. Sometimes they speak in parallel, but they are just as often at cross-purposes.[244] Divergent voices have been sought, heard and recorded. The cohort was from this point of view reasonably representative, but essentially reflected insider views.[245] Effort was made to include 'elders' of the cohort in this research: to the extent that these are unique characters from a passing generation, some findings may not be, in research terms, 'repeatable'.[246]

Finally, As Klag and Langley (2013) so aptly express it, 'conceptual leaps may be as varied as the individuals that engage in conceptual leaping and the circumstances in which they leap at particular moments in time';[247] this applies to both researcher and the researched.

Conclusion

Interviewees consistently voiced their belief in the curatorial import of the data collected and their interest in how the information was to be used. This adds a further level of research accountability. The methodological approaches explained here have facilitated new knowledge that elevates our understanding of the People's Court and its contribution to the Victorian community. The cultural, operational and social justice issues raised are both obvious and subtle. The resultant findings - data rich in detail, revealing and sometimes surprising - are outlined in the next three chapters.

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[244] Quoting from published texts and referencing quotations collected in interviews may both be seen as 'borrowing of others' words' (Pennycook 1996, p. 202).

[245] Hilary Astor describes this quandary in her research on English and Welsh magistrates' clerks: 'It would have been most attractive to have been able to conduct formal interviews with magistrates, police officers, defendants, lawyers, social services and probation workers on their views of clerks. However to have done this would have multiplied the number of interviews needed by at least five and would have required a much more extensive project. … Inevitably this means that the project is about the clerks and reflects their view of their world of work. But this was in essence what the research set out to do, to examine what clerks do, the extent of their power and influence and the enormous impact that their behaviour has on all other court users'. Astor (1984, p. 30).

[246] No doubt interviewees would have reacted differently to another interviewer and a different researcher may have sought other angles to the research. The research may not be in that sense replicable. It is however based on sound methodology that is readily applicable to other projects of this nature.

[247] Conclusion; no pagination.

The first of these, Chapter 4, details the dissonances between the clerks' formal role and how they chose to perform it. Subject as they were to direction from senior officers, magistrates and the executive of the Law Department, their work was also dictated by statute and set out within increasingly detailed books of instructions, yet there was room for discretion in the operation of the court. Actual supervision could be minimal, the Law Department remote culturally and geographically, and the clerks' *Instructions* could not hope to cover every contingency that arose in the dynamic court environment. Day to day choices and decisions made by clerks of courts therefore impacted significantly on sociolegal policy implementation and service delivery in the People's Court.

Chapter 4:

The business of the Court: tradition and transformation

We will not return to the old ways; change will be accelerated.

President, Clerk of Courts Group, 1978.[248]

Introduction

The two decades from 1970 have been called 'The Golden Age for Australian law reform' (Neave 2002, p. 1). While, as acknowledged by Roach Anleu and Mack (2007, p. 185), 'Law itself is not necessarily the most important factor in understanding how society changes', many of these legislative initiatives did transform the operation of the court and its accessibility and helpfulness to court users. In the 1980s, sweeping change and a new generation shone light on accepted practices that suddenly no longer seemed appropriate. This was also an intense period of reform in executive and operational management.[249]

In the 1970s law reform pertaining to the Victorian summary jurisdiction was addressed by a Magistrates' Courts Reform Committee appointed by the Attorney-General (comprising two representatives from each of the Law Institute, the Bar Council and the Magistrates) and the Chief Justices Law Reform Committee, headed by Mr Justice Smith and the Chief Magistrate.[250] The election of the Cain government in 1982, however, accelerated law reform under the leadership of Attorney-General Jim Kennan[251] with an ambitious program of legislative and procedural innovation in both the criminal and civil jurisdictions.[252] The resulting expansion of the summary jurisdiction and the increasing

[248] Ryan, K 1978. 'Editorial'. *Chronicle: Journal of the Clerks of Courts*, 19, 4, July p. 17.
[249] 'The most important social technology of the 20th century was management, our ability to bring people together to do things at scale with ever improving efficiency and quality' Hamel (2015, p. 32).
[250] 1972. Alston, R, 'Victorian Magistrates Courts', reprinted in: *Chronicle: Journal of the Clerks of Courts*, 15, 1, February p. 3.
[251] Jim Harley Kennan (1946 - 2010) was Victoria's Attorney-General during 1983-87 and 1990-92.
[252] 'Arguably the last of the social-democratic governments in Australia, the advent of John Cain's Labor Party administration in the Australian state of Victoria in April 1982 was seen by many as a welcome "sea-change" after 27 years of continuous conservative reign … Labor remained out of power from 1955 until 3

complexity of cases were key factors in the push to professionalise the bench. A suite of necessary changes included the decommissioning of justices' judicial role, the requirement for legal qualifications for magistrates and 'indirectly, opening up the possibility of appointment of women to the bench as a result of this change'.[253]

'We will not return to the old ways; change will be accelerated,' wrote the President of the Clerk of Courts Group in 1978.[254] In 1980 the *Chronicle* published an article on law reform by the then Attorney-General Haddon Storey, editorially endorsing his advocacy for change.[255] The end of seniority in selection processes, the success of the new court complex in Prahran, the secondment of a clerk to the Legal Aid Committee and the use of clerks as consultants to report on the operation of the court system were cited as definitive developments.[256] Further, this was evidence of clerks being recognised for the nature and level of their expertise: the possibility of their being 'confident enough' to apply for positions outside the Law Department was addressed for the first time as a positive.[257]

This chapter begins answering the research questions posed earlier that concern the formal and informal influence of clerks between 1948 to 1989. The operational norms of the summary jurisdiction are described to lay the foundation for an understanding of the significance of micro changes and macro reforms and their impact on clerks of courts and their services to the community.

April 1982 when it again acceded to the Treasury Benches under Cain's leadership and went on to retain government for three parliamentary terms.' Harkness (2013, p. 27).

[253] By 1992, magistrates were 'routinely dealing with offences which would have been heard by the County Court'. Douglas, R and Laster (1992, p. 53).

[254] Ryan, K 1978. 'Editorial'. *Chronicle: Journal of the Clerks of Courts*, 19, 4, July p. 17.

[255] 'When I was appointed Attorney-General in 1976, one of my first duties was to consider the effect of archaic provisions in the major laws affecting the citizens of Victoria', he wrote; 'anomalous and anachronistic provisions had to be repealed and replaced with new provisions reflecting modern values and dealing with modern problems'. Storey, H 1980. 'Reforming and Modernising the Law'. *Chronicle: The Journal of the Clerks of Courts*, 20, 4, December p. 200. The editor, Lance Pilgrim (later to become a County Court judge), endorsed the Attorney-General's comments on p. 197. Storey (1930 -) was Victoria's Attorney-General from 1978 to 1982.

[256] The Legal Aid Committee was established by the *Legal Aid Act 1961* (Vic), commencing in 1964 and providing aid mainly in the civil and minor criminal jurisdictions of the magistrates' court. Its functions and a much broader mandate were taken over by the Legal Aid Commission of Victoria in 1978. See Smith, S (2019, p. 134) and Wikipedia contributors (2020).

[257] Ryan, K 1978. 'Editorial'. *Chronicle: Journal of the Clerks of Courts*, 19, 4, July p. 17.

Daily work in the courts

Clerks were the administrative and operative nuclei of magistrates' courts. Judiciary, police, barristers and solicitors and members of the public from all walks of life - governmental, professional, political, trades, commercial, 'the criminal class', the destitute, the aged and the very young - all had discrete working relationships with court staff. Clerks convened benches, briefed magistrates, opened the court, called and swore in witnesses and closed the court. Clerks ran the court office and were present there as visible and accessible representatives of the justice system. This was especially important in the outer suburbs or regional areas where government services taken for granted by Melbourne residents might otherwise be minimal or entirely absent.

Court was a centre of civic life: there one came face to face with the some of the most confronting aspects of society. Evidence of the effects of poverty, addiction, exploitation and disadvantage played out daily in the business of the court and impacted on all who worked and visited there. Much of the court's work allowed a discretionary dimension; court officials had many opportunities to help or hinder. These daily acts could be as simple as extra time taken to listen to people and provide advice or practical help, but sometimes formal boundaries were overstepped and risks taken to assist a court user, even to the extent of defying instructions from those in authority. When interviewees alluded to career highlights or the pride they took in their work, it was often this discretionary aspect that they chose to discuss. 'Quite honestly, I loved it', declared a former clerk. 'I helped a lot of people I didn't have to. That's what I always enjoyed knowing.'[258]

It must be remembered that court facilities were often woefully inadequate for the purpose and people they were supposed to serve. As one solicitor commented, they were often 'cold, airless and poorly lit'. There was no privacy. Barristers, prosecutors and witnesses would often have to sit cheek by jowl while awaiting their hearing: 'If a deserted wife desires the Clerk of Courts to issue a maintenance summons on her behalf it is often necessary for her to recite the personal, and sometimes embarrassing, details of

[258] 2018. Interview #20.

the marriage in the presence of other clerks and members of the public who happen to be in the office at the time.'[259]

Although the clerks' book of *Instructions* became more detailed and complex with each edition, it could not provide guidelines sufficiently nuanced to deal with the enormous variety of ways in which problems and issues presented themselves during any business day. A *Chronicle* editorial, for example, delivers a 'brick-bat' 'to the powers that be, who failed to send instructions to Clerks during the recent bank strike as to the procedure to be adopted. Clerks had to make their own decisions to do this, allowing them to use their initiative, which is good, but it could leave them open to charges for failing to comply with the Instructions.'[260] Pragmatism and inventiveness born of experience, together with the cultural values clerks brought to their work, would sometimes engender methods and systems that were not officially endorsed. A former clerk said, 'One of the things I've always loved about courts people is that they're incredibly resourceful - nothing was impossible. Clerks of courts always made improvements even before all those continuous improvement programs'.[261] Usually this flexibility worked in favour of the court's efficiency and responsiveness to court users, but sometimes it did not.

Statutory duties

The clerks' statutory role was perfunctorily described, if at all, in early legislation pertaining to the summary jurisdiction. Record keeping and submission of returns are described in s 32 of the *Offenders Punishment and Summary Jurisdiction Act 1832* (NSW). Towards the end of the nineteenth century we see more specificity in relation to some aspects of the clerks' role: the *Justices Act 1887* (Vic) describes requirements for fee-taking and probity relating to their administration (ss 7-11) and the receipt, curatorship and handling of informations, summonses and warrants (ss 20-29). These had by that time, of course, increased considerably in complexity. Decades later, the *Justices Act 1958* (Vic), ss 86 and 87, and Part IV of the *Magistrates' Court Act 1971*

[259] 1972. Alston, R, 'Victorian Magistrates Courts', reprinted in: *Chronicle, Journal of the Clerks of Courts*, 15, 1, February p. 1.
[260] Bedohazy 1974. 'Editorial'. *Chronicle, Journal of the Clerks of Courts*, 17, 1, February p. 1.
[261] 2017. Interview #31. A key finding in the 1992 research of Douglas and Laster was that magistrates evinced 'hostility to measures which strip the courts of their discretion' (Douglas, R & Laster 1992, p. 64).

(Vic) similarly both describe the clerk's and deputy clerk's responsibilities as to keeping of court records, taking of warrants and issuing of summonses and licences. By implication, it is clear however from the earliest evidence that the clerk was expected to be fully conversant with the powers and responsibilities pertaining to justices and the operation of the Courts of Petty Sessions. Explanatory court circulars, eventually to be wholly or partially replaced by printings of the *Instructions*, were sent to both clerks and justices, and clerks enjoined to advise and remind the bench as to procedure and evolving legislative requirements.[262]

Administrative duties

Until 1968 the *Instructions* summarised the work and expected work ethic of clerks under a series of headings in the Preface.[263] The significantly modernised and more detailed 1967/8 edition of the *Instructions* was intended not only to provide instructions, as in the past, but to act as a training manual, although no formal training was yet in place.[264] Applicable statutes and regulations were specified for some duties. A focus on supervision and personnel matters was also introduced in this edition.[265]

- Clerks were expected to be 'thoroughly conversant' with the relevant legislation and regulations and departmental instructions. The 1967 edition introduced a section on the giving of advice to both the public and honorary justices.[266] Amendments to legislation were to be cut and pasted, or hand-written, into each clerk's *Instructions* book. As seen above, clerks were expected to draw the attention of magistrates to these as they were issued.

[262] Harriman, 1885. 'Circular No. 84, 15 July'. *Circulars to Clerks of Courts from Law Department*,. PROV, VPRS 7609/P0001/1.
[263] Williams, Galagher and Wheelhouse (1958, pp. vii-x). The content and tone of the Preface changes little from the first edition to the 1957 version.
[264] The edition is cited as 1967 but the Secretary's foreword in the edition used for this research dates from 1968.
[265] 'Foreword'. Law Department Victoria (1967, p. 9).
[266] 'Officers shall confine advice given to the public to matters within the scope of their duties and knowledge.' Law Department Victoria (1967, p. 9).

- Trust was placed in clerks to manage money and records in a scrupulous manner.[267] The court handled substantial amounts of money, providing the government with income from various sources: 'The prompt banking of official moneys is essential. The Audit Act …. should be constantly kept in mind'.[268] The accounts were managed by qualified clerks, but errands to the bank were the work of juniors.[269] The Poor Box (discussed below) is treated as an accounting function.[270]
- Correspondence was to be answered 'promptly'.[271]
- 'The taking of depositions is one of the most important duties of a Clerk of Courts ... He should endeavour to write legibly and rapidly' with 'at least, an elementary knowledge of the admissibility of evidence; so equipped, he will save the court a lot of time and himself much unnecessary writing and correction when challenged matter has to be expunged from the depositions.'[272]
- Preparation and checking of informations, summonses, warrants, convictions and orders was everyday essential work.[273] Oversights and errors in paperwork could result in a waste of public and court time as in the example just cited, or more

[267] Supervision, regular reporting, auditing and inspections were the main means of ensuring rigour in accounting, but the fact that clerks did occasionally fail the probity test shows that there was ample opportunity for defalcation. Perhaps surprising is that over 180 years there have been very few recorded cases of clerks abusing this trust, even allowing for those where the clerk was confronted informally and the matter hushed up (2019. Interview #58).

[268] The *Audit Act 1957* (Vic) is again invoked in Instruction 31: 'any officer neglecting to collect money payable to him for the revenue is liable to forfeit a sum equal to twice the amount omitted to be collected'. Williams, Galagher and Wheelhouse (1958, p. 12). This Act was repealed by the *Audit Act 1958* and the provision replicated in s 11 (2).

[269] Monies collected included fines issued through and by court process, and fees generated mainly through the applications for licences. Clerks kept a Register of Accounts, a Collector's Cash Book, a Fine Book where business was large, a Suitors' Cash Book, an All Jurisdictions Receipt Book, a Licensing fees Receipt Book, a Book of Investments (on behalf of infants and people with a disability), a Poor Box Fund and Cash Book. The clerk would manage the revenue and trust accounts and balance them at the end of each month.

[270] Law Department Victoria (1967, pp. 22,3).

[271] 'Not more than one post shall be allowed to elapse between the receipt of any letter and the dispatch of the answer, unless there are special circumstances.' Law Department Victoria (1967, p. 11).

[272] In committal cases, the clerk of courts was required to record proceedings in longhand. They contained the names of informants and witnesses, the evidence given by each party, and the resultant decision and sanctions, and were of vital evidentiary importance in any ongoing proceedings. Former clerk Kevin Anderson recalls evidence being 'taken down in longhand by the clerk of court whose speed was inspiring, but legibility often left a lot to be desired'. Anderson (1986, p. 31).

[273] Clerks were encouraged to speed up the preparation of documents requiring copies by using a typewriter 'if available'. The use of 'a little ingenuity' is suggested in the 1958 edition. Williams, Galagher and Wheelhouse (1958, p. ix).

seriously, subverting the course of justice - invalidating an order for imprisonment, release or committal.

- Clerks were sternly reminded that delay in the transmission of returns 'may have serious consequences' with respect to the higher courts.[274]
- 'Clerks of Courts should exercise the utmost tact in attending to the public. In giving legal advice they should be careful to confine their opinions to matters that come within the scope of their duties.'[275]
- Granting and renewal of various kinds of licences and permits was a large part of the clerks' administrative work and impacted substantially on local economies. Clerks kept licence books and forms and managed fee payments and associated returns.[276]
- There are specific sections on the husbandry of court buildings and furniture;[277] office management;[278] correspondence, postage and duty stamps; accounts; and management of witnesses and jurors.

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[274] Clerks were required to collect statistics and submit returns to the government. A relieving clerk of courts who enjoyed fishing and wished to ensure his continued deployment at the quiet outpost of Bendoc fabricated a large number of cases in his returns, convincing the Law Department that a new courthouse should be built there: Challinger (2001, p. 18). 'It looked like a mini-Parthenon', remarked one interviewee (2018. Interview #12); '[The clerk] did outside courts [as a reliever] - including Bendoc, population 35 ... Bendoc had two court sessions twice a year - [he] liked getting the mileage - picking up the mail and then going fishing. So he told the one-man police station to go and get more convictions. He worked really hard and got one more case. Then [he] had a brainwave - a Sheep Carrier's licence, no fee. He posted the licence to everyone registered on the electoral roll - husbands, wives, what have you. Told the local copper what he was doing - the locals were calling to ask 'What's this?' The figures went up to 30 or 40 - 'There must have been a mini crime wave in Bendoc?!''

[275] Williams, Galagher and Wheelhouse (1958, pp. vii - ix).

[276] S 6.5, pp. 15,6.

[277] 'He shall keep a catalogue of all text books, law reports, Commonwealth and State Acts and Statutory Rules.' As office manager the clerk kept a supply of forms and stationery, but also, in courts where there was no electric or gas heating, chopped firewood and kept the hearth stoked in both the courtroom and the office. Stationery, forms, office supplies and furniture had to be ordered via the Law Department, which kept a steely eye on any tendency to profligacy, and repairs via the Public Works Department. 'The strictest economy must be exercised in applying for, and in the use of, forms and stationery. Envelopes of a larger size than is absolutely necessary to cover the enclosures should not be used. … Obsolete Forms May be Used for Correspondence.' Again, 'The strictest economy must be exercised in the use of postage stamps and envelopes.' Williams, Galagher and Wheelhouse (1958, pp. 8,5,6). There are additional instructions for the upkeep of departmental residences (p. 7).

[278] 'N.B. A Clerk of Courts upon assuming office at any place should not adopt a complacent attitude towards the condition of the office. He should not hesitate to improve upon inadequate systems previously used'. Williams, Galagher and Wheelhouse (1958, p. x).

- Attendance, punctuality and probity were emphasised.[279] 'Clerks of Courts are … placed in trustworthy positions, and any breach of that trust will be regarded more seriously than a similar offence committed by an officer under direct and regular supervision.'[280]
- Family services, some of which amounted to welfare, were not assigned a category of their own in the *Instructions* although they were an important part of the court's work. These included handling maintenance payments, advising victims of domestic violence, paying poor box monies to applicants, applying for probate and conducting marriage ceremonies.[281]

This basic information was supplemented by the clerks' local adaptations and formulation of statewide procedures and rules to manage the implementation of new legislation (ideas were discussed at Clerk of Court Group meetings and published from time to time in the *Chronicle*).[282]

[279] Clerks in the country found that their position made them accessible to the public even off-duty, so 'punctuality' seemed rather beside the point.

[280] Williams, Galagher and Wheelhouse (1958, p. viii). In the 1968 edition a requirement for attendance books is introduced, and sole operators are instructed to keep a diary (pp. 5,6). Attendance books had however been in use in the City Court at least since the 1930s. Anderson (1986, pp. 10,1).

[281] From Federation in 1901 until 1961, each state and territory was responsible for regulating marriage. After the *Marriage Act 1961* (Cth) and its regulations (1963), clerks and deputy clerks at certain courts could be designated civil marriage officials under s 9, although the first non-religious and non-governmental marriage celebrant was not officially appointed until 1973. A Code of Practice for celebrants was later developed, but until then celebrants often asked the advice of clerks of courts (2018. Interview #20). Clerks could develop their own ceremony protocols (2018. Interview #6). 'As to performing marriages, there was no instruction apart from peers. After the first 20 or so, you got the "hang of it".' 2018. Personal communication, 9 July. If clerks carried out their duty to the letter it could be a very perfunctory business, but many took pleasure in tailoring the ceremony to the requirements of the couple and tried to make it memorable (2018. Interview #9). One former clerk described offering to perform a marriage ceremony for a mature-age work-experience student at his court. 'She gave me a brief outline of her background etc which included being engaged to be married to a young man who was a member of the Defence Force and who was to be deployed within the next 7 days. She was worried her marriage may not get to happen in the event something happened to him. I satisfied myself that she was very sincere and very mature for her age. I explained as 2IC I was a Marriage Celebrant and a Prescribed Authority (to shorten time) and offered to marry them … They were happily married by 10.00 am that day!' 2018. Personal communication, 24 April.

[282] See, for example, the extensive set of proposals by Ferguson, J 1981: 'Suggested Procedure for New Civil Jurisdiction'. *Chronicle: Journal of the Clerks of Courts*, 21, 2, June pp. 262-7. John Ferguson was a senior clerk.

Task allocation

One of the most public roles of the clerk - that of bench clerk - was traditionally performed by the newest of the cohort. This was considered the quickest and most efficient way for recruits to learn about the justice system. When not in court, trainees performed the more routine tasks of the court office (called 'grot work'), such as opening and sorting mail, filing process and taking cash to the bank.[283] More senior clerks managed the cash functions and handled enquiries at the counter. Larger courts had experienced clerks dedicated to case co-ordination and other specialist functions. A junior was likely to have a wider variety of duties in a smaller court with less specialisation.

Having qualified as a clerk of courts, one could be appointed as clerk in charge of a one-person court and would be expected to perform all court services without immediate supervision.[284] Clerks sometimes likened managing a court to 'running your own business': they would learn from practices at other courts and there was a covert competitiveness between like courts. If the person had been recruited straight out of school, as was the norm until the mid-1980s, and qualified quickly, some of these appointees might be just out of their teens. The Law Department's policy of staff rotation for juniors ensured resource flexibility and ideally built breadth of experience.

Before the substantial court closures in the mid-1980s, many small courts were staffed by teams of two or three clerks. Staff in these courts developed efficient teamwork and multi-skilling across a range of court functions. Micro-cultures evolved, infused by the character of the senior staff and magistrates, the demographic of the local community and the architecture of the court building.

[283] 'In a busy suburban court the filing of process is very important and occupies considerable time.' Williams, Galagher and Wheelhouse (1958, p. ix). Process could only be destroyed after fifteen years and under the supervision of an auditor, so there was much material requiring storage.
[284] These smaller courts might only be open two or three days in a week, and on the other days the clerk might independently service other sole-operator courts or rejoin the team at the 'parent' court.

Unofficial duties

The clerk had status in smaller communities. In contrast to commonly-understood characterisations of bureaucrats, clerks tended to see their job as vocational: a values-driven calling that demanded their engagement as a whole person. As 'independent officials of the court'[285] they enacted protocols and knowledgeably applied statutory law, but the best operators brought life experience, character and people skills to the mix.[286] It was, after all, the People's Court.

Clerks were aware of the powers inherent in their position and their discretion to use it. One interviewee remarked that it was 'a bit of a coup being a clerk of the magistrates' courts - you had powers to sign things, you had a degree of respect - you weren't just some hack working in a department - there was a degree of specialness, and courts were respected and people who worked in courts were respected'.[287] This sounds tantamount to hubris, but according to interviewees most clerks were conscious of the good fortune of being in their roles as court officials and their consequent responsibility to the community. As one (former-clerk) magistrate commented, 'Some people are too worried about the status of the office - mum and dad taught me a bit of humility. Take enough time to hear their story - that's what it's about. The majority of people - they haven't had the opportunities that we've had'.[288]

Community involvement

As the local centre of government the court functioned like a citizens' advice bureau, especially in a country town. People would come to the courthouse with questions about a range of matters, not always court-related, and the clerk would try to help.[289] 'You'd listen to their problems and issues - you had time, I suppose. I never saw any clerk turn

[285] Clerks 'had an interesting culture - saw themselves not as public servants, very independent thinking. … You were an independent officer of the court' (2017. Interview #25). One interviewee commented that some newer recruits post 1989 were about 'Getting contacts to get a job, so they're not going to be independent' (2017. Interview #46).
[286] The concept of *judicial* independence as expressed by Locke in the 17th century is accepted by most Western democracies (Locke & Cox 1982). For many reasons administrative independence has not been as eagerly embraced by either governments or populace; public servants always serve several masters.
[287] 2017. Interview #31.
[288] 2018. Interview #10.
[289] 2018. Interview #19.

their back on people - they were good with their people skills,' remarked one interviewee.[290] Another remarked,

> You were a sounding-board with the local community. This was good experience for the clerks who became magistrates. You had your finger on the pulse re what was going on in the town and you developed an empathy. [A visiting inspector] … said, 'One of the complaints about you is that you spend too much time with the public'. I said, 'Well people come with a problem; I sit with them perhaps for 10 or 20 minutes; I'll say oh! Really! Oh! And by the end of the 10 or 20 minutes their problem will have been solved and I haven't said a word'. And I said, 'After all, I am a. Public. Servant'.[291]

Clerks not only occupied a respected public role but in smaller communities would also be seen coaching local sport teams, captaining the tennis club, being a member of Lions, Apex or Masonic clubs, leading a Scout pack, or otherwise involved in community activities requiring organisational and leadership skills.[292] Some helped establish or revive youth clubs to help address issues caused by juvenile boredom.[293] 'In the country, you had a certain position in the town - they'd get you to draw a lottery to give it credibility', said one former clerk.[294] Work did not always end at five pm; at the end of the day or on the weekend, clerks could be approached in the pub or in the street for a chat about a warrant or an upcoming court appearance.[295]

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[290] 2018. Interview #10.

[291] 2018. Interview #57. Another former clerk said, 'I liked to listen to people. A woman said to me once, "Ah, gosh, Catholics are lucky - they've got confession!" Whereas [the public] would come along and tell you their problems, and quite often, they've got the answer themselves but they just wanted someone to listen. It's a shame we didn't have the proper facilities to *hear*. Thank God it wasn't as busy as it would be today. … When it was all over - "Yeah, that's what I thought I'd do. Just wanted it to confirm it, yeah". So you felt like you'd done some good'. 2018. Interview #55.

[292] 2017. Interview #50; 2017. Interview #4; 2017. Interview #21; 2018. Interview #20; 2018. Interview #40; 2018. Interview #12; 2018. Interview #15.

[293] 2017. Interview #4; 2018. Interview #8.

[294] 2018. Interview #12.

[295] 2018. Interview #20. 'We sometimes did court business [at the pub] - "Hey [name of clerk], could you pay in my maintenance when you get in on Monday and bring me my receipt back? - … I don't like going into the court". I used to get pointed out as a clerk of courts and asked questions' (2018. Interview #19). Another former clerk said the locals would want to talk court business outside the courthouse, but he made it a policy never to handle cash (2018. Interview #20). For obvious reasons, the handling of money after hours was discouraged in the *Instructions*. Williams, Galagher and Wheelhouse (1958, p. viii).

Terry Knight, a father of five, was shocked by the rate of children appearing in court in his country town:

> When I first came as Clerk of Courts I looked through the registers and thought: 'This job will be easy', but when I opened up the Children's Court Register, I knew there was a problem. There were kids needing help and nothing for them. Near where the swimming pool was built there was a hall which had been used as a youth centre but that organisation had collapsed … So I used my power as the person nominated by the Councillors … the first thing we had to do was to get the hall fixed up and get something going for the kids.[296]

Knight was a foundation member of the YMCA at Wodonga. He was a Councillor for twelve months and during that period had the town's only turf wicket funded and constructed. He played cricket and football for local teams, set up cricket teams for three age-groups, and was coach and Club President at various times. He wrote a weekly cricket report for the *Border Morning Mail*, as well as many articles in the *Chronicle* about the cricket matches he helped organise for the clerks.[297] In the late 1950s Knight taught himself rudimentary German so that he could liaise with German-speaking people at the Bonegilla Migrant Camp: 'They would come in to see the Clerk of Courts'.[298] He

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[296] Whitla, J, 2010. 'Knight. 2010'. Wodonga Historical Society, Wodonga pp. 9,10. The author remarks that the interview was interrupted at numerous times by locals coming to pay their respects: 'when the people of Wodonga talk about Terry Knight it is with great affection and respect. Many say a lot of kids would have gone astray if it hadn't been for Terry's caring and the programs he initiated for young people' (p. 11).

[297] When the courthouse at Wodonga was on fire, the town's cricket gear stored there was reportedly given priority in the retrieval of effects. 'Twenty past two in the morning, I get a phone call from Terry via the landlady. "The court's on fire!" Thought, Oh, he's playing a joke. Put a tracksuit on over my pyjamas - all the trucks are banked up; … all the furniture was out on the highway; and I run up into the courtroom and I'm pulling out the big blue registers and files from behind the bench and throwing them out the side door, and Terry comes up and says "What are you doing?!" I said, "I'm saving the registers!" And he said, "Leave the effing things where they are," he said - "get the cricket equipment!"'' In the aftermath Knight did not wait for instructions from the Law Department. 'Within a day or two, he'd lined up another building - a vacant butcher's shop - the next day we were cleaning it up - we found a Union Jack and turned the refrigerator around and put it up …' (2018. Interview #10). There are many stories about Terry Knight, some of them no doubt apocryphal. 'He got away with blue murder up there', remarked one interviewee admiringly (2018. Interview #12). The data used here is sourced from both written accounts (including some by Mr Knight and his wife Marie Knight), interviews with former colleagues and a member of the Knight family, and Wodonga historian Jean Whitla.

[298] He had unsuccessfully applied to the Law Department for a German-English dictionary (2017. Interview #4). It was also reported that Knight and a junior clerk 'started a basketball team at Wodonga with a young priest and played at Bonegilla - we picked up some famous basketballers from Hungary - and won the

agitated for and helped set up a St John's ambulance service for the community in 1961, and was made Superintendent of the Wodonga Division.[299]

On the other hand, it is undeniable that close community connections could become cosy relationships that immunised against criticism and worked against the interests of marginalised groups. One interviewee commented that in some country towns there was perception of court system bias, citing the example of 'the magistrate who had been a clerk, played in the local footy team, drank in the pub - Aboriginal clients didn't think they were getting a fair go'.[300] But the positive and the negative aspects of community engagement were simply not the concern of the Law Department. If the *Instructions* or statutes are taken as the sole sources of authority, none of the extra-curricular activities undertaken by Knight and the many other clerks who were active in their communities were anything to do with their formal role. Community involvement did not further the clerk's career. Some clerks thought was it incumbent upon the senior local representative of justice services to volunteer, and some simply felt the need to contribute to their community; others did as they pleased for good or ill, with little expectation of either praise or censure.[301]

Models of service

Interviewees who had worked in the suburbs gave examples of instances where vulnerable court users were treated with understanding and compassion, regardless of their being 'on the wrong side of the law'. One former clerk recounted:

> At South Melbourne [court], we knew every prostitute in town. They called you 'love' and all that stuff. One poor woman came into the office to pay a fine and she had a brown paper bag that she left behind (so distressed - the coppers must

Premiership - Terry did a lot with the young ones. Kids would come to the courthouse after school to play cricket - he would drive them to Albury' (2018. Interview #10).

[299] There was no ambulance as such; participating local volunteers were permitted to affix St John's stickers to the windscreens of their private vehicles and by arrangement with the local police they would be given priority in traffic when engaged in service. Knight had the volunteers trained in First Aid so that they could use the equipment they carried in their cars (Whitla 2010).

[300] 2018. Interview #34.

[301] One famous clerk, 'a complete and utter rogue', would put up a sign on the courthouse door: 'Back in three days'. 'But if the police needed you, they could always find you'. 2018. Interview #24.

> have given her a hard time) - she ran out, got a taxi and was gone. One of the kids said, 'That's probably her lunch', but when we opened it up, it's full of money. I said, 'Don't even touch it, just put it in the safe'. About an hour later, she came back - 'Look, I know it's a stupid question, but I didn't leave something here?' … We gave her the bag and said, 'You'd better count it'. She said, 'No no, I don't care what you've taken, I'm happy to get it back'. We said 'Madam, we've taken nothing out of it, it's all yours'. And she couldn't believe it.[302]

At a time when it would have been easy to be judgemental about people in these circumstances, this example of probity and respect was modelled for junior staff and remembered.[303]

Several clerks described assisting bereaved people with probate applications. Survivorship applications could be complex, and one clerk recounted helping an elderly lady with hers and calling his contact in the Supreme Court to have her application addressed without delay.[304] A former senior clerk said that in his experience, the 'maintenance women' were usually taken seriously and were given 'a good and sympathetic hearing'.[305] It was common practice to give the maintenance applicant money from the Poor Box to pay for stamp duty and then type up the summons while she went to the Post Office to pay it.[306] There are other accounts of clerks who went as far as threatening and even physically assaulting recalcitrant former partners, knowing it would be unlikely that they would be reported for overstepping the line.[307] Although it is

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[302] 2017. Interview #3.
[303] Retiring Chief Magistrate H. B. Wade (formerly a clerk) was quoted in the newspaper on his retirement: 'I have always felt sorry for the person in the dock. ... I would say 75 per cent of people that appear there should not be there. They are not criminals. I feel they should be the subjects of medical and psychiatric treatment. There should be some institution where they could be sent and treated properly instead of being sent to gaol'. Source: family newspaper clipping (publication unknown), 1963.
[304] The clerk invited her to 'come around and sit behind this side, at a table. I helped her relax – "Stop worrying, I'll fix all this for you, all your worries are over as far as this is concerned". Chat for half an hour. Cost $5 at the post office for stamp duty. Offered to go to the bank manager with her … I rang [name] at the Probate Office - "I'm sending this file down, she's here with me now … - could you make sure you put it at the front of the list". She couldn't believe it, and started crying. She sent flowers when my son was born'. 2018. Interview #19.
[305] 2017. Interview #50.
[306] 2018. Interview #40.
[307] 2018. Interview #12. 'I saw a senior guy once jump the counter and pin a bloke against the wall and say if you don't start to pay your wife maintenance I'll give you a smack on the mouth.' 2018. Interview #19.

important to note such actions were not common practice, some clerks felt very strongly about achieving a result for vulnerable court users.

Among the interviewees' accounts, one story stands out as an example of the extent to which a clerk could go in attempting to assist a member of the public. An order had been issued for a man to pay maintenance, but he had defaulted; the wife could receive no government money because the order existed.[308] Concerned for her, the clerk applied for a court order to seize the man's car and sell it, with the proceeds to go to the wife's maintenance arrears. At this point he encountered the first in a series of bureaucratic hurdles: the police refused to execute the warrant, saying that as a state agency they had no jurisdiction. The clerk referred the order to the Federal Police.

When they too refused to execute the order ('they didn't give a shit'), the clerk, a law student at the time and having researched the legislation, attempted to have a Contempt of Court order issued against the Chief Commissioner of the Commonwealth Police. This controversial move placed the young man under considerable pressure from high-level officialdom (both inside and beyond the court) to back down. 'No', said the clerk reportedly, '*You* go and tell this woman no-one's going to give her her money'. The application was heard by none less than the Chief Magistrate, and swiftly dismissed. A comment was made that this episode of insubordinate activism 'killed [the clerk's] career. [He] didn't get promoted again for a long, long time'. The interviewee added, 'That's the sort of impressive thing clerks of courts have dealt with over the years'.[309] We can only speculate what the complainant made of these well-meaning efforts.

Sadly, some clerks were not courteous or helpful. On one occasion this was addressed in a *Chronicle* editorial:

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[308] 'I was told to try and get maintenance from my husband; that I thought was like getting blood from a stone. How can you get maintenance from someone who has already been ordered to pay, and refuses or just plain disappears.' Comment from a social service client in Benjamin (1977, p. 21).

[309] 2018. Interview #22; 2019. Interview #58. The above account draws on the recollections of two interviewees, including the person who took the actions described. The former clerk in question did not volunteer to tell this story but when asked about it, he confirmed the details, except that he felt his career had not suffered unduly. He still felt strongly about the injustice that had been perpetrated upon the court user, but reflected that he probably would not have gone that far had he been older.

> While most of us provide our time and energy enthusiastically, it must be admitted that some of our members do no more than absolutely necessary. The decision that each Clerk of Courts must make is whether to provide only the minimum and be labelled as just another public servant, or to willingly offer and provide every possible help to those who need our services, and be a true Clerk of Courts.[310]

Another reminder reads: 'Contempt for the public and their needs and requirements in the name of self-interest and the "work load" is something that lowers the standard of our profession'.[311] One interviewee said that in an urban court where he was stationed in the late 1980s,

> There was no such thing as customer service, *none*. ... We were taught by example really to be rude to people. (It changed very quickly I should say; within five years the wheels began to turn a different way, both in terms of drinking and in terms of customer service.) … if you liked the cut of their jib either because they were pleasant or it was an attractive woman or something, you would be as charming as you could be, but if someone came in and they were a little bit annoying, you know you had *carte blanche* to treat them with something bordering on disdain.[312]

He recounted an 'appalling story' story to illustrate:

> a very well-respected clerk came to our court … a woman rang up, quite troublesome - she rang at 4 o'clock and I was trying the best I could - and she just unloaded on me. - 'Put Jeff Simmons on - how dare you - I spent 40 minutes talking to Mr Simmons yesterday!' - 'There must be some misunderstanding - I've been at this court for 18 months and there's no Jeff Simmons'. So I went out

[310] 1980. 'The marketing of a service'. *Chronicle: Journal of the Clerks of Courts*, 20, 1, March p. 135. The use of the term 'true Clerk of Courts' resonates with comments of interviewees.
[311] Bedohazy 1976. 'Do We Take Pride?' *Chronicle: Journal of the Clerks of Courts*, 19, 7, December p. 2. This took up the theme of the 1948 article with the same title, showing that this theme was reiterated over at least five decades.
[312] 2018. Interview #36.

> back into the court (gave her my name and phone number) and said 'You wouldn't believe what happened!' - and the gun clerk said, 'Oh, she was giving me buggery, so I made up a name'.[313]

One interviewee remarked, 'You can have a knack to upset people - I've seen that with some of my colleagues when people come to the counter quite fine, and leave pretty upset - I soon learnt that wasn't the way to do things!'[314]

Poor Box

The dispensing of relief to the poor and needy may seem an anomalous role for the magistrates' court.[315] Its origins, however, were entirely pragmatic and congruent with the operation of the court, since it had been designed to assist persons in emergency situations arising from court business: deserted wives and children awaiting maintenance payments and witnesses or defendants requiring support with their travelling expenses or document issuing fees. But this had changed. The 1970s and '80s saw the Poor Box, a function that operated in every Magistrates' Court in Victoria, now described as 'Victoria's largest single source of emergency cash relief' because 'welfare organisations have been unable to provide the level of assistance from within their limited resources. As a result, such organisations have, on an increasing basis and as a last resort, referred persons to the Poor Box for assistance'. In 1983, disbursements from the Poor Box totalled $ 1, 514, 920.80.[316] 'It was an opportunity to face the real world, people in difficult circumstances', said one interviewee;[317] clerks saw it as playing a 'vital role …

[313] 2018. Interview #36. The slang term 'gun' in this context means experienced and extremely competent.
[314] 2018. Interview #45.
[315] Charities were set up in Victoria almost as soon as the governmental institutions (and the public houses) as a mark of civilised society: 'Such acts of benevolence do greater honour to the colony than even our gold mines, and raise it higher in the opinion of the people of England', proclaimed His Excellency General MacArthur at a subscribers' meeting of the Benevolent Asylum (reported in 1856. *The Argus*, 29 January p. 6). The first charity in Victoria had been established in 1848 by the Jewish community, and there were many more to come. There was a time however when judgmental attitudes meant that 'Neither the government nor the philanthropic individuals on which it was dependent were prepared to admit that any citizen had a right to relief'. Swain (2008).
[316] Law Department Victoria (1985a, pp. 4, Appendix C 5).
[317] 2017. Interview #28.

in our community's welfare'.[318] Such a welfare role did not sit easily with Law Department court reformers in the 1980s.[319]

Magistrates had established the fund independently of the Law Department and it was they who determined the imposition of fines upon certain defendants for the court's Poor Box 'without the "strings" of administration attached to government'.[320] Clerks of courts performed the actual distribution of Poor Box funds and, contrary to formal instructions, the magistrate's sign-off was usually retrospective and perfunctory.[321] People arriving at the counter to apply for money appeared on their own initiative or, with increasing regularity, were referred to the court by other agencies.[322] The decades of the 1970s

[318] A President of the Clerk of Courts Group pointed out in 1981 that 'The applications for assistance not only keep us in touch with people in trouble, but may be said to show the public the "nicer" side of the law'. Ryan, K. 1981. 'Answers - Future of the Poor Box'. *Chronicle: Journal of the Clerks of Courts*, 21, 2, June p. 262.

[319] 'The present administration of the Poor Box Fund may be seen as unsatisfactory for a number of reasons … It should be recognized that the Poor Box is a fund established by Magistrates and not subject to the direction of the Law Department or the Courts Administration Division.' Law Department Victoria (1985b, pp. 14,5).

[320] Law Department Victoria (1985a, p. 11). At the discretion of the magistrate, a contribution to the Poor Box could be ordered where the sentence given was a bond, but the magistrate thought the defendant had received lenient treatment at the hands of the court. Officially, payments from the Poor Box could only be made for charitable purposes. The tradition of dispensing aid from the court derived from England and Ireland (Ireland still has a 'Poor Box'), but the legal backbone of this, the notorious 'Poor Law', was not imported along with it. This left colonial charities 'in the anomalous position of having to discern the "deserving" from the "undeserving", while knowing there was no other institutional assistance for those rejected' O'Brien, A (2011, p. 214).

[321] From 1913, all Poor Box distributions, in theory, had to be signed off by a magistrate; the trust fund, cash book system and the paperwork were subject to audit (1913. 'Circular 13/9295'. *Circulars to Clerks of Courts from Law Department*, PROV, VPRS 7609/P0001/1). The *Instructions* state that 'Payments shall be made only upon an order, in writing, of the Magistrate or Justice to whom the application is made.' Editions prior to 1967 permitted a small amount of cash to be kept on the premises for emergencies: one pound in 1957 and increased to three pounds in 1964. Cheques only were issued after 1967. The instruction that 'Clerks shall not, in any circumstances pay out moneys from the Poor Box Fund and subsequently explain the facts to a Magistrate or Justice and request his signature to authorize the payment' (Law Department Victoria 1967, p. 23) was seldom heeded. As summarised by a former clerk and magistrate: 'The Poor Box was not closely supervised - a bank account really - the magistrate would sign off at the end of the week, unless the inspector was coming. Listen to them, give them something: end of the week, what about the Poor Box? - That's all right - phsh! Sign them off' (2018. Interview #56).

[322] 'Clerks of Courts are not formally trained to provide assistance to the public on welfare matters.' Law Department Victoria (1985b, p. 14).

and ’80s saw increasing demand upon the Poor Box (later called Court Fund)[323] in Victoria.[324]

Some community groups (including the Victorian Emergency Relief Committee) criticised the inadequacy and lack of consistency of Poor Box procedures, and some in the welfare sector decried the clerks’ lack of engagement with social welfare planning and policy.[325] Yet the Poor Box was an essential and appreciated service to the community, as this excerpt about clerks of courts from a publication by the Action Resource Centre for Low Income Families shows:

> This group of people would be the most humane workers in the law field. They have an understanding of persons who are in crisis situations, unable to pay debts and need cash assistance to enable them to buy a bit of food or pay the rent arrears, keep the law at bay by paying up a fine and keeping the hire purchase hounds off their backs. The welfare field has to call on the Clerk of Courts quite heavily … Cash assistance is the only way a family can survive if in a crisis situation, for example, evictions, food, gas or electricity cut offs, waiting periods for unemployment and sickness benefits, retrenchments, etc. Who else can they turn to for aid when they face these problems. Welfare Agencies ... have to send

[323] Clerks had long agitated for the anachronistic name of this service to change. An item in the minutes of a Clerk of Courts Group executive meeting in August 1974 reads: ‘Moved that the Secretary write to the Secretary, Law Department suggesting that the name “Poor Box” be changed in view of the stigma attached to poor box. - Carried’. 1974. *Chronicle: Journal of the Clerks of Courts*, 17, 3, September p. 5. In 1985, however, it was still called the Poor Box; it is now known as ‘The Magistrates’ Court Fund’. In 2013 a Supreme Court decision ruled that magistrates could no longer direct that monies be paid directly to charities.

[324] ‘In recent years there has been a massive increase in the demand … because both public and private organizations have increasingly referred persons to the Courts for assistance from the Poor Box.’ Law Department Victoria (1985b, p. 14). In August/September 1980, Clerks of Courts participated in a state-wide recording system for relief agencies (the Victorian Emergency Relief Project). The results showed that the proportion of requests to relief agencies and to courts from people on social security pensions was identical (80%). Gow, H 1980. ‘What is the Future of the Court Poor Box?’ *Chronicle: Journal of the Clerks of Courts*, 21, 1, March p. 225.

[325] These groups included the Council for the Single Mother and her Child, the Aboriginal Advancement League, the Action Resource Centre, North Richmond Survival Group, the St Kilda Income Stretcher and the Dandenong Citizens’ Advice Bureau (Law Department Victoria 1985a). These and other issues were discussed in Law Department Victoria (1985a, p. 8). See also Law Department Victoria (1985b, pp. 13-5).

families in need of cash assistance to their local Court House' (Benjamin 1977, p. 22).[326]

The Poor Box had long been an antiquated concept when most of the cohort in this study were working as clerks of courts. Additionally, until it was reformed, it was often a security risk and, essential or not, rarely a pleasant experience for either clerk or applicant. An account from Hansard in 1982 describes the 'absolute degradation' experienced by people who went from welfare agency to court office. 'In Victoria they may have to go to the clerk of the court for a handout from the poor box - that relic of a bygone era - and confront people who vary in their sympathy and experience. They almost always have no training in social work and they require … demeaning details of people's poverty.'[327]

The Poor Box was open to subjective judgement and manipulation, and opaque to scrutiny.[328] In the *Instructions*, it was simply treated as an accounting function, with clerks being required to enter receipts and bank moneys into an interest-bearing cheque account.[329] By the mid-1980s the average payment was about $30,[330] but there were no

[326] The Action Resource Centre for low-income families opened in 1976 on a self-management basis, taking over from the Family Centre which was run by the Brotherhood of St Lawrence. The centre was originally partially funded by BSL, but it later withdrew financial support.

[327] 'The absolute degradation felt by people who have to swallow their pride and go to an agency and beg for assistance is something most of us in this country know nothing about. Having to tell your story to strangers, and then be offered a totally inadequate amount of assistance, because the agency is low on resources, is a cruel irony when leaders presently boast of prosperity and growth rates ahead of other Western countries. There is a world of difference between the rhetoric of a lucky, prosperous country in which all of us can flourish, which we hear so often in this place, and the reality of the situation as described by the welfare agencies.' Commonwealth, *Parliamentary Debates*, Senate, 5 May 1982, 1827 (Grimes).

[328] Records were subject to state audit and internal inspections (Law Department Victoria 1985b, p. 14). Apart from lack of training, cramped court facilities often precluded following the advice given to clerks by a writer (probably a senior clerk) in the *Chronicle*: 'It is important that where people are forced by financial stress to approach the clerk of courts, arrangements should be made to preserve their dignity and the confidentiality of their cause. Applications for assistance, where possible, are dealt with in private' (1980. 'The Court Poor Box in Victoria'. *Chronicle: Journal of the Clerks of Courts*, 20, 1, March p. 138).

[329] Law Department Victoria (1967) Section 6.10, pp. 22,3. It was only in 1913 that official policy had first been formulated to govern the management of the Poor Box. 1980. The Court Poor Box in Victoria. *Chronicle: Journal of the Clerks of Courts*, 20, 1, March p. 138.

[330] 'The only criterion for assistance from the Poor Box is whether there is a need for immediate assistance and there are no limits or suggested limits as to the level that should be provided. … As a matter of practice a person seeking assistance is asked to provide details to establish his immediate financial need and some Courts require a completed questionnaire. In some cases … documentation has been issued by a welfare agency' (Law Department Victoria 1985a, p. 7).

guidelines as to how funds were disbursed. This was a role that called for judgement, discretion and sensitivity, but one learnt on the run, with minimal instruction.[331] Interviewees admitted that the Poor Box was open to unorthodox uses.[332] Occasionally a clerk would write out a small cheque to or 'A. Ladder' or 'A. Tray' or 'T. Pot', sometimes with magisterial approval, to obtain items that the Law Department was not disposed to provide.[333] More problematically, a clerk might 'borrow' Poor Box money with the intention of paying it back the next day; at least one clerk was sacked for this offence.[334] One interviewee said it was dipped into to fund parties at the courthouse.[335] Perhaps surprisingly, systemic misappropriation or mishandling of court funds by clerks appears to have been rare, but it did happen both in historic times and within the memory of the research cohort - mainly due, it seems, to poor leadership and permissive local organisational culture.[336]

The worst scenario during the timeframe of this study was in Mildura, the furthest court from head office in Melbourne, where the 'unholy trinity' of a Catholic Monsignor, police chief and clerk of courts colluded in an array of corrupt practices, such as non-receipting of court moneys (including Poor Box payments) that could then be used for

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[331] 'The experience people got depended on the clerk having empathy and being sensible. Somebody who had lost their wallet and couldn't get back to Melbourne - the cheque would be made out to the railways.' 2017. Interview #21.

[332] Numerous interviewees had tales of applicants who 'Poor Box shopped' or who would be found drinking the proceeds at a nearby pub (2018. Interview #12). Interviewees generally held the view that it was better to be lenient with people unless it was evident that they were systematically defrauding the fund. Some described work-arounds to prevent abuse of the system 'by the greedy instead of the needy', for example a voucher system so that applicants or their abusive partners would not be able to manipulate the system. 'This resulted in a 40% drop in demand for the Poor Box, and people abusing the clerks over the counter. We used to have to encourage magistrates to … slug someone a hundred bucks to replenish the Poor Box because the fund had nearly run out - no longer. More money for the needy and no cost to the Department.' 2018. Interview #12.

[333] 2018. Interview #24; 2018. Interview #19; 2018. Interview #12.

[334] 2018. Interview #7.

[335] 2018. Interview #52.

[336] Australia, like other developed countries, is considered to have low risk of systemic corruption. A recent report identified however the hierarchy of most likely integrity failures within Victorian agencies in this order: 'procurement (medium or high risk); breach of IT or information security (medium or high risk); financial misconduct by employees (across all levels of risk); misconduct relating to recruitment or human resources (low or medium risk); and theft or misuse of resources by employees (low risk)'. Van der Wal, Graycar and Kelly (2016, pp. 3,4,9).

other purposes.[337] A clerk relieving at Mildura was aware of these issues when accosted by the local policeman: "'I want a hundred dollars from the Poor Box." I said No, you tell the story and I'll put it to the magistrate. "When [the other clerk] is here, and I come on, I expect to get what I want immediately." [I said] Well, [the other clerk] is not here, and I refuse to do it. And he turned and went out.'[338] Another experienced clerk who was sent to rectify matters was horrified by what he found:

> I spent many weekends and I found hundreds of dollars, receipt books, and [the resident clerk] came in one day and I told [him] I found all this money, and I handed it to him; I found money under blotting paper, and he ripped a few notes off and said, 'Oh, you might need some of this to fix some things up ...' What went on up there … [The] … inspector - he came up and he said, 'Don't ever tell anyone about what's gone on up here …, 'cause they just won't believe you'. They were protected, because if the auditors were coming they'd drop in at Swan Hill and the message would get up [to Mildura] … The auditors came up in my time, and they said, 'We only had to audit what we could see in the books', and I heard that [the clerk] had arranged for them to get so many cases of oranges to take home and that … a lot of things got through marked 'Satisfactory'. The whole culture up there was … [grim laugh] - yeah.[339]

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[337] 'Money changed hands all the time - the corruption was unbelievable. I reckon it would be the worst incident, unless we have one coming up now' (2018. Interview #55). The misuse of the Poor Box at Mildura in the 1960s and '70s was but one facet of a raft of criminal activity that included paedophilia, sexual harassment, bribes, fraud and theft. The clerk of courts was perhaps the junior partner in this triad of collaborators, but history has not judged him kindly (Ryan, D & Hoystead 2013). A former clerk suggested that 'Magistrates are only there six months at a time now, because of [the events at Mildura]. Once people knew where the magistrate was, he wouldn't get his rubbish bin emptied, and he'd get graffiti on his fence - so they don't leave them there long. … At the end [of my time there] I was nearly in tears to leave' (2018. Interview #12). I note however that magistrate John Presnell remained in Mildura from the mid-1970s until his retirement more than a decade later. Dempsey (1990) records that attempts by a police officer in a Victorian country town to enforce the law in a manner disapproved of by the townsfolk would render his position untenable (p. 50). In this case is the culture of the town influenced the culture of the local justice system rather than the other way around as happened in Mildura.

[338] 2018. Interview #56.

[339] 2018. Interview #5. The most serious aspect of the situation in Mildura was that the three most powerful institutions in town - the church, the police and the court - were operating corruptly in tandem. It was a systemic and entrenched abuse of power that took many years to address and exacted an unknowable toll on many lives. What the authorities knew about these activities - and how much they knew, and when - may also never be completely understood. Denis Ryan, the police detective who tried to investigate these

The system has been reformed, and notwithstanding the known problems of previous practices, some interviewees expressed regret that court staff now lacked the flexibility to help individuals as they were once able to do.[340]

Courtcraft: teamwork and tacit understandings

The clerks' *Instructions* - informed by legislation, regulations and office conventions - outlined the explicit rules of court business, but operations were largely guided by what may be thought of as implicit traditions of courtcraft.[341] Courtcraft drew on shared, often tacit knowledge born of experience, and could adapt and evolve with changing demand and context.

Hand-picked for the job, relievers were often a means of carrying information and innovation from one part of the state to another. They were experts on court office norms and standards. A reliever arriving for a new assignment could immediately discern the 'hum' of a well-run court where every member of the team knew their job and performed it with skill and confidence. 'You could walk into any court, even if you'd never been there before, and you would know exactly what drawer the journalled receipts would be in, where everything would be kept, maybe even where the key of the safe would be

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crimes and bring the perpetrators to justice, was granted compensation by the Victorian Government 47 years after being forced to resign from the police force. He is quoted as saying, 'Their allegiance was towards a cathedral and not to the people of Victoria that they'd sworn an oath to protect. They did not protect them'. Ryan was Mildura's Citizen of the Year in 2016. The clerk of courts in question was permitted to end his career in retirement. Although qualified, he did not become a magistrate.

[340] The most recent incidence of systemic embezzlement was in another regional town in 2005 and was investigated by the State Audit Office: Cameron (2005, pp. 107-35). The Magistrates' Court Fund is now managed by a committee, and monies conveyed to agencies rather than to individuals. An interviewee commented that such misuse 'changed the function of the Court Fund forever - there's governance control now, but it's now much harder for people who need funds to directly access them. For instance at Mildura, the headmaster would let the court know when there were kids who couldn't access a school outing'. 2018. Interview #24.

[341] Although work in this field usually focuses on work groups of judiciary, prosecutors and legal defence, the description used by Flemming et al. can be seen to apply to the work of the Victorian clerks of courts: 'Craft is practical knowledge of how others perform their work and of the relationships involved in this work. It combines personal experiences with the lessons learned by others so that legal practitioners can organize their work and manage their relationships, all of which makes their craft highly contextual. Accordingly, because courtroom work is performed in stratified court communities within a political and policy context of bounded adversarial relationships, what is regarded as "common sense" in one court community may not be regarded as such in another. In this way, common sense, the interpretation and use of experience and folklore, becomes the court community's local culture'. Flemming, Eisenstein and Nardulli (2016, p. 195).

hidden. People tended to run their courts in the same way.'[342] Some used their experience to benchmark systems and adaptations: 'I made up my mind to take the best points from every court I went to. That was me. See what other people were doing. A pincher of other people's good ideas - my mantra'.[343] Similarly, an inspector (a senior clerk of courts) would be able to assess very quickly where intervention was required.[344]

Operational relationships between clerks and magistrates

Effective operations also depended on the relationship dynamics between clerks and professional magistrates, who as former clerks were deeply experienced in courtcraft. Some magistrates favoured non-traditional procedures such as starting hearings well before the official court opening time of 10 am or batching similar cases to expedite the day's list. They might ask for particular individuals to bench-clerk for them.[345] This worked well where a magistrate had particular operational preferences; if a clerk could be found with the requisite skills, the rest of the team could get on with their jobs.[346]

Gatekeeping and getting through the list

Collaboration between magistrates and clerks, a product of habits of partnership formed over years, facilitated unofficial innovations in scheduling and case handling.[347] Wallace, Mack and Anleu (2014, p. 669) argue that 'considerable skill' is brought to bear by staff 'in balancing key principles and values of judicial work organisation, including efficiency, fairness, neutral case allocation, and judicial independence'. Skilful management of caseloads, triaging of cases and working with parties before and after

[342] 2018. Interview #24.
[343] 2018. Interview #3.
[344] 'I can walk into a court and I can tell within 15 minutes whether it's well run.' 2019. Interview #58.
[345] This practice was not officially endorsed.
[346] 'I was one of the few who could manage him. He liked to officiate where I was bench-clerking and would accept advice from me where he wouldn't from anyone else. When he made mistakes, I would work with him to get them fixed before he left' (2018. Interview #6).
[347] In a debate about court closures in 1989, the Hon. P. R. Hall commented: 'The solicitors of Traralgon and the Magistrates Court had a convenient arrangement that probably exists in other country towns. The local solicitors would telephone the clerk of courts early on a sitting morning and ascertain the approximate time their case or cases would be listed. … instead of solicitors being at the court at 9 a.m. they could turn up at the appropriate time later in the day. Their working time would be far more productive and they would not have to sit around the court all day' (Victoria, Legislative Assembly, 1989: 762,3). According to interviewees, these arrangements were sometimes initiated and managed by the local clerks of courts (2018. Interview #8; 2018. Interview #14).

hearings allowed the magistrate optimal space and opportunity to exercise judgecraft during court proceedings. As one interviewee remarked,

> Countless clerks … have very kindly and properly looked after the health of magistrates by managing their workloads because the clerks are in charge of the incoming cases … an astute court co-ordinator is very important to the health and wellbeing of any court. … it's about skill, experience and treating people with a bit of decency - not just the magistrates, but also the litigants.[348]

A former magistrate appointed from outside the ranks of clerks commented,

> The bench clerks were fabulous. They saved many a magistrate's life - very good at handling lists and people - they knew a huge amount about the law and the relevant bits and pieces. Pre-computerisation, they were responsible for hand-preparing all the commitments, arrest warrants, good behaviour bonds, everything. … They were very responsible jobs - and some of these people quite young.[349]

Clerks were not in charge of the court list until the mid-1980s. Their drive to innovate, however, predated the formal introduction of the Mention System in 1985 in some locations and its rapid implementation within the magistrates' courts.[350] Case scheduling was, for clerks, about the most productive use of the court's and especially the magistrate's time. 'You had to exercise your authority - otherwise you'd just be run over', remarked a former clerk.[351]

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[348] 2018. Interview #40.
[349] 2017. Interview #35.
[350] 2018. Interview #8, 2018. Interview #21. 'Defendants pleading guilty have cases dealt with immediately and those pleading not guilty are given later dates to appear, when police interviewees involved in the case are available. Fifty two percent of all cases heard during the trial of the Mention System at Moonee Ponds and Prahran did not require the attendance of police. Previously, police had been required to attend and, in many instances, to spend long hours waiting for cases to be heard.' Law Department Victoria (1985b, p. 29). The new way of operating met with resistance from some clerks and legal practitioners. 'Too often practitioners would abuse you in front of the judge when they were called up and not ready to go ahead, but they'd had prior notice. Not a pleasant experience. But less wasted judge time - it was a new mindset for all parties' (2018. Interview #12).
[351] 'There was not a lot in the Manual, but it gave you some idea.' 2017. Interview #25.

Clerks' positioning between magistrate, public, police and lawyers meant they were often seen not just as intermediaries but as gatekeepers.[352] A former co-ordinator recalls, 'In my day we were taught to do defended cases shortest to longest, and undefended shortest to longest and you could get through the bulk of the work … You got to know the barristers and solicitors. We used to have a "black book". They'd say five minutes, and you'd say Bullshit!'[353] A former barrister recalls observing eye-rolling or a covert smile exchanged between a favoured practitioner and the magistrate, and sensing that there were powers at play that could disadvantage her client.[354] A clerk who later became a barrister also learned how it could be on the other side of the table: 'there were one or two instances where I thought I was treated shabbily', he remarked; 'blokes you [had previously] worked with would be the co-ordinators, and give you buggery'.[355]

Magistrates were equally committed to getting through the list, though they worked at varying speeds: see Mack and Anleu (2016). Some court users were critical of the exclusionary games they saw played in court and thought the co-ordinating clerks had too much power.[356] The introduction of the Mention System, which allows criminal cases that are likely to be dealt with more quickly to be heard first, did dramatically increase

[352] 'those pesky gatekeepers': 2017. Personal communication from a former solicitor, 22 May.
[353] 2018. Interview #18. Another former clerk commented that you had to 'control [the] egos' of some 'haughty barristers'; 'of course they'd lie to you; "Oh, my case will only take 5 minutes"; you'd hold them back, but do it in a way they didn't think you were a complete arsehole'. 2017. Interview #25.
[354] 2018. Interview #48.
[355] 2018. Interview #36.
[356] Legal practitioners sometimes saw the clerks as unsympathetic or even antagonistic to getting their cases scheduled, as a satirical article in the *Bar News* from the late 1980s makes clear. The imaginary co-ordinating clerk says: 'There is nothing I know to match being able to despatch any question or request with a blunt response. … when a barrister has lined up for 15 minutes or so to enter an appearance and you turn your back on him, start reading a file and appear not to notice or hear him. They know they can't afford to get angry. …The pained expressions. The bottled-up vitriol. Their inability to say what they really feel in case I force them to wait even later next time before sending their 10-minute applications away. I've done that a few times I can tell you.' He concludes by justifying his behaviour: 'They're not my friends. They're all enemies. Look, if they have nothing better to do than hang around my court all day, cluttering up my foyer, bothering me with their incessant questions… they deserve everything they get. … why should I have to put up with it on my salary.' 'Mouthpiece', reprinted in 1988. *Chronicle: The Journal of the Clerks of Courts*, 28, 4, December pp. 19, 20.

the caseloads at some courts but resources were not augmented accordingly, so ownership and proactive handling of cases, systems and court users was vital.[357]

Rough justice: 'saving the public shilling'

Successful triage results in the streaming of cases into their parallel lanes in the court list, or detouring them to adjournment, diversion or further conference between the parties. It requires a mastery of resources and a sense of the balance that must be struck in each matter between competing needs and priorities of parties.[358] Clerks were expected to act knowledgeably and impartially in prioritising court users and mobilising resources.

Symbiotic relationships between clerks, magistrates and police could result in 'bulk processing' of simpler matters. Sometimes, interviewees admitted, pressure was created by the desire to have the magistrate finished by lunchtime, but they also argued the benefit for parties in having a shorter wait. Not everyone agreed this was a good thing. 'How was justice delivered? Roughly. That's how it felt as a practitioner. Quickly, roughly, and dare I say often non-judiciously', reflected a former barrister who had fought many battles in the magistrates' courts.[359]

One interviewee recounted how as a bench clerk he would sift through cases before court started and find out how defendants were likely to plead. A discreet 'G' for Guilty on the summons page would alert the magistrate that he could speed through a case. The clerk saw it as 'saving the public shilling' by making the system work more efficiently.[360] One interviewee described the modus operandi of a magistrate (also a former clerk) in dealing

[357] In one regional court the case load increased from 2,000 to 12,000 in 1982/3. Only one staff member had been added to the contingent, but the senior clerk took the initiative of recruiting two typists as trainee clerks (2020. Personal communication, 23 October).
[358] James Q. Wilson notes that professionals in government agencies 'bring esoteric knowledge to their tasks - they know how to do things that others cannot easily be taught - and … they are expected to regulate their own behaviour on the basis of professional norms' (1989, p. 149).
[359] 2018. Interview #48. A solicitor who had formerly spent years as a clerk commented that some magistrates 'would always be testing the prosecutor out … "I suppose you know the act number for the *Vagrancy Act*, don't you?" "Ah, 7393, Your Worship"', said the former clerk. He added, 'I could do it in my sleep. He was waiting for me to say "I don't know", and he would have said, "You're supposed to know that, you're a solicitor!"' 2018. Interview #12.
[360] 2018. Interview #23. Another not officially approved method of expediting the list was to liaise with the prosecutor beforehand: 'When we'd been doing this [job] for a long time, I would go into court before the session and sit down with the prosecutor and essentially we'd go, "Bond, fine, bond …" and we'd have the list all sorted before' (2017. Interview #31).

with repetitious, mostly traffic cases,[361] before the police-procedural innovations of on-the-spot fines and (later) speed cameras became predominant:

> He'd rock up at a quarter to nine - 'Let's get going now - get out there, see who's there and we'll start now!' Or he'd just say, 'OK, everyone who's pleading guilty on this side, everyone who's pleading not guilty on that side' … - and then he would go, 'OK, Constable, give me the bare minimum. … Exceed 60, doing 65 - OK, $100. Next!' Getting out of there quickly, light penalties - you'd notice more people coming over to the 'plead guilty' side. Caseflow management! By one o'clock, we were done and he was on the golf course.[362]

One young clerk informed the magistrate their workload would keep them in court all day:

> '170 cases? I'll have a pot of beer over at the pub at one o'clock.' He would dispense justice. Sorry, he would dispense WITH justice! 'If I do it - you buy the first pot.' We bloody finished before one o'clock - and you should have seen my office - it was the greatest mess - I had no idea what was going on.[363]

Another former clerk spoke appreciatively of a magistrate who would request her to do traffic court with him so that they could whip through the list:

> … it was shocking, in terms of justice, it was rough as - but we would make it our mission to get through our list of 150 APs[364] before lunch so he could go and play

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[361] An early example of specialist courts - regional 'Traffic Courts' - were piloted from 1972 to handle 12-15,000 cases annually. 1971. 'Opening Address by Secretary of the Law Department (Mr. R. Glenister)'. *Chronicle: Journal of the Clerks of Courts*, 14, 1, September p. 2.

[362] 2017. Interview #16. In most courts, hearings would not start before 10 am. Many magistrates until the 1980s liked to have court business finished in order to play golf in the afternoon and would encourage smart paper handling by the bench clerk.

[363] 2018. Interview #15. There was still plenty of work for clerks to do in the office afterwards!

[364] 'On the spot fines' or infringement notices gave rise to what was referred to by the clerks as AP 'alternative procedure'. The *Justices (Alternative Procedure) Act 1970* (Vic), s 94A and Part VII of the *Magistrates (Summary Proceedings) Act 1975* (Vic), ss 84-89, specified the means by which those in receipt of a notice could elect not to appear in court and the matter could then be dealt with expeditiously in chambers; otherwise it would be scheduled for hearing in the normal manner: 'The system had shifted from one of opting out to one of opting in' (Fox, RG 1995, pp. 49,50). By the time the procedure was abolished under the *Magistrates' Court Act 1989* (Vic), s 52, it had applied to some fifteen Acts ranging from the

> golf on Friday, and that was in the days you had to hand-write everything. … [We] used a series of signals so if he was going to do a [good behaviour] bond he would hand down the file and I'd slap it down in front of the barrister to make sure he saw it, and then get out the bond form and the barrister would go '… And that's the end of my submission' and sit down - done! It was very naughty. I was fast, I got it, and I loved it.[365]

In these examples, the service provided was not 'by the book', but nor was it strictly against the rules. Business was conducted in a smart but perfunctory way. By speeding through the court's list of relatively straightforward cases, a process usually managed by very experienced clerks, magistrates and practitioners who understood 'the game', matters were concluded promptly and with minimum trauma. Police prosecutors could go back to work, barristers and solicitors could attend to other clients, and parties could return to their lives. Caseflow management statistics, which were of growing interest in the 1980s, would also benefit, although this was probably not the primary motivation for these clerks and magistrates.[366]

These were surely not the kinds of matters where a person wanted to 'have their day in court', yet not all recipients of speedy justice thought it an unalloyed good: 'You liked working with them because they really got the job done. But the public wouldn't necessarily like it', remarked one former clerk.[367] A magistrate relieving in the regions who had no such expedient relationship with the clerk was told, 'This is not the way we treat people at Bendigo'. The magistrate remarked, 'I've just been castigated by the clerk of courts and I need to slow down'.[368] He had been sensitised by the resident clerk to the fact that, in this community, 'bulk processing' was not acceptable.[369] There are few

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original *Parking of Vehicles Act 1953* (Vic) to Acts covering weights and measures, housing, litter, dogs, companies and securities.

[365] 2017. Interview #31.

[366] The clerks' drinking culture is discussed in Chapters 5 and 6.

[367] 2018. Interview #15.

[368] 2018. Interview #15.

[369] 'Lower court arraignment sessions clearly demonstrate to waiting defendants that the judge is very busy, that the court has developed procedures to speed the process, that the court appreciates cooperation with the process, and that most people accept their inability to understand what is going on'. Lipsky (2010, p. 64).

reports of serious disagreements between magistrates and clerks, but here we see that an experienced clerk was empowered to assert the service values expected by the locals.[370]

From 1985, police-issued traffic infringement notices were introduced to deal with minor traffic matters. A new computerised court (PERIN), staffed by clerks, was set up by the following year to handle the growing volume of fines administratively rather than judicially.[371]

'Holding up the brick'

Experienced court staff and magistrates speak of their 'radar': they can 'read' the atmosphere of a court room and the state of play, and manage it accordingly.[372] For clerks this ability was developed through daily exposure to the unfolding of multiple cases in court as bench clerk and witnessing how justice was done or not done. One former clerk commented that the experience

> really opened your eyes to a broad range of things - I look back on it very fondly, a great life experience - how the system worked, how it shouldn't have worked - how poor people were disadvantaged against the wealthy, how the well-educated

[370] On one occasion in the 1960s a magistrate ordered the arrest of his clerk for contempt of court for leaving at 5 pm while court was still in session. The constable was reluctant to carry out this order, and the clerk had reappeared with a barrister and was prepared to apologise. The magistrate eventually had his clerk to apologise not to him, but to the defendant, who was still awaiting the outcome of his bail application. The clerk was ordered to pay the defendant's surety of £100 (1988. 'Clerk Arrested'. *Chronicle*, Vol. 28, No. 4, December pp. 21,2). According to interviewees, this clerk was not known for punctuality and would disappear for weeks at a time, leaving a notice to that effect on the courthouse door. 2019. Interview #9; 2018. Interview #24.

[371] This enlarged on the provisions of the *Road Traffic (Infringements) Act 1959* (Vic). It is estimated that 70 per cent of Magistrates' Court time was devoted to road traffic offences (Mukherjee 1981, pp. 84-6). PERIN was the acronym for Penalty Enforcement by Registration of Infringement Notice; senior clerk Stewart Mackie was in charge of its implementation. Infringement penalties could be imposed on 'summary offences, particularly motoring offences, and … coupled with other sanctions such as the accrual of "demerit points" by drivers, or the loss of licences. Sanctions of the type under discussion are administrative rather than judicial in nature' (1995, p. 9). Procedures were later outlined in Schedule 7 of the *Magistrates' Court Act 1989* (Vic). In 2006 this function was taken over by Fines Victoria.

[372] 2018. Interview #37. This they say has been made much more difficult with the wildcard of the drug ice; behaviour is less predictable and likely to be more extreme, but in the busier courts the presence of PSOs has made a big difference to court security (2019. Interview #58). The Magistrates' Court of Victoria has entered into a contract to provide Court Security Officers at every venue where the court is sitting.

> were better off than the uneducated - clerks of courts tried to have the game played evenly.[373]

He elaborated,

> It was … more about understanding how it operated, the personalities, what they were looking for and what they weren't … it wasn't that they knew you - you knew how it worked and that was useful, because it made things a lot more efficient … if you said to me did it lead to injustice I'd say no… The whole aim was to even the game up - I felt comfortable going home knowing *he* got jail when he should; *he* got fined when he should; and *he* got a good behaviour bond. That was pretty much everyone's aim... pretty much everyone got the right penalty.[374]

These reflections are not those of a passive observer and processor of forms. They point to the clerk's active engagement with not just the processes, but the outcomes of court process, an interesting insight considering the non-judicial, officially impartial nature of the clerk's role.[375] Some clerks would speak with unrepresented defendants before court to help them present their story and would explain to them what was likely to happen in the hearing.[376] An experienced bench clerk might discreetly act in a defendant's interests during the hearing itself:

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[373] 2017. Interview #25.

[374] 2017. Interview #25. The establishment of the community volunteer-run Court Network in 1980 under Carmel Benjamin AM was intended to assist in 'evening up the game'. It aimed to ensure that victims of crime, accused persons and their families had access to information and moral support during their court experience and were provided with appropriate referrals where required. Its motto was 'community members standing beside community members'. Volunteers were trained to provide a more focused and consistent service than was generally available at the time. It could not provide services to all courts but still achieved wide coverage. It is still in operation today (Court Network Inc 2021).

[375] The *Instructions* stated, 'Clerks must be strictly impartial, and, whilst affording the public reasonable assistance and all proper information in accordance with their duties, must refrain from taking any personal interest in the affairs of litigants' (Williams, Galagher & Wheelhouse 1958, p. ix). In the subsequent edition this was made more specific: 'An officer … shall not do anything from which it may appear that he is acting as the legal representative of any person' (Law Department Victoria 1967, p. 9).

[376] 'I used to be very conscious … that everyone sitting in that room is very nervous. I used to know everyone who was there and why they were there - get the back story. "Plead guilty, and just tell the magistrate what you just told me."' The magistrate would acknowledge in court that the defendant had spoken with the clerk. The interviewee explained his thinking: 'You "represent" all these people - a friend

> And you always had an audience... You had to be careful - *very* careful with your facial expressions! You'd be shaking your head, some of the things you heard … thinking, Oh no, don't say that. You gave lots of advice, even during - you'd know what was going on, as would the magistrate, … and you'd say 'Let's just adjourn for five minutes', and you'd go and have a quiet chat. 'I think you should be taking this approach, because the magistrate's thinking …' or 'He might want to hear from you about this …' A lot of people were unrepresented, and they didn't know how to put an argument. Sometimes when it was quite serious and it was going off the rails, you'd say, 'Look, you might want to think about getting legal advice, because you're probably looking at a very big fine or going to jail. So maybe you should be asking for an adjournment now so you can get some legal advice'.

Clerks were sometimes critical of the strategies used by police prosecutors; former clerks described tactics they had used to communicate covertly with magistrates or police prosecutors when they felt that court process was being abused. One observer reported that there would sometimes be a brick wrapped in paper under the clerk's desk. During a hearing, if the bench clerk thought the police prosecutor was being 'slightly inaccurate' he would tip the brick over and the quiet 'thunk' would alert the magistrate to 'have his wits about him'.[377] Some clerks would covertly display a brick so that the prosecutor could see it: 'if a copper was in the witness box telling porky pies, I'd slip a brick out. Not an uncommon thing for us. Make sure they saw it. Some of the magistrates would know - the ex-clerks'.[378] Clerks called this 'holding up the brick'. It was a way of

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of the court - give information, not pleading a case - [where] there was no legal aid person'. 2018. Interview #19. A less ambiguous role is now performed by Legal Aid and the Court Network where available.

[377] 2017. Interview #4; 2017. Interview #25. This was probably a reference to what clerks called 'bricking', where a police officer would work very hard to convince the magistrate that the person in the dock was guilty of an offence: 'you could tell when the prosecutor had taken a dislike to someone … obviously the police had got together and said, "We're going to get this bloke" and you could tell - the prosecutor would start using all this emotional language - here we go, what's this bloke done?' 2017. Interview #25. Another interviewee said, 'They'd bring in a crim, and they'd brick him' (2017. Interview #3).

[378] 2018. Interview #18. 'Some police would take it poorly … I wasn't the only one who used it. We never told the magistrates - some would not have taken it well. … Some probably guessed that we were doing something. Some of the police … you could see them getting a little bit angry … some of them might smile - … come up afterwards and say "maybe you took that a little too far" - and some of them would have a crack at you. I didn't care.' 2017. Interview #25.

alerting those who understood that somebody was not 'playing fair', but 'no-one would admit to it, it was done informally'.[379]

The more widely available provision of pro bono legal aid services by solicitors around the state in the early 1980s was a credentialled alternative to the 'poor man's lawyer'.[380] The availability of duty lawyers in courts and branch offices altered the role of clerks, but not the sensibilities they brought to the job; they actively participated in the engagement of duty lawyers at their courts and in referring court users.[381] Instead of feeling it necessary to support unrepresented litigants in court however covertly, clerks now had a means to direct defendants to legal aid at triage stage, and hearings could be planned accordingly. They still, however, provided a range of other paralegal and advisory services.[382]

Working with Justices of the Peace

Although Justices of the Peace dealt in general with simpler matters, clerks' dealings with JPs were more complex than with professional magistrates. 'JPs were the scourge of my life', remarked one interviewee. Another said:[383]

> And then you had to sit with JPs who'd continually ask you what decision to make. Some were … wonderful - not all [were] incompetent. But often out of

[379] 2017. Interview #25.

[380] Community action preceded the formal establishment of legal aid services. See Smith, S (2019, pp. 125,53,54). At Springvale a legal aid service had been established by Monash law students in 1971; one of the founding members of the Fitzroy Legal Service was future Attorney-General Jim Kennan. Now known as Victoria Legal Aid (VLA), the organisation 'funds legal practitioners (both in private practice and salaried lawyers at VLA and community legal centres) to represent people who cannot afford a lawyer (this is described as a *grant of aid*)'. Noone (2014, p. 40). The *Legal Aid Commission Act 1978* (Vic) established a parent body for legal aid agencies around the state.

[381] 2017. Interview #23.

[382] An article in the *Chronicle* reminded clerks that even with the introduction of legal aid services, 'legislature has provided for our assistance in such matters as Administration and Probate applications, Maintenance complaints and enforcement of orders, and the preparation of legal documents. Clerks are instructed to tender advice on matters within the scope of their duties and knowledge. … The "poor man's lawyer" is not a myth, as for many years Clerks of Courts have assisted people to identify their problems; but, in the future, we should play a more positive role'. Duthie, F and Tobin, J 1973. 'The Poor Man's Solicitor'. *Chronicle: Journal of the Clerks of Courts*, 16, 4, October p. 4.

[383] 2018. Interview #6. My own father (son of a magistrate) related to me that if his parent came home from court grumpy, he knew that he must have been sitting with JPs that day.

> their depth ... a result being given and the client saying I want to appeal it and the JP saying, 'Well I've heard your appeal and I'm dismissing it'.[384]

Unsupervised in court as bench clerks were, a measure of legal/procedural knowledge, common-sense, judgement and mental acuity was required in providing support to lay justices, as well as confidence.[385] Support extended well beyond the routine tasks of preparing forms, swearing in the witnesses and writing up committals. As seen in Chapter 1, clerks were expected to be abreast of current legislation and procedures and to draw the attention of the bench to recent changes.[386] Tactful intervention could help prevent errors in law or procedural injustice.

Clerks worked amicably and in good faith with the justices, but a lay justice with limited knowledge of the law and judicial process needed tactful guidance. The clerk had no authority over a JP and could only use 'soft skills' to procure an outcome that was just in process and correct in law.[387] Agile teamwork was often required. As one former bench clerk put it, 'It was your job if you knew they were about to do something stupid or gobsmackingly illegal, to quietly suggest they adjourn and get them a cuppa, then dash off to get the magistrate to come in and just affably talk them around'.[388]

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[384] 2018. Interview #18. Another interviewee recounted feeling the need to intervene as a bench clerk when the JPs announced, 'Yes, we've reached our decision; we find there is a doubt in this case, and we give the doubt to the policeman!' The clerk suggested a quick adjournment: 'You say you've got a doubt. Is it a reasonable doubt?' 'Yes, yes. We don't know whose story to believe, so we'll believe the policeman.' The interviewee related that the police prosecutor was 'not too impressed' with the JPs coming back and reversing their decision. 2018. Interview #12.

[385] 'You had to know a lot more about the legislation when you were assisting JPs. The majority took it seriously and knew what they could do and what they couldn't … Sometimes you would have to get the boss in to explain if they challenged your advice.' 2017. Interview #16.

[386] This was made explicit in the clerks' Instructions: 'Clerks of Courts shall, when requested, advise Honorary Magistrates upon points of law, the limits of their jurisdiction, minimum and maximum penalties and the Act, Section, Regulation and By-law applicable [,]… on matters of practice [and] the general principles governing the admission of persons to bail. … Whilst the Clerks of Courts must be ready to give legal advice if the Honorary Magistrates seek it, or offer any necessary suggestions when he can do so without obtrusion or offence, he shall carefully abstain from advising on the facts or interfering in the conduct of cases'. Law Department Victoria (1967, pp. 9,10).

[387] JPs wielded symbolic and actual power and could call upon powerful connections; they were often political appointments. In the City Court, the Lord Mayor was by virtue of his position both a JP and the Chairman of the Bench, even if the Chief Magistrate was present. The Lord Mayor was also President of the justices' umbrella group, the Honorary Justices' Association.

[388] 2017. Interview #31. The system was of course imperfect: 'you could have a bench with two JPs who were meant to be advised by a clerk of courts with presumably some knowledge of the law, but often ended up with a very junior bench clerk and … some very strange decisions'. 2018. Interview #42.

Clerks were responsible for managing the composition of benches by calling in JPs to sit, but JPs could also appear on any court sitting day to present for duty, and 'bench stacking' sometimes occurred when vested interests were at issue.[389] It was not beyond the power of a clerk to invite an additional JP to sit when it was perceived that a case was likely to be hijacked by vested interests on the bench.[390]

Due to the advisory nature of their role with JPs, clerks ran the risk of appearing to influence the judicial process. In many ways they did influence it, feeling that they needed to redress errors or a power imbalance.[391] This was a delicate exercise because it was important for the public and practitioners to see that the bench and not its clerk was in charge and to safeguard the dignity of the judicial office.[392] A clerk could not be seen to 'retire' with a JP and assist him or her with the making of the decision. Because legal practitioners knew that a lay justice was likely to be unfamiliar with the law, the bench clerk was sometimes suspected of having too much sway:

> … some JPs sat regularly, kept their own notes of penalties etc., and had good knowledge, but 90 percent knew nothing about anything, and the bench clerk ran the court. … JP consulting very experienced clerk [named]: - 'What do you think I should do with the penalty?' (This had been going on for years.) The JP ruled on the submission in very awkward language. [Counsel] jumped up in court and - 'I see [the clerk of courts] has my submission again! This is justice denied!

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[389] 'JPs could double-dip, on one occasion travelling across [the suburbs] to sit on the same SP case when it was adjourned to South Melbourne.' 2018. Interview #40. In horse racing, the starting price (SP) refers to the odds prevailing on a particular horse in the on-course fixed-odds betting market at the time a race begins. 'Reformers' attempts to ban horseracing failed, and the anti-gambling crusaders, by preventing legal off-course betting, ensured the survival of an illegal SP … industry and the corruption of public officials in telephone services and law enforcement.' McConville (2008), no pagination.

[390] JPs were known to roster themselves to adjudicate on matters in which they had a pecuniary interest (such as on public house licensing days).

[391] 'Half of them didn't know processes or procedures - get a flash barrister in front of them and they'd dismiss [the case] because they weren't confident. Defendants had a better chance of dismissal in front of a JP due to lack of confidence and not knowing the law.' 2017. Interview #28. Once a clerk at Yarrawonga refused to officiate in court because only one 'incompetent' lay justice was present for the hearing; he told the defendant he need not plead, and locked himself in his office! The court, however, continued without its clerk. 1895. *Age*, 21 December p. 11.

[392] 'The important factor appears to be that the decision must appear to be that of the Justices and not that of the Clerk … we bear in mind the dictum of Lord Goddard that "justice must not only be done but must manifestly appear to be done".' 1954. '"GUILTY". Advising Justices'. *Chronicle: Journal of the Clerks of Courts*, 7, 2, July p.1.

> Justice denied! … Every time - I put in a submission - I get overruled by the bench clerk.'

The clerk demanded that the solicitor retract the accusation, and the JP attempted to reassure the angry practitioner: 'He doesn't overrule - we make the decisions here, he's only here to assist.'[393] Outright accusations of this nature were rare, but every clerk was aware of the potential for such tensions to manifest.

Some injustices could be averted or creatively corrected, avoiding the need for an appeal.[394] In one case related by an interviewee, the young bench clerk felt strongly that an unrepresented defendant should not have been charged in the first place and was now facing a jail sentence from the bench of JPs. The clerk slipped the defendant a note suggesting that he should plead not guilty and was seen doing this by a barrister, who complained to the Law Department. Once the story was understood, however, the clerk was informally commended for his action and the prosecutor reprimanded.[395]

Clerks felt strongly their responsibility for court processes, aware that 'Everyone's busy - things could easily go off the rails.'[396] According to interviewees, many clerks attempted

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[393] The interviewee commented, 'the people sitting in court thought this was a circus'. 2018. Interview #12.

[394] One former clerk discovered a JP's error in fining a man £100 instead of the maximum £20 for a driving offence: the clerk advised the man to pay £20 to the court and £80 to a charity of his choice (this was of course non-enforceable). 'This was the kind of discretion and initiative you would expect a clerk to exercise', he remarked. 2018. Interview #6.

[395] The case concerned a panel beater and the charge was theft of a motorcar. His wife was delivering a baby and there was a queue of cars; the police picked him up on the way back from the hospital. The JPs were wanting to jail him, asking 'Why didn't you contact the owner?' This was in the days before mobile phones. 'The police who had lodged the information got pissed off, but they should never have charged the bloke in the first place', commented the interviewee. 2017. Interview #25. After the court-led introduction of the Diversion Program (which was trialled in 1997 at the Broadmeadows Magistrates' Court and then at the Heidelberg in 2000 before being rolled out across the state), a magistrate would have had the option of suggesting that the defendant, having admitted guilt, might make a donation to a charity and the matter might then be withdrawn: see Jelena Popovic's comments in Law Reform Committee (2001, p. 3). Magistrate Popovic adds, 'You would be surprised how many people are involved in stupid car thefts' (p. 5). Diversion practice is now governed by s. 59 of the *Criminal Procedure Act 2009*. A much earlier version of diversion was the police-led Shopstealing Warning Program, where first-time offenders could be cautioned on the spot by police instead of being processed through the court. The initiative was more about efficiency than the value of goods, since the value of items stolen was relatively small but the number of offences was increasing ('shoplifters continued to be the largest single category of offenders prosecuted. Moreover, the number of shoplifters proceeded against had grown from 5966 in 1974 to 10 433 in 1984'). Smith, S (1985, p. 256).

[396] 2017. Interview #25. A former legal practitioner who had practised in the Aboriginal Legal Service said this was particularly observable where applications were made 'in front of JPs in out-of-the-way courts - with the clerk having to run the show from a typewriter and tell the JPs what to do'. 2018. Interview #34.

to avert miscarriages of justice. One former clerk reported that in a country town at one time an old man, arrested for having 'insufficient means of support', was given twelve months' imprisonment by the JP. 'Excuse me, Your Worship,' said the seventeen-year-old bench clerk, 'but the maximum penalty is six months'. This advice was ignored. The senior clerk quickly contacted a County Court judge and managed to have an appeal set for the same day. The bench clerk was called as a witness. The conviction was quashed, and the defendant given money from the Poor Box and sent on his way.[397] In this situation justice system teamwork - a clerk's resourceful action and the co-operation of a judge - allowed a wrongful decision to be speedily righted. Normally, of course, appeals had a much longer wait.[398]

Operational empowerment and accountability

As seen in this chapter so far, much of clerks' work and the manner of their performing it was 'under the radar'. Even if clerks themselves had been able to explain the nuances of their work to those outside their work group, they may not have wished to put at risk the latitude they enjoyed by laying its dimensions open to scrutiny. Many interviewees spoke of their unwillingness to let the Law Department or its Head Office know exactly what was going on in the courts - but by the same token, they criticised Head Office executives for not knowing what the courts did.[399]

From March 1984 a series of integrated reform initiatives took shape across the Victorian court system. This was backgrounded by growing Australia-wide discomfort in judicial circles, the legal profession and the community with the court system's slowness to adapt to changing demands and expectations (Law Department Victoria 1985b). A number of tribunals (such as Residential Tenancy and Small Claims) had been created to take some of the growing backlog and deal with certain types of cases more expeditiously.

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[397] This was in the early 1960s. 2018. Interview #10.

[398] The *Magistrates' Court (Appointment of Magistrates) Act 1984* removed the judicial component of the JPs' role. In fact, however, its importance had already been diminished by the predominance of stipendiaries; by the early 1970s in Victoria only 'about 22 per cent of court sitting time is provided by honorary justices'. Lewer (1972, p. 483).

[399] Dissonances between operatives and administrators or executive are well documented in academic literature. Wilson (1989), for instance, comments on the animosity between line managers in the Naval Oceans Systems Center and personnel officers.

Nationally, the Australian (later Australasian) Institute of Judicial Administration (AIJA)[400] was formed 'with the objective of improving the administration of Court systems in Australia through systematic research projects' (Law Department Victoria 1985b, p. 2). More judges were appointed in the higher jurisdictions, jurisdictional increases were effected in the County and Magistrates' courts, pre-trial conferences were piloted in the Supreme and County courts, and the Office of the Director of Public Prosecutions was established to improve the flow of criminal cases. In Victoria, the Civil Justice Committee was formed and chaired by the Chief Justice, Sir John Young: its mandate was 'a full-scale review of the administration of civil justice in Victoria' that resulted in 'a watershed for change in Victoria's Civil Justice system' (1985b, pp. 2,3). The state government's second strategy was the installation of the Public Service Board's Principal Consultant (Major Projects) John King in a newly-created position of Deputy Secretary for Courts: his brief was 'to develop a long-term program to improve progressively the efficiency and economy of the Court system and the effectiveness with which it meets community needs' (1985b, p. 3).[401]

Between December 1983 and March 1984, the Courts Administration Division's office had been reorganised and its resources augmented so as to be a headquarters for the implementation of the Courts Change Program. Project teams were mobilised. Senior clerks, magistrates, consultants[402] and subject matter experts were involved in formulating recommendations in eight key areas, the main elements of which are briefly

[400] 'The principal objectives of the Institute include research into judicial administration and the development and conduct of educational programmes for judicial officers, court administrators and members of the legal profession in relation to court administration and judicial systems' (Australasian Institute of Judicial Administration 2021).
[401] King was assisted by a consultant from the Public Service Board, the late Michael Spain, who wrote a detailed article in 1984 specifically for the *Chronicle* to explain the objectives of the program and the strategies to be employed, principal amongst which was the involvement of clerks. Spain, M 1984. 'Courts Management Change Program'. *Chronicle: Journal of the Clerks of Courts*, 24, 2, August pp. 11-19.
[402] 'If the 1970s were the age of the inquiry in Australia, the 1980s have become the age of the consultant.' Halligan and O'Grady (1985, p. 38).

discussed below.[403] Interviewees recalled the vitality and excitement, as well as the turbulence, of this period of deliberately accelerated change.[404]

Caseflow management

Clerks, as did others within the justice system, resented what they saw as the reductionism of budget and statistics.[405] Yet 'public accountability is the lifeblood of the public interest'.[406] Without publicly-available metrics, courts cannot be fully accountable to their stakeholders, plan for the future capability needs nor attract the appropriate levels of funding. A lack of transparency and the paucity of reliable, quality operational information was ultimately understood by clerks as detrimental to the development and future sustainability of the courts.[407] Rectification of this deficit was one of the key platforms of the Courts Change Program from 1983 and it called for not just operational, but cultural change.[408]

Traditionally, the flow of court business in the summary jurisdiction was controlled by police and freely disrupted by parties.[409] The 1985 Courts Change manifesto notes, 'The present method of scheduling or listing matters in Magistrates' Courts does not allow for effective control by the Court over the manner in which matters are brought before it for

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[403] These areas were: organisational options for courts management in Victoria (including court closures and regionalisation), management systems and information technology (including the development of Courtlink), Court buildings (rationalisation, systematic maintenance and construction of purpose-built facilities, including court complexes), human resource development and management (devolution of executive powers to the courts), communication and consultation, poor box fund (reform and renaming as Court Fund), court trust funds and administration of the licensing function. Law Department Victoria (1985b).

[404] 'It was terrific fun', recalled one interviewee: King 'ran an interesting operation'. Anyone was welcome to attend his daily morning meetings, but he would shut the doors at eight a.m. 'If there was an issue', she said, 'he would send the protagonists out to resolve it'. 2017. Interview #28.

[405] 'It appears to each of us at times that all that is used to manage Courts is a budget figure - and a calculator.' 1989. 'A Comment', *Chronicle*: *Journal of the Clerks of Courts*, Vol. 29 No. 4, Summer p. 9.

[406] Field and Hodge (2004, p. 4).

[407] 2018. Interview #14.

[408] It was not until the 1980s, for example, that any training needs analysis was carried out to identify the nature and scope of clerks' learning requirements. Clerks were still arguing for relevant professional training well into the 1990s: 'With regard to Crimes Family Violence and further training in this area, the Executive is pushing the Department for such seminars, however, no action yet.' 1992. *Chronicle: Journal of the Clerks of Courts*, 32, 1, Winter p. 8. A later article suggests that the training commenced in February the following year. Smith, G 1993. 'Family Violence Seminars'. *Chronicle: Journal of the Clerks of Courts*, 32, 4, Summer p. 21.

[409] Peter Sallmann comments, 'the system provided plenty of latitude for those who wanted to delay the process for any number of strategic or other reasons' (1995, p. 195).

hearing. The ad hoc listing of cases where user-clients select dates and venues without prior consultation with the Court has created significant problems for the Magistracy, the administrative staff, the legal profession, the Police and the public' (Law Department Victoria 1985b, p. 16).[410] Since the court's civil jurisdiction had been broadened by the *Magistrates' Courts (Civil Jurisdiction) Act 1971* (Vic) and by the *Magistrates' Courts (Jurisdiction) Act 1984* (Vic) (s 5 raised the jurisdictional limit on motor car accidents), the system was under increasing pressure.

In an environment where inputs are not easily controlled,[411] case management provides readily identifiable criteria and quantifiable data as a means of assessing the productivity of courts.[412] Experts including Peter Sallmann, and Maureen Solomon and Carl Baar from Canada were commissioned to advise on improving the flow of cases through the courts and provide education to staff and judiciary.[413] This may have been perceived as a threat to the expertise of the clerks, who prided themselves on know-how gained over many years of experience, but after all, as seen in Chapter 1, they had long advocated for the 'professionalisation' of their role. The existence of well-credentialled court administration consultants both in Australia and internationally could no longer be ignored.[414]

[410] Douglas and Laster comment in 1992 that 'Not too long ago bringing a matter, however trivial, to court was a major undertaking. Police, witnesses and the defendant would wait around, sometimes for hours, in the hope that their case would be heard on a particular day'. Douglas, R and Laster (1992, p. 54). One interviewee described mornings at court as 'four hours of chaos'. 2017. Interview #25.
[411] 'Under our system of adjudication, while independent courts and tribunals might have some capacity to control and improve their outputs, they have very limited control over their inputs.' Laster, McKinna and Wade (2013, p. 97).
[412] See, for example, Baar (1988); Erwin (2010); Mack and Anleu (2016); Sallmann (1995); Solomon, M, Akers and Sallmann (1988); Wallace, Mack and Anleu (2014).
[413] See Baar (1988), Solomon, M, Akers and Sallmann (1988), Solomon, HE (1981), Sallmann (1995).
[414] Court administrators overseas had been benefiting from specialised, credentialled education since the early 1970s. 'In 1970 there were less than fifty individuals in court administrative positions who had any management training at all. By the end of the decade, there were over five hundred men and women occupying top and mid-level management positions in the state and federal court systems, many of whom had extensive education in court administration. Hundreds more had at least some short-term court management training on the national and local levels.' Solomon, HE (1981, p. 683).

Senior clerks and magistrates set up formalised case management systems (such as the Mention System) and promulgated them in their regions, some very keenly.[415] The results were measured and compared, spurring a competitiveness between them. Sallmann notes that initiatives in Australia were often underfunded because governments 'often mistakenly' believed courts to be inefficient and would be able to make do within existing under-used resources: 'the catch for the courts was that they knew they had to do something to improve their position but had to do it, and be seen to do it, very much under their own steam' (Sallmann 1995, p. 208).

The courts-led introduction of the Mention System in 1985 depended on effective working relationships between clerks and magistrates in partnership with court users.[416] It brought new discipline to the criminal law process and gave defendants automatic right to a first adjournment.[417] Sallman felt confident in claiming for Australian courts a decade later that 'Great strides have been made in delay reduction, to such an extent that the access to justice debate now focuses on other areas such as the overall cost of justice, the structure and operation of legal services and the protection of rights' (1995, p. 194).

Clerks as managers

In tandem with these changes a new managerial structure - regionalisation - was implemented, giving clerks opportunities to operate as Area Managers with teams of staff and a network of geographically linked courts under their control.[418]

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[415] 2016. Interview #2. Clerks and magistrates had been proactively trialling various strategies, but not in any uniform manner. For example, courts in the La Trobe Valley had implemented a prototype of the Mention System in close association with magistrates and where relationships permitted, enlisting the goodwill and co-operation of local solicitors and prosecutors (2018. Interview #8; 2018. Interview #14; 2018. Interview #5). The Mention System was formally introduced on March 1, 1985.

[416] Magistrates in Douglas and Laster's 1992 research described the Mention system as 'the greatest thing that ever happened to the courts' and the 'greatest innovation since sliced bread or canned beer'. They said 'It sorts out the "wheat from the chaff", "lets police get on with the job that they're paid to do" and saves "the government and the community time and money"'. Yet they also recognised that 'Mention days can sometimes look and feel like "conveyor-belt justice", with defendants feeling as though they've been through a "sausage machine"'. It is seen as a 'good system but not a fair one'. Douglas, R and Laster (1992, pp. 55,6).

[417] It was given statutory standing in the *Magistrates' Court Act 1989* in Schedule 2 s. 3.

[418] 'The decentralization of administration to regions commenced under Liberal governments, but progress varied among sectors and was generally not well advanced. The regionalization process has accelerated in intensity and scope under the present government, but in the absence of a coherent approach, individual departments have been developing their own regional systems.' Halligan and O'Grady (1985, p. 42).

Area (regional) managers were delegated staffing and financial responsibilities for the first time.[419] They were also required to enter into reporting systems that made their operations more accountable, enabled tracking and state-wide comparison of court performance, and provided opportunities for operational issues to be flagged, monitored and escalated. They also participated in strategic, budget and business planning - new skills for clerks. The restructure provided a level of communication between clerks and head office that had not previously existed, and helped move to front of stage the issues perennially faced by courts and their staff as well as the newer challenges.

Computerisation

Although it would be fair to say that until the 1980s little money or expertise had been funnelled in the direction of administrative amelioration in the courts by the Law Department, technical innovations that entailed relinquishing of autonomy and flexibility had traditionally been resisted.[420] The Law Department's report on the future operation of the courts noted dryly that 'Administrative systems within the courts have essentially remained unchanged for the past century except for the ballpoint pen and typewriter replacing the quill and inkpot'.[421] The report noted in addition the comparative isolation in which each court operated. One interviewee half-joked that such was the labour-intensity of manual court administration that one was obliged to perform '700 transactions for 100 jobs'.[422]

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[419] For example, the North-East Area had 62 staff (2018. Interview #14). 80% of budgetary items were non-discretionary, with 20% attributable to operating expenses (Victorian Auditor-General 2007, p. 24).

[420] In one workplace during the 1970s, the Department had a timeclock installed. 'It … never worked for the two years I was there - it was always breaking down after the Law Department came around to fix it. It was rumoured that … staff poured sugar into it. But they still had "the book" - the red line would be ruled underneath at 9.50, but allowances were made. You were supposed to be there at 8.45. Most were in by 8 am, and everyone by 8.30. … The management there didn't like automation, and made sure it didn't work.' 2017. Interview #16.

[421] Law Department Victoria (1985b, p. 18). One interviewee said that when he left the courts in 1975 clerks were still typing out orders on 1940s typewriters using two fingers, and writing by hand in register and forms. There as yet were no computers (2017. Interview #25). .

[422] '… if you were the cash clerk: open mail, cash and cheques in piles, in alphabetical order - who it was from, cheque, cash, money order, how much; receipt - transcribe from receipt book into suitors'; suitors' cash/revenue book, then pay-in book; then separate maintenance register; then draw the cheques. Plus all the money from the night before'. 2017. Interview #21.

This was now changing. 'With computerisation of the Courts' administrative systems each Court can be linked to a State-wide Courts' computer system' (Law Department Victoria 1985b, p. 19). The new case management system, christened Courtlink, was piloted in purpose-built court complexes at Broadmeadows (suburbs) and Moe (country). Its functionality was envisioned as including digitisation of the court register, production of forms and orders, batch-processing of order enforcements, case transferral and monitoring, and later cash management, management reporting and case listing (Courts Management Change Program 1985).[423]

Introduction of the technology was swift, and early attitudes towards it were frequently described by interviewees as antagonistic.[424] Courtlink did away with the cumbersome court registers that required writing in a series of columns and was carried between court and office and from court to court, but the dominating presence of its replacement, the bulky bench computer, was not universally welcomed.[425] The increasing use of computers in courtrooms from the 1980s depended heavily on clerks who undertook the training not only of fellow staff but also judicial officers.[426] A former clerk recalls a magistrate who sat in the training room with his arms crossed, refusing to touch the

[423] See also 1987. 'Computer System Heralds Changes'. *Chronicle: Journal of the Clerks of Courts*, 27, 2, June pp. 8-15.
[424] 'Quite clearly this had been the most hotly debated political and industrial issue in the recent reform package, and one which aroused strong emotion: "I hate the computer with a passion".' Douglas, R and Laster (1992, p. 43).
[425] 'The court register was immediately and accurately updated after each hearing and could be searched from any court registry.' Nicholas Pappas, former Chief Magistrate, quoted in the montage 'The Magistrates' Court of Victoria: 170 Years of "The People's Court"' (The Magistrates' Court of Victoria (2013), no pagination).
[426] 2017. Interview #32; 2017. Interview #31; 2018. Interview #39.

machine.[427] Clerks also supported the (sometimes disinclined) magistrate in the use of technology during hearings.[428] An interviewee commented:

> The [legal] profession were really upset because they didn't know what was being typed in there about them - at one point they were proposing that it should be on a screen (so open, transparent justice). A lot of clerks too didn't want a bar of it, and quite rightly because they had to deal with magistrates who were cranky, and some magistrates wouldn't do their orders in court so we couldn't generate forms, so we had police and prison vans sitting around because they were waiting for the warrant to take the prisoners … it was disruptive initially. It was probably the biggest thing to hit the courts in a long time, and it was a very difficult baptism of fire.[429]

The development of Courtlink, which served the Victorian magistrates' courts for over thirty years from 1985, involved teams of clerks and magistrates working intensively alongside information technology specialists.[430] A team of young Courtlink trainers - including female clerks - travelled around the state to initiate staff and magistrates into the system. Some of these clerks did not go back into the courts proper, but pursued careers in human resources, information technology or management. Computerisation

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[427] 'There was a lot of angst at the time, though it was a pretty basic system. … A massive culture shift for the courts, a lot of discomfort - some of the magistrates were FURIOUS, absolutely furious that they should be so demeaned as to have this computer on their bench and secondly, looking like typists using it. … we always did one-on-one with magistrates for three full days each, then we would train groups of clerks for a week. [One magistrate] just came in, sat down and crossed his arms and said "I'm not going to do this". I said, "Well, we're just going to have to sit here for three days", and we literally sat there for half an hour in complete silence, him with his arms crossed and me just sort of twittering on regardless, and eventually I said, "So if you could press F4"…' 2017. Interview #31. In 2021 there is still a registrar whose role it is to induct new magistrates into court technology (2021. Personal communication, 19 July).

[428] Some magistrates were known to have referred to computers as 'expensive paper weights'. One judge was reportedly upset that the dot matrix printer dropped all the tails off the letter 'g'. 2018. Interview #11.

[429] The interviewee added, 'Even after a couple of years there was still discomfort about it. It got easier, because we got in new magistrates who knew nothing different. They were change agents because of that'. 2017. Interview #31.

[430] The firm Arthur Anderson was appointed to plan the project and senior clerk (later magistrate) Lance Martin was to work full-time as the in-house expert on court operations. 1985. *Chronicle: Journal of the Clerks of Courts*, 25, 1, March-April p.7. In late 2020, the CMS (Case Management System) was being developed and implemented in a staged approach: 'The project is a joint initiative of MCV and ChCV, supported by Court Services Victoria (CSV). The $89.2 million project replaces the current IT systems, some of which are 30 years old' (MCV is the Magistrates' Court of Victoria; ChCV is the Children's Court of Victoria). Magistrates' Court of Victoria (2020a).

furnished opportunities for staff to broaden their skills and experience and differentiate themselves from their peers, an advantage principally enjoyed by relievers until then.

FIGURE 10: 'COMING TO GRIPS WITH THE COMPUTERS'

CARTOON BY CLERK (LATER MAGISTRATE) SIMON ZEBROWSKI, 1989. CHRONICLE: JOURNAL OF THE CLERKS OF COURTS, 29, 4, SEPTEMBER P. 29.

Court closures

Court closures over decades had done away with many smaller courts, some of which had operated quite independently. In 1880, with all the effects of the gold rush in play, there were courts in 235 locations across Victoria; a century later only 120 were still operating. In the 1970s and '80s the number of small courts continued to dwindle. Purpose-built multi-functional court hubs like those at Moe (a large regional centre), and Broadmeadows in the outer suburbs, now called for larger teams of staff with diversified and specialised skills.

It was problematic to remove a clerk without replacement, and more difficult still to dispense with a courthouse altogether. The government's court closure program in 1989 provoked a successful motion in the Legislative Assembly: 'That this House expresses its concern at the decision of the government to close 41 courthouses without

consultation with the community, municipalities, the police or the legal profession and calls upon the government to postpone the closures until proper consultation has occurred, and that the terms of this resolution be forwarded by the Clerk to the Attorney-General'.[431] Several members made detailed, impassioned arguments for the retention of courts in their electorates in the debate that ensued.

> Cuts were made in many areas of this year's Budget, particularly in areas affecting country Victorians. Courthouses and one-man police stations have been subjected to closure. … so much for social justice in country areas when the residents cannot attend a local courthouse or go to their local, one-man police station![432]

As we have seen, clerks and their families were deeply embedded in regional communities and enjoyed a range of club, service and sporting connections. Spouses were often also active in community activities. One interviewee commented that because of their organisational skills, clerks were often asked 'to act as Chairpersons, Secretaries, members etc. of Boards of Management, Schools, Tribunals, Racing Clubs, Service Clubs and the list goes on. Most, if not all, of these activities were unpaid and after hours, at the expense of family time. A former clerk commented:

> Victorian communities have all been the richer for these roles. When courts and other institutions were regionalised and closed in the 80s, many small towns lost families and volunteers, most of which were never replaced. To give an example of this, when I was transferred to [a small country court] in January 1980, that town had a clerk of courts, all banks represented, a Post Office, a Railway Station, the S.E.C., the Gas and Fuel, the Forests and Lands Departments, two local government councils as well as a number of small businesses. Less than 10 years later, all were gone, in the name of pr[o]gress!!![433]

Many clerks were unhappy about the withdrawal of local court services and the *Chronicle* published these views from time to time.[434] As one former clerk reflected

[431] Victoria, Legislative Assembly, 1989: 744 (Chamberlain).
[432] Victoria, Legislative Assembly, 1989: 703 (Best).
[433] 2020. Personal communication, 1 September.
[434] See 1989. 'Court Closures'. *Chronicle: Journal of the Clerks of Courts*, 29, 1 Summer pp. 17,8.

during interview, 'Court closures took a hell of a lot of service from country towns. … I used to argue that these towns deserve to have the poor man's lawyer come and visit them. "You don't have to pay me, just give me the government car and I'll drive over there once a fortnight - tell the people you can come and see the clerk of courts."'[435]

Controversial as they were, court closures enabled funding of some important changes in the magistrates' jurisdiction during the 1980s, especially the sizeable investment in technology. Economies were made in local services with a view to to improving the service overall. Closure of smaller courts enabled the creation of semi-autonomous regions that were intended to allow better and closer management of geographically-linked courts and ancillary services. The building of large court complexes provided scope for a range of functions in a concentrated setting. Clerks could specialise, building on their strengths. In addition, the appointment of Area Managers partially compensated senior clerks for the erosion of their path to the magistracy.

Smaller courts and their flexible, localised services were, on the other hand, casualties of this modernisation.[436] One of the most difficult aspects of the period of court closures for staff was that senior clerks of courts - not a faceless 'department' - were delegated the work of consulting with communities that were about to lose their facilities and services, enacting as it were the 'dark side' of executive empowerment. As one senior clerk prepared to go on road-trips to break the official news and face inevitable community anger and disappointment, another was writing unauthorised letters to affected municipalities and clerks to warn them of the impending loss of their courts.[437] Duty and loyalty were now at odds. In the chapter that follows, we see how this played out.

[435] He continued, 'Got to see a lawyer and sometimes there's no legal aid - you have to go to Shepparton [a bigger town many kilometres away] to see someone straight out of law school'. 2018. Interview #19.
[436] A minority of these places, as we have seen, had also become breeding grounds for unscrupulous practices.
[437] 2018. Interview #6; 2018. Interview #9.

Conclusion

Clerks were not bureaucratic virtuosi,[438] but at their best, knowledgeable, and pragmatic problem-solvers whose daily work was to provide court services that were both just and efficient. This ethos was insistently and consistently expressed by interviewees: clerks were habitually less interested in following prescribed procedures than in engineering satisfactory and if possible compassionate outcomes. Shortcuts and work-arounds were devised to deliver court services faster and make them less onerous to perform and more accessible to court users in a chronically under-resourced and ill-fitted environment.

The *Instructions* focused on tasks and duties, but clerks experienced their job as much more than this. Far from being mechanical, clerical and merely compliant with law and legal procedure, clerks saw their work as the exercise of initiative, knowledge, resourcefulness and the facilitation of just process. Their actions, large and small, largely unsung, played a fundamental part in the shaping and reshaping of the People's Court service culture - and in the implementation of evolving government policy - during two decades of unprecedented legislative and governmental innovation.[439] The frontiersmen who had become poor men's lawyers were embracing a new professionalism, not only as officers of the court but as managers of it.

The recollections and reflections brought to life in this chapter do not support a view that clerks were just cogs in the machine; they operated with awareness and agency in the space between court user and bench, issue and outcome. We have seen in this chapter that tacit understandings between clerks and other actors in the court system had the potential to 'even up the game' and to some extent affect justice outcomes. Interviewees expressed pride in the characterisation of clerks of courts as 'people who can't say no to a

[438] Influential sociologist Robert Merton conjured the image of the 'bureaucratic virtuoso, who never forgets a single rule binding his action and hence is unable to assist many of his clients.' Merton (1940, p. 563). 'Courts are often depicted as quasi-bureaucratic institutions in which judges, prosecutor and defense attorneys cooperate in a series of rituals which formally "process" defendants in accordance with agreed-upon informal norms' (Church 1985, p. 507).

[439] 'Changes which would have rocked many organisations have been able to be absorbed by a jurisdiction whose most striking attribute prior to the initiation of those reforms had been its institutional stability.' Douglas, R and Laster (1992, p. 2).

problem'.[440] This group of little more than three hundred junior and middle-rank public servants operated beyond the strictures of their official role and in doing so, appears to have driven a disproportionate amount of traction.

As confronting as some of the operational changes described above were, *Chronicle* editorials and the comments of interviewees referenced in this chapter show that they resonated with the thinking of the cohort's more progressive and realistic-minded. Efforts to engage court staff in developing and implementing change initiatives were met by a sufficient number of answering voices from the ranks for improvements to be accepted, even embraced.[441] Clerks and magistrates thus engaged would in turn champion the new ways amongst their peers. The loss of close community connections and the capacity to assist people in compassionate, resourceful, locally sensitised ways were nonetheless collateral sacrifices, and mourned by many.

During the turbulent 1980s, court staff were enabled to take charge of some of the incapacitating issues they had been facing during the previous one hundred and fifty years. Yet under the surface of legislative and procedural change, it was clerks' complex and dynamic organisational life that held the key to their negotiating and surviving this difficult rite of passage. In the chapter that follows, we explore how the strengths and liabilities of the clerks' culture played out in an environment of fast-changing demands and accountabilities. We examine how the practices and incidences that assumed a kind of hive mind between clerks and magistrates became less prevalent as the career nexus between clerks and magistrates was controversially dismantled. 'Master and apprentice' and tacitly collaborative relationships between clerks and magistrates would be less in evidence as older magistrates retired and new magistrates from outside the courts' culture arrived.

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[440] 2018. Interview #53: 'that was the beauty of the old clerks', added the interviewee. 'GSD' (Get stuff done) is the motto of one magistrate (a former clerk). 2020. Private communication, 11 November.
[441] Douglas and Laster comment on a key element of these changes, computerisation: 'In a different organisational climate however this issue could have proved far more explosive and divisive'. Douglas, R and Laster (1992, p. 45).

Chapter 5:

Solidarity and sociality:
A close-knit cohort in crisis, 1969 - 1989

[Y]ou were part of a tradition … Anyone who's ever been a clerk of courts feels an affection for that Clerk of Courts Group culture … [442]

We all cared about the job. The Group was absolutely essential.[443]

We lived and died on loyalty and trust.[444]

Introduction

In the previous chapter we examined the core operational elements of the clerks' role and, in addition, the discretionary dimension that allowed clerks to exercise judgement, resourcefulness and compassion - or choose not to do so. This chapter focusses on the values, traditions and culture that provided the framework for these choices and sustained the clerks as a group during periods of turbulence and challenge. It highlights the perhaps counter-intuitive finding that clerks' deep sense of frustration and loss did not preclude their engaging resourcefully with change.

There was, up to 1970, a palpable state of alienation between the bureaucratic, command-and-control departmental culture and that of the street-level, street-smart and sociable 'independent officers of the courts'.[445] A culture under stress often provides insight into its strengths and vulnerabilities. The 1970s and '80s saw an intensification of issues that had been fermenting for decades, and it is in this era that a tipping point was reached.

During these two decades in particular, deep organisational memory was triggered by critical incidents in which clerks and magistrates were reminded of the Law Department's apparent lack of concern for the state of court buildings,[446] the poor quality of

[442] 2018. Interview #40.
[443] 2018. Interview #15.
[444] 2018. Interview #20.
[445] See footnote 284, p. 86.
[446] In 1985 only 8 out of 66 country court houses met the minimum standards proposed for court buildings. 19 were rated as 'poor' in terms of their functional adequacy. Law Department Victoria (1985b, pp. 124, 7, 31, 38). Comparable data for metropolitan courts were not cited, but several of these courts were replaced

accommodation for resident clerks,[447] under-classification of positions, random transfers, career impediments and loss of recreation leave due to understaffing. Further fundamental changes saw the Clerk of Courts Group acknowledging that 'Morale in the courts is at a low ebb'.[448] It was a time of awakening to both possibilities and threats. Some of the clerks' long-held fears (such as court closures and loss of access to the bench) became realities, but as seen in the previous chapter, unexpected opportunities accompanied these changes. What perhaps was not foreseen was that the process of addressing these issues would activate fissures in the culture that could threaten the sustaining solidarity cultivated for decades.

Camaraderie and commitment

'To be recruited by an institution is not only to join up but also to sign up' (Ahmed 2012, p. 39); belonging, and being seen to belong, were important to the clerks.[449] Nearly every trainee became a financial member of the Clerk of Courts Group from their first day of employment. 'I was involved in the Group - you wanted to be a part of it - you received a Clerk of Courts tie and were proud to wear it. Just about everyone wore it to work, and some probably wore it to weddings and funerals', remarked one interviewee.[450]

A snapshot of the cohort in September 1980 shows that there were 313 clerks of courts in the system. This number comprised 62 located at the City Court, 82 in the country and 139 in suburban courts. Not all were 'operational': four were working in head office.[451]

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over the ensuing years, including, of course, the manifestly outgrown and unfit for purpose Melbourne Magistrates' Court (in 1995).

[447] In 1980, after 40 clerks responded to a letter seeking their views, the Group approached the Victorian Public Service Association to lobby Treasury to have funds levied for the improvement of sub-standard ('hopeless') departmental housing. Ryan, K 1980. 'President's Report'. *Chronicle: Journal of the Clerks of Courts*, 20, 2, June p. 160.

[448] 1978. 'Annual Conference'. *Chronicle: Journal of the Clerks of Courts*, 19, 5, September p. 37.

[449] 'The need to belong can be considered a fundamental human motivation.' Baumeister and Leary (1995, p. 521).

[450] 2017. Interview #16. The tie was first proposed in August 1979 by senior clerk John Denahy and made available for purchase soon afterwards. 1980. 'Executive Meeting 6/7/79'. *Chronicle: Journal of the Clerks of Courts*, 19, 8, August p. 96. A letter to the President from 'one of our country clerks' reads, 'I don't mind about paying $6.00 for the tie, it's the bloody $150 suit to match that's the problem.' 1980. 'Group Ties'. *Chronicle: Journal of the Clerks of Courts*, 20, 1, March p. 141.

[451] Source: 1980. 'List of Personnel Employed in the Courts as of 23 September, 1980'. *Chronicle: Journal of the Clerks of Courts*, 20, 3, September pp. 193 - 6. In addition, one clerk was seconded to Legal Aid, one to oversee the Moe Typing Pool, one to a Royal Commission and one to the Crown Solicitor's Office.

There were 16 clerks in the County Court, five at the Coroners Court and another five at the Children's; the list also included 19 relievers and three inspectors. Although few in number and geographically scattered, all clerks were conscious of being part of an organisation that promoted social and professional connection and looked after its own.[452]

The public sector is often characterised as lacking passionate engagement with work,[453] but clerks of courts saw themselves as an exception. Although obliged to spend many years occupying the lower echelons of the public sector hierarchy in exchange for security and the likelihood of eventual promotion, they drew emotional and professional satisfaction from their work and from their sense of belonging as much as from the expectation of future rewards.[454] One interviewee declared, 'Clerks didn't identify as public servants - they felt different. I knew of public servants who just went to the pub and stayed there, because they hated their jobs. I loved my job'.[455] They saw it as a 'lifelong career'; 'you built a deep commitment to it'.[456]

The culture has been characterised as inclusive, warm, supportive, politically aware, sociable, resourceful, collegiate, helpful, proud of its traditions, and social justice-oriented. Yet every family has its issues. Interviewee statements such as 'I left because of the culture' were encountered.[457] The culture has also been described as conservative, clubbish, sexist, macho, morally compromised, bibulous and bullish: a place where intimidation, disillusion and collusion could be experienced. Some of these elements had evolved as survival mechanisms, but as we shall discuss, also presented a more

[452] An observer who knew the cohort well commented, 'If they weren't looking after each other, who was going to be looking after them?' A mistake would have been very public and highly censured. The clerks were almost invisible until something went badly wrong. 'So all of that makes perfect sense. And the fact was that they very, very, very rarely got criticised. There would have been reporters that they would have been mates with, at the pub or whatever, and they would have told them certain things, but that would have been respected - not now though'. 2019. Interview #59.

[453] 'Anybody who has ever read a Dilbert strip knows that cynicism and passivity are endemic in large organizations.' Hamel (2012, p. 139).

[454] An interviewee said, 'We'd turn up with arms in slings etcetera - help each other lift the registers. It was expected, as a team. The camaraderie - that was the thing I missed when I left. Pride in the work, the things you had to know'. 2018. Interview #12.

[455] 2017. Interview #16. As will be seen below, not all clerks appeared to make this connection, loving both the pub and their job, while others may have used the pub as a distraction from it.

[456] 2018. Interview #22.

[457] 2018. Interview #18; 2018. Interview #44; 2018. Interview #26.

problematic dynamic. One descriptor is agreed by critics and supporters alike, however: the culture was powerful.[458]

'Work hard, play hard', the adage that Deal and Kennedy (1982) made famous in the 1980s,[459] is referenced directly and indirectly by interviewees when talking about their court experiences in the 1970s and '80s. Work and play were part of life in the courts and participation in both was expected. Serious, ambitious and hard-working clerks could be admired for their drinking prowess and the fun you could have in their company, as well as for their professional expertise.

As seen in Chapter 2, clerks had their own pantheon. These respected elders with their modest origins and collegiate values inspired generations of clerks to support each other, raise their professional profile and enhance community standing. Included in the tradition however were anti-heroes, likeable rogues who seemed to personify the other side of the coin: the rules-flouting, hard-drinking larrikin; the celebrated raconteur. Some figures were esteemed for a mixture of attributes. Others were celebrated as 'characters' even though they had done little to enhance the reputation of the profession in terms that forefathers like Kevin Anderson might have endorsed.

'Part of the family'

Clerks valued workplace friendships; interviewees frequently expressed a sense of loyalty and protectiveness towards each other. As will be seen in discussions below, this could manifest in partisan ways and be defined by a sense of the 'enemy' as much as by recognition of the 'ally'. The clerks' ethos appeared to be tolerant of individualistic

[458] One 'outsider' (a legal practitioner) said, 'The clerks were likeable and not all of them were old-fashioned - the blokes running them were. Clerks were absolutely indispensable - they needed to be powerful because of the jobs they were doing - they knew it. The system of justice … could NOT have worked without them, without the clerks of courts. … They were a critical part of the system of justice and they were like a union - like a really good kind of DLP union, like the Shoppies. Powerful - good on them'. 2019. Interview #59. The DLP is the Democratic Labor Party; 'Shoppies' is the Shop, Distributive and Allied Employees' Association (SDA).

[459] It is also attributed as a favourite slogan of Theodore Roosevelt and can be traced to earlier origins: see Aarssen (2015, p. 7).

behaviour that could be described as renegade or maverick, as long it was not seen as directly threatening to the unity of the cohort.

A reason often cited for remaining in the courts' workforce was the closeness of the team. Clerks were sociable: their Group organised sporting events and numerous other occasions where clerks and their families could enjoy each other's company.[460] The most important and popular of these events, as shown in Chapter 2, was the Annual Dinner - a chance to relax and re-establish connections with colleagues from across the State, and importantly, exchange information.[461] Despite the dispersion of the cohort, news travelled fast. As one interviewee put it, 'gossip was rife amongst the clerks - the jungle drums beat loud'.[462]

Interviewees made comments like, 'You'd always back up your colleagues'; 'it was a family affair'; 'I miss the camaraderie'. One former clerk remarked,

> It was a family culture - not 'command and control' … Generally people went into [the] job and they expected to get promoted up through the ranks. It's not like today where you get experience and you have to move around. It was a career path, and you were put on that career path from the time you were introduced. Everyone seemed to know each other very well, especially the

[460] Interviewees recalled that the Clerk of Courts Group put on an annual cricket tour. Every second year, they would hire a bus and go to Sydney to challenge the Clerks of Petty Sessions in NSW. 'It was an annual revelry, with eskies blocking the aisle. Not much cricket played. There are many stories from those excursions. They enjoyed a camaraderie that was something else'. 2017. Interview #4. Groups of former clerks and magistrates still meet regularly for lunch, drinks, football, car rallies, sailing, golf or fishing, or holiday trips.
[461] 'The Clerk of Courts Dinner was really the highlight of the year. I joined Group early on - mostly for the dinner', said one interviewee (2018. Interview #30). Another said, 'My first Dinner was amazing - I'd never been to anything like that - such a fun night - hundreds of people - biggest occasion ever!' (2018. Interview #41). Annual meetings were 'a big social event - twice a year - it would be on the family calendar. It coincided with other events held in Melbourne, for example the Clerk of Courts Dinner. The Attorney-General used to attend them, barristers, judges - there was a distinguished guest list - country people came too. There was always a vigorous discussion' (2018. Interview #6). Another said, 'The dinners - good companionship and fun. You'd go off elsewhere [afterwards] and kick on. … Good speakers helped make the occasion' (2019. Interview #58). Photos and articles from the Dinner, picnics and sporting events would be published in the *Chronicle* - as they still are today.
[462] 2018. Interview #23.

longer-serving ones. A family sort of approach to nurturing people through the ranks.[463]

Many interviewees who had been clerks took pleasure in describing the spirit of the workplace: '[it was] just a joy to go to work. … they called me "the little fatty" at six foot two and 100 kilos. … A big team, but we had so much fun, it was just fantastic. We were wild! ... We got through the work, and we had fun'.[464] Some courts had hothouse cultures where the newcomer would be quickly initiated into the mores, mindset and characters of the local contingent: 'You meet someone for the first time, [others] will tell you all about them - gay, drunk, third wife, affair with someone else's wife. Like the Country Women's Association. You were told about nicknames'.[465] As with other cultures, it was about belonging and recognition of those who belong, but it could also be exclusive, even dismissive, of those classed as outsiders.

Clerks and magistrates

Magistrates and clerks could be friends outside work, something that prior to the 1970s was generally frowned upon. One interviewee admitted to having once attempted to influence a magistrate on behalf of a friend (while playing golf); he knew he could lose his job for this. 'It was a delicate situation and I thought [my friend] needed a break', said the former clerk. 'But even if you were friends outside work, there was no mucking around in court', he was quick to add.[466]

Closer relationships between different echelons in the justice system were more likely in the country. When a magistrate was visiting, hospitality would customarily be offered by the clerk and his family;[467] at Ouyen in the 1960s this extended to sharing home space

[463] 2018. Interview #26.
[464] 2018. Interview #18. The accounts of interviewees about their work environment are comparable with Kevin Anderson's comments from a previous era as seen in Chapter 1. The culture of the workplace is described by Anderson as friendly and hard-working. Early starts of 7.30 am were 'not uncommon' and there was 'no time for relaxing' in the busy court; 'everyone seemed to be imbued with a sense of duty to get things ready on time. Young men could be trusted with a large degree of independence, 'especially when acting as clerk in a court'; a junior clerk could 'be solely responsible for his own court one or two days a week'. Anderson (1986, pp. 20,2).
[465] 2018. Interview #52.
[466] 2018. Interview #23.
[467] 2018. Interview #15.

with the magistrate and even giving up one's bed, since the clerk and his family lived in the courthouse itself and there was no other accommodation available.[468] Some magistrates did not own a car, and relied on the clerk or police officer to drive them to court.[469] It was difficult in these scenarios to avoid the perception of close relationships between magistrates, clerks and police, particularly in a small town;[470] this could exacerbate distrust of the system amongst Indigenous communities.[471] From the late 1970s, however, according to interviewees, suburban clerks were more conscious of the tensions between the arms of justice and less inclined to be seen fraternising with police.[472]

Relievers

As seen in the previous chapter, relievers were an important part of the clerks' culture because they not only provided 'relief' by allowing clerks to take their leave, but they disseminated social news and operational information. They were seen to be in a privileged position because not only did they receive allowances that substantially

[468] 2017. Interview #4. One interviewee reported that Terry Knight had 'had to take the hammocks out of the courtroom' on court days (2018. Interview #56). The clerks who lived in the courthouse at Ouyen are known amongst the cohort as 'Hell's Heroes', since summer temperatures in the Mallee are amongst the highest in Victoria and there was no air conditioning in the old courthouse building. Improving accommodation options for country clerks was the subject of years of campaigning by the Clerk of Courts Group. One former country clerk wrote, 'Our wives and families … often suffered more than we did. Once … our hot water heater froze and broke down in a -5 degrees winter morning … The Public Works officer said he could get a plumber out [in six days' time], but not before then. I had 3 children under 5, including a 9 month old and I went out and ordered a new heater that day and it was installed that Thursday afternoon. I was told that I would have to pay for it myself because they had a process to follow and I didn't have the power to alter that!!! Although I was abused by all and sundry (Public Works and Courts), the heater was never paid for by myself and I believe that common sense came to the fore'. 2020. Personal communication, 6 October.

[469] A former clerk recounts, 'one magistrate used to rely a bit too much on the police to drive him - [they] would let him out at the back [of the court], then turn up at the front. "Oh, good morning Your Worship!'" 2018. Interview #56.

[470] 'Our era [1950s - 1970s] was pro-police. You were in their office all the time. In the country - some of them were notorious. Keep the Fisheries and Wildlife [cases] till last because they have a car - they can drive me back … - never think twice!' 2018. Interview #55.

[471] 2018. Interview #10. The Parker Report noted criticism of Australian courts as being seen as exclusionary towards Indigenous people, especially women (Parker 1998, pp. 146-54).

[472] 2017. Interview #25; 2017. Interview #46; 2018. Interview #52.

boosted their income, but the diversity and well-roundedness of their experience could distinguish them from other applicants and advantage them in selection processes.[473]

Away from partners and children, many relievers were ready to party. 'The relieving clerks were a little sub-group', remarked one interviewee. 'A "band of merry men" - they knew everything and could fill in anywhere. There were characters and villains in that group and if you knew one was coming, you'd have fun for a month. They were a lot of heavy, solidly experienced drinkers and there was no way you could expect to match them, though they'd expect you to keep up - impossible for the poor junior clerk'.[474]

The privilege of relieving came at a cost. Relieving was not a family-friendly lifestyle, nor conducive to continuing one's study. 'It was hard work - years living out of the boot of a car - but I loved it' said one interviewee.[475] One former reliever shared what he considered to be a 'black spot' in his career when he was called into Head Office and requested to report back informally on the state of the court he was about to visit.

> And that caused me a considerable amount of angst, because that's spying, and I'd never been asked to do that before. And I knew the registrar; I knew him quite well - I didn't socialise with him privately, but I'd certainly had drinks with him and I knew him to be a very good clerk. … I sort of sat there and thought, Well jeez, do I say 'No, I'm not going to do that?' … I struggled with it for a couple of days, and then I took the registrar aside and I told him. … I had to ring back [after visiting], and tell [Head Office] what I thought. … And I said 'This place is well run, it's up to date, no problems. I don't know what's been reported or not

[473] It was easy to spot 'the white-haired boys' because they were 'earmarked for great things' and sent out as relievers. The relievers were able to claim travel, accommodation and meal expenses and accumulated enviable experience in a variety of courts ... 'a licence to print money'. 2017. Interview #28. A former reliever remarked however that 'Certainly there was a perception that relievers were "loaded" and received expenses, however it was never as much as it seemed. For one you had to have a very reliable car and everyone wanted to have a drink with you and "pick your brains" regarding the goings on at other courts. You were away from your families and sleeping in some very rough old hotels. It certainly wasn't all "beer and skittles" but what was great was that you got to be very self-reliant and work in all jurisdictions, thus gaining qualified knowledge'. 2020. Personal communication, 6 October.
[474] 2018. Interview #23. 'The relievers weren't always the hardest workers but there were good ones - John Caven and Peter Menkhorst, and who could forget the three Meehan brothers.' 2016. Interview #2.
[475] 2018. Interview #24.

> reported, … but this is a perfectly well-run court'. And that never happened again, thank God. And if it had, I think I would have resisted greatly.[476]

This account serves to illustrate several features of the clerks' culture. The code of loyalty between the clerks enjoined them to look out for colleagues: a watchful trust based on mutual obligation.[477] Drinking with a colleague acknowledged camaraderie and was an implicit sealing of the pact. Clerks were uncomfortable with the idea of 'snitching' on each other since this undermined the pact.[478] The request made of this clerk to 'spy' on his colleague caused the interviewee to wrestle with conflicting obligations: firstly his loyalty to a fellow clerk, and secondly his duty to the management that paid his salary and held the keys to his next promotion. There was also the suspicion that somebody else, possibly within the clerks' cohort, had mutinously suggested to Head Office that not all was as it should be at the court. Finally, the clerk felt aggrieved because as a junior he was being asked effectively to perform the role of an inspector, a much more senior role; he felt there was an element of exploitation and underhandedness in the task he had been given.[479] Although he found a way to satisfy these conflicting obligations, it was not without some compromise, and he still feels uncomfortable telling the story.

Pub culture

Of the clerks' cultural characteristics, drinking was one of the most pronounced: framed within a widespread drinking culture in Australia, it was an accepted means of relaxing

[476] 2019. Interview #58. Another former reliever commented that clerks in this role were always in demand for information: 'what the relieving staff did do was to inform all courts what the prevailing thoughts were within the system. A number of us … were on the Executive of the group and … we regularly informed our colleagues as to the current trends. We were always "milked" for information from [the] "Department" and as we spoke to personnel regularly, we obtained up to date information on various matters'. 2020. Personal communication, 6 October.

[477] One interviewee provided the example of a senior clerk who had been away sick for a month. Returning, he said 'I'll tell the Department I'm back'; his colleagues replied, 'We never told them you were away'. They had forged his signature on cheques issued in the interim (2018. Interview #56).

[478] 'Snitching' was the word used by the interviewee (2019. Interview #58).

[479] The role of Inspector was very senior; inspectors applied for their positions (this was often the last promotion before becoming a magistrate) and their duties were clear, so there would have been less moral tension in their reporting on findings from that point of view.

and socialising.[480] Drinking with colleagues was a time-honoured expression of camaraderie and could be used to talk shop, consolidate friendships, compare notes and let off steam. It was expected that clerks attending Group meetings and conferences would repair to the pub afterwards.[481] Clerks drank primarily with each other, and sometimes with police.[482] It was enjoyable and fun, but rather expensive.[483] As a habit it could, of course, be damaging to morale and to health.

For many, it acted as social bonding; for some, it dampened ambition,[484] and for a significant minority, it ended in more or less functional alcoholism.[485] Some

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[480] Drinking at the pub after work and at lunchtime was a feature of most clerks' (and many other work groups') working lives. The pub was seen by many - both men and women - as a refuge: 'a place of confidentiality among the initiated, like an association of conspirators. Thus, in the teacher's lounge at a school, the ladies' room in a restaurant, or the bed-room of an apartment, the corresponding members of a team - such as colleagues, friends, or a romantic couple - can relatively safely exchange their opinions about their respective audience, be annoyed by or make fun of them, and then go back to the classroom, the dinner table, or the party': Raab (2019, p. 54), discussing Goffman's concept of role-playing in *The Presentation of Self in Everyday Life* (1959). Interviewees with experience of other workplaces described the police, the criminal bar and the navy as being well-known for their heavy-drinking cultures (2017. Interview #35; 2017. Interview #25; 2018. Interview #40). In 1952, Australia had been ranked fifth amongst seventeen surveyed countries in terms of both amount of alcohol consumed and the incidence of alcoholism: 'There can be little doubt that alcoholism constitutes a major health problem in this country' (Sargent 1968, pp. 147,8).

[481] One interviewee recalled, 'I went to the annual meeting and drinkathon, back in the late '70s - I remember getting home and not having any idea of what had happened for the last three to four hours' (2017. Interview #21). Another remembers feeling cheated when at one Dinner there was 'almost no beer - who have I got to fight to get a beer? I found out much to my chagrin that the people who were in charge didn't want the young ones getting pissed and going up to invited guests, and so they put a real embargo on the booze. - Hang on, this is our money!' 2019. Interview #58.

[482] 'Generally, having fun … sort of in a way that a family does. It wasn't malicious. But you know we would go to the police social club on a Friday night at Russell St (entrance in La Trobe St downstairs) - no windows, like a secret little place, so everybody would go there of a Friday night and drink. Quite often the boys would go over there during the week, but I never did. Seemed to be a lot of socialising between the police and the clerks. Not frowned upon at the time; it was just the way things were. But they were careful about not being too overt about it.' 2018. Interview #26.

[483] 'One of my colleagues used to have six pots each lunchtime. I don't know if it was admired, but it wasn't frowned upon - and it was probably a money thing it was well - I mean how can you afford six pots? The system at one of the Melbourne pubs where at lunchtime a toss of the coin would determine whether you got your beer for free (ten of them) or had to buy beers for ten people ... I was not earning very much money at the time!' 2018. Interview #45.

[484] 2017. Interview #1; 2018. Interview #40; 2019. Interview #9. One interviewee left, he said, because the intensive drinking culture was interfering with his ability to pursue his legal studies (2018. Interview #40).

[485] 2017. Interview #1; 2018. Interview #43; 2018. Interview #14; 2019. Interview #9. An interviewee recounted that one clerk in this situation lived in a share-house. There were issues with another tenant and rather than come in the back door, he would climb in through his bedroom window when coming home late at night, and throw himself on his bed amongst the debris that had accumulated there. Co-workers, aware of his problems, would sometimes come and help him clean up. A colleague sent his son to mow the lawn, which had turned into a grass forest, but came back reporting that it was impossible to mow due to the

interviewees discussed drinking as stress relief.[486] One said, 'In court, you learn things about how vicious and violent people can be to each other, animals … Constant things. You never get any psychological help, and if you said something you'd be banished. I think this led to us drinking a lot'.[487] Another remarked, 'By socialising with your colleagues, you knew how they thought, you knew that your problem wasn't just your problem, it was everyone's problem, so you weren't a standalone ... You knew if you stuffed your court up, you knew you couldn't say I've had this problem, I've had that problem, I didn't have this, they won't give me that, because you knew it was the same with everyone, you were just in the mix'.[488]

Some of the most influential and respected clerks were heavy drinkers and admired for being so. 'The "fifth exam" was your ability to drink a lot', jested one interviewee (referring to the four examinations required for clerks to qualify under Public Service Regulation 10.4; clerks used to joke that this meant 'ten pots in four minutes'),[489] but then he added, 'There were actually some very dangerous drinkers'.[490] Another former clerk reflected, 'when I think about the culture, yeah, it's quite scary. A couple of occasions where you'd do the wrong thing … you didn't think twice about it - but when I look back, shit we shouldn't have been doing that - you'd be breathing beer over people at the counter'.[491]

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objects lying around in the undergrowth (socks, underwear, bottles). The clerk (never married) was kindly invited to a fellow clerk's family Christmas dinner one year. Given a strict commencement time due to the children needing to eat early, he was still not there half an hour later and the host telephoned him. 'Where's your address again?' 'Call a taxi.' He eventually arrived an hour and a half late. After dinner when it was time to leave, he fell asleep on the toilet and the host had to break into the room after paying the taxi driver $100 to wait. 'No, it was never an issue; he was a colleague', said the interviewee (2019. Interview #9). Implicitly, the clerks' families were also very accommodating (2018. Interview #15). Interviewees spoke of colleagues who had been suspended because of alcohol issues or died of alcohol-related diseases (2017. Interview #28; 2017. Interview #46; 2018. Interview #20; 2018. Interview #52).

[486] 'If you had a problem, you could talk it out together at the pub.' 2018. Interview #14. Some of the stresses being dealt with were bigger than life in the courts: 'Most of the senior blokes were World War II veterans - I thought they were alcoholics but it was post-traumatic stress as we know now ... Some of those blokes were very big drinkers'. 2018. Interview #8.

[487] 2018. Interview #52.

[488] 2019. Interview #58.

[489] 2017. Interview #25. Interviewees referred to being 'piss-fit' (2018. Personal communication, 25 November).

[490] 2017. Interview #25.

[491] 2019. Interview #58.

One former clerk described the work habits of a senior clerk he admired:

> He would be out drinking at lunchtime three days a week. But he came in at seven am and got all the work done - there was never anything on his desk by nine. Nobody resented it when he went out to the pub. ... As a boss, he was one of the better ones, even doing some of the juniors' work. He more than pulled his weight.[492]

The drinking culture was an acute problem however in certain large urban locations.[493] At one large suburban court, 'They would run the court from there, from the bar. If you weren't part of that, you were just shunted', said one interviewee.[494] Another recalled, 'The City Court was incredible - urgh, the City Court Hotel at any time … morning or night - there'd be clerks of courts in there - nobody seemed to think it was unusual'.[495] Juniors were encouraged to participate at lunchtime but had to 'hold the fort' when their senior colleagues occupied the pub during work hours.[496] One interviewee recalls Thursday nights at the County Court and the payday pub crawls. After their night on the town, the clerks would go back to the courthouse and stage mock trials, imitating characters they knew.[497]

Young men were quickly inducted into the drinking ethos.[498] One former clerk recalled an incident that took place in the first week of his work in courts: 'the phone rings at a minute to one - "How're you going, old cock?" (I didn't even know what that meant) - "Not bad". "When you've finished come down to the carpark outside." A car full of

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[492] 2017. Interview #28.
[493] 2017. Interview #29. The City Court had the biggest contingent of clerks, sufficient for running a social club. There was also a large amount of rote work and, as one interviewee remarked, not enough desks so that if you were the latest arrival on a given day, you might have to process your files on the floor. 2018. Interview #51.
[494] 2017. Interview #28.
[495] 2017. Interview #29. Dating back to 1849, the City Court Hotel was conveniently located on the south-eastern corner of La Trobe and Russell streets opposite the court. It was demolished in 1990 (Dunstan 2008).
[496] 2017. Interview #29; 2018. Interview #45.
[497] 2017. Interview #25.
[498] 'The success of the male bond relies on several things: avoiding talk of personal relationships and other intimate matters, being able to put someone down (often by degrading and objectifying women and gays and lesbians), and being able to "take" a joke without losing one's cool.' Dellinger and Williams (2002, p. 248).

blokes, bundled into the car, pub in Richmond opposite the MCG - striptease, with a pot of beer in my hand. (Is this what goes on? - I can't keep this up)'.[499]

Those who eschewed alcohol could be grudgingly respected, but might also find themselves lesser participants in the avid networking, information exchange and camaraderie that clerks loved.[500] 'The drinking culture - that's another story', mused one interviewee who had left and made a career outside the courts. He believed that it was 'embedded in the criminal law' fraternity. 'I saw that all the states had that sort of culture, but it wasn't present in the federal courts. … The whole of society was transitioning out of that sort of workplace culture at that time, certainly the public service'. He continued, 'Camaraderie - so that's how I met everyone in the first nine months I was there. But it was also one of the reasons I left to get my experience - the big Melbourne court was a large social club as well, and I wanted to focus on career'.[501]

Clerks cannot have been blind to the effect their presence in the pub and absence from the court must have had on the public and on the junior staff. It could hardly have been professional pride that kept them there during work hours: tolerance and glorification of this behaviour are not markers of high morale. According to some interviewees, arrogance and in a few cases, alcoholism were to blame.[502] For others though, drinking was simply an enjoyable habit they could get away with and were unwilling to give up. The issue was never overtly addressed by the clerks; in one *Chronicle* an extensive article about the problem of managing court users affected by alcohol and the grievous effects of alcohol in the community is followed by a humorous article, 'How to join the coronary club', that fails to mention alcohol.[503] Communal drinking was celebrated as a necessary

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[499] 2018. Interview #36.
[500] 2018. Interview # 24; 2017. Interview #2. One former clerk recalled his incredulity when discovering that some of his colleagues were teetotallers (2019. Interview #58).
[501] 2018. Interview #40.
[502] 2017. Interview #1; 2018. Interview #5.
[503] 1966. *Chronicle: Journal of the Clerks of Courts*, 10, 11, July pp. 3,4. A similar disconnect occurs where a *Chronicle* article about drink-drive programs is placed below a report on discussion of the serious business of 'the problems and the future of the Courts Branch' (at a clerks' weekend event in Gippsland) that was leavened by consumption of 'a reasonable amount of "lunatic soup"'. Didsbury, G 1979. 'Pleasant View's Drink-Drive Programmes'. *Chronicle: Journal of the Clerks of Courts*, 19, 8, August pp. 100,1; Francis, M 1979. 'Gippsland Clerks Bar-B-Q'. *Chronicle: Journal of the Clerks of Courts*, 19, 8, August p. 100. Was this editorial humour at work, or simply maladroit positioning?

and affirming ritual of life in the courts, and almost completely ignored, at least in public, as a health or discipline issue.[504] To the extent that it was detrimental to productivity and health - even an occupational hazard - it stayed deep in the 'too hard basket' during this period.

The underbelly of an ethical culture

Even if aware of itself, culture is often 'accidental' (Nelson 2010). The public face of the clerks' culture was assiduously cultivated and well-articulated. Performing of their cultural values was very important in their civic role, but as change intensified in the 1970s and '80s there was evidence of other elements the clerks could not have been so proud of. A former trainee reported that she left not because she was unhappy with the work, but because she could not reconcile the differences between the clerks' espoused values and those she saw practised at the urban court where she worked:

> I know that I didn't want to stay because I was getting too comfortable in the world of breaking the law, stretching the law - working it to your own advantage - and I just didn't like how being so close to that environment all the time tended to move your moral compass: and that's what I was worried about. And I saw it happening a lot. I know there were times when [a senior magistrate] would get picked up drunk, and then they'd cover it up, the police would cover it up. And that would happen, and it wasn't just him. (People would know the magistrate, know the solicitor and together work out a way to get a family member off. And they'd follow the letter of the law in doing it. Knew how to work the system.) Anyway, I just felt there was an undercurrent of [flouting] the rules that I didn't want to become a part of.[505]

Another former clerk said that she knew certain things were hushed up and quietly dealt with, but felt she missed out on the details of some of these happenings because she was

[504] One interviewee related however that at one stage in the 1980s the Annual Clerk of Courts Dinner was 'getting unruly; it was not a good look because high-profile people were invited and often attended'. They decided to 'clean this up, and on the advice of the Protocol people from Premiers, the practice of appointing table captains was established - to keep order, keep it nice, and look after people: do the introductions' (2018. Interview #7). 'Premiers' was the Victorian Department of the Premier and Cabinet.
[505] 2018. Interview #26.

'on the outer'.[506] She recounted observing a clerk taking payments that were not receipted, and being advised by a middle-ranking colleague to stay out of the way when cash was being handled. 'He helped me dodge a bullet', she said.[507] It is important to note that when these matters were raised with interviewees, most were adamant that in their experience, such occurrences were infrequent.[508]

Although the data indicates that values and service ideals were quietly and consistently modelled by most clerks, there were some who did not do so. One former clerk commented that in a large suburban court in the 1980s, since 'people had nowhere else to go' it was considered acceptable to treat court users discourteously. He mentioned, by way of contrast, a young, tertiary-educated junior clerk who had expressed his concern about displays of unprofessional attitudes and behaviour: 'He was too good for us', said the interviewee wryly; 'he was ahead of his time'.[509]

Any disconnect becomes a cultural fault line in times of challenge; momentous changes in the 1970s and '80s presented a threat of rupture never before encountered with such intensity. An editorial at the height of the anxious time when magistrates' qualifications were being revised expresses this dilemma:

> We must be more concerned and we must be active in our concern. That concern should not be about the petty irritations of being part of the bureaucracy but should be the concern for those who seek our assistance and guidance, and concern for the future of all our fellow clerks of courts. That concern is not to stultify ambition but to seek ways in which our field of endeavour could be widened so that our positions do not become that of mundane rubber stampers. We have a long and proud history of being the 'poor man's lawyer'. Let us not allow that idea of service to the public to sink into the morass of self-interest.[510]

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[506] Both of these accounts come from women; the question as to whether women were more likely to identify cultural dissonances because they were 'on the outer' is addressed in the next chapter.
[507] The clerk was confronted by an inspector, confessed and was charged, and the case heard quietly by a senior magistrate. The offender received a good behaviour bond and left the courts. 2017. Interview #28.
[508] 2017. Interview #3; 2020. Personal communication, 7 October.
[509] 2018. Interview #36.
[510] Clothier 1978. 'Editorial'. *Chronicle: Journal of the Clerks of Courts*, 19, 1, July p. 17.

While the aspirational side of the culture was consistently expressed in the *Chronicle*, the journal did not suppress the contradictory, even curmudgeonly opinions that tended to surface at times of challenge and change.[511] Open discussion and some self-criticism were permitted, perhaps manifesting the Group's confident leadership and focus on improvement, although some interviewees expressed the view that the clerks' powerful leaders were not really open to change.[512] Interviewees were aware of some painful or shameful episodes that were not openly discussed amongst peers and certainly never outside the cohort.[513] This face-saving was consistent with the tendency of clerks to protect reputation and obviate criticism, but can also be seen as a lost opportunity to further strengthen their culture and leadership.

Grassroots leadership: clerks versus the Department

'If you can still get something done without the trappings of bureaucratic power then you are a leader. If you can't you're not, you're a bureaucrat', declaims Hamel (2015, p. 33). For many clerks, it was a battle of the operators against the bureaucrats.[514] The administration was seen by clerks to be distant and authoritarian: 'the Department treated us like children', declared one interviewee.[515] At times this mistrust intensified to perceptions of incompetence and lack of integrity. As seen in Chapter 2, this dissonance had helped shape a culture in which self-reliance, resourcefulness and tacit exercise of

[511] Testy letters to the editor criticised for instance computerisation, interviewing and interview panels, and performance appraisal.

[512] One interviewee attended quarterly meetings at the City Court 'as a snotnose CC-1 - age 20, 21 - every now and then I would put up suggestions for change and some of the older guys would go "Oh no, we don't want that" - so you'd get knocked back. A little bit of disappointment there. Lots of stuff was put up and discussed there, but it wasn't necessarily the venue for innovation. [It was good] for a bit of whingeing, a bit of venting, raising problems we were encountering. Things were done [though], problems solved, things taken up with the Department' (2019. Interview #58). CC-1 was the first level of a clerk after qualification.

[513] These included misuse or theft of Poor Box funds, sexual harassment of staff and clients, absenteeism, and using positional influence or contacts to do favours for friends and relatives.

[514] 'Courts Admin were bloody hopeless. They had no understanding of what was going on in the courts, and people were being appointed that didn't have any background ... you'd ring up and explain something, and they just didn't understand. Same with Public Works who were responsible for building courthouses.' 2018. Interview #5.

[515] 'I was told … that the role of a country clerk was very important and did I have a "stable marriage"? I answered that I hope I did as I just increased it with a "colt" and in any event I said that was not an appropriate question. I was admonished for my flippancy, but got the role anyway. It is an example of the power that the Courts Branch felt they had over clerks. We were often treated like children!' 2020. Personal communication, 1 September.

discretion were valued survival mechanisms. It probably also encouraged a distrust of 'outsiders' and created conditions that mitigated against disclosure of fault or failure.

'A sense of mission creates a feeling of special worth in the members', writes James Q. Wilson (1989, p. 95), adding cynically: 'and enables the administrators to economize on the use of other incentives'. The chapters so far show that clerks felt their work and their commitment to the job were undervalued by the administration. This important dynamic in their culture - what clerks saw as the struggle to maintain a sense of status, empowerment and fair play in the face of an uncaring, even exploitative bureaucracy - played out with intensity in the 1970s and '80s.

Executive authority, operational autonomy

In theory the Westminster system kept the administration separate from the operational aspects of courts. The hierarchical and financial management structure of a government department, however, effectively entrenched executive hegemony over resources while reducing the opportunity for dialogue between levels. This executive stranglehold was a potent driver of the significant reforms that led to the creation of a judicially controlled, public service-independent Court Services Victoria in 2014 (Bunjevac 2015). These transformations were foreshadowed and shown to be viable by governance reforms in other Australian jurisdictions such as South Australia (1981) and the Federal Courts from 1979 (Sallman & Smith 2013, pp. 267-72). In Victoria, only recently adapted to a judicial model, the twin deterrents of political reluctance and governmental complexity had apparently delayed the needful transition.[516]

As Chapters 2 and 4 show, distance from the centre of power gave clerks a certain amount of operational freedom by default, but they were obliged to go cap-in-hand to prosecute demands for court repairs, recruitment, restructures or improvements in working conditions. Interviewees commented that being outspoken could lead to the

[516] Sallman and Smith (2013, pp. 273,83).

threat of sanctions.[517] Executive control of funding, establishment and staff deployment substantially impacted on the scope, independence and capacity of the justice system (Bunjevac 2015; Warren 2004, 2015).[518]

The Department also mediated the courts' relationship with the Public Service Board (generic working conditions) and Public Works Department (maintenance of court buildings).[519] In any effort to leverage change the Law Department was, according to some clerks, at best a distant and half-hearted ally whose promises could not be trusted.[520] Interviewees commented on the clerks' frustration at the Department's high-handed dismissal of their claims and its (at times) profound silence.[521] Suggestions for operational change from operational experts often went unheeded. Interviewees recount that personal interactions with Head Office were limited to unwelcome news about a surprise transfer.[522] Historically there were thus economic and organisational as well as cultural reasons for clerks to resent and resist, but ultimately defer to, the power of the executive.

Loyalty to 'the job' did not therefore entail allegiance to the mothership. While acknowledging the Department as the commanding power it was, clerks and magistrates were not invested in its leadership and found leverage instead through self-organisation,

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[517] 'The Department could crucify you by sending you to certain places - throughout my career I saw some terrible instances - even up to the time I retired you were often under threat if you complained about something: you'd get the message (never direct): "How would [clerk's name] like to spend six months at Broadmeadows Court?" A way of punishing you if you criticised.' 2018. Interview #5. (There was nothing intrinsically bad about that court, but it would have obliged the clerk to travel an inconvenient distance.) This is borne out by comments from some Victorian magistrates in a 1992 research project: 'interviewees indicated that speaking out on certain issues might involve such sanctions as being posted to an undesirable court, or being called to the Chief Stipendiary Magistrate's office to explain one's alleged misbehaviour' (Douglas, R & Laster 1992, p. 84). Departmental heads would, however, sometimes attend and make speeches at annual meetings of the Clerk of Courts Group or the Dinner.

[518] It was the perception of departmental sibling the Land Titles Office that funding was directed to the courts at the expense of other branches of the Law Department (Grow 2013, p. 160). Douglas (1992) suggests that 'resourcing of courts … such that urban courts are under-resourced in relation to their case-loads' in Victoria is 'a highly questionable assumption', but neither figures nor qualitative data are offered to support this.

[519] 'Court leadership was originally all court based and all operations based. Administration in terms of hiring, firing and budget was done by the Department'. 2018. Interview #14. Generic conditions of employment across the public sector were the province of the Public Service Board.

[520] 2017. Interview #21; 2018. Interview #7; 2018. Interview #8.

[521] 2019. Interview #6; 2019. Interview #7.

[522] 2017. Interview #28; 2017. Interview #31; 2018. Interview #5.

community interface and the positional authority of the court structure. The architects of the Courts Change Program acknowledged that 'Blanket policies … determined for the State as a whole' contributed to poor outcomes: 'a sense of common purpose between the Central Administration and Clerks did not develop'.[523] Historical resentment and distrust had to be broken down and relationships remade for change to be effected, and it took the Courts Change Program to make the large-scale reforms required. The John King era was one of few intervals up to this time where a rapprochement existed between the courts and the bureaucracy proper.[524]

Apart from being the voice of the clerks and responsible for publishing the *Chronicle*, the Clerk of Courts Group was charged with representing the interests of all clerks to those in authority.[525] If the Group felt strongly enough about an issue, they would send a delegation to the Secretary of the Law Department. If necessary they would take the next step and lobby the Public Service Board.[526] In the view of one non-clerk, clerks now exercised surprising leverage. Recruited to a management position in Head Office, she remembered her 'shock … at meeting those [Law Department] hierarchies for the first time. That Clerk of Courts Group was so powerful. They were a lobby group. … If clerks wanted something, generally they got it. ... Like the tail wagging the dog'.[527]

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[523] Law Department Victoria (1985b, p. 25).

[524] One of the important changes in the 1980s was the establishment of the position of Deputy Secretary for Courts (John King) and the courts' own Personnel Branch. This meant much closer co-operation between senior clerks and the administration; some of the senior clerks later became part of this administration, further narrowing the communication gap. King operated as if he had read this (later) advice: 'If [he] wants his message to take hold in hearts and minds, rather than gathering dust on shelves, he should probably … attract rather threaten people into new ways of ordering their lives; help ease the anxieties associated with radical change; … not prematurely shut down any hope of institutional reforms; and by all means, be widely inclusionary rather than exclusionary in creating your beloved positive futures'. Gladwin (1998, pp. 404,5).

[525] 'I PRAY that …, with voices uplifted, they may in one mighty shout, heard in the four corners of the globe, proclaim our clarion call.' Johnston, W 1941. 'The Editor's Prayer'. *Clerks' of Courts Chronicle: The Journal of the Clerks of Courts Group*. 8, 12, March p. 87.

[526] As seen in Chapter 2, the clerks had been successful in having one of their own, Jack Dillon, installed as a representative on the Board; they were experienced in negotiating these paths.

[527] 2019. Interview #59. The interviewee was not making a comment on the merits of the clerks' demands, but that they knew how to prosecute them. They had learned these skills, as described in this chapter, over generations.

Words and deeds: clarion calls, campaigns and action

Cohort solidarity was central to the power clerks were able to exercise. As we saw in Chapter 2, the Clerk of Courts Group (described colloquially as a 'guild' and formally as a 'professional association') gained remarkable strength in the inter-war years from 1933: this fortitude appears bound up with the inception and ongoing production of their inhouse journal the *Chronicle*.[528]

A unifying force for the Clerk of Courts Group

Described as a 'valiant little journal',[529] the *Chronicle* survived to produce monthly editions through challenging periods such as the Depression and post-World War II.[530] It had been funded initially by voluntary subscriptions from the membership and the unpaid labour of editors. 'Putting the *Chronicle* together was a massive task', recalled one interviewee. 'You had to fill up at least four pages and plead for articles. Typesetting was a nightmare before computers'.[531] At first every clerk was sent a copy whether they had subscribed or not, but the editor had to harangue readers for subscriptions to make up the deficit.[532] By the 1970s subscription to the *Chronicle* had been incorporated into the cost of Clerk of Courts Group membership.

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[528] It was apparently known within the public sector as 'The live-wire group'. 1940. *The Clerks' of Courts Chronicle: The Journal of the Clerks of Courts Group*, VIII, 9, December p. 64.

[529] 1940. 'Happy Birthday contd'. *The Clerks' of Courts Chronicle: The Journal of the Clerks of Courts Group*, VII, 2, February p. 77.

[530] Publication was suspended in 1942 and resumed in 1945; some 'sturdy subscribers' had continued to pay their dues during this time. The Group decided to trial regular salary deductions to automate subscriber contributions. 1945. *The Clerks' of Courts Chronicle: The Journal of the Clerks of Courts Group.* XI, 1, August p. 1. 'Remember, on you, each of you, junior and senior officers alike, rests the fate of this journal ---- [d]o not fail it.'

[531] 2018. Interview #7. Submissions were requested from the membership: any clerk could submit letters, articles, anecdotes or jokes.

[532] 'Every Clerk of Courts throughout Victoria is again receiving a copy of this month's issue of the "Chronicle" as a reminder that subscriptions for the forthcoming year are now DUE. Readers are earnestly requested to forward their subscriptions of FIVE SHILLINGS to MR. W. H. Johnston, Court House, St Kilda on or before by 1st May 1939. Only those whose subscription has been received will receive a copy of the "Chronicle" next month.' 1939. *The Clerks' of Courts Chronicle*, VI, 4, April p. 3. 'I OFFER THANKS for my worthy subscribers who, to their other virtues, add the prompt dispatch of one Six Shilling Postal Note per annum (payable in advance). Bless them, may they multiply. … I PRAY that the aforementioned subscribers will with promptitude and exactitude forward their postal notes for the greater glory of the Chronicle. … 'REMEMBER – NO SUBSCRIPTION – NO CHRONICLE!'' Johnston, W 1941. 'The Editor's Prayer'. *Clerks' of Courts Chronicle: The Journal of the Clerks of Courts Group*. VIII, 12, March p. 87. William Johnston (1898-1972) was a well-known clerk who edited the *Chronicle* from 1935 to 1942

Chapter 2 shows how the *Chronicle* brought information to the cohort and attempted to strengthen collegiate bonds and morale.[533] It published correspondence to and from the Department, reports from committees and working parties, legal opinions, case law, parliamentary transcripts, government reports and snippets from social worker and police publications. Stories from the courts were featured, and articles of historical interest commissioned.[534] In the days of promotion by seniority alone, all clerks looked forward to the classification lists that started to appear in the 1950s.[535] It is said that all work would stop for ten minutes when the latest edition of the *Chronicle* arrived.[536]

Mouthpiece for the Clerks

The Clerk of Courts Group Executive (annually elected by the membership) edited the *Chronicle*, held the Group's meetings and ran campaigns. Sometimes sub-committees researched or developed strategies on matters of importance to the membership. A former clerk commented that the Group was run by 'ambitious, intelligent men' whose aim was to make sure 'these outsiders didn't dud us'.[537]

A former Executive member remarked:

> The Executive was very dedicated to the cause - it started to take on a form of union role. There were close-knit relationships between members of Executive -

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and was President of the Clerk of Courts Group from 1941-44 and 1957-62. In 1963 he was made a Life Member of the Group. 1983. 'William Howard Johnston'. *Chronicle: Journal of the Clerks of Courts (Jubilee Edition - 1923-83)*, 23, 1, April pp. 19,20.

[533] 'Realising that there were … very few channels through which Clerks of Courts could gain information of moves, promotions, vacancies and the activities of their fellow clerks, it was decided ... that we publish a Clerk of Courts Chronicle ... which would keep them interested and active.' 1933. *The Clerks' of Courts Chronicle*. 1, April 1 p. 6.

[534] There were articles about the history of certain courts (for example, Echuca, Kyneton, Swan Hill and Prahran) and a series of profiles of historical Secretaries of the Law Department (one of these, A P Akehurst, had been a clerk of courts).

[535] 1952. 'Seniority List'. *Chronicle: Journal of the Clerks of Courts*, 5, 1, March p. 3. There were 144 clerks in Victoria at the time.

[536] 2018. Interview #40. In speaking of the clerks' affection (even need) for the *Chronicle* it was held that 'for most officers, promotion or transfer meant the difference between butter or dripping on the breakfast toast, and news was eagerly awaited'. 1983. 'William Howard Johnston'. *Chronicle: Journal of the Clerks of Courts (Jubilee Edition - 1923-83)*, 23, 1, April p. 20.

[537] 2018. Interview #7. The first woman had started on the Executive by this time. As Tolman has it, 'Identifications are strengthened by common enemies' (Tolman 1943, p. 144).

> you were fighting for everyone, and everyone contributed. Anything decisive was always discussed at meetings, and everyone walked away with the result. It was transparent to the membership.[538]

The Group was not a union per se and clerks were not, essentially, a highly unionised cohort.[539] During most of its history the Group functioned as an affiliate of a public sector union (in the 1980s this was the VPSA), free to pursue its own agenda. The early leadership encouraged (indeed, exhorted) members to join the relevant union as well as the Clerk of Courts Group.[540] This was written up as part of its Constitution.[541] Many clerks failed to do so; they did not see themselves as public servants in that sense.[542] Clerks were not convinced the more broad-based union had their specific interests at heart and did not trust public sector union officials to understand or to promote their specific interests.[543] In general they preferred to look after their concerns inhouse and pursue improvements in career structure, salary and conditions via direct negotiation with the Department or delegations to the Public Service Board.[544] The Group became a force in its own right.

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[538] 2018. Interview #24. 'Our deliberations have been far ranging and at times hotly debated. I can assure you that the Executive has not "rubber stamped" matters before it … your interests have been paramount'. Collins, G 1978. 'Secretary's Report (1987 General Meeting)'. *Chronicle: Journal of the Clerks of Courts*, 19, 4, July p. 20.

[539] The Group was originally affiliated (as a sub-group) with the Australian Public Servants' Association and was first known as 'The Clerk of Courts Group of the APSA'. Their first meeting was held on 16 March 1933. *The Clerks' of Courts Chronicle*, 1, April 1 p. 4.

[540] 'The V.P.S.A. is very much part of our lives - the days of living in isolation from our fellow public servants has gone forever.' Ryan, K 1979. 'President's Report'. *Chronicle: Journal of the Clerks of Courts*, 19, 8, August p. 97.

[541] 2018. Interview #24.

[542] 2018. Interview #24. In 1940, for instance, the VPSA was fighting for, among other issues, the creation of a five-day working week and against the imposition of a 'clerical bar' which would restrict promotional movement for those in the Clerical stream of the Public Service. 1940. *The Clerks' of Courts Chronicle: The Journal of the Clerks of Courts Group*. 7, 3, March p. 87.

[543] 2018. Interview #6. 'You couldn't wait to sign up and join the Clerk of Courts Group, because everyone was there, but the impetus to join the VPSA was not so strong.' 2018. Interview #24. In the 1990s when the Kennett government moved to abolish direct debits for union fees, the Clerk of Courts Group was able to demonstrate to the Attorney-General that Group fees were used not for union or political purposes but to subsidise the Clerk of Courts Group Annual Dinner and send funeral wreaths to bereaved families of members. The direct debit arrangement remained, and with it the financial support of nearly every court registrar in Victoria (2018. Interview #6; 2018. Interview #41).

[544] A former industrial officer in the Law Department said that there were never any industrial issues regarding the clerks that impacted on her workload. 'They were like a union, so well organised that I would have been the last person they would go to - I would have been the fallback person - they were very well controlled. That was smart, really'. 2019. Interview #59.

'Ask not what the Group can do for you…'

Members of the Clerk of Courts Group executive worked on an honorary basis, usually after hours. A leadership position is usually seen as an avenue to 'power and efficacy through activities and alliances',[545] but here recruitment and that all-important outcome, promotion, were until the mid-1980s officially the province of the Law Department. The strength of the Group was primarily in galvanising its membership. Periodically the Group rallied support for its efforts: 'Ask not what the Group can do for you - ask what you can do for the Group' (1940).[546] A more prosaic call was issued in 1980: 'We must not be complacent, fatalistic, self centred … The more vigorous the effort one contributes … the more the individual gains. It is time to get off our backsides and put in a fair share'.[547]

In Chapter 2 we saw evidence of the developing political nous of the Clerk of Courts Group in their successful campaign to have Jack Dillon elected to the Public Service Board. Dillon was still on the Board in 1952 when a delegation consisting of the Secretary to the Law Department, senior clerks and the union mounted a convincing argument to have the Public Service Board lift the ceiling on recruitment of trainees. It was an exercise in collaborative diplomacy. The success of this effort led to permission being granted for the Department to accept more trainees from those who had passed the Administration Entrance Examination for the State public service.[548]

Unfortunately, most of the successful candidates in the next round were either temporary staff who already worked in other departments or had changed their minds once having passed the exam. In consequence there was still a deficit of recruits to fill the ranks at

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[545] Kanter (1993, p. 200).
[546] 1940. *The Clerks' of Courts Chronicle: The Journal of the Clerks of Courts Group*. Kramer and Brewer (1984) conducted laboratory experiments that demonstrated that a person's sense of the importance of belonging to their group predicted a likelihood of sublimating their individual needs in favour of that of the group.
[547] Pilgrim (attrib.) 1980. 'Editorial'. *Chronicle: Journal of the Clerks of Courts*, 20, 1 March p. 133.
[548] 1952. 'Annual Leave: Deputation to the Board'. *Chronicle: Journal of the Clerks of Courts*, 5, 4, November pp. 2-8.

base level, and this was compounded by attrition in the higher ranks.[549] The Group acknowledged that 'The problem is symptomatic of our times. Employers all over the country are competing for staff'. [550]

The clerks, with the sanction of the Department, then mounted a vigorous campaign to recruit staff themselves by encouraging young men to sit the exam. 'Every clerk, junior and senior, is needed to help in an organised effort to win recruits … I believe we'll succeed - we must!'[551] Spearheaded by the President of the Group K J Kean and supported by the efforts of individuals across the state, this remarkable push resulted in the appointment of twenty-one new juniors to the Courts Branch, about half of those persuaded to apply.[552]

The willingness of clerks to invest personally in the ongoing sustainability of the courts suggests a singularly cohesive and energised culture. Seemingly, although the Department and Public Service Board had apparently reached the limit of their powers in addressing the issue, the clerks pushed past theirs. This entrepreneurial action achieved

[549] The courts' establishment was still '31 below authorized strength'. Although the establishment ceiling had been lifted, there were too few candidates available at base level. 'Sixty candidates passed - sixty only - and of these the Courts secured none. On the surface, that may seem like a raw deal, but the fact is that 57 of them were already members of the Public Service. … The other three did not accept appointment'. Kean 1956. 'President's message'. *Chronicle: Journal of the Clerks of Courts,* 7, 3, July p. 1. There were 191 clerks across the State at the time and 81 administrative officers (Class D/E trainees), so a deficit of 31 was substantial. Source: 1955. 'Establishment of Courts Branch (Excluding Prothonotary's Office)'. *Chronicle: Journal of the Clerks of Courts* 7, 6, October p. 2.

[550] Kean 1955. 'President's Message'. *Chronicle: Journal of the Clerks of Courts*, 7, 3, July p. 1. The end of World War II marked the beginning of 'the long boom' (McLean 2012, p. 183). Global action on mitigating the economic and social effects of World War II led by the International Monetary Fund and the International Labour Organisation urged countries to seek full employment. This is indeed the policy direction pursued in Australia. Government of Australia (1994) *In*: Coombs (1994) [Appendix].

[551] 'The solution, I humbly suggest, lies only in ourselves realistically facing the problem, and doing something about it. In short, we must recruit our own staff. Every clerk, junior and senior, is needed to help in an organised effort to win recruits.' Kean 1955. *Chronicle: Journal of the Clerks of Courts,* 7, 3, July p. 1. Five months later, Kean was able to announce that 'The score is now 42. … We are jubilant. This magnificent result has surpassed our most optimistic hopes'. Kean 1955. 7, 8, December p. 1.

[552] 'In the "Chronicle" of July last, as you will recall, I painted a gloomy picture of the crisis facing the Courts branch as a result of staff shortage. That was only a few short months ago, but the intervening time has witnessed the averting of the crisis by a concerted effort of Clerks of Courts. The picture has changed its hues and the prospect grows brighter. … We recruited 42 boys, but the number after 12 failed at the Entrance Examination and others declined appointment, dwindled to 21, all of whom were allocated to the Courts Branch.' Kean 1956. 'Smoother Waters'. *Chronicle: Journal of the Clerks of Courts*, 7, 9, March p. 1. These recruits included a future president of the Group, John Denahy.

but short-term success, however, and the issue of relieving staff in the courts remained a pressing issue.[553]

Flexing the muscle and feeling the pain

All important issues, operational, legal, organisational and social, were discussed at formal meetings, formally minuted and reported in the *Chronicle*. Regularly, through editorials, the Group promoted professional values - solidarity, a strong work ethic and service orientation - and encouraged members to take pride in their role. Increasingly, however, clerks' reaction to governmental economies and the challenges wrought by change intensified.

In 1979 there was a fierce reaction from the clerks to a government cost-cutting decision. At a time when private cars or public transport were the only options for clerks to visit circuit courts, the government announced that mileage payments were to be reduced. The Clerk of Courts Group decided that clerks should withhold their private cars from official use. Some courts went unserviced while others were visited by taxi. Unsympathetic magistrates threatened clerks with contempt of court action if they failed to appear on court days, but clerks negotiated stopgap solutions (such as lifts from sympathetic magistrates). It was a 'testing time', commented an interviewee, but 'The short lived industrial action was successful and the punitive policy was scrapped. A win for the masses!'[554]

[553] Sir Henry Bland chaired an inquiry (resulting in five reports from 1974 to 1976) into the Victorian Public Service at the behest of the state Liberal (Hamer) government. The 1976 report states: 'Inadequate provision has been made for staff establishments to cope with leave taking: staff turnover, including delays in staff taking up positions on promotions; sickness; and release of staff for training. Most attention has been given to the problem in the Courts Branch of the Law Department.' Bland (1976, p. 43). An interviewee commented that the matter was never entirely resolved, eventually passing to regional managers from 1986. Some were obliged to close more courts because they could not staff them (2020. Personal communication, 1 September).

[554] 2020. Personal communication, 7 October. This matter is referred to briefly in 1979. 'President's Report'. *Chronicle: Journal of the Clerks of Courts*, 19, 8, August p. 97. In this instance clerks worked with the VPSA because the mileage policy was a service-wide issue.

In July 1981 the *Chronicle* reported an unprecedented mass gathering of some 200 clerks (out of 313 at the time)[555] at the Clerk of Courts Group's Annual General Meeting, which had been brought forward as a matter of urgency.[556] The cause of this action was a proposal that senior clerks of courts positions be opened to outside competition. An hour beforehand, the Secretary to the Law Department had met with the Group's executive and agreed that the sub-regulation be deleted. 'The 11th hour decision was too close for comfort but can we rest assured that a similar move will never again be made, that the matter is dead? We must be ever vigilant and prepared for a show of strength … maintain our traditional "siege mentality" to preserve our future.' The victory was celebrated by a large body of clerks at the City Court Hotel.[557]

Although the *Chronicle* continued to promote outward-looking service values, during this era cynicism and a more combative tone crept into its pages. The clerks had become increasingly frustrated with the inaction of the Law Department in addressing the under-classification of some of the courts. Each magistrates' court was classified according to the level of responsibility considered necessary to run it; a small suburban court that only sat two days a week, for instance, might be a CC-2 court, whereas a large regional court could be a CC-5. The Chief Clerk of the City Court was a CC-6. Clerks were concerned that for many years clerks of lower classifications (and lower pay) had been sent to relieve at higher-level courts. This was considered unfair on these junior staff who should have been paid for the performance of 'higher duties' and dismissive of those who were due for a promotion.

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[555] 1981. 'List of Officers Employed in the Courts Branch as at 9.9.'81'. *Chronicle: Journal of the Clerks of Courts*, 21, 3, September pp. 290-3.

[556] In 1981 the Clerks of Courts Group Annual General Meeting was brought forward to protest against Draft Sub-Regulation 3A of Regulation 28 of the *Public Service Act 1974* (Vic) Regulations, a proposal for the lateral appointment of senior clerks 'which would, if implemented, have meant disaster to the future of all of our members both aspiring magistrates and career clerks - the possibility of persons from outside the Public Service being installed as senior Clerks of Courts … the district courtroom was packed, with an overflow into the courtyard, even the bench was occupied'. Mansbridge (attrib.) 1981. 'Editorial'. Chronicle: Journal of the Clerks of Courts, 21, 3, September pp. 269,70.

[557] 'Many old acquaintances were renewed and new ones formed until late into the night or was it morning? ... All would agree that it was one of the most enjoyable occasions organised by the Group. There may even have been a note of triumph about it.' 1981. 'Editorial'. *Chronicle: Journal of the Clerks of Courts*, 21, 3, September p. 270.

The Group believed that the Department was deploying these lower-classified clerks to save money both in the short-term assignment of a more junior clerk, and by avoiding the recruitment of more senior clerks and therefore creation of consequent further vacancies. Delegations had been sent to the Secretary on several occasions to discuss the matter formally, but no undertakings made to change the practice.

A 'bureaucratic' Department versus 'fat and lazy' clerks

The Editor of the *Chronicle* at the time, senior clerk Bryan Clothier, expressed the Group's frustration in an unprecedented tirade: 'Bureaucratic is a strong word to use in describing the Department but it seems to fit the situation at present.' He accuses the Department of using stock phrases to explain why a clerk did not get a promotion: 'Oh, you're too senior' or 'Oh you're too junior'. He declares the Department to be 'dishonest' in filling a vacancy at Frankston Court with a lower-grade officer.[558] He goes on to say, 'The reason why the Department can do these things and totally disregard us is because they know that we won't do anything about it. We have become "fat" and lazy. We have been lulled into a false sense of security by the "sops" handed out by the Department.'[559] Clothier's words were seen by the membership as courageous. Those elected to the Group executive were often next in line for the bench; few would have been willing to jeopardise this promotion of a lifetime by antagonising their powerful departmental masters.[560]

The displeasure of a 'grieved' Secretary, Roy Glenister, was not alleviated by a somewhat attenuated declaration of the clerks' position in the subsequent edition of the *Chronicle*.[561] A severe chastisement was administered to the Group and the Group went

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[558] 'The Law Department was being shoofty and shonky', declared one interviewee. 'Assistant clerks who went off to do the outlying courts (i.e. OIC jobs) were under-classified. You had to be qualified (i.e., a C-Class), but the Department placed people there who weren't - it was a dishonest system. It saved the Department lots of money.' 2018. Interview #7.

[559] Clothier 1969. 'Editorial'. *Chronicle: Journal of the Clerks of Courts*, 12, 8, December p. 1.

[560] One interviewee commented that as soon as a clerk achieved the position of President of the Clerk of Courts Group, he became noticeably more conciliatory in tone towards the Department in view of his 'next in line' status (2018. Interview #7). Clothier in fact became a magistrate in 1979, but other interviewees expressed a belief that their activism did affect their careers (2018. Interview #6; 2018. Interview #12).

[561] 'The Deputation, as empowered by the December Quarterly Meeting, retracted any intemperate language used but indicated to Mr Glenister that the comments expressed reflected the general feelings of

into damage control. Clothier was forced to resign his position on the executive and a more diplomatic, unqualified apology was printed in the following edition.[562] This was regarded by some interviewees as a shameful capitulation (two former clerks called it 'grovelling'), even though it had been agreed upon at a Group meeting.[563] The issue is remembered with resentment by people who lived through it and serves to illustrate both the intensity of its impact on the clerks and the complexities of leading the Group at this time. It was another tipping point in their relationship with the Department, and potentially divisive for the clerks as a cohort. The Group experienced a slump in attendance at meetings for the next few years and difficulty in rallying interest in issues: 'we must be the most "depressed" group in the state' opined one editorial.[564] Although some limited and belated success was achieved in 1973 with small pay rises for clerks,[565] the issue of classifications was to simmer until the 1980s when a comprehensive raft of reclassifications initiated by the Clerk of Courts Group and carried out under the auspices of the Public Service Board finally took place.

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the Group. The Executive agrees that some of the sentiments … were expressed too trenchantly. It apologizes to Mr Glenister for any embarrassment suffered …'. Clothier 1970. 'Executive Statement'. *Chronicle: Journal of the Clerks of Courts*, 13, 1, December p. 1.

[562] 2018. Interview #7; 2019. Interview #58. Eighty clerks had attended a special meeting to discuss the issue and they passed this motion: 'That the Clerk of Courts Group tender to the Secretary to the Law Department an unqualified apology for the remarks and tenor of the December Chronicle and the subsequent articles contained in the March issue of the Chronicle'. The new President, John Dugan, adds, 'I trust that you will accept the apology with the sincerity in which it is tendered and I further hope that the relationship previously enjoyed by the Department and the group will continue'. Dugan 1970. 'Correspondence'. *Chronicle: Journal of the Clerks of Courts*, 13, 2, July p. 2. There was now an Executive Sub-Committee instead of an individual editor.

[563] 2018. Interview #7; 2019. Interview #58. One said, 'People of my [younger] age group were very annoyed when we backed down … The way we were treated and ignored; classifications - these were things that certainly my age group thought, "That's bloody true!" We thought we'd hit the mark - because Glenister was upset'. 2019. Interview #58.

[564] '… but this is through our own making. Just for a change let us all try to imagine what the Clerk of Courts' group would be like if we asked, "What is best for the Clerk of Courts' group"? and not, "What is best for me as an individual"?' [sic] (1972. 'Editorial: Why Is It So?' *Chronicle: Journal of the Clerks of Courts*, 15, 2, April p. 1. 'SO DON'T BE COMPLACENT, PARTICIPATE' thundered another: 1972. 'Editorial'. *Chronicle: Journal of the Clerks of Courts*, 15, 4, September p. 1. 'Over the last few years there has been a lack of support from the Group generally with the exception of a core of Clerks': 1974. 'Editorial'. *Chronicle: Journal of the Clerks of Courts*, 17, 1, February p. 1.

[565] Although '…the Group's Log of Reclassifications …. was lamentably long in being brought to fruition …. many Clerks may be disappointed', the President of the Group, J. A. Barns, considered that the Department had done its best under the circumstances. 1973. Barns, 'President's Report – 1973'. *Chronicle: Journal of the Clerks of Courts*, 16, 3, July p. 1.

Competition in the system

In the meantime, the seniority system had been replaced with merit-based competition.[566] There was a tacit order of merit amongst the older cohort and some therefore saw little need for rivalry,[567] but the new merit system permitted any qualified clerk to apply for a position, even the most junior (Stanton 1978). A 1979 editorial in the *Chronicle* shows the clerks' leadership recognising the new reality that seniority, a nudge and a wink were neither sufficient nor sustainable for the long-term viability of the profession: 'seniority … is a fallacy … The best man for the job … should and must win'.[568]

Despite such declarations, the comfortable certainty of eventual promotion was upset under this new order, and camaraderie between old friends disrupted.[569] Much angst was occasioned amongst clerks because, as one example explained,

> The Department appointed number 23 in the line to get a CC-3 - so the other 18 to 20 would appeal - that clogged up the appeal system. People were fighting each other: you'd be the best of mates - now you're trying to say you're a better clerk than he is because of A, B and C. End of the seniority system. Up to then, if the senior bloke didn't get the job, there was always a good reason and everyone would know.[570]

The newer generation of clerks adapted more easily to the new merit system requirements and some who would otherwise have waited years to be promoted were able to skip the

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[566] With the establishment of the courts' own administration branch, registrars' duties and the reciprocal duties of the administration were codified. Duties and qualifications for clerks' positions began to feature in job advertisements around 1978; this was part of the major changes during this period, coinciding with the establishment of the courts' own Personnel Branch, introduction of merit selection and later, formal performance management systems. 1978. 'Editorial'. *Chronicle*: *Journal of the Clerks of Courts*, 19, 4, July p. 17. Appeals at the Promotions Appeals Board could now be based on the satisfaction of key selection criteria and the performance of specific duties.

[567] 'Years on the job we know who is good, we clerks are like a club … a half hour test is a snub': Anon 1983. 'How I interviewed the CC-5 panel'. *Chronicle: Journal of the Clerks of Courts*, 23, 2, July p. 12.

[568] Pilgrim1979. 'Editorial'. *Chronicle: Journal of the Clerks of Courts.* 19, 7, April pp. 73,4. The few women in the cohort at the time must have noticed the use of the masculine in this assertion.

[569] This has been observed in other organisations: 'those who perceived rigid stratification were more satisfied than those who perceived a mobile system in which they personally were not mobile'. Kanter (1993, p. 162).

[570] 2018. Interview #12. A lengthy article by an anonymous contributor details why 'there is no magic in the interview procedure, it is unnecessary and time-consuming' in 1983. 'The Interview'. *Chronicle: Journal of the Clerks of Courts*, 23, 3, September p. 11.

queue over others who had long awaited their 'turn'. This could cause resentment amongst the fraternity: one popular former clerk confessed that he had experienced 'the worst Christmas ever' when he was promoted two rungs up the ladder, with colleagues refusing to talk to him for a month or two.[571] Those who aspired to the bench were prepared to break with the unspoken code between clerks once they understood that the sun was setting on their hard-won magistrates' qualifications. It was an invidious situation since promotion might be at the expense of competent and more senior colleagues who might now miss out for good.[572]

The Group muscles up

In September 1983 the Group's President, John Denahy, wrote in the *Chronicle*, 'The last twelve months have continued to be most frustrating for your Executive, the inordinate delays in the advertising and processing of reclassified positions, the definite maybes, the unconcerned attitude of the Personnel Branch have caused anguish to us all'. The Group sent a blunt message to the administration:

> The Group does not believe that many if any, strengths exist in the present management structure. The overall picture discloses a selfish incompetent group of individuals pulling in separate directions for the betterment of their own positions rather than a united effort working for the improvement of Courts. … It is hoped that under the direction of new senior management, and an autonomous Courts branch, that these frustrations will be lifted.[573]

[571] 2017. Interview #3. Another interviewee recalls being 'put into Coventry for a while' after a 'premature' promotion; 'relationships broke down', he remarked. 2018. Interview #15.
[572] 2018. Interview #14; 2018. Interview #15. Controversy was again occasioned when less senior clerks applied for and obtained some of the new Area Manager positions in 1985/6: it took an entire week to process all the appeals for just one of these selection decisions at the Promotions Appeals Board and the inaugural Area Managers' Conference had to be delayed for several months while all appeals were settled. 2020. Personal communication, 1 September.
[573] Denahy 1983. 'President's Report'. *Chronicle: Journal of the Clerks of Courts*, 23, 3, September p. 5. He adds, 'I have read in the daily press that thousands of new positions have been filled in a number of Departments. The Departments seem to be attached to the "gravy train" whilst Courts remain understaffed, officers work in dilapidated conditions, using antiquated equipment. The catch cry of "no funds available" seem to be constantly directed at the non vote catching area of Courts' (p. 5).

There was no holding back here, and although this communication must have been unwelcome in head office, it appears that no apologies were called for. By the time the reclassifications began to take effect, a dedicated Courts Administration Branch had been set up under John King and the Change Program was underway.[574]

A former executive from the Department's Personnel Branch commented,

> It was a big restructure, and [we] went on a road trip doing interview skills training etc. They would bring in the clerks from all the outlying courts to attend. … Then after the restructure we had massive numbers of interviews, and 374 promotion appeals, which took [one person] pretty much three or four months full-time to do. And it was awful, because one day you'd be saying this person was awful, and the next day you'd be saying they were fabulous, and vice versa, because if you didn't get one job you'd have to appeal against someone, and everyone was appealing against each other. What a system - but that's how it worked. … I don't know if they'd ever had that number of appeals before, historically …
>
> The restructure - it had a big impact. People had to apply for their own jobs. Very problematic if it was someone from the country, and they'd moved their family up there, and they weren't getting the job … not that you could ever think you had your job for life, though lots of them did … it would have been a very difficult time for people … and they closed lots of courts. Dramatic change.[575]

[574] The *Chronicle* had commented on the appointment of King as follows: 'Be patient, and co-operate, the process of change will be hard for us all but when we come out at the end we will find that it's all been worthwhile and will be beneficial to us all - this is the substance of a plea to the Clerks of Courts by Mr. John B. King at a recent interview. … For the first time we have in charge of our Administration someone who is qualified, not only in law but is also a Master of Business Administration from Harvard. … no changes will be introduced without consultation - maybe this is what we have been looking for!' 1984. 'Mr. John B. King - Assistant Secretary for Courts'. *Chronicle: Journal of the Clerks of Courts*, 24, 1, March p. 7.

[575] 2018. Interview #33.

Industrial action

In October 1983 the Group decided upon an unprecedented step: a stop work meeting.[576] Clerks were worried about their careers, frustrated about delays in filling jobs[577] and increasingly anxious about the future of their profession.[578] Family plans were put on hold while clerks awaited news of promotions and transfers due to the restructure.[579] They were conscious of the consequences to the community if the day's business were to be interrupted, so this was a serious undertaking and shows how deeply-felt were their grievances. The Group's executive obtained support from the Magistrates' Association and sought an undertaking from police that they would not staff the courts in their absence.[580] Buses were organised to drive clerks to the meeting.[581] One senior clerk advised the Secretary, Elizabeth Proust (who was touring country courts at the time but had a dedicated phoneline set up in case action was announced), 'Don't worry. They won't go on strike - they haven't got the guts'.[582] This may have been an overly harsh assessment but the clerks, after a discussion with the Director of Personnel in which some

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[576] 'For the first time ever in the Group's 60 year history, has such a step been taken. … It is regrettable that such action should have been necessary by a Group such as ours and it is hoped that these drastic measures will never again be called for.' 1983. 'Editorial'. *Chronicle: Journal of the Clerks of Courts*, 23, 4, December p. 7.

[577] 'At several courts in Victoria staff numbers have been short of requirements for some considerable time forcing the remaining staff to either work regular unpaid overtime or allow the work to accumulate. This situation cannot be tolerated and the Department has been asked to remedy the fact that eight officers have resigned or retired in recent months and not been replaced. Your Executive and Industrial Officer of the V.P.S.A. are closely monitoring this development.' Dent 1983. 'Secretary's Report'. *Chronicle: Journal of the Clerks of Courts*, 23, 3, September p. 6.

[578] 'For the second time in eighteen months, a legal officer has … been appointed to the bench ... Clearly such appointments are not acceptable to our members where clerks of courts with similar qualifications plus twenty years experience working in Courts of various jurisdictions are passed over for the position.' Dent 1983. 'Secretary's Report'. *Chronicle: Journal of the Clerks of Courts*, 23, 3, September p. 6.

[579] 'Delay about the reviews - people didn't know where they were going - where to buy houses, where to put kids into school - can I afford these school fees?' 2018. Interview #12.

[580] 'We called the Secretary of the Magistrates' Association - there was support there but they wanted the Group to ensure no people on bail would be walking off scot free, and [we said to] the Secretary of the Police Association (Danny Walsh): "We don't want your members coming in to act as bench clerks and swearing in witnesses etc.".' 2018. Interview #12. Another former clerk recalls, 'The proposed stop work happened to be a gazetted court day at [my country court]. The (relieving) Magistrate's … response was that he would deal with the Clerk (me) by way of contempt including arrest and incarceration if deemed appropriate!! In a panic I contacted the President, Kevin Ryan, who assured me I would be looked after. History has it that our claim settled 4.00 pm the evening prior - Court doors opened and court was conducted'. 2018. Personal communication, 24 April.

[581] 2018. Interview #14.

[582] 2018. Interview #7.

palliative undertakings were made, called off the stop work on the eve of the proposed action.[583]

This was of course a memorable event for the cohort and although there were still unresolved issues, they had managed to avert the closure of some of the courts on the list.[584] Over the following year the Clerk of Courts Group maintained pressure on the Law Department and continued to voice the frustrations of the clerks: 'Faced with staff shortages, delays in implementation of the reclassification and the resulting drop in morale, an unprecedented number of clerks opted for greener pastures in private practice. Our members are now faced with court closures and the threat from the Australian Government to take over all maintenance enforcement'.[585]

Another complication was the secondment of some of the leaders of the cohort into the Department itself, where they took on senior roles to participate in the Courts Change Program during the mid-1980s. This was seen by some colleagues as a conflict of interest.[586] One interviewee reflected, 'There was a bit of tension from time to time, when reporting lines (and "loyalties") crossed paths. Justice (independent courts) the Department (executive) and the workers' Union, made it a unique work environment. The aim to provide a responsive, accessible state-wide service was common ground'.[587]

At some level, though, the clerks always recognised that the transcendent issue was the status of the jurisdiction and that professionalisation of its people was the key. The sticking point - qualifications of magistrates - was conclusively dealt with from 1978 to 1984, but not without trauma for the cohort.

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[583] 'David Webb [the Law Department's Director of Personnel] took the Executive out to lunch - spoke candidly - "We are getting things underway - can put some more people on …" We went back to a meeting chaired by John Denahy - … gave an update - "We are not left wing - by nature conservative - they know now where the beef is and we're fair dinkum - David Webb seems a very genuine bloke - if this hits the headlines it would affect the government." Two-thirds voted to call it off.' 2018. Interview #12.
[584] 2018. Interview #12.
[585] Dent 1984. 'Secretary's report'. *Chronicle: Journal of the Clerks of Courts*, 24, 2, August p. 3.
[586] 'It got quite heated - a lot of people thought, what's going on here? Effectively, [the staff officer] called them in and set them up. A lot of people felt quite dissatisfied, because they were left with nowhere to go.' 2017. Interview #25. Some of these antagonists, now retired, enjoy regular, very sociable meet-ups, but some friendships ended in bitterness (2018. Interview #6).
[587] 2017. Personal communication, 16 November.

Professionalisation in the People's Court

'Enhancing the prestige and status of an occupation are outcomes or benefits of professionalization' state Anleu and Mack (2008, p. 191). Such enhancement - which took place between 1978 and 1984 in the Victorian summary jurisdiction - was long overdue here. As much as these changes 'enhanced occupational status and prestige in the case of magistrates' through both 'separation from the public service and the appointment of magistrates who have legal qualifications and experience',[588] though, they were seen to dim the status, prestige and aspirations of clerks. The breaking of the career and cultural nexus between qualified court administrators and the bench was disheartening to many whose career objectives seemed no longer attainable.

The question of magistrates' qualifications had been contentious for more than a century. The legal profession had long advocated its entitlement to the bench. For many in the law it was manifestly unfitting that barristers and solicitors should appear in front of judicial officers who had less formal legal education than they.[589] In New South Wales a law degree had been the minimum qualification for appointment to the magisterial bench since 1955,[590] but Victorian clerks continued to argue that their combination of formal study and years of court-based work experience was better and broader preparation for the magistracy than could usually be achieved by practising law.[591] Yet increasingly, the

[588] Anleu and Mack (2008, p. 191).

[589] In 1932 the Victorian Attorney-General had been reported as declaring that he was 'far from satisfied' with the standard of legal knowledge required of the State's 26 police magistrates, notwithstanding that there were some with 'marked ability and judicial temperament'. He stated that the summary jurisdiction's extension into contract and civil wrongs had caused him 'some anxiety'. 1932. 'Police Magistrates'. *The Age*, 16 September p. 18. The issue was taken up by the *Argus* and *Law Institute Journal* (LIJ) the following year. The LIJ detailed the current qualification standards and principles of appointment as specified in the *Public Service Act 1928* that in theory allowed a barrister and solicitor to be appointed (s. 44), but in practice preserved the clerks' almost exclusive path to the bench via s. 37 ('Legal Qualifications of Police Magistrates' 1933, pp. 55,6). See also 1933. *Argus*. 'Police Magistrates. Higher Qualifications. Wider Selection Urged'. *Argus,* 10 March p. 3.

[590] Ward (2013, p. 185).

[591] Due to the system of progression by special qualifications and seniority in Victoria, a degree in law did not necessarily advance a clerk's position in the queue, so from a short-term perspective there was no compelling argument for pursuing one. Once a person had achieved the mandatory qualifications for promotion, one had to wait until a vacancy occurred and the next most senior person was appointed. The minimum age set in statute for ascension to the bench was 35 and it was usual to take around twenty years as a clerk of courts to achieve this career pinnacle. The age of 39 was considered very young to arrive at this point, although Arthur James Curtain, Herbert Barton Wade and John 'Darcy' Dugan were also

problematic relationship of judicial independence with employment in the public service was in the public eye. Judicial autonomy and security of tenure (which allowed protection from undue pressure from governmental powers) were key considerations, along with respect for the office of magistrate and ultimately for the court itself.[592]

Clerks had long campaigned for their career stream to be recognised by the Public Service Board as 'professional'; the Board had approved the transposition of Clerk of Courts positions from the Administrative to the Professional Division in 1947.[593] Their unique internal qualification[594] both made for formal recognition of their status and effectively prevented lateral recruitment (a significant issue for the clerks as we have seen).[595] Clerks resisted however the professionalisation of the magistracy since with the mandating of a law degree, twenty or more years of experience as a clerk or registrar and progress towards the old magistrates' qualification (a selection of university-level law subjects) could lose their leverage.[596] Moreover, their closed-shop progression to the bench would cease to exist.

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promoted at this age. Arthur Purssell Akehurst's appointment to the bench in 1865 at age 29 preceded the age rule. (Servicemen returning to government jobs were compensated for the deficit in their work experience and advanced in the queue by virtue of Section 2 (1) of the *Public Service Act 1919* (Vic). Their names were asterisked in the establishment lists published in the *Victoria Government Gazette*. After World War II the *Discharged Servicemen's Preference Act 1943* (Vic) applied).

[592] Anleu and Mack (2008, pp. 189-91); Golder (1991, p. 33); Lowndes (2000, p. 517).

[593] From the *Chronicle* May/June 1947, reported in 1983. 'Talking Points'. *Chronicle: Journal of the Clerks of Courts (Jubilee Edition - 1923-83)*, 23, 1, April p. 8.

[594] The requirement to enter the VPS as a permanent officer was HSC (Year 12) and the Public Service entrance examination. Regulation 46 (as amended from time to time) of the *Public Service Act 1946* (Vic) and successive Acts specified the requirements for a trainee to be qualified as a clerk. Three subjects were to be passed: two (Commonwealth and State) Statute Law subjects, and Introduction to Law (based on a specified text: for many years this was *Outline of Law in Australia* (Baalman 1955). The list of statutes to be studied expanded considerably over the years. By the 1960s a fourth subject, Court Practice and Procedure (based on the *Instructions to Clerks of Courts*), had been added. A minimum of three years' experience (including Magistrates' Court, Children's Court, Coroners Court, County Court, and in larger country districts, the Supreme Court) was also required. This completed, the officer was eligible for promotion to 'CC-1' level, subject to satisfactory performance reports. Once promoted, the clerk could be appointed in charge of certain metropolitan and country courts or placed in charge of a section at the City Court or County Court in Melbourne.

[595] The first Victorian Bland Report had pointedly warned that 'there will be no room, in future, either for a compartmentalized Public Service or for a Service which is a closed shop - the preserve of those who enter at the lowest ranks and at the threshold of their working lives and remain until retirement or earlier demise'. Bland (1974, p. 43).

[596] One interviewee decided to complete his law degree because he wanted to avoid being 'snouted' by the Law Department: 'I'd only be good as a law clerk if the qualifications changed'. 2018. Interview #5.

Until December 1978 Victorian clerks were 'protected' from outside competition by a kind of stalemate. The Law Department had delayed the inevitable by progressively 'moving the goal posts' for aspiring magistrates, with the required completion of university law subjects changing from six subjects to, eventually, twelve.[597] In 1964 former clerk and magistrate John Dillon, a qualified lawyer and accountant, had urged (less presciently than pragmatically) upon those present at the annual Clerk of Courts Dinner that 'every clerk should endeavour to qualify to the highest degree'.[598] An increasing number of them did achieve their LLB by studying after hours and negotiating the logistics involved in physically attending lectures.[599]

Anxiety reached fever pitch when legislative changes to magisterial qualifications were mooted in the late 1970s. Heated discussions erupted in Clerk of Courts Group meetings; delegations attended urgently upon the Secretary and Attorney-General. The VPSA was brought in to negotiate between interested groups and the Public Service Board.[600] In

[597] A comment was made that some senior clerks who had been 'sitting on their twelve subjects [awaiting promotion] were shitting themselves' (2018. Interview #7).

[598] 1964. *Chronicle: Journal of the Clerks of Courts*, 9, 1 June p. 4. Dillon had by this time left the bench for the role of under secretary and permanent head of the Chief Secretary's Department (Wortley 2018). Generations of clerks must have keenly observed interstate developments. In 1895 the NSW government had legislated to disrupt political patronage by blocking lateral appointment into the magistracy, thus creating a career for Clerks of Petty Sessions as a side effect, but the Public Service Board was unwilling to cut across its own efforts to upgrade the qualification levels of paid magistrates, so appointment of lawyers continued. 'Public servants argued that this … upset the tacit bargain - between the Board and its junior staff - which underlay the reforms of 1895. The Petty Sessions branch of the Department of Justice drew in able and ambitious recruits, who tolerated a long and not particularly well-paid apprenticeship because they anticipated promotion to the Bench. Too many external appointments could disrupt a chain of promotions and ultimately threaten the staffing of the branch' Agreements were made that effectively blocked external appointments from 1909 to 1975 (Lowndes 2000, p. 515). Kevin Anderson's memoir includes anecdotes about one of the very few magistrates not appointed from the ranks of clerks of courts. This magistrate benefited on occasion from the advice of his clerk: one instance concerned correct citation of a legal text and another the scope of the magistrate's jurisdiction (Anderson 1986, pp. 14,5).

[599] 'At that time, courts had the most highly qualified staff ever - the Courts Branch had 80% of people who wanted to study, become a magistrate or get a law degree - various modes of studying to go further - the knowledge base was incredible. Quasi-legal officers we were, really' (2017. Interview #21). 'I completed my law degree over seven years part-time. Clerks worked collaboratively sharing lecture notes; all your holidays were spent studying. You could only attend say one-third of lectures' (2017. Interview #25). Interviewees reported that their bosses often refused permission to attend lectures because court was too busy, or they were moved to courts where they would have no hope of getting to the university (2017. Interview #28; 2018. Interview #40). Some, however, were 'looked after', given lighter duties or informally excused when they needed to study for an examination (2018. Interview #18).

[600] The proposals were also of interest to Legal Officers employed in the public service.

October 1978 the Group capitulated, formally agreeing that the minimum qualification for the bench should be a law degree: a historic shift in position.[601]

The *Magistrates' Courts (Stipendiary Magistrates) Act 1978* (Vic) mandated a law degree for appointees to the Victorian bench but incorporated a 'sunset clause' for clerks of courts caught between the old provisions and the new.[602] Clerks with legal qualifications could apply for appointment, but they rightly feared that opening the bench to qualified outsiders would reduce the number of positions available to them. They could compete on equal terms with their own, but now the field was wide open: 'I felt I had no chance', recalls one former clerk (now a solicitor).[603]

The legislation, however rational and anticipated, caused considerable turmoil amongst the cohort. It was seen as a major hit to the clerks' sense of themselves as heirs to the bench, and consequently to their status.[604] In December 1978 the president of the Group wrote, 'This year has been one of confusion, uncertainty and anger for Clerks of Courts

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[601] Senior clerks Tony Ellis, Kevin Ryan and Bryan Clothier met with Attorney-General Haddon Storey and Secretary Roy Glenister and agreed at the meeting, on behalf of the Clerk of Courts Group, that the minimum qualification for the office of magistrate should be a Bachelor of Laws, but they advocated for mandating of experience in the magistrates' court jurisdiction. 1978. 'Annual Conference 6-10-1978'. *Chronicle: Journal of the Clerks of Courts*, 19, 5, September p. 59.

[602] This functioned as an amendment of the Principal Act (The *Magistrates' Courts Act 1971* (Vic)). The *Magistrates' Courts (Stipendiary Magistrates) Act 1978* (Vic) provided for both qualified public officers (clerks and legal officers) and applicants from outside the service who were qualified in law and eligible to practise as a barrister and solicitor to be appointed as magistrates. Section 2 (a) (iii) allowed clerks who had qualified under the previous provisions to retain eligibility for appointment if they had qualified before the prescribed date. The Attorney-General's intent was that the cut-off date for achievement of the existing qualification would be 1 January 1981, a year earlier than the date the clerks had lobbied for (see 1979. 'Editorial'. *Chronicle, Journal of the Clerk of Courts,* 19**,** 7, April p. 73).

[603] 2017. Interview #21. Several former clerks who left at this time were interviewed for this research. One said, 'At CC-2 level it was very hard to get promotion … a lot of people who were just … stuck in the bottleneck. Then there was the issue of the changed requirements for the magistracy. There were 40 to 60 clerks who then went on to complete degrees or left. A lot went out and had a law career' (2017. Interview #25). Another former clerk (now a solicitor) said: 'A person whose name I can't remember rang me and told me I'd regret [leaving] … and you know what … I never did' (2017. Interview #21). Kevin Anderson in the 1930s was one of those clerks who did not wait to ascend the patient rungs of the career ladder. He completed his degree after leaving the courts in 1935 to work in the Crown Solicitor's Office, and became a judge rather than a magistrate.

[604] The *Chronicle* noted in 1977 recent poor attendance at Group meetings, attributing this to 'complacency' or 'fatalism'. Members were urged to show the Department that clerks were 'a responsible group of men and women who should be consulted on matters affecting our jurisdictions as we are the ones who know'. 1977. 'Times they are a'changing'. *Chronicle: Journal of the Clerks of Courts*, 19, 3, September p. 1.

and their families'.[605] The Group now took on the challenge of dealing with the fallout. 'The Executive assures you that it will strive to ensure justice for all clerks of courts whether they have … academic qualifications or not. ... It is the task of the Executive to see that the reasons for the lack of morale are eradicated', read one edition at this key moment.[606]

There were, however, more reasons on the horizon. Victoria definitively shut the gate on the traditional apprenticeship to the bench model with the *Magistrates' Courts (Appointment of Magistrates) Act 1984* (Vic).[607] The requirement of a law degree was augmented by eligibility to practise as a barrister and solicitor. In addition, as had already happened in most other states, magistrates were removed from the public service. One of the effects of this was that legally qualified clerks would either have to prove before the Victorian Legal Admissions Board that their service constituted eligibility (no easy task) or be obliged to leave the courts to gain the requisite experience elsewhere. This is what many clerks did.[608] The *Chronicle* acknowledged the difficulty of adapting: 'Clerks of Courts could be forgiven for feeling bewildered by the series of events … Even the "grapevine" has been accused of breaking down amidst the confusion, however unlikely that may seem'.[609]

Those who had risen through the ranks and worked hard for what was to be the crowning achievement of their career felt betrayed and undermined, despite reassuring comments

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[605] Ryan, K 1978. 'Editorial'. *Chronicle: Journal of the Clerks of Courts,* 19, 6, December p. 57.
[606] 1978. 'Annual Conference'. *Chronicle: Journal of the Clerks of Courts*, 19, 5, September, p. 37. '**We will learn much from the ensuing struggle by our N.S.W. counterparts to keep the bench open to them. Remember that N.S.W. appointed two solicitors to the bench in the late 1970's and they floundered for years, turning out to be the best advertisement that Clerks of Petty Sessions ever had. We trust that the Victorian Government will not make the same blunder.**' Dent 1983. 'Secretary's Report'. *Chronicle: Journal of the Clerks of Courts,* 23, 3, September p. 6. (Type is bold as it appears in the original.)
[607] Section 7 (3) of the *Magistrates' Courts (Appointment of Magistrates) Act 1984* reads, 'No person shall be appointed a Stipendiary Magistrate unless he has been or is qualified to be admitted to practise as a barrister and solicitor of the Supreme Court of Victoria or the High Court of Australia'. Lowndes (2000, pp. 593,4) states that by 1985 all new appointments to the bench in the Commonwealth were legally qualified. The parallel development in NSW of freeing the magistracy structurally from the public service took place in 1982 with the *Local Courts Act* (NSW).
[608] 'At the time of these changes, there was "much bitterness about the loss of the traditional career path". Understandably many old clerks resigned "amid some ill-feeling and disillusionment".' Douglas, R and Laster (1992, p. 47).
[609] 1983. 'Message from the Executive'. *Chronicle: Journal of the Clerks of Courts*, 23, 2, July p. 6.

from the Premier.[610] A senior clerk later described this change, in fact, as 'the greatest kick in the guts a government has ever given to the Clerks of Courts of this State'.[611] As one former clerk who had been fortunate enough to ascend to the bench remarked at his retirement:

> I have never forgotten my background, my roots. The service that clerks of courts have given to the people of this State should never be underestimated. I'm surprised that so few clerks of courts since 1983 have been honoured by appointment as magistrates. Their … years of experience at the coalface have not in my opinion been sufficiently recognised ... I am proud to have been a Clerk of Courts and I am grateful for my years as a magistrate.[612]

In 1986 the president of the Clerk of Courts Group wrote: 'Unfortunately, the lack of opportunity for our members to gain promotion to the Magistracy sees a constant drain of qualified officers leaving our ranks. This loss is having, and will continue to have, an adverse effect on the standard of our professionalism'.[613] Concerned by the exodus of some of their best and brightest, the leadership redoubled its efforts to refocus the cohort on alternatives to the bench, setting up committees to investigate and report on retraining and educational options.[614]

These developments that brought major disappointments for clerks were not, as might have been expected from the tone of some of the above comments, a precursor to antagonism, resentment and a souring of the relationship between clerks and the bench. Research into the effects of change on the magistracy reveals a culture that readily

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[610] The Premier Mr Cain remarked, 'I do not consider the proposed legislation should have any effect on the extent to which the Courts Branch will continue to provide the principal source of recruits for the magistracy … If any assurance is necessary, I give that assurance … The branch has served Victoria well as a place from which magistrates have been and continue to be drawn, and I am sure it will continue the service in the future' (Victoria, Legislative Assembly, 1984: 119).
[611] Having described the emotional impact, he qualified his statement by arguing that although it was not a 'wrong' decision per se, it coincided with 'cutbacks in staff numbers, increased work commitments and an increased degree of difficulty in getting into law courses … We had been demoralised'. Dinsdale 1993. 'A message from the President'. *Chronicle: Journal of the Clerks of Courts*, 32, 3, Autumn p. 6.
[612] 2018. Interview #57.
[613] Denahy 1986. *Chronicle: Journal of the Clerks of Courts*. 25, 1, September p. 7. Presumably this was a reference to the levels of qualifications of the clerks remaining, not their standards of behaviour.
[614] 1983. 'Your Future as a Clerk of Courts'. *Chronicle: Journal of the Clerks of Courts*, 23, 3, September p. 7.

accepted, even welcomed the new appointees (Douglas, R & Laster 1992). Clerks supported the new magistrates on their learning curve. One outside appointee commented that 'Good clerks took pressure off the magistrate. It's vital'. New magistrates appreciated the clerks' 'protectiveness'[615] and, as one expressed it, their

> discreet and respectful advice … Pragmatic, about how things worked. Adjournments and how to use them. A good lesson to learn. For example, if there's a riot, a sensible clerk stands up and says 'Adjourn the court' and gets the judge or magistrate off the bench so that the other people can deal with it in ways that the judge or magistrate doesn't see. They gave you the cover of their enormous understanding of the system - how it worked from the time someone came in, whether it was a civil case or a criminal case, to the time they went out the door to jail.[616]

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[615] The architecture of the court could usually afford the quick exit of a magistrate from a side door near the bench, but there was not usually as convenient an exit for the clerk, who relied instead on getting help via the telephone or the protection of burly police officer at the door of the court (2018. Interview #46). Interviewees had many stories of people fighting in the courtroom, attempting to jump over the counter, spitting at the magistrate, trying to escape from police custody, smuggling in weapons or uttering threats. One recounted an incident where members of a bikie gang surrounded the courthouse and staff decided to seal the doors until a police presence could be summoned (2018. Interview #8). Clerks would accompany magistrates on site visits to prisons or coronial investigations. One interviewee described an incident where the attendant clerk had stepped into a threatening situation to negotiate with angry prisoners: it was later revealed that the inmates had been planning to 'detain' the magistrate and attract publicity to their claims (2018. Interview #12). After one of the research interviews, at a busy metropolitan court, a fracas erupted in the foyer. Security officers descended upon the combatants and separated them from each other while court visitors and registrars paused to watch. The interviewee commented, 'In some ways it may have been good for you to witness what can explode in court buildings from time to time. … a Clerk of Courts workplace can often be a tense and sometimes hostile environment in which to work day to day unlike other workplaces in the public service' (2018. Personal communication, 30 May). The Russell Street bombing in 1988 was, of course, a traumatic event for court and police staff, and several interviewees commented on the profound and long-lasting effect it had on them and their colleagues.

[616] 2017. Interview #35. Amongst the interviewees were judicial officers in busy metropolitan courts who commented on how they see court staff today as opposed to in the period under study (1949 - 1989). One (a former clerk) remarked, 'Things have really changed for the worse re the attitude of clerks - they are less committed. More like bank tellers' (2018. Interview #53). Another had a different view: 'Good staff - makes the job of judges and magistrates easier. It's not the traditional public service mentality. No "Dunno, go ask a lawyer". Lawyers are treated well and with good service ... Prosecutors have good confidence in the registrars ... Staff talk about it - [I tell them] Every day you go to work, and that's your interview for your next job' (2018. Interview #22). Some magistrates expressed the view that court staff today are not as respectful as they should be (2018. Interview #10; 2018. Interview #48). They said that a formal distance should be maintained and registrars should not be allowed to address the judiciary by their first name (as is sometimes now the practice); a country magistrate (formerly a clerk) confided that sometimes registrars try to stand over him because they do not like the way he prefers to run his court. On the other hand, I

Conclusion

Camaraderie sustained a small but purposeful cohort and energised its efforts. Until the major disruptions of the 1970s, the clerks' culture was protective of its relatively homogenous membership: members recognised each other as having shared history, values and interests. They could be distrustful of those they saw as outsiders, and although change was anticipated, increased professionalisation across the public sector was experienced as a competitive threat. They had yet to see themselves as competitive in a wider domain. In coming to terms with the actuality of change, clerks had not only to reform the some of their operational norms but also their attitudes and ways of relating to the Law Department as their powerful employer - and with each other as individuals. This intensified the challenges faced by clerks in an already pressurised context.

The inner workings of a culture are not easy to access. The considered views of insiders are essential to the analysis of culture, but they do not always agree, and it is unlikely that they will be impartial (Smith, G 2012; Wilson 1989, p. 93). Nonetheless, interviewees' recollections and expressions about their culture as crystallised in a period of industrial tension and social change resonated authentically with contemporaneous records in the *Chronicle*. Today, in a very different environment, the Clerk of Courts Group is no longer expected to exercise industrial muscle; serving on its executive is seen not as a career move, but as a contribution to the wellbeing and sustainability of the cohort. Its annual dinners are as well-attended as ever before; the *Chronicle* is produced annually and provides a space both for sociality and for court staff to reflect on justice system issues at a broader-scale, more strategic level. The Group has its own Facebook page.[617]

witnessed a magistrate who was offended by the way a young registrar delivered the morning's list to her in her chambers without introducing himself: to me, he seemed nervous. Senior interviewees sometimes expressed their disquiet that the courts as an institution and the court process itself do not today appear to command the level of respect appropriate to the institution; registrars and judicial officers found it disappointing that they would have to admonish a defendant for chewing gum, swearing in court or addressing the magistrate inappropriately. For registrars and magistrates this gives the sense of an erosion of power, especially if that power is mostly 'bluff': lack of respect makes their job harder (2018. Interview #45; 2018. Interview #22).

[617] One older interviewee remarked (rather ruefully) that it is 'more like a social club today' (Interview #20). Industrial battles are usually dealt with by senior registrars or referred to the CPSU Interview (2018. Interview #41).

Comments from interviewees still working in the magistrates' court suggest that the cultural characteristics of camaraderie and a sense of belonging to an exclusive group remain: 'You might meet [a fellow clerk] a couple of times and not see them for ten years, but it will feel as if they're an old friend when you meet again. One of the benefits, as I tell the trainees. You make friends - nothing's changed - it's the unique character of the work we do. Most of the people we see on the other side [of the counter] we don't want to see again. We back each other up'.[618]

Being a clerk of courts was a life career - for some, a veritable vocation. It also meant being part of a long tradition of clerks and for many, belonging to a family dynasty. Culturally and literally it was 'in the DNA' (Schein & Schein 2016, p. 9). In a system where a small group of men managed and delivered justice services to the populace, being part of this tradition even at a junior level was experienced as a powerful affirmation of one's significance. So what happened to this culture when the midst of a moment of critical change and stretched resources, the position of women in this family suddenly altered - when they were no longer only wives and daughters and vulnerable court users, but became colleagues? This is what we explore in the chapter to come.

[618] 2018. Interview #30.

Chapter 6:

‘Ducks on the pond’:
women and change in the People’s Court

One feels tempted to twist the adage 'More in sorrow than in anger' ... to register an informal protest against the further intrusion of the female into the last (and that one should have considered the unassailable) stronghold of man - namely the Courts. ... Is the sordid atmosphere necessarily associated with a Court in an industrial suburb compatible with the delicacy of nature with which womanhood is endowed?. ... I can hardly conceive of any legitimate pursuit which could provide innocent girls with such a rotten environment.

'CAVEAT' 1940. 'Letter to the editor'. *Chronicle: Journal of the Clerks of Courts.* VIII, 8, November p. 57.

Introduction

The workplace has traditionally been important to men's identities (Rutherford 2011, p. 26), and the courts were no different in this regard. The story of the first female trainee clerks provides us with a window into the effects of a significant cultural stressor. In exposing some telling faultlines, it functions as a litmus-test for the adaptability and inclusiveness of the clerks' culture.

In February 1975 the first female trainee clerk of courts, Barbara Allen, was recruited to start the long promotional climb in this 'last stronghold of man'.[619] She was the only woman amongst 289 magistrates' court officers across 85 courts; at the City Court she was one of 20 trainees in a staff of 40.[620] A scattering of women worked as staff in the

[619] Rutherford (2011) notes that 'using female in front of the word' reinforces what is seen as a paradox: for example, a woman being a leader (p. 193). In this chapter I have found it necessary to use the prefix 'female' when discussing clerks of courts who were women; although it sounds (and is) anachronistic, it has been necessary in the context of the era being discussed and is being used in this context to point to the perceptions and treatment of the early female clerks vis-à-vis their male colleagues, similar to in sociological discourse where 'The category of male becomes meaningful only in relation to the category of female' (Mael & Ashforth 1992, p. 105).

[620] An organisation chart from 1975 shows that there were other women in the court: six assistant female clerical officers, a stenographer, several typists and a telephonist. Three of these women were located with Barbara Allen in the Main Office. 1993. 'Melbourne Magistrates' Court - Organization Chart'. *Chronicle: Journal of the Clerks of Courts*, 32, 3, Autumn pp. 15-23. Law Department. 1975. 'Classification of Officers attached to Magistrates' Courts, County Court as of 12th May, 1975'. *Chronicle, Journal of the Clerks of Courts*, 18, 3, pp. 5, 6.

larger courts as low-status typists and clerical staff;[621] there were as yet no female magistrates, and there would be none for several more years.[622] This betokened a lonely beginning for the first young women in the job.

There was no formal communication about how this major change in the demographic would be managed, and a range of attitudes awaited the new recruits soon to follow: from kind and awkwardly protective to patronising, impatient, callous, predatory and misogynistic. Despite their belated entry into the clerks' cohort, by 1989 there were 94 women amongst 329 clerks - just under one third of the contingent. Three of these women had reached mid-level seniority (CC-3) and slightly more females than males were being recruited; 55 out of the 100 trainees were women.[623] These numbers alone are a sign of historic transformation in the People's Court, and over a relatively short period of time. Despite confronting experiences as described by interviewees in this chapter, many women stayed to make lifetime careers in the courts, and many more arrived to take the places of those who left.

In 1995 Laster and Douglas posed the question, 'How is it that women have had such a quick and profound effect on a culture as conservative and powerful as Law?' Writing about the Australian courts in the 1980s and '90s they suggest, 'Although it is valid and important to document the impact of women excluded too long from all spheres of life, the significance of gender is that it is a fine barometer of the complex social and political context of change' Laster and Douglas (1995, p. 203). Clerks of courts were as a group

[621] Margery Davies suggests that the 'gender-neutral' typewriter provided a segue for women to enter the office workforce without appearing to trespass upon the man's domain, but for many women this proved a cul-de-sac. The first Victorian female clerks were specifically recruited as trainee clerks. Davies argues that 'The fact that female clerical workers were often identified as women first and as workers second reinforced the assumption, probably shared by many of them, that a woman's primary role in life was to marry and raise a family' (1982, p. 172).

[622] The first woman to be appointed as a stipendiary magistrate was Francine McNiff, to the Children's Court in 1983 (Sturgess 1983). She was followed in 1985 by magistrates' court appointments Her Honour Margaret Rizkalla and Her Honour Sally Brown AM, then Linda Dessau (at the time of writing in late 2020, the Hon. Linda Dessau AC, Governor of Victoria) in 1986. None of these new magistrates, of course, had been clerks of courts. A senior clerk comments in the *Chronicle* on the legal profession's 'clamour to get jobs for the boys'. He adds, 'Jobs for the girls is a more political concern, so we are told'. Not only were these positions now open to 'outsiders', but they were also open to women, and a political (rather than operational) imperative was seen by some to be driving the changes (Ryan, K 1980. 'President's Report'. *Chronicle: Journal of the Clerks of Courts.* 20, 2, June p. 161).

[623] 1989. 'Classified List of Clerks of Courts'. *Chronicle: Journal of the Clerks of Courts,* 29, 3, Spring pp. 25-43.

driven by a service imperative and an acute consciousness of the needs of society's vulnerable.[624] Yet theirs was also a culture of deep-set masculine traditions. The interface between clerks of courts and the profound social changes that were taking place in the 1970s and '80s is a little-investigated area of research, yet in many ways they were on the front line as government services were pushed to respond to these changes. Engagement with the challenging, problematic and growing family law jurisdiction has become a key marker of the court's performance. Did the introduction of women as fellow workers into an erstwhile 'male bastion' change the way the People's Court dealt with female clientele?

The data collected in this study reveals that the 'feminisation' of the magistrates' court at street level was uneven in its effects and its success.

Unsuitable for innocent girls

Public service employment provides opportunities for women to participate meaningfully in public life, but across the globe it has not always been considered a desirable thing.[625] A letter to the Editor in the *Chronicle* in 1940 expresses severe objections to the incursion of female staff 'into the last (and that one should have considered the unassailable) stronghold of man - namely the Courts'.

[624] In interviews, 22 former clerks directly addressed the need to be of service to vulnerable court users and the general community, or told vivid stories to illustrate clerks having done so. Three others made allusions to the same. They would say things like 'It's not about us, it's about the punters' (2018. Interview #53) or show compassion 'They weren't drunks - they were sick' (2019. Interview #9). They would speak of the job being 'an essential community service' (2017. Interview #32) and of clerks having 'a social conscience' (2018. Interview # 37).

[625] 'One of the important ways in which women can contribute to public decision-making is through public service employment': Sawer (2001), no pagination. The first female court clerk in Great Britain and Ireland (and indeed the first woman to hold public office there) is said to have been Georgia Frost, in Ireland, 1920. A third-generation clerk of petty sessions, she was appointed after a series of court cases appealing decisions against her appointment, although she had been working in an unofficial capacity between 1909 and 1915. Mr Justice Dunbar Barton's arguments sound familiar: 'The reason of the modern decisions disqualifying women from public offices has not been inferiority of intellect or discretion, which few people would now have the hardihood to allege. It has been rather rested upon considerations of decorum, and upon the unfitness of certain painful and exacting duties in relation to the finer qualities of women'. O'Brien, M (2009), no pagination. The first female clerk of courts in Australia may have been Aileen Mary O'Neill in 1936, in an acting capacity at Alice Springs. She had been employed as a typist and stenographer seven years previously. Her experience in this pioneer role and the readiness with which she was accepted into it are unknown. 1936. *Age*, Wednesday 21 October p. 14.

The ‘sordid atmosphere’ and ‘rotten environment’ of the court is incompatible with woman’s ‘delicacy of nature’, declares the writer. No matter how hard a male staff member might try to ‘shield’ her, she would be privy to ‘Matters, the depravity of which, I am anxious my little wife should not, even in her full maturity, suspect. In the Courts one certainly sees life at its rawest’.[626] The writer (whether a clerk or magistrate is not known) disapproves of the employment of women even in the absence of much of the male workforce during wartime.[627] In 1946 two female ‘typistes’[628] were ‘promoted to the counter’ where they issued ‘warrants of distress, orders etc’ - previously clerks’ work - and this led to the appointment of a further two women to take over typing and reception duties.[629] They were apparently the first four women to work at the City Court and it appears from the jovial tone of the articles about them in 1940 and 1946 that they were accepted and welcomed.

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[626] ‘CAVEAT’ 1940. *Chronicle: Journal of the Clerks of Courts.* VIII, 8, November p. 57. No comment is provided by the editor in response to the letter, and discussion of its claims in subsequent editions is not in evidence, although the editor at the time, celebrated character W. H. Johnston, was known to maintain a lively correspondence with contributors.

[627] Over a period of at least six years during World War II, there were four female staff happily working at the City Court. 1940. *Chronicle: Journal of the Clerks of Courts*, VII, 7, October p. 49. It is not known what their official designation was as their names do not appear in the *Victoria Government Gazette*. The first advertisements for female typists in the Law Department appear in the 1920s (1922. *Victoria Government Gazette* 5, January 18 p. 66), but these appointees probably worked in the Titles Office. The absence of much of the male workforce at the Front (before the declaration of Clerk of Petty Sessions as a ‘protected profession’) no doubt paved the way for these women to work in the City Court. During the previous (‘Great’) War, workforce opportunities had been opened to women in a previously unthinkable manner - for example, in munitions factories in the west of Melbourne (Melbourne Living Museum of the West 1985).

[628] The role of typist(e) was one of the few positions originally considered ideal for women: ‘the First Public Commissioner, D. C. McLachlan [circa 1920], believed women’s role should largely revolve around their special aptitude for typing. It was not envisaged that women would fill administrative positions in the service, although there was no formal bar to this’ (Sawer (2001), no pagination). By contrast, Davies (1982, p. 163) notes that in America ‘clerical workers, who prior to 1870 had practically all been men, were by 1930 predominantly women’. American women had been granted access to this form of employment in the nineteenth century, but their role as ‘typewriter girls’ was looked down upon in comparison with that of court reporters, a role also available to women in the USA at the time. A job as court reporter was seen by activist women as an avenue to social and economic independence (Srole 2010).

[629] 1946. *Chronicle: Journal of the Clerks of Courts*, XI, 12, July p. 79. Two more ‘smart young things’ had been appointed to take their place at the typewriter and telephone. One of these women, Lorna Landy, was well-known as a singer and in 1944 she married Xavier Connor, who was later to become The Honourable Xavier Connor AO QC (Crennan 2006, p. 25). Interestingly, she was still employed in 1946 despite the ‘marriage bar’ which precluded married women from continuing their employment in the Victorian Public Service. Acceptable practice in the Commonwealth public service was perhaps the model adopted here: ‘Typists, whose work was regarded as unsuitable for men, were allowed to return as temporary staff members after marriage’. Sawer (2016), no pagination.

As much as some men ostensibly wanted to protect their womenfolk from the evils of the court environment, women were and have always been, of course, court users and audience; they also participated as legal practitioners (from 1903),[630] justices of the peace (from 1927)[631] and as community volunteers.[632] Early editions of the *Chronicle* published articles by two of these prominent women, JP and special magistrate Julia Rapke[633] and barrister Joan Rosanove.[634]

The Clerk of Courts Group promotes recruitment of women

Until now it has been assumed that clerks and the male bastion of the courts had the arrival of women foisted upon them by equal opportunity legislation and affirmative action programs. A survey of the *Chronicle* shows that in fact, clerks of courts pre-empted these initiatives. The Clerk of Courts Group saw women recruits as a partial solution to long-term staffing issues, and from the mid-1970s it maintained a push to recruit them. The Group's executive meeting agenda for July 1974 (before the arrival of

[630] Victoria was the first state in Australia to permit women to practise law (Mossman 2009); the *Women's Disabilities Removal Act* 1903 had been specifically drafted to allow Grata Flos Greig to practise.
[631] The first seven female (unpaid) JPs had been appointed in 1927. Victoria was the last state in Australia to appoint women justices.
[632] One day in March 1947, court proceedings were suspended to announce the retirement of Major Mary Anderson of the Salvation Army, a volunteer worker who supported underprivileged clients of the court. The presiding magistrate Mr McLean said: 'Words are inadequate to express the debt owed to this lady. She has been attending these courts for 34 years, and has given remarkable service. In my 11 years on the Bench my appreciation of her has grown every year. I have never ceased to be amazed by her energy and vitality'. Major Anderson was also thanked by representatives of the Bar and the police. Mr Dunn, representing the legal profession, declared her 'the greatest advocate for the underdog that this court has ever known'. 1947. *Argus*, 25 March p. 4. Caring for the poor and disadvantaged was traditionally seen as women's work; it was often underpaid or voluntary, and sometimes irritation was expressed at their 'interference' in court business. It was unusual to have these contributions acknowledged publicly in court and with such evident respect.
[633] In 1945 the *Chronicle* published a three-page article by Justice of the Peace and Special Magistrate Julia Rapke (appointed a special magistrate and justice of the peace at the St Kilda Children's Court in 1929: the Children's Court was a division of the Magistrates' Court jurisdiction until 2000). As founding president in 1938-40 of the Women Justices' Association of Victoria, Rapke used her post to rally women of influence to promote the rights of women and young people (Smart, J 2002). She comments, 'We enjoy the distinction of being the only State in Australia, with one exception, which has appointed women as well as men to act as Special Magistrates of Children's Courts with absolute equality of status and jurisdiction' (Rapke 1945. *The Clerks' of Courts Chronicle*, XI, 4, November p. 25).
[634] In her article Joan Mavis Rosanove explains the problematic operation and effects of the *Maintenance Act 1926* in relation to deserted wives, arguing for amendments. She notes in conclusion: 'My criticisms … are levelled at the Legislature itself and in no case at its administration' (Rosanove 1945. *Chronicle: Journal of the Clerks of Courts*, 11, 1, August pp. 5,6). Rosanove (née Lazarus) was Victoria's first female barrister in 1923 and was belatedly granted the status of the first Victorian female Queen's Counsel in 1963 (Falk (2002), no pagination).

the first female trainee) contains this item: 'Moved That the executive approach the Secretary and request that more officers be appointed to the relieving staff and also discuss the position of the addition of female staff to the relieving staff. - Carried.'[635] The path was nominally open.

Barbara Allen's arrival was announced without comment, words of welcome or mention of her name in a brief item on page 3 of the *Chronicle*:

> STOP PRESS
>
> The first prospective female Clerk of Courts started in the City Court on 12/2/75. At the moment she is in the Main Office from where she will be moved to the Bench Clerks.[636]

Before the end of the year she had departed.[637]

'Ducks on the Pond': reactions to the incursion of women

Amidst all the changes of the 1970s and '80s, the introduction of female colleagues meant a fundamental challenge to clerks' understanding of themselves as a group: what had been 'other' now had to become 'us'. Most men working in the courts at the time had had no experience with female staff except typists in the larger courts; the magistrates had never sat with a female bench clerk. Clerks' private-life experience of women was mostly limited to family, receptionists, nurses and school teachers.[638] Court business was not usually discussed with their wives, parents and children: this was done

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[635] 1974. *Chronicle: Journal of the Clerks of Courts*, 17, 3, September p. 6. The request for 'more relievers and female relievers' was rejected at that time by Treasury (it is reported that the Group had requested two female officers) but was raised by the Group again the following year (1975. *Chronicle: Journal of the Clerks of Courts*, 18, 3, August p. 1).

[636] 1975. *Chronicle: Journal of the Clerks of Courts*, 18, 1, February p. 3.

[637] It is fortunate for research on this subject that the first Victorian female trainee clerk of courts and other early recruits made themselves available to contribute to our understanding of this important episode in the history of the courts.

[638] In their 1992 research, Douglas and Laster quoted a research participant as saying of some older and more conservative magistrates, 'They're used to only talking to women about domestic issues at home' (Douglas, R & Laster 1992, p. 49).

in the pub with male colleagues.[639] Clerks were habituated to and enjoyed the company of other men at work, at the pub and at sport.[640] Yet in 1978 the Group's secretary, a senior male clerk, expressed a hope that 'the insular thinking we may have been guilty of in the past is gradually giving way'.[641]

Some trepidation in anticipation of the arrival of the first female recruits was recalled by male interviewees. One remarked, 'Women - we were thinking, oh shit! Going to have to be careful, you know, what you say'.[642] Another said, 'The impact was negative at first because boys enjoyed boys' company. That generation - don't swear in front of women. Men felt they might be restricted a bit'.[643] An early female trainee at the City Court recalls, 'You had to announce yourself before entering the magistrates' room. They weren't used to a woman being a clerk of courts, and I'd hear "Ducks on the pond!"'[644]

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[639] 'I believe that for too long now some of our wives have held lingering suspicions that as a Group we meet in sleazy suburban hotels in a back room in the dead of night with the blinds pulled down and the lights turned off', wrote the secretary of the Clerk of Courts Group in 1978. Collins, G 1978. 'Secretary's Report (1978 Annual Meeting)'. *Chronicle: Journal of the Clerks of Courts,* 19, 4, July pp. 19,20.

[640] It was only in the 1970s that clerks began including family members into some of their social activities. 'Many wives have been heard to complain that the Group does not organise any functions where they can attend. Well, here's one that could be of interest.' This was a dinner dance organised by Terry Knight: 'so get in early and ask your wife or girl friend, or both if you are that way inclined.' Knight, T 1973. 'For your diary'. *Chronicle: Journal of the Clerks of Courts.* 16, 4, October p. 4. The event must have been highly successful, as 'a number of us went and had a swim in … [Terry Knight's] new pool at about midnight!!!' 2020. Personal communication, 22 October. At another mixed event (a hotel gathering in 1979), a clerk wrote: 'We hope the practice of including the girls continues'. 1979. 'Good Odd Time' [sic]. *Chronicle: Journal of the Clerks of Courts*, 19, 7, April p. 81.

[641] 'It is to our credit that we have at long last realized a need to involve socially our families.' Collins, G 1978. 'Secretary's Report (1978 Annual Meeting)'. *Chronicle: Journal of the Clerks of Courts,* 19, 4, July pp. 19, 20. A former clerk commented, 'Maybe surprisingly, I really didn't have any problem working with women. I actually saw it as a blessing and it gave a bit of "fresh air" to an anachronistic male environment'. 2020. Personal communication, 13 October.

[642] 2019. Interview #58.

[643] 2018. Interview #15. It is worth noting that both men, in the event, enjoyed working with women and were known to be supportive of their female colleagues. It is, of course, possible that more negative attitudes were simply not reported by male interviewees to this female researcher. One interviewee, however, recounted the story of a senior clerk requesting him to find a recruit urgently. 'I need someone on Monday morning!' The recruitment officer explained that he had some 'A-listers', but they were female and needed four to six weeks' notice. 'Nah - I got too many women here - I need someone with balls!' One young man who had ranked lower in the assessment was ready to start any time, so with some misgivings he was sent along on Monday morning. According to the interviewee, he was found to be addicted to gambling, and his colleagues would often have to ring him to get him to come in of a morning; he would arrive looking dishevelled and unwell. Within two years he had been dismissed after being caught dealing drugs outside the Children's Court (2017. Interview #16).

[644] 'Look out - female approaching! A warning cry from a male as a signal to other men that a woman is approaching a traditionally all-male environment. It is a reminder that the men should modify their

A male former clerk and magistrate reflected, 'The first woman was a big thing - a minority thought it wasn't a woman's job'.[645] Courts were not initially conceptualised as a workplace for women and neither was the of Clerk of Courts geared to welcome women into the ranks.[646] Supervisory styles had evolved to accommodate a self-sufficient and robust, convivial, sporty and bibulous male workforce. Recruits would be dumped in unwelcoming workplaces, put through confronting experiences without preparation, and expected to toe the line in a culture designed for and dominated by men. Many of these young women, too, came from protected backgrounds.[647] It was, as described by one interviewee, 'make or break'.[648] Co-ordinated strategies to accommodate a more diversified demographic were not in place until the mid-1980s.

As one female recruit noted, there were 'no female role models - [I felt] really isolated and different. I was older and had been to uni - some of the older ones didn't like that. I was planning not to go to my graduation or tell anyone. But [an older male clerk] advised me to do my exams, my pay would go up and he said he would help me. ... But pressure to be one of the gang was really hard'.[649] Apart from lack of infrastructure, training of any kind for supervisors was non-existent and there was none but the most perfunctory induction for trainees.[650] At the most basic level, there were no women's

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language and behaviour to avoid giving offence. It was first used in shearing sheds, but is now heard in other places, especially in a pub. While the first written evidence comes from the early 1980s the phrase probably goes back several decades earlier' (ANU 2017).

[645] 2019. Interview #9.

[646] 'Terry Grim, a professor in the Studies of the Future program at the University of Houston, recalls a video she saw from the 1960s depicting the office of the future. "It had everything pretty much right, they had envisioned the computer and fax machine and forward-looking technology products." But there was something missing: "There were no women in the office," she said.' Eveleth (2015), no pagination.

[647] 'I had no exposure to police or crime or anything like that. I didn't know what drugs were.' 2018. Interview #37. 'I thought law would be interesting but didn't know anything about it at all. … I had wonderful parents, but they didn't prepare you for the big, wide world: closing down arguments at the dinner table.' 2018. Interview #26.

[648] 2017. Interview #31.

[649] 2018. Interview #52.

[650] More than one interviewee asserted that the standards of a clerk's first supervisor and the discretionary training he or she provided were often an indicator of the ultimate quality of the clerk (2017. Interview #24; 2019. Interview #9). Induction and orientation were subject to neither oversight nor review. One trainee from the 1970s said that nobody had shown her the *Instructions for Clerks of Courts* or pointed out that she needed to study it for her exams. 'You could get forgotten in a big place like the City Court' (2018. Interview #27). Senior clerks did, however, volunteer to run sessions for trainees to get them up to speed on statute law and late in the 1970s there was a formal role for a clerk to conduct lectures. One interviewee recalled setting up a program for trainees in the 1980s at Broadmeadows Court while he was quite junior

toilets in many of the courts and some clerks used this as an excuse to prevent women from working in these locations.[651]

Women found the well-meaning paternalism of some of the magistrates puzzling, amusing, and also frustrating.[652] A newspaper quotes Louise Grose, the first female trainee to qualify as a clerk of courts, saying she could see no reason why women had not previously been appointed as clerks: "'Perhaps they thought women would be offended by some of the things they'd hear and witness in court" she says cheerfully, "but they don't worry me."'[653] Another early trainee reported that 'The magistrates were very protective. They were all older middle-aged men, very patriarchal, and [one magistrate] did not let the young women sit [as a bench clerk] where there were cases of bestiality or pornography being heard. No discussion'.[654]

Another female clerk reported that when a witness or prosecutor was going to have to repeat something likely to be unsuitable for young female ears the magistrate would ask for it to be written down and passed up to him - via the female bench clerk - 'tightly folded paper with rude words written on - of course I'd unfold it - is that all? For quite a few years [this went on]. This is … life, this is the reality … Eventually the magistrate would just allow it to be said aloud'.[655] One female trainee resented not being allowed to

himself. It included tuition in court process and moot court sessions (2017. Interview #32). In 1983 the Manager of Recruitment in the Law Department put a proposal to the Director of Personnel for her entire unit to be converted to a training and development function, and this was agreed. The new unit then established a program of generic (non-technical/law-related) courses with clerks of courts as a large contingent (2017. Interview #33).

[651] 'They didn't want [a particular female clerk] in her job and used the excuse of the toilets' (2019. Interview #59). At Frankston Court there were no women's toilets for staff and they had to use the public facilities; a clerk at another suburban court arranged with the police for his one female clerk to use theirs (2017. Interview #16; 2017. Interview #28).

[652] One early trainee remembers a gathering of magistrates and clerks in the City Court where she was one of very few women. An older magistrate said to her, 'Good on you - you go for it', and pointed out that she could become the first female magistrate, while another indicated a couple of bachelors and said to her, 'You should find a good husband here at the City Court'. 2018. Interview #27.

[653] 1979. 'First female "legal eagle"'. *News Advertiser*, 26 September, p. n/k.

[654] 2017. Interview #31.

[655] 2017. Interview #29. The former trainee further commented that 'Even the court reporters in the County and Supreme Courts were male because it was considered too distressing for females to have to hear details of rape and murder cases'. One interviewee, however, suggested that writing down the rude words was not dictated by the presence of a female bench clerk, but in opposition to the words being spoken in open court 'long before 1975' (2020. Personal communication, 22 October). Some courts had certain words written on a board so that they could be held up and pointed out to the magistrate, unseen by the public. The interviewee commented that this could also be used to playfully insult colleagues.

accompany the magistrate on his visits to prisons; he was however happy to take one of the older women.[656]

Away from the City Court, not all magistrates and clerks exercised a benevolent attitude towards the young clerks; most interviewees had stories about magistrates who terrified them ('cranky old mongrels', said one person).[657] One bench clerk was 'screamed at' in public by the magistrate on her first day of bench-clerking. She was following her printed instructions, but he disagreed with them.[658] There were magistrates who called their assistants 'Miss Clerk' or 'Mr Clerk' rather than by name.[659] An interviewee recalled bench clerking for a magistrate who was

> not very nice to sit with. He didn't me like because I had long hair; it was the '80s, and I had a perm. He told the boss he wouldn't have me in court as a bench clerk unless I tied my hair back … I was always really well dressed, … so I was really affronted by his attitude.[660] … One time (soon after I had started) he was trying to get my attention: 'Miss Clerk ... Miss Clerk!' so I got on the speaker and called 'Miss Clark... Miss Clark. Miss Clark to Court One' at which point he picked up his ruler and hit me over the head: he said, 'I mean YOU'. Incredibly demeaning, and in a court full of people. … I loathed that man![661]

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[656] 2017. Interview #31. Prison visits were done from Preston because it was the closest court to Pentridge at the time (Coburg Court had been closed in February 1985). The interviewee suggested that magistrates had been assigned this job 'because they were considered independent and judicial'. The remand yards were open and the prisoners were 'all showering and walking around naked'. The magistrate would listen to prisoners' complaints and grievances. The clerk would then write letters on the prisoners' behalf and follow up on issues. The prisoners could also telephone the court via a corrections officer, and clerks would take the calls. Country prisons were also visited by magistrates and accompanied by clerks of courts until the introduction of the prison visitor system in 1986 (Corrections Victoria 2020).
[657] 2017. Interview #31.
[658] 2018. Interview #38.
[659] Another interviewee clarified, 'It wasn't necessarily that the magistrate didn't know your name (although I concede that some did not), it was the general term used in the court at that time. For example the prosecutor was referred to as Mr Prosecutor'. 2020. Personal communication, 22 October.
[660] Interestingly, a male interviewee commented that he was denied bench-clerk duties in the late 1970s because of the long hair he refused to cut (2018. Interview #15). Another former clerk, however, told me that on her first day at work in the late 1980s she was observing in court with a bench clerk who sported 'dreadies, twenty ear-rings in each ear, holey jumper' (2018. Interview #38); this was unusual and still would be in today's courts, but it shows that magistrates varied in their requirements and standards.
[661] 2017. Interview #31.

A male interviewee also recalled however 'one magistrate in a country court hitting his clerk with a piece of paper if he wanted his attention, as he was short and the bench was high!!!' He added, 'It wasn't necessarily sexist, but it was sometimes elitist'.[662]

Former trainees also commented on their experiences with their peers. One said that 'there seemed to be a deliberate effort to educate people across the various roles of the clerks of courts. With me they tried me out on everything. Deliberately. Challenged me to see whether, you know, I could cope, and I was deliberately working very hard to be sure to show that it didn't faze me'.[663] One woman who had been a work experience student in a court and later became a clerk said, 'I saw some things that scared the living hell out of me'. Photos of crime scenes and suicides were not spared her. 'It's just a photo, it's not real - was the way to rationalise it. That's why these days they prefer trainees to have some life experience - at that time, a year out of school was the norm.'[664]

An early female recruit reports bench-clerking in a committal:

> You'd have to take longhand depositions. I did a few of these, and got fairly used to it, but this one sticks in my mind. It was on a case of buggery, which they thought they'd test out [on me] ... And everybody - the other clerks of courts - were in the court watching, to see how I handled it. Terrible, what they did … I didn't even know what [buggery] was, and I had to write it all down. I just kept my head down and kept writing, and I knew everybody was watching me! [Laughing] So that was education by doing, it was. [More laughing.] And they probably put a lot of people through it, but I think they had particular glee in

[662] 2020. Personal communication, 22 October.
[663] 2018. Interview #26.
[664] 2017. Interview #46. A 1975 editorial in the *Chronicle* took the view that 'The hurly-burly of a Court House is no place for the easily offended … This group has for many years suggested that only officers who have passed the Clerk of Courts examination be allowed to perform these [bench-clerking] duties. The Law Department at one time accepted this as a matter of policy, but lack of qualified Clerks prevented any changes'. 1975. *Chronicle: Journal of the Clerks of Courts*, 18, 4, November p. 1. Although it is also possible to read this as a strategy to accommodate the arrival of 'innocent girls', the editorial in this case was occasioned by a contretemps between a bench clerk and a justice of the peace. It posed as an argument for more staff so that experienced clerks could be selected for bench-clerking duties, but in larger courts bench-clerking had always been (and still is) a job for the most junior.

> seeing how I'd manage it. … And everyone talked about it afterwards - it wasn't a debriefing, it was 'Ha ha ha - we wanted to see how you'd cope!'[665]

In the mid-1970s, the Coroner's Court was primitive and unpleasant. The clerks who worked there were confronted daily by the sight and smell of cadavers and it was referred to as 'the butcher's shop'.[666] Trainees could be sent there within a week of having started work. Far from shielding one new recruit from the worst aspects of the court's operations, the clerks asked her if she wanted to see the 'cool room':

> They … opened every door gleefully - I was expecting bodies in drawers within cabinets (like the TV shows I had seen) but there were just naked chalky bodies with toe-tags lying everywhere, and they took great delight in explaining [it all] to me ... it was just awful. I don't think they thought anything about respecting the bodies … The Coroner's room had all these jars everywhere with interesting entrails - they'd be showing me through all these things - I remember it as clear as anything … They would deliberately whistle and sing - it was a very cheery place [despite being] … a chop shop when I was there.[667]

A recruit from the late 1970s recalls a clerk on her interview panel telling her 'We need you to be a clerk of courts', but she had never heard of the job. She says the panel 'did a massive "sell", describing it as a "glamour job"' - so much better than where she was working at the time. She was being 'poached'. The panel was pleased she was doing a law degree and she was assured the administration would be supportive of her studying. 'At the time they were on a drive to get more women into the courts. It was a deliberate strategy. A whole raft of women started about the same time', she recalls.[668]

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[665] 2018. Interview #26.

[666] One seasoned magistrate is known to have come home after a day's work there to vomit in the garden before he could face his wife and children (2017. Interview #35); a male interviewee who was at the time a young recruit, one of the earliest to arrive with a degree, noted that sometimes people working at the Coroner's Court struggled to adjust. On his own visit to the morgue early in his career he experienced a 'hot flush, caught by surprise. The smell, noise of buzz saws - you could hear it from the office' (2017. Interview #16).

[667] 2018. Interview #26.

[668] 2017. Interview #31. The seniority list of 1976 lists five female trainee clerks of courts: Barbara Allen, February 1975; Fiona Ross, 8 July 1975 (she did not start in the courts proper until later); Louise Grose, 20

‘You can’t blame them’: sexualised behaviour in the court

Sexualised behaviour was common in the courts as in many workplaces, and could be subtle or overt.[669] ‘It was a very ‘laddish’ culture’, reflected one female former clerk. ‘Girls weren’t a comfortable part of the environment and sexual harassment was rife.’[670] A woman who had been a trainee in the 1970s reflected,

> There must have been quite a few relationships between clerks and the female staff. [One senior clerk] was a bit of a ‘letch’, I think. I remember having to be very careful of him. He was married. I didn’t mind him as a person. But … you just put up with it - it was the way of the world. They didn’t think they were doing anything wrong, so you can’t blame them.[671]

In one court, reported a former trainee, young women were having affairs with their married male bosses (a problematic dynamic in a ‘family culture’ where the clerks’ wives and partners would be known socially),[672] and appeared to receive preferential treatment as a result. ‘If you were popular, you’d get better jobs, which led to job advancement - those people would be on your [interview] panel, and you would be looked after.’[673]

March 1976 (she was the first woman to qualify as a Clerk of Courts, in 1979); Maria Walsh, 9 April 1976; Kathryn O’Keefe, 27 July 1976. All but one of these women stayed to establish careers in the courts. By September 1980 three women had qualified as CC-1 (Louise Grose, Kathryn O’Keefe and Nerida Wallace) and there were ten female trainees. 1980. *Chronicle: Journal of the Clerks of Courts*, 20, 3, September pp. 195,6.

[669] Kari Lerum’s morally neutral definition of sexualised behaviour is employed in this chapter: ‘the range of verbal and physical activities that workers may encode as sexual’ (2004, p. 774).

[670] 2017. Interview #31. It was ‘rife’ in many workplaces. I remember a typical response by an older, male, married personnel officer in the Law Department when the subject came up in the 1980s: ‘Sexual harassment? Where do I get some?’ It would be some years before the *Sex Discrimination Act 1984* (Cth) and the *Equal Opportunity Act 1984* (Vic); these Acts specifically prohibited sexual harassment in the workplace.

[671] 2018. Interview #26. ‘Letch’ was slang for ‘lecherous man’. Another interviewee reported that at a court where she worked the boss and his second-in-charge were in an unhappy relationship that made the work environment unpleasant (2017. Interview #46).

[672] ‘One of the magistrates’ wives would always come and bring in baking - a lot of the wives treated the court as their family too’ (2017. Interview #46).

[673] 2018. Interview #52.

Sexualised behaviour was not, of course, the sole province of clerks. Some magistrates 'known for their *double entendres*' were not assigned female bench clerks.[674] There was competition between the clerks and the police for the young women; the resident clerks considered 'they had first dibs on you'.[675] One former clerk of courts described the social pressure she felt on day one in a large suburban court. A clerk asked her outright if she had a boyfriend, but another who had already found out the answer sang out, 'Yeah, we've already lost this one to a copper'. These accounts compare with women's from the same era in Australian policing.[676] Criticism from within the ranks was not welcomed. A young clerk at the Coroner's Court stood up for a female friend: 'I spoke to [a male senior clerk] about a minor sexual assault that had happened to a colleague - "What does the victim think about it?" he asked.' She realised with shock that he meant *the victim of the complaint* - the alleged perpetrator - and that 'He didn't want to take action'.[677]

'No way he was going to see me as an equal'

Young women were still 'expected to do as they were told', said a male interviewee;[678] in some courts 'girls used to get the magistrate's lunch, clean up the kitchen, carry cash to the bank'.[679] This would have been normal in many workplaces. One account, however, describes the ill-will of a senior clerk towards a female trainee and his disposition to impose his authority in a startling manner. She wrote: 'I remember being locked in the safe as a joke with a pile of pornography that belonged to the boss'; 'he got a real kick' out making her answer the phone identifying herself as his secretary; 'no way he was

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[674] 2018. Interview #55.
[675] 2018. Interview #52. A male interviewee remarked, 'There was a bit of suspicion about the coppers - an element of jealousy because they tended to attract the female clerks - relationships going on. The women were warned off - you looked down your nose at [police] - always sniffing around our sheilas and so on - the relationship was too close' (2018. Interview #36). The perception amongst some clerks was that girls got jobs in courts just so they could go out with policemen, according to a female interviewee (2017. Interview #31).
[676] 'Women serving in the 1970s and 1980s were particularly vulnerable. Said one: "The 70s were the most challenging, with weekly sexual assaults by colleagues. The bosses were the worst offenders".' Paterson (2018, p. 98). A 2015 report by the Victorian Equal Opportunity and Equal Rights Commission states that 'The Review heard that women working in Victoria Police were commonly viewed by their male colleagues as potential sexual partners. They were very conscious of the need to "manage their reputation" and their interactions with male colleagues.' Victoria Equal Opportunity and Human Rights Commission (2015, p. 15).
[677] 2017. Interview #39.
[678] 2018. Interview #53.
[679] 'Wander[ing] through the streets of Sunshine with a bag full of cash.' 2017. Interview #31.

going to see me as an equal with [the male clerks]'.[680]... Reflecting later, she commented:

> Women my age didn't know what to do or what to say, [we] tried to make the best of it - so we wouldn't have been saying anything … But there was such a really good core of men who'd obviously been brought up much better that were horrified and I talk to [one of] them now … I reckon he was almost traumatised by the things he witnessed that happened to women - he said he saw one woman being bodily picked up and put on top of a filing cabinet - he felt so powerless because he knew that that was wrong and he wanted to do something but he was low-level and he couldn't do anything about it.[681]

She was later assigned to another suburban court but the clerk there refused to have her on his staff, saying that 'he didn't want any females working in his court'. She added, 'That was apparently his call to make, so I was sent elsewhere'.[682]

My pin got moved: staff relocation

In 1976 the Coombs Report[683] identified compulsory staff transfers as an issue.[684] A major concern for women, as for men with families, was the expectation that they would accept being moved from court to court on promotion or transfer; sometimes this entailed leaving home for the first time, moving from one side of Melbourne to another or from the city to the country or vice versa, a spouse resigning from their job, or buying and

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[680] 2017. Personal communication. 14 December.
[681] 2019. Interview #29.
[682] 2017. Personal communication, 14 December.
[683] 'Where, for some reason, difficulties were experienced with a particular department, we recommend that the Board should not hesitate to use the power of directing temporary transfers of staff which is currently contained in section 51 of the Public Service Act. … However, since the primary purpose of this planned mobility is increased diversity and opportunity for the individual officer, it would clearly be unwise for the transfer to be forced upon him. The Commission believes that the Board should respect the wishes of officers not to be moved if they do not respond to persuasion.' Coombs (1976, p. 410).
[684] This issue concerned both men and women but is included in this chapter because a large percentage of female interviewees addressed it and spent time discussing it. Arguably a peremptory move could have had more impact on a young woman at the time than on a young man (who might stay at the local pub), although for families the impact was always considerable if it involved moving home and changing schools and a partner's job. One young woman campaigned publicly to have the practice changed (2017. Interview #28).

selling of the family home.[685] Interviewees reported that a move could be announced via a phone-call on a Friday for a move the following Monday.[686] They recalled that the personnel officer in the Law Department 'had a map of Victoria on a huge pinboard full of coloured pins behind his desk, each one representing a clerk - and he could easily and without any compunction take one from the north of the map and move it far to the south. "I'm responsible for assigning clerks of courts across the state, so when I do that I just take a pin from here, and put it there",' one interviewee quotes him as saying: when would he take her pin and 'plonk it' somewhere else? 'And that was a person's life he was moving, essentially. He was demonstrating that he was all-powerful, and when he moved you that was that. I don't know the formula he used … your preferences weren't considered, even asked for'.[687] Others commented that they could be relocated a long way from university even while they were known to be studying law and had been encouraged to do so.[688] Looking at the places to which the early female clerks were assigned, there does not appear to be any pattern or discernible rationale.[689]

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[685] One interviewee commented that he and his wife had bought a residence in their country town on the Law Department's advice that residences for clerks were being phased out. He was then informed that he had been assigned on promotion to another town 180 miles away. Property and children's schooling decisions were complicated by having to wait for the outcome of appeals. 'Clerks and their families had to be very resilient and decisions from head office had great bearings on families and I sometimes wonder if they even realised the stress put on staff and others' (2020. Personal communication, 22 October).

[686] This had long been the norm for clerks of courts, at least within the metropolitan area. The proceedings of a Clerk of Courts Conference in 1961 show that a sub-committee formed to consider the question of rotating junior staff in the metropolitan area had decided that 'the advantages ensuing from such scheme would far outweigh the difficulties and hardships' and they suggested a rotation every nine months, except in cases of 'exceptional hardship'. 1961. Conference held at Hawthorn Court House 20 and 21 May (papers from a personal collection).

[687] '… it was a nightmare to get to [work]. I used to walk for an hour to [the] station. I was too young to get a licence.' When after 18 months he 'picked up my pin and moved it to [the other side of Melbourne]', she was called into the boss's office to be told the news. She loved where she was working 'so much', and was 'devastated, and cried and cried. I wondered what I'd done wrong to be moved' (2017. Interview #31).

[688] For example, one trainee had to make the dash twice a week from Frankston to attend 3.15 pm lectures at Monash University in Clayton (2017. Interview #28). One early trainee discontinued her law degree because she was moved to a court on the Mornington Peninsula and was no longer able to attend lectures (2018. Interview #27).

[689] Probably these were in the main vacancy-driven decisions made without much concern for the circumstances of assignees. Interviewees believed however that assignments were insensitive and sometimes malicious (2017. Interview #28; 2017. Interview #31; 2019. Interview #9; 2018. Interview #15). Seniority lists and lists of transfers were published from time to time in the *Chronicle*. More senior clerks could put in a request to be moved to certain locations but often had to negotiate heavily with head office. For instance, a clerk desperate to obtain experience in a multi-jurisdictional court might accept being sent to a location nobody else wanted (2017. Interview #21).

One former clerk protested publicly about the movement 'holus-bolus' of clerks around the state regardless of their personal circumstances. Many women had left because of this practice, she claimed.[690] She said she was made a target for bullying because she 'wasn't afraid to speak up' about such problems.[691] She was 'blackballed', she said, by a member of the Clerk of Courts Group executive ('Get this girl, she's a troublemaker'), moved from court to court and 'made to feel incompetent'.[692] This certainly implies that it was not just head office that was the subject of and sensitive to criticism.

'Drink for drink': female clerks and the pub culture

Most of the cohort's socialising took place in public bars which were essentially spaces for men.[693] As seen in the previous chapter, young men in the 1970s and into the '80s were often inducted into the clerk of courts' culture by the ritual of drinking. Interviewees who had been recruited during this period discussed the casual assertion of male clerks' prerogative to go to the pub at lunchtime and stay there until close of business. It was one of the few overtly exclusionary behaviours routinely practised by male clerks in respect of their female colleagues.

'The men would often go to the pub at lunchtime, leaving all the trainees … stuck in the registry trying to figure out how to deal with somebody at the counter while everybody else was at the pub … There were no mobile phones back then, so you'd have to go to the pub to get them if you needed them', commented one woman matter-of-factly.[694] It was 'drinking all day and coming back at 4.30 completely blind, then letting the women go

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[690] She said, 'it was hard to get traction amongst the [Clerk of Courts] Group. And many good women did leave at that time' (2017. Interview #28). A male former clerk recounted the story of one young woman who 'lived at home at Essendon with her parents but got sent to Wodonga … it all became too hard' (2019. Interview #9).

[691] 2017. Interview #28. Feeling discouraged, she made an appointment with consultants and asked them to 'run some tests' to see if she was suited after all to the job of clerk of courts. She said she was shown a graph mapping projected career trajectories. The consultant pointed to a parallel path well below hers. "These are the men. They only ever get to here. You should be running the place. You need to be more assertive!"' She added that showing these results to the senior clerk who was giving her the most trouble changed things for her; women in the Personnel Branch were also supportive. 'After that,' she said, 'I was untouchable'.

[692] 2017. Interview #28.

[693] Kirkby and Luckins (2006, p. 75) describe 'a sense of men's ownership of the Australian pub and an associated camaraderie'.

[694] 2017. Interview #47.

home because they'd been holding the fort all afternoon and thinking that was a really good arrangement,' said another, less tolerantly.[695] A male interviewee recalled female clerks at a major regional court, who had worked all day, getting into trouble with the male bosses (who had been at the pub all afternoon) for leaving at four pm.[696]

A male former clerk recounted an incident where a female clerk mounted a lonely protest against the prevailing 'drinking culture, the sexist culture'[697] that translated into being left to run the court while the men went drinking:

> The managers were all boys, and the girls were the more junior, and probably didn't complain, although I do remember one occasion we *were* at the pub, all the boys, and there was only one girl left back at the office … and she was the only one, and someone came in from the tax office to get something signed. Although she could sign it, because it was an affidavit or stat dec,[698] she said 'No, I'm not willing to, because all the boys have left me on my own at the pub - they're at the pub drinking and I just don't have the time to do it and I refuse to do it.' … We weren't all that impressed with it (because it came back to us) *but* I can understand it! We got a phone call from [a senior magistrate from Melbourne] the next day saying there'd been a complaint by the Taxation Office … And the response from one of my colleagues more senior to me was: 'I don't know anything about it'. OK thank you - that was it - so can you imagine that in this day and age?[699]

Drinking was understood to be aligned with masculinity.[700] The clerk in charge of a suburban court took one young man at lunchtime, on his very first day, to 'a pub in the middle of nowhere': 'the pub's completely full of blokes, and in the middle there are

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[695] 2017. Interview #29.
[696] 2018. Interview #53.
[697] As described by interviewee, 2017. Interview #29.
[698] A statutory declaration.
[699] 2018. Interview #45.
[700] In 1934 a contributor to the *Chronicle* commented: 'The C.P.S. at Melbourne has vases of flowers on his office table. The staff drinks morning tea, and doesn't know that an Hotel is close by….. O spirit of G…. C…., avenge thou the effeminacy of thy successors'. The CPS was the Clerk of Petty Sessions; G.C. seems to have been a cultural hero from the past. Quoted in 1981. *Chronicle,* Vol. 21, No. 1, March p. 228.

tables all joined together - everyone's holding a beer - then, the music started, and after a few minutes, out comes the stripper'. When asked how he felt about this event he responded: 'I didn't really know what to think - I probably felt welcomed, to be honest – "How good's this, they've taken me to the pub and really, I'm one of the boys from Day One".'[701] While this particular ritual was not universal, it can be seen as consistent with the prevailing values in some locations and with the culture of the broader community.[702] These reports came from interviewees who had witnessed such behaviour in city and suburban courts.

Pub outings did not initially include the women and 'The women clearly resented it', commented a male interviewee.[703] 'A female colleague thought [the men had] earned it because they'd been around a long time', said a former trainee. 'Acceptance - whereas I thought "This isn't right".'[704] Accounts of such excursions suggest that the men's collegiate but exclusionary behaviour was, if not overtly sanctioned, at least tolerated and a blind eye turned at a very senior level. 'It was a massive cultural thing from the top down,' remarked a male magistrate.[705] A male former clerk commented, 'It was a macho culture … swaggering, beer-swilling, cigarette-smoking machoism'.[706] It is fair to say the courts were little differentiated in this respect from prevailing culture across the country; the dissonance created by this entrenched behaviour in a changing world was yet to be comprehended in many workplaces.

Some young women became acculturated, working and playing alongside the men in their milieu on their terms, accepting to a point the hegemony of the drinking culture.[707] An advertisement in the *Chronicle* posted by a female clerk in the late 1980s reads,

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[701] 2018. Interview #45.
[702] Women were not included in such rituals but were expected to accept them; one former clerk recalls being asked to collect the courthouse keys from her boss while he was drinking at a topless bar. 2018. Interview #52.
[703] 2018. Interview #36.
[704] 2018. Interview #38.
[705] 2018. Interview #53; 2018. Interview #45; 2018. Interview #40.
[706] 2018. Interview #36.
[707] An interviewee commented, 'The court was a party place. The parties happened after work in the court. There was alcohol, money taken from the court fund for the BBQ. When you're young, it's fun but it's wrong, but it's fun … There were a lot of people having relationships, and the courthouse was where they would meet up'. 2018. Interview #52.

'Wanted: Clerk to share a house … Pets OK. Drunkenness totally acceptable.'[708] One trainee was 'mentored' in coping mechanisms at age eighteen by a slightly older female colleague:

> They were the men, they were in charge, they called the shots. … and so, the thing is, the women, to fit in, some of the women started doing it as well … I thought the only way I'm going to make friends, get along, to make this work is … go drinking - try keep up with them, get to shouts with them, and they'd be drinking so quickly, and - oh, and struggling home on the train … that was pretty normal. … I learnt from [female colleagues] how to handle these situations … match them drink for drink, match them cheek for cheek, match them innuendo for innuendo - whatever they do you do twice as much. So that's how I was taught to cope with that.[709]

The sense of resentment was palpable amongst some interviewees. 'There were a lot of alcoholics on the staff - they would manipulate the court list to finish at lunchtime - if the magistrate was an ex clerk that would be their expectation; but in the '80s there were bigger courts and more work, so trying to run a court list that finished every day at lunchtime didn't work so well', one former clerk stated.[710] 'So what you'd do is, particularly if you had to drink every day - you'd go down to the pub and get smashed, and then it was usually the women were left to run the court for the rest of the day.'[711] She condemned the practice of having 'the women running the court and being put in dangerous positions because they were the only ones there. [They were] overworked, and underpaid because it would be the blokes who would get the promotions'.[712]

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[708] Reference withheld to protect the identity of the clerk.
[709] 2017. Interview #29. Similarly, Deirdre (Moriarty) FitzGerald, the first woman elected to the Law Institute of Victoria Council, was advised to 'learn how to drink in order to fit in with "after Council drinks"' when she commenced in 1973. Smith, S (2019, p. 143).
[710] The problem of serious drinking issues in the clerks' cohort was mentioned by twenty-one interviewees.
[711] Fourteen interviewees spoke of male clerks habitually going to the pub and either not returning, or returning inebriated.
[712] This interviewee declared that she had been 'offended' when she heard there would be a chapter in this thesis about women in the courts because she felt that the female clerks deserved more than just a chapter: 'It was the women who ran the place,' she said. 2018. Interview #52.

Looking back to that era, interviewees readily accepted that attitudes of the time were unfair to junior staff, most of whom happened to be female, but few were prepared to condemn the drinking scene outright because of the fun they had, the stress relief it provided, and the social bonding it brought for those involved. Both male and female interviewees perceived, however, that a sense of entitlement and sometimes unaddressed mental health issues influenced the more extreme practices.

The culture did evolve to accommodate its diversifying demographic, but some of the cohort did not evolve with it.[713] Interviewees from the younger demographic observed 'functional alcoholics', those who were half-present at work and unable to modify their behaviour. One interviewee recalled three clerks being placed on suspension because of pub-related absenteeism. In a corner of the City Court, she said, there was a group of older clerks known as 'the veggie patch'. 'You knew the alcoholics … you knew the smell - pop them over in the corner where they couldn't do too much damage. They were extremely knowledgeable, so if you wanted to deal with something like a miner's permit …'. She added, 'The pub scene - it was an old boys' thing'.[714] The pub culture was no longer representative of male privilege; though still tolerated, it had become pitiable.

Barriers to promotion

Arguments made against the employment of women even into the 1980s were often about pregnancy, childbirth and child rearing, none of which had any place in a masculine workforce.[715] Promotion was slow for most clerks due to the large number of junior

[713] One interviewee commented that at least by the 1990s, 'there was a big pub culture where the girls would come to the pubs as well. In the city, it was more everyone; in the suburban courts, it was more the blokes, but sometimes it would be all of us - we'd go to the pubs for lunch - there were probably less cafes anyway'. 2018. Interview #45.
[714] 'There were boozy lunches and the court was never opened in the second half of the day - they all used to go out and get drunk on Friday - the judiciary as well.' 2017. Interview #46.
[715] The 'marriage bar' that required married women to relinquish their public sector employment had, for Commonwealth employees, been lifted in 1966. For teachers, it had been dispensed with a decade earlier. The marriage bar had been established in 1902 with the *Commonwealth Public Service Act* whereby a woman employee was 'deemed to have retired from the Commonwealth service upon her marriage'. This roadblock to the ongoing employment of women remained in force within the Victorian Public Service until 1977. When young women started their careers in the Victorian Public Service there were accordingly limited provisions for the 'intrusion' of these and other life events, although the basic elements were in

positions and the much fewer senior opportunities in their protected but pyramidal career structure.[716] Some female clerks felt this situation to be exacerbated by sexist selection practices, even without the burden of family responsibilities. 'I basically left because of the culture', said one interviewee. She explained that perhaps twenty applications for promotion met with no success and, though she felt 'conflicted' because she enjoyed the job so much, she felt that she would have to accept not going anywhere, or else 'do something about it … It was having an impact on my confidence'.[717] As previously mentioned, another woman commented on the gilded path of those chosen as relievers, 'the white-haired boys'.[718] They had an advantage over other applicants both male and female because of the diversity of their work experience and connections.

Women and the Clerk of Courts Group

Women's participation in the Clerk of Courts Group was a significant marker of cultural transformation. The Group was powerful, and all clerks were encouraged to join from day one. To participate on the executive, one nominated for a position, and members' votes determined the successful applicant. The first woman to take up a position on the executive was Mary Bourke in 1979; others soon followed.[719] There were, of course, unwritten rules to be negotiated.

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place. See Colley (2018); Sawer (1996). Some arguments used at the time against employing women were bizarre. I recall interviewing for Sheriff's Officers in the 1980s where a senior panel member said he was unwilling to recruit females because when they were pregnant they would be unable to fit behind the steering wheel of a car.

[716] A small number of women were able to move from the Clerical Officer stream into a career as a clerk of courts, but for them it was an even longer road, even if they had been performing clerk of court duties before moving across. Male interviewees expressed disgust about the unfairness of this (2018. Interview #7; 2018. Interview #9).

[717] 2018. Interview #44. A female former clerk with a law degree commented, 'I could have become a barrister, but the culture was appalling - even worse than the courts' (2017. Interview #28).

[718] 2017. Interview #28.

[719] 'Mary Bourke was the first ever female member of the executive.' Collins, G 1980. 'Secretary's Report', 20, 2, June p. 162. Ms Bourke (Waldron) served on the Committee in 1979 but resigned in 1980 to take up a career in teaching. In 2004 the outgoing president of the Clerk of Courts Group commented: 'the executive needs more women and … it will be a great day when the Group has its first female president'. De Visser 2004. 'John Dinsdale, life member'. *Chronicle*: *Journal of the Clerks of Courts*, Christmas Edition p. 19. The first female president is Karen King, who took up the role in August 2012.

One female committee member was not taken seriously when in response to a discussion about improving work practices she chose to make a rather courageous critique of what she termed the clerks' 'party' culture. Her account of it is as follows:

> It was my turn to speak and I said, 'Well - all I can say is this: the party is over. Like - this is - all gone. You guys have had a good time for far too long, and it's not appropriate anymore. What you do is not professional'. I said, 'Things are different. Head Office now has these expectations; you're all bemoaning this. You should be looking at … how bloody lucky you've been to be getting away with the craziness you've been doing for so long. Like It Is Out of Control'. So, I did a bit of a rant … Anyway, the minutes came out - I turn up at the next meeting - it's got, you know, a summary of what everyone said. My summary: 'The party's over'. Basically, they pissed their pants laughing - they thought that was hilarious. All they have on record is 'that's what she said'.[720]

Female former clerks reported attending the annual Clerk of Courts Dinner, a prime opportunity for socialising; it had traditionally been an all-male occasion.[721] One of the earliest women to attend agonised about what to wear and how to look professional, choosing a suit: another declared that she wore the shortest dress she could find.[722] Young women had to learn to negotiate the line, wherever it was, between the professional world and the social one, and the unwritten standards of behaviour for each.[723] As with other aspects of their work in the courts, no relatable role models existed: no precedents, and no well-trodden path.

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[720] 2018. Interview #52. The interviewee later revealed she had discovered that the tally of votes for her re-election to a position on the executive had been tampered with to prevent her from continuing because she was so outspoken. Interestingly, there were other women present at the meeting (but not as committee members). This resonates with a previously-quoted comment: '… women my age didn't know what to do or what to say, tried to make the best of it - so we wouldn't have been saying anything' (2017. Interview #29).

[721] In 1978 the secretary of the Clerk of Courts Group wrote, 'now that we have ladies in the Courts Branch the format of our Annual Dinners will in time change'. Collins, G 1978. 'Secretary's Report (1978 Annual Meeting)', *Chronicle: Journal of the Clerk of Courts Group***,** 19, 4, July p. 18.

[722] 2017. Interview #28; 2017. Interview #31. One early trainee says she did not start attending 'until there were more women in the mix' (2018. Interview #27). This was undoubtedly sensible as 'The old dinners - they were bucks' nights back then' (2018. Interview #37).

[723] No such awkwardness was evident at the dinner I attended in 2018!

Women in power: early pushback

Senior women in the department's administration were outwardly treated with respect, but according to one interviewee, were viewed with 'an enormous amount of suspicion and derision' by some clerks. She maintained that behind their backs, 'senior women were spoken of very rudely ... "What would they know about the stuff we have to do?"' One senior male clerk, she says, was 'just vitriolic about these women coming in with their silly ideas and their different language'.[724]

Times were changing too fast for some, perhaps because it was not until the legislative and policy changes impacted on people personally by changing rules and procedures that they became obvious. There was disquiet from some quarters that women might have begun to exercise power over clerks' promotional prospects, the certainty of which was already felt to be under threat by the introduction of the merit principle.[725] The following offering from a (presumably unsuccessful) applicant for a senior clerk of courts position published by the *Chronicle* in 1983 expresses the outrage of betrayed entitlement:

> Years on the job we know who is good, we clerks are like a club.
>
> Best man for the job, that makes sense, and a half-hour test is a snub…
>
> But there are 4 in the room, familiar faces only 2 votes,
>
> Caught his name, gave him a firm hand, forget her, the secretary there to take notes…
>
> A decent bloke, I warmed to him, even though he had me on the burn
>
> It hasn't ended? Bloody hell, they're saying it's her turn.
>
> The stupid bitch asked the oddest things, I felt I was on the skids

[724] 2017. Interview #31. This sentiment was echoed by a male ex clerk who had been less than impressed by the visit of a senior female official to his court: he asked one of his staff to 'Show [her] what you do'. The (female) clerk replied, 'Do you mean she doesn't know what I do?' (2018. Interview #8). One female executive was referred to as 'a cross between Marta Hari and Madam Whip' (2019. Personal communication, 10 January). The 'different language' referred to here was probably the jargon of 'the new management' and would have been spoken by consultants and executives both male and female.
[725] The seniority lists had allowed clerks to predict with certainty how long it would take them to move up through the ranks (2018. Interview #53).

She wouldn't know County from Batman Avenue, I gave her a lecture on kids.

We're supposed to treat them as equal, I couldn't even remember her name

I could see the job just fading away and all because of a dame.[726]

This piece appears to be at odds with the established tone of the *Chronicle*. Perhaps it was felt that if clerks were to be encouraged to contribute to the journal and to 'have their say' rather than going underground during this time of upheaval, then attitudes such as these should be subject to scrutiny. It must all the same have sent a very negative message to women in the courts, to staff in the Law Department, and to the readership at large.

It was duly responded to in the next edition of the *Chronicle*. Two opinions were published: one sympathetic to the writer's point of view insofar as denouncing interviews as an unnecessary trial, and the other questioning the attitudes of the aggrieved clerk. 'Did you see the traditional attitude of Clerks of Courts reveal itself in the article, did you see the interviewee as being cynical, imbued with the "holier than thou" syndrome? What was his attitude to the lady on the panel and why? I urge all clerks to read the article a second time and then ask themselves, does it show clerks in a very good light? I would say not! … I think that the poem should be an inspiration to all thinking clerks, as to how they could be seen from the other side of the table.'[727] No further discussions on this subject are recorded.

'Add women and stir': attitudes to women as court users

'You were never trained in how to deal with relatives or witnesses - all you could do was hand over a box of tissues that you would supply yourself', recalls a male former clerk.[728] It was probably hoped that the presence of women on the clerks' side of the counter might make the court's services more accessible and sensitive in dealing with matters impacting upon female court users and their families - or that female clerks would just

[726] Anon 1983. 'How not to obtain promotion in the courts' [editor's heading], *Chronicle: Journal of the Clerks of Courts*, 23, 2, July pp. 12,3. Batman Avenue was the location of the Children's Court at the time. The Executive commented on p. 7 that 'Interviews are part of today's world … and Clerks of Courts accept them, as I do, like a trip to the dentist'.
[727] 1983. 'The interview', *Chronicle: Journal of the Clerks of Courts*, 23, 3, September p. 10.
[728] 2017. Interview #16.

know what to do because they were women.[729] The following discussions throw light upon how clerks, including some young women, dealt with welfare and family law matters and show how difficult it was to make a difference - even with a more representative demographic - in the absence of life experience, skilled mentoring and appropriate training.

Poor Box

One interviewee reported her experience being in charge of Poor Box applications:

> The Poor Box was a huge thing at all those courts there. Footscray Court had closed,[730] but we'd send a clerk down there on a Wednesday to do the Poor Box … you'd pull up in the afternoon and there'd be a queue down the street. You were there by yourself. The man who inducted me opened a drawer under the counter and [said] … 'So if you get into trouble, here's the hammer. Or you can go out the back' (where the police station was), but it was all locked up anyway, you couldn't really get out. So if anyone had ever taken issue, you were trapped in this office with your hammer to protect you, which was pretty bizarre. But you really couldn't afford to get anyone too anxious, so you'd just hand out the money.[731]

She identified that young women were just as likely to deal unsympathetically with applicants as other clerks: 'you had all this power invested in you, and I'm sure I didn't wield it very nicely'.

> I asked [a Poor Box applicant] … what he'd spent his dole money on, because we would always get a run before pension day and dole-day. Ciggies and repayment for a video recorder, and I'd say, 'Well, *I* can't afford a video recorder' - you know, just awful. I look back now and think, what an arrogant young woman I

[729] 'A lot of them [family law cases] were tunnelled my way', recalled one former female clerk. 2017. Interview #17.
[730] Footscray Court closed on 1 February 1985.
[731] 2017. Interview #31. The security risk was real: one clerk will never forget an applicant threatening to cut her throat, and men too felt fear when an angry or unstable client came their way in an isolated court. 2018. Interview #27; 2018. Interview #45.

> was. I couldn't understand people who would prioritise alcohol, cigarettes and a video player over food for their kids, so I think I had a very black and white view of the world. It was ridiculous to have people without a rounded experience sitting there literally in judgement over people like that. No training - [no] customer service - and no diversity in the job. We'd do the yelling at deaf people and we wouldn't use interpreters at the counter … it was a very different public service back then.[732]

'The maintenance women'

Under s 35(a) of the *Maintenance Act 1965* (Vic), maintenance money could be paid via the Magistrates' Court so that recipients (mostly women) did not have to deal directly with their estranged partners.[733] Collecting their cheques in person from the clerk of courts also enabled them to obtain their money more quickly.[734] From 1976, maintenance orders could also be made and enforced by the court under the *Family Law Act 1975* (Cth). The *Chronicle* urged clerks to be proactive in their family law dealings and many clerks had 'regulars' whom they assisted in various ways.[735] A former clerk who had been deeply involved in the implementation of the new family law legislation commented,

> we as the court of summary jurisdiction [were given] lots of powers to do its functions (obviously not divorce) - it gave us for example the power to issue injunctions … major, major change. ... The ability to appear in court, to prosecute

[732] 2017. Interview #31.
[733] This legislation repealed the *Maintenance Act 1958* (Vic). The Child Support Agency (CSA) was set up in 1988 by the federal government to manage assessment, collection and distribution of maintenance payments.
[734] 'Women would often come into the court to get their cheque so that they received it quickly and didn't have to wait for the mail' (2017. Interview #28). Various iterations of the Victorian *Marriage Act* and then the *Family Law Act 1975* (Cth) applied for the financial support of deserted wives and children, including children born out of wedlock.
[735] 'We should look at our individual performances and assess what we do for the deserted wife or husband. Do we fob them off by saying they'll need a solicitor anyway, so why not send them straight there. We as Clerks of Courts have a responsibility to the people we serve and that means to those we are instructed to assist as well as to whom we have a discretion to help or not' (1978. 'Family Law Act and You'. *Chronicle: Journal of the Clerks of Courts*, 19, 6, December, p. 61). An interviewee commented for example that one 'maintenance lady would ring the clerk and ask that he write to her ex-husband every 3 months and request the back maintenance. This … practice worked well for many years with no dispute from the ex' (2020. Personal communication, 22 October).

> enforcement of maintenance ... And we never got one iota of credit from the Department, absolutely nothing. And I think that was a political decision.[736] Clerks were left to implement it - and we did, totally. And I just can't emphasise [enough] how major that was for us. There were no forms. Even the Commonwealth had nothing to tell us. 'There you guys - it's the Act, read it and do your jobs'. That's a highlight, a collective highlight. And I must admit I threw myself into it … a personal highlight, yeah. Very pressured stuff.[737]

An uneven picture emerged, however, of clerks' service to these families. Clerks used the epithet 'maintenance women', a term that sounds dismissive, even if not so intended.[738] One senior clerk allowed the cheques to accumulate in a drawer despite the growing distress of the women coming regularly to check on the arrival of their money.[739] Colleagues would rectify the issue if they discovered it, but nobody informed on the offending clerk.[740]

It was known that a minority of men took advantage of the plight of these women and sought sexual favours or would flirt with them before handing over the money.[741] Another said that if the women 'kicked up a bit of a fuss' the clerk might choose not to pay them. 'The view was, we had a monopoly - if they didn't go to us, where were they going to go? They were stuck with us. … I remember some of them being treated appallingly, you know. … We learnt to a certain extent to be that way - we thought that was what you did.'[742]

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[736] The interviewee refers here to the fact that the legislation was enacted by the reformist Whitlam Labor government, but the Victorian state government at the time was Liberal.
[737] 2019. Interview #58.
[738] Service providers across the justice system had many such terms, some much worse than this, that they used privately. These usages sometimes sound cynical but they could serve as a 'buffer' against the confronting nature of some of the issues they represented: violence, victimisation, hardship, disability.
[739] 2018. Interview #52. This was said to be a very rare occurrence ('I must say that I am flabbergasted and I have never heard of this before': 2020. Personal communication, 22 October) but is mentioned here because an interviewee reported it.
[740] '… you never surrendered up a boss or a colleague, never.' 2019. Interview #58.
[741] 2016. Interview #2. '[The clerk] would make them endure his abhorrent jokes and lewd remarks before he would deign to hand over their cheques. The cheques belonged to the women anyway, but he had them bluffed into believing that he held absolute discretion over how much they would be paid or indeed if they would be paid at all. The women were fearful and intimidated, and would not report him.' Ryan, D and Hoystead (2013, p. 73) and see also p. 161.
[742] 2018. Interview #36.

Two female interviewees considered on reflection that they did not deal understandingly with vulnerable court users. They recall being beset by heavy workloads and a sense that what they did ultimately made no difference. The hopelessness of repeatedly fighting what seemed to be a losing battle had hardened into cynicism, evoking Susan Sontag's remark about the 'unstable nature of compassion':[743]

> That time was marked by a lack of compassion for people - [although] not everyone - there wasn't much sympathy for people and their problems - I'd say that's because you'd seen it all before - it was just roll on, roll on. When you worked a lot in the family law area in those days, we were dealing with the women coming to the counter and being so distraught because the husband wasn't paying the maintenance - the piece of legislation we had to get the money off the men was the *Child Support Act* - it was so ineffective, it was virtually no good at all - letters, summonses - oh, it was dreadful … the CSA [Child Support Agency] was the best thing that ever happened to Victoria I reckon. So then we'd get the men coming in and complaining 'She won't let me see the kids' … it was easy to become cynical as a young woman until I matured a bit.[744]

One interviewee reflected that there was 'a background culture of discomfort' with all matters 'domestic' (both clerks and police exhibited this) and a wish that it would just go away or be dealt with elsewhere. She and other former clerks expressed the view that this is one of the factors in the State courts losing control over family law and ceding the jurisdiction to the federal courts. As a junior clerk, she would go to some lengths to be helpful, following up with the payer and sending a letter or a summons whereas, she said, most of her more senior male urban colleagues would not.[745] The prevalence of such unhelpful attitudes was disputed by some other interviewees, but the overall impression is that service levels were inconsistent across the courts.

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[743] 'Compassion is an unstable emotion. It needs to be translated into action, or it withers. … If one feels that there is nothing "we" can do … and nothing "they" can do either … then one starts to get bored, cynical, apathetic.' Sontag (2004, p. 101).
[744] 2017. Interview #29. The interviewee was implying that some men were using 'She won't let me see the kids' as an excuse not to pay maintenance.
[745] 2017. Interview #28. Evidence that the gender of bureaucrats influenced prosecution of child support for clients is provided in Wilkins, VM and Keiser (2006).

'Just a domestic'

The *Crimes (Family Violence) Act 1987* introduced a civil intervention order system to protect family members from physical domestic abuse, harassment or the threat of abuse.[746] It was significant reform with widespread ramifications across the justice system and the community.[747] More than 10,000 applications were made in the three years after the introduction of the legislation.[748]

Clerks played a key role in the implementation of the legislation. By July 1987 there were 32 female clerks of courts senior enough to be working at the counter and dealing with family violence matters, but most of them would have been in their mid-twenties or younger.[749] Although domestic violence had long been a confronting reality for street-level service providers in the justice system, there had never been explicit responsibility assigned for dealing with it.[750] Australian society was loath to recognise the serious and pervasive nature of violence in households and familial/intimate relationships, and this was reflected in the attitudes of public officials, including police as reluctant first responders and some clerks of courts and magistrates.[751] Prior to the legislation, remedies were limited: police would often urge a breach of peace application in preference to issuing charges, even if black-letter law recognised that the perpetrator

[746] S 4 conferred power on the magistrate to issue intervention orders. This could be done *ex parte* and entitlement determined on the balance of probabilities. The clerk would interview the applicant and assist them in the preparation of their affidavit. They would also deal with respondents. These were highly charged interactions for which many clerks were initially unprepared. Most court facilities did not allow for the physical separation of parties. One interviewee said that the only time he had been physically assaulted in the course of his work was when dealing with warring family members (2018. Interview #14).
[747] The legislation substantially amended the *Crimes Act 1958* (Vic). See Carr and Morrison (2006).
[748] Magistrates' Court of Victoria (1990, p. 20).
[749] Three CC-2s and 29 CC1s/ CC-1As (the classification range in the clerks' stream was from ADM-1, or trainee Clerk of Courts, to CC-8). There were another 35 female trainees. The contingent of clerks numbered 292; this meant that twelve years after the commencement of the first woman trainee, already more than a quarter of the cohort were women. 1987. 'Seniority list'. *Chronicle: Journal of the Clerks of Courts*, 27, 3, September pp. 23-25.
[750] Historically, there had been detailed explanations, instructions and examples about family law matters that could be dealt with by justices under the *Justices' Act 1915* (Vic), together with summaries of relevant case law, in the *Justices' Manual* (Wade, TB & Dixon 1919).
[751] A former magistrate identified that the 'stereotypes that were underlying huge swathes of the law including vast areas of sexual assault, assault of women and of children were firmly in place in the minds of many members of the judiciary, many lawyers, police - many members of the legal community and many judges who could say, and did, "This is a common and garden rape".' 2017. Interview #35.

could be charged with assault.[752] A former clerk and magistrate recalled that in the decades before the legislation was enacted,

> Every Monday, you could guarantee at Richmond Court at least five women would come in, often with black eyes and God knows what; we would counsel them and they would make the decision about whether they wanted to take the husband or boyfriend to court. If they did, we would issue a summons and get two-and-six out of the Poor Box to pay for the duty stamp for the issue of the summons. We had seven to ten of these cases per week. But at least 90 percent would be back in two days to withdraw.[753]

The shame factor for affected family members was extreme, particularly as applicants had to queue with other members of the public: there was no privacy unless clerks perhaps used a staff office or a magistrate's chamber.[754] A fracas in the home or between family members was often dismissively labelled 'a domestic', and unofficial police policy was to leave such matters to resolve themselves.[755] 'Police were not satisfied an assault had been committed unless there were broken cheekbones, broken bones, cuts, bruises and someone had gone to hospital', commented a former magistrate.[756] There

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[752] Under the *Crimes Act 1958* (Vic).

[753] 2017. Interview #50. This story predates 1966: 'two and six' was two shillings and sixpence.

[754] At one busy suburban court, 'There was no interview room and you would interview people at the counter up against 100 people. You would interview women about people assaulting them; maintenance arrears … [the clerk] would use the clerks' room to interview people and if that was full and the magistrate wasn't there, … the magistrate's room. [On one occasion the magistrate] came in at 20 to 10: "What are you doing in my room?" "Sorry Mr [name] … there's something delicate I have to discuss here - I'm taking instructions here." "No, you can't do that, this is my room - get out of here, get out!" Had to apologise to the woman and tell her he'd interview her later when there was free space'. 2018. Interview #12.

[755] A recent study on policing in South Australia describes how in 'the early days of an interest in domestic violence … [police] were predominately motivated by their desire to save time attending and re-attending such incidents. At this point in [their] operational history, the department had a non-intervention in family matters policy. This meant that police patrols would attend domestic violence incidents, restore the peace and at least temporarily stop the violence, usually without laying charges against perpetrators'. Paterson (2018, pp. 7,8).

[756] '"Just' a domestic, was the standard expression of police, barristers. … If the bloke was charged with a crime, he was often given a slap over the wrist because the barrister said "it's just a domestic", and there was no protection for the woman in the criminal sense.' 2017. Interview #35. A former clerk stated that in one suburb in the mid-1970s 'There'd be fourteen women there all with broken arms, black eyes, crutches - Friday night, you come home full, use your wife/ partner as a punching bag, she calls the police, the police come in, interview her in hospital, they tell them to come in on Monday morning and take out a breach of the peace application. Why not an assault summons?'. 2018. Interview #12.

was even less recognition for the invisible, non-physical forms of domestic abuse such as coercive control or stalking, and the system did not take into account serious repercussions for victims who sought redress.[757]

The *Crimes (Family Violence)* legislation provided for affected persons to apply for intervention orders. This was a civil remedy, the breach of which was paradoxically a criminal offence: it was designed to prevent crime rather than to punish it but at the same time to highlight the criminal nature of such assaults.[758] Such a profound reshaping of the paradigm included taking complainants seriously even if they withdrew their applications several times before deciding to proceed. It required substantial investment in the education of judiciary, police and court workers because its success depended on cultural and attitudinal change as much as an understanding of the legislation itself.[759] Former clerks frequently mentioned their frustration with what they saw as lack of co-operation from police.[760]

Interviewees reflected on the galvanising leadership of magistrate Sally Brown, who earned the respect of clerks and magistrates alike. She was one of the first to issue interim orders as per the legislation.[761] She was also one of the first professional magistrates to run family violence information and cultural/attitudinal change seminars

[757] Even today, it is recognised that 'There are criminal offences committed *within* domestic abuse, but the worst of it cannot be captured on a charge sheet. A victim's most frightening experiences may never be recorded by police or understood by a judge'. Hill (2020, p. 6). The law changes, but slowly.
[758] A former magistrate explained, 'Under the *Family Law Act 1975* you could apply for an injunction (civil), but … you had to bring a civil enforcement of it. So if you could persuade a magistrate (not easy) to exercise the *Family Law Act* power or you went to the Family Court, all of which cost money, and you had to bring applications, and you got an order that x not assault y, when you called the police there was nothing they could do - you had to go back to the court with an enforcement application. The onus on enforcing was on you, which was expensive, and very inefficient, and nothing really happened. It was into that vacuum that the intervention orders fell'. 2017. Interview #35.
[759] This was in an environment where a (South Australian) Supreme Court justice felt it reasonable to declare that there were times when a husband might subject his wife to 'rougher than usual handling' (Hocking 1993, p. 152).
[760] 'Police - they were part of the problem - we had our processes, we'd fax them the order to go and serve and that was a low priority [for police], and the women would call us to say where's the police, I can see him [the perpetrator] coming up the drive. … I remember a policewoman … who wouldn't serve the order to remove the man from the house because it was his name on the lease. And so the order came back unserved. That was her training'. 2017. Interview #29.
[761] Under s 8 (2019. Interview #58; 2017. Interview #35; 2017. Interview #3).

for clerks and magistrates.[762] Education was vitally important, not just to convey information but to change mindsets:

> [We ran] A lot of early conferences, before the laws even came in - it was very confronting - we really squarely put it in the context of inequality, harassment - not just 'this is another offence that's being created'. Because you've got to breathe life into radically new laws. Culture is much, much harder to change. It's not just a piece of legislation. And so, there was no point in just saying, 'there's this form, and you do this and you do that'.[763]

Life experience was helpful; training and mentoring essential, but even more so in times of rapid change. 'It was lot of responsibility for young people - and a lot of power';[764] lacking the necessary grounding, young clerks with face to face responsibility in dealing with applicants were likely to conduct themselves as described here by one interviewee:

> I probably wasn't very compassionate about it - I was just young, and it didn't have any context for me. I was slightly annoyed that I had to churn out all these intervention orders. I remember saying, 'it's just a piece of paper' - [and] - it's a horrible thing to say to a person - 'it won't stop him hitting you'. Awful things like that. Just callow, and ridiculous. We weren't compassionate about it, probably as a profession, because it just meant more work. That whole thing about women coming in and not showing up on the day … it must have been a hideous experience for the women - standing at the counter in public with your kids, even with the best-intentioned clerk. And you knew that the piece of paper was literally a piece of paper and if the police happened to come out … well … People thought that family violence was a lower-class problem, it didn't happen in nice families, and ... that was the demographic [in that suburb]. So, what could you do, and probably nothing much was ever done for them.[765]

[762] The Honourable Sally Brown AM became Chief Magistrate in 1990, and was a Family Court judge between 1993 and 2010 (Brown, S & Henningham 2016).
[763] 2017. Interview #35.
[764] 2028. Interview #44.
[765] 2017. Interview #31.

For all that there were clerks (and magistrates) disinclined or initially unable to come to terms with the requirements of the Family Violence legislation, and despite lack of engagement and frequent resistance by the police, some clerks of courts were energised by the change and determined to make it work. Several interviewees (male and female) related examples detailing investment of time and leveraging of resources to assist women affected by domestic violence. This included following up with unwilling police to check orders had been served,[766] putting women in touch with community resources and working with individuals to help them move out of a violent home and find safe accommodation.[767] This was not considered a necessary part of the job at the time.[768]

Several interviewees described how they did their best within the boundaries of their role to turn the bare bones of the innovative legislation into an effective service. One said, 'You would develop your own way of getting the information from people in a way that would keep them calm'. She explained how the experienced team at her court developed procedures to cope with the challenges of the jurisdiction:

> the hardest thing was when they'd come back two weeks later, with their partner, and want the order lifted. We developed our own practice - our process was 'We have to get you to come into a room by yourself'… you'd sit down with them and say, 'Are you sure? Here's a phone number of someone who can help you',

[766] 2019. Interview #58. One interviewee relayed the manoeuvres that resulted: the police would say, '"Oh, no, we haven't got time, we're short-staffed, we'd have to really push things"… sometimes we'd word up the magistrate'. She said she remembers the paperwork 'going missing at the police end … they didn't know what to do'. 2018. Interview #27. In 2001 Police Commissioner Christine Nixon announced three priority areas for policing: burglary, motor vehicle theft and violence against women. Leigh Gassner was assigned to focus specifically on family violence and sexual assault (Padula 2009). A former magistrate recalled, 'I once heard Leigh Gassner tell a very restive group of police, no matter how many times you go and they don't turn up, you've got to take the view [that] every time you try, you might be stopping a homicide'. 2017. Interview #35.

[767] 'A woman came to Frankston - broken arm, blackened face - she had been sent to the court by the police - often police wouldn't come to the scene. [I realised that this was] A serious criminal act here. I took her over to the station - stayed there while she told her story. "He's got to be charged [I said] - this is not the first time".' 2018. Interview #19. Another interviewee commented, 'When I became a clerk I always took assaults very seriously and like many other clerks, would often walk victims (always women and very often on Mondays) to the C.I.B. [Criminal Investigation Bureau] and asked that they undertake a prosecution, particularly where there was clear Actual Bodily Harm. … In one instance and with the help of police and ambulance, I arranged for a family … to be taken to a refuge in a regional city, without the perpetrator ever finding out. Clerks took these matters seriously and did what they could in the circumstances'. 2020. Personal communication, 22 October.

[768] 2018. Interview #19.

> etcetera. Some cases, you always knew that the orders were going to get breached … and you used to always hate it when the DPP [Department of Public Prosecutions] rang - you'd go 'Ohhh crap', because you knew that someone was going to have to give evidence in a murder hearing.[769]

Clerks came to realise that they had an imperative role to play in addressing a pervasive social problem; both procedural and humanising in nature, it required a fundamental change in outlook for many.[770] Those who recognised the evolving nature of court business began consciously to differentiate their work practices from the old ways of doing (or not doing) things. The comments below show that with maturity and experience came confidence in their capacity to provide the services needed so urgently by the community.

A female interviewee reflected,

> It was very refreshing when the culture finally changed … I think it had something to do with the beginning of the intervention orders, the family violence legislation - a huge change - we were used to dealing with the very distressed women in the maintenance area, but now we were dealing with the poor women who'd been bashed - the men [male clerks] who barely could cope with talking with people at the counter anyway, they could not do this … You just couldn't let these men loose on these poor women, because imagine how they would talk to them - no sympathy, no empathy.
>
> And it was a very big piece of work to assist somebody to get an intervention order, because you had to interview them and précis their story into 3-400 words -

[769] 2017. Interview #46. 'One magistrate with experience in the Coroner's Court noted that many homicides had a long history of clearly unsuccessful intervention orders'. Douglas, R and Laster (1992, p. 63). Between 2014-15 and 2015-16, one woman was killed every 9 days and one man every 29 days by a partner; Indigenous people were 32 times as likely to be hospitalised for family violence as non-Indigenous people in 2016-17 (2019). See also Bryant and Bricknell (2017). At the time of writing at least one woman per week is killed by a partner or ex partner. A running tally of women killed by violence in Australia is kept at https://www.facebook.com/DestroyTheJoint/ [accessed 29 January 2021].

[770] Today registrars receive training in the handling of domestic abuse matters and are aware of the resources that are available to assist. A specialist Family Violence Division of the Magistrates' Court with branches across the state is staffed by trained registrars and magistrates.

you had to really talk to them, and get it out … these men, they just could not handle that. I think that was the beginning of the change - we couldn't keep going on like this - our customers had changed. They were no longer just the local feller coming in to pay his speeding fine.[771]

The culture starts to change

Mentors and champions

Most interviewees, male and female, spoke of mentors who had inspired, supported and actively assisted them in their careers. This was crucial in the absence of female role models in the late 1970s and early '80s.

Some young women were targeted to get moving in their careers. 'I was lagging a bit with my exams. I was still thinking this is not my career, and I was brought in [to Head Office] for a talk [with a senior male clerk]: "Just do your exams!" So I did, and I was able to apply for jobs then, and I applied for [a suburban court], which was a CC-2 at the time. A bit of a thing. I was one of the first girls to have their own court, even though it was a tiny little court.'[772] Some received sympathetic help from their elders. A young woman experiencing bullying was given a series of poor performance reports which were passed to the inspecting clerk of courts. 'Let me read out the list of the things they've said about you', he said. After discussion with her, he 'proceeded to cross them out in the report with his purple pen'.[773]

Some senior clerks and magistrates were prepared to find ways to accommodate women's life circumstances and so retain valued staff. One interviewee remembers with gratitude the lengths to which the senior clerk at her court ('my hero') went to help her in a crisis. 'He saved my life I reckon - when my marriage broke down he was the first one on the phone saying, "Whatever you want to do, fulltime or part-time - you can do it" - oh, he

[771] 2017. Interview #46. Another woman also commented that some of the older clerks 'did not handle the interviews very well' (2018. Interview #27).
[772] 2017. Interview #31. A milestone was reached when one suburban court - Sunshine, a four-person court - was staffed entirely by women from 1992 to 1994. One of the registrars present at the time reported, 'The media came out one day. Sally Brown was sitting, and a female VLA. "It's an all-woman court!" We said, it's no issue, we do this every day' (2018. Interview #47).
[773] 2017. Interview #28.

was so wonderful - and then within months my father had a stroke that pretty much took him out, and my mother who'd been my backup until then had to look after my dad, so all at once I had no child care. So he said, "Well I've got this niece …"' Without such support, the interviewee feels that she would have given up her job.[774] While some senior clerks insisted (ironically) that part time hours were not compatible with court work, others found a way to make unconventional arrangements work and were repaid by long term loyalty.[775]

A female clerk of courts in the company of other women was in a better position to call out bad behaviour. Although there were only about ten female clerks in the courts at the time, one interviewee started her career at a suburban court where there were already two women on staff.[776] 'They were fantastic mentors and incredibly tough', she said. The boss, however, 'thought it was fine to give you a squeeze and kiss you'; the seventeen-year-old trainee felt 'very uncomfortable' in the first couple of months. Then she mentioned it to one of her colleagues, 'who was a mother, feisty and fantastic - she tore shreds off him and he never did that again'.[777] She had assumed that this behaviour was institutionalised but was relieved to find that in this court, at least, it was not, thanks to the presence of a confident, more experienced female colleague.

Although the presence of senior women in the courts context was negligible in the 1970s, from the early '80s the Law Department had recruited an exceptional contingent of senior

[774] 2017. Interview #29.
[775] Accommodating the family responsibilities of female staff was certainly as much a pragmatic attitude as a compassionate one. One senior clerk well-known for his preference for having males rather than females on his staff kept a talented female clerk in part-time employment for several years, allowing her to work from home (2017. Interview #16; 2018. Interview #51). A former senior clerk wrote that he had employed two female clerks on a part-time basis 'thus continuing their careers rather than have them resign. To me it was a win-win situation as they were both highly experienced and well respected and to lose either would be a disappointment. Both continued to serve the courts with distinction' (2020. Personal communication, 22 October). Due to what we would today call 'the commitment penalty', part-time work and working from home did stifle some careers in an era when promotion opportunities for part-time workers were limited: 'fifteen years of part-time just kicked the guts out of my career, really', remarked one interviewee; part-timers were often just used to 'plug gaps' (2017. Interview #29).
[776] It is not known whether this was a deliberate placement, as the rationale for such decisions was never openly discussed.
[777] 2017. Interview #31.

and influential women to work in its central administration.[778] Ultimately, it was recognised that this new cohort who had come from outside the courts would benefit the system and its staff.[779] Female non-clerk interviewees who had worked in head office senior roles stated that, although they recognised the power wielded by the clerks, they enjoyed working with them.[780] These women had significant impact on the attitudes of some of the senior clerks, according to one former clerk.[781] A former magistrate declared that she had never experienced negativity from the direction of the senior male clerks, and in fact found them respectful and very helpful.[782]

Key people were aware of the need to keep working on attitudinal change. A notable act of leadership by Chief Magistrate John 'Darcy' Dugan (who had risen through the system as a clerk of courts) in heading off criticism by magistrates of family leave was recounted by one interviewee:

> someone stood up and made a snide remark about how the court was going to cope with listings when a woman was able to go off on three months' leave and they had husbands who were working … Darcy, a very clever man, must have had some notion about this (he had an ear to every door and window). 'During the time women have been in this court, we've lost x number of work weeks to men who have had psychological problems. We haven't lost a single week to a woman. Women have babies, men have psychological problems. I know which I prefer.' It was done. Very clever because he didn't go into the routine stuff about 'this is a new world', etcetera. None of that - just Bang, and it disappeared.[783]

[778] These included Elizabeth Proust (Secretary to the Attorney-General's Department), Jennifer Williams (Deputy Secretary for Courts), Sally Gilbert (Director of Personnel), and other senior women in the Personnel Branch in charge of recruitment, training and development and industrial relations.
[779] 2018. Interview #7, 2018. Interview #9.
[780] 2019. Interview #59, 2018. Interview #33.
[781] 2017. Interview #28.
[782] 2017. Interview #35. Sally Brown wrote, 'From the outset, some of the oldest magistrates, those with carefully-honed reputations as curmudgeons, opened their doors to us. Jack Caven once said to me, 'If anyone ever told you that I was against having girls as magistrates it's not true', a sort of pre-emptive prior inconsistent statement objection, but once there the practical help was extraordinary'. Brown, S. 'The practicalities of working within the legal system' *In*: Thacker (1998, p. 52).
[783] 2017. Interview #35.

Harbingers of change

Some magistrates took advantage of the new talent that had become available with no qualms about gender. A former courts executive recounted how Hal Hallenstein as State Coroner had a female clerk, about 20 years old, accompany him 'into the bloody slaughterhouse that was the site of the Queen Street shooting … It was the University of Life every day'.[784] Another interviewee commented that male clerks came to recognise a resilience amongst their female colleagues:

> [The senior clerks were] more protective of the women - if someone was arcing up at the counter you'd always know there'd … be someone there who'd come around, … but ironically it wasn't usually the women that needed it - the joke was they'd always call me out to deal with the difficult customers, because the boys didn't know how to deal with a man crying. They'd call me, because I was the hard-arse. And that was the irony, because most of the women were probably stronger like that … you have to develop a thick skin when someone called you names, and you couldn't be offended by swearing, that was the number one thing. Because it's around you all the time, you become so desensitised.[785]

By the 1980s women were regularly participating in Group-organised sporting events and their exploits reported in the *Chronicle*. Sometimes a women's netball team would accompany the men's cricket team on interstate trips to compete (but like the men, mostly socialise) with court colleagues over the border.[786] One interviewee reports the fun she had dealing with the assuredly masculine brio of her work mates:

> Being a girl worked enormously well for me - I was well taken care of, very well protected. There was that paternalism. Like having big brothers at work. They were naughty and rude and funny and played awful practical jokes on me. I had a ball, an absolute ball. It was such a fun job. [The old court had] literally just three rooms, an awful building, but it was great fun and I enjoyed being there. …

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[784] 2018. Interview #9. The mass shooting occurred in December 1987 at 191 Queen Street, across the road from the Courts Management division of the Attorney-General's Department (Murphy 2017). After obtaining her degree, the clerk worked as a lawyer at one of Melbourne's big firms.
[785] 2017. Interview #46.
[786] 1992. *Chronicle: Journal of the Clerks of Courts*, 32, 1, Winter pp. 26-30.

> They'd get the police onside with their jokes. Once I had my skirt unzipped and they let me be on display like that all day, even in the court! I was upset at the time, but it was make or break, and I loved it.[787]

The Courts Change Program was initially seen by the rank and file as threatening, yet for many, including numerous women, it delivered opportunities for input, influence and status. Clerks being drafted to work in Head Office alongside technical consultants and managerial specialists brought about an increasing porosity of the boundaries between operations and executive, altering perspectives.[788]

This was instrumental in changing the culture of both. Several interviewees - including women whose beginnings in the workplace had been difficult - were able to make substantial professional contributions and fast-track their career progression by skipping a level or two of the hierarchy or working parallel to it in faster-moving administrative careers. In addition, innovative legislation and new court complexes required large teams of staff with senior and specialist positions: roles diversified in both country and city.[789]

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[787] She was not singled out in this behaviour: juniors both male and female could be teased and jostled around by their seniors, but it was more overtly violent between males. A male former clerk reports being frequently harassed under the counter by his older colleagues while working with the public. On one occasion he was so annoyed that he grabbed his tormentor in a headlock and squeezed until 'the top of his head turned purple'. He explained that once he'd 'set the boundaries' they became 'good friends'. 2018. Interview #30.

[788] In research interviews a divide was evident between 'career clerks' and those who had moved into management, an opportunity not afforded to clerks before the 1980s. Those in the older cohort who evinced a certain cynicism about 'the Department' were less likely to have had experience working in 'Head Office'.

[789] Law Department Victoria (1985b, p. 45).

Conclusion

Women entered the courts as trainee clerks at a time of sweeping change across the public sector and the nation. Social change in the 1960s and '70s unlocked opportunities for women and other under-represented societal groups, and the expectations of oncoming generations were correspondingly more ambitious.

An era of free university education initiated by the Commonwealth government from 1974 'opened up access to tertiary education to those for whom it would otherwise have been out of reach, and created a precedent of universal access to higher education',[790] making graduates from more diverse backgrounds available for recruitment into the public service generally.[791] The courts were also changing, and on many fronts. As seen in the previous chapters, legislative reform posed challenges to the operation of the courts, requiring not only operational but attitudinal change.

As this chapter's findings show, women's engagement with the courts was facilitated as a pragmatic measure by senior clerks concerned about workforce capacity. Politicians and heads of government agencies were already engaged with improving the participation of women, but court administrators made moves in advance of pressure by their parent department. The sudden entry of women as equals into clerks' collegiate and operational space was, however, initially disruptive to an essentially masculine culture of positional power, camaraderie, solidarity, sport and drinking. It was not, on the face of it, a welcoming environment for young women, however smart and determined.

A substantial disconnect was evident between the governmental policies and strategies designed to build the numbers of women and the actuality of managing the change. This

[790] Whitlam Institute (2018), no pagination. The era of free university education in Australia was to last for fourteen years.

[791] The lack of officers with any kind of tertiary qualification in the ranks of the Administrative Division was the subject of criticism in the first Victorian Bland Report: 'Such tertiary qualifications as are possessed by members of the Administrative division have, until recent months, generally been acquired post entry and those members who are graduates are a minor proportion. The academic calibre of the Administrative division therefore lags lamentably behind that of the Professional division'. Bland (1974, p. 43). In financial year 1976-77 some 80 graduates were recruited into the VPS; 35% of those passing the administration examination in March 1977 were graduates (degree or diploma). Figures supplied by the Secretary to the Public Service Board to the editor of the *Chronicle*. 1977. 'Public Service entrance examinations'. *Chronicle: Journal of the Clerks of Courts*, 19, 3, September p. 6.

left many new recruits to flounder and inimical practices to go unchecked. Talent was lost as some women became disillusioned, and left. The aim of protecting women from the 'sordid' business of the court was initially used as a reason to exclude them, but it was in fact the behaviour of colleagues that would cause the greatest problems for women entering this domain.

The first female trainees were eager for the experiences that went with the job and were not unduly discouraged by its confronting aspects. They were motivated to demonstrate their resilience and did so, although at first they were too young and too few to make a major difference to the culture. Interestingly, although those who left gave good reasons for having done so, there appears to be little correlation between negative experiences and the decision to stay. They were engaged by the job itself, by their collegiate experiences, and by a culture that did eventually embrace them: 'I found my world', said one long-serving senior female registrar.[792]

The attitudes and actions of female clerks of courts recruited from 1975 illustrate how even given a delayed and tentative start, they played a significant role in the evolution of the workforce's capability, responsiveness and resilience. One interviewee concluded: 'As a 17-year-old, I just had to grow up really quickly … I really enjoyed the work, and still do - I love applying the legislation to real life situations and I made the right career choice, so I'm really happy about that; and here I am all these years later'.[793] It could be said that this personal maturation process paralleled that of the institution.

The data reveals a complex picture that adds depth to our understanding about women entering a sphere where men have an established hold on political and operational power. If early women clerks were not necessarily more likely than men to be active in the promulgation of change, their awareness of the need for change was often acute. Some of them, as the data shows, did come to be highly engaged, and the individual efforts of supportive mentors, not least the energetic and strategic leadership of people such as Sally Brown in the early days of the Crimes (Family Violence) implementation, were

[792] 2017. Interview #47.
[793] 2017. Interview #29. As Rosabeth Moss Kanter (1993) argues, 'The job makes the person' (p. 292).

influential and timely. The culture would change irrevocably as choices and adjustments were made by all.

For the balance of power to tip, a potent combination of factors was required: the leadership actions of key senior clerks, executives and magistrates, the changing composition of the demographic with female recruits in increasing numbers and confidence, and innovators testing different ways of doing things. Time and generational change did the rest. The products of this alchemy are evident in the highly skilled, specialised and more diverse Magistrates' Court workforce of today.

The import of this shift is as a diagnostic of organisational culture and cultural change at a singular moment. What now follows draws from theoretical models to analyse and build on the insights generated by the unique yet resonant empirical data yielded by this study.

Chapter 7

Discussion

Introduction: findings in theoretical context

Magistrates' courts delivering services to the Victorian community were driven by distinct operational imperatives and cultural mindsets as outlined in the foregoing chapters. Here I will analyse the elements of an organisational culture[794] so singular that 'we can rely neither on theory nor on overseas evidence' for point by point analysis (Douglas, R 1992, p. 64).

Yet this picture, unique though it is, can be broadly understood in the context of institutional, organisational and legal-culture theory and the experience extrapolated to other themes and contexts. Major insights are afforded by the work of Michael Lipsky in identifying the characteristics and behaviours of what he terms 'street level bureaucrats' (Lipsky 1969, 1971, 2010; Weatherley & Lipsky 1977), those public servants who, often distant from their executive masters, pragmatically interpret and deliver government policy face to face with their community of service users.

Public sector culture is often invoked, but empirical study of it is uncommon. A range of theoretical insights will be used to analyse the distinguishing characteristics of the clerks' culture and its response to root and branch reform. The choice of headings and sub headings in this chapter is informed by the vivid interview-derived leitmotifs that crystallised during the NVivo thematic analysis described in Chapter 3. These nascent themes were then honed and categorised on the basis of theoretical insights derived from interdisciplinary reading.

The dynamics of the clerks' distinctive cultural artefacts (Schein & Schein 2016, p. 13) are described in Chapters 2, 4, 5 and 6. As we saw in Chapter 2, the Victorian magistrates' courts were structurally located within the Weberian formality of the Law Department yet differentially evolved in terms of service ethic, identity and operational

[794] A widely accepted definition of culture is Daniel Denison's 'the set of values, beliefs, and behavior patterns that form the core identity of an organization' (Denison 1984, p. 5).

independence (Chapters 4 and 5).[795] For a century and a half this arrangement had carried with it both advantages and disadvantages for court officials. They enjoyed operational freedom, but the complex relationship with their powerful employer had to be navigated whenever funding, welfare and working conditions were in issue.

Schein (1996) posits that discomfort is a prime motivator for change.[796] Cultural dissonance between the magistrates' courts and their parent Law Department reached breaking point over various issues in the 1970s and '80s.[797] These difficulties, as described in Chapters 2, 4 and 5 - often viscerally painful for the clerks - prefigured the eventual separation of the Victorian courts from the executive (Bunjevac 2015; Warren 2004, 2015). Operational, structural and philosophical issues have been identified in the literature, yet the precise nature of the cultural dissonance has not been extensively researched. The work of Wilson (1989) and Douglas (1986) on the mindset of government institutions is used to interpret the clerks' clan-like culture (Ostrom et al. 2007) along with that of their ostensible host culture, the Law Department.

'Typical street-level bureaucrats' says Lipsky (2010, p. 3), 'are teachers, police officers and other law enforcement personnel, social workers, judges, public lawyers and other court officials and many other public officials who grant access to government programs and provide services within them'. Clerks of courts belong to these work groups not only in the sense of their officialdom but in the sense that they daily interact in a decision-making capacity with citizens, at the cutting edge of service provision. In the busy hands of street-level government employees, government policy is translated into actions that not only interpret policy to fit the context in which it is delivered, but cumulatively influence its future iterations.

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[795] Edgar Schein defines culture in anthropological terms and insists that it cannot successfully be overwritten. 'Culture in anthropology is the sum total of what any group, organization, or nation has learned throughout its history in coping with survival and managing its internal relationships. … The main consequence is that a part of strategy is totally constrained by the culture that a group already has' (Schein 2017, p. 64).

[796] 'It is my belief that **all** forms of learning and change start with some form of dissatisfaction or frustration generated by data that disconfirm our expectations or hopes' (Schein 1996, p. 28).

[797] Note that the Law Department was renamed Attorney-General's Department in 1987 but is understood as the same institution in the context of this thesis given the scope of its timeline.

‘The lifeblood of administration is power’, argues Long (2000, pp. 257,8), ‘Its attainment, maintenance, increase, dissipation, and loss’, yet ‘Neither statute nor executive order, however, confers more than legal authority to act’. There is, in other words, a discretionary space between the authority to act and the activation of other powers that come into play. From a material point of view there was also, for the clerks, often a considerable geographical distance between the authority of the Law Department and the courthouse itself. Clerks’ work was characterised by the day to day presence of the court user and the absence of senior bureaucrats. As officers of the court, clerks leveraged scope for expert, adaptable and responsive service, particularly in the suburbs and regions. Courts showed a decided lack of tolerance for bureaucracy, as noted in Douglas (1992, pp. 65,6).

Lipsky’s framework recognises a consciousness of power and also a lack of accountability in its exercise: ‘Street-level bureaucracies usually have nothing to lose by failing to satisfy clients’ since many of the courts clients are ‘nonvoluntary’ and ‘dependent on these agencies’ (Lipsky 2010, p. 55). Some frank comments of interviewees, as seen in Chapters 4 and 6, resonate with this paradigm.[798] Lipsky does not imply that public service workers have untrammelled power, however; scope to decide and act is typically constrained by lack of resources, including time, information, advice and materials. This can contribute to an arbitrariness of approach or bulk-processing.

The other constraint is rules which often exist in ‘encyclopedic’ amounts and are ‘constantly being changed’ (2010, p. 14).[799] Clerks had their Instructions, their statutory obligations and their administrative protocols but they often lacked guidelines to navigate day-to-day problems. Paradoxically, argues Lipsky, a plethora of rules increases the dimensions of discretion exercised by street-level bureaucrats because of the inverse proportion of resources to these rules. Government employees are forced to prioritise the rules to be enforced or activated; they cannot cover all instances where rules might be

[798] For example, as seen in Chapter 6, ‘The view was, we had a monopoly - if they didn’t go to us, where were they going to go? They were stuck with us’ (2018. Interview #36).
[799] Crozier (1973) neatly explains rules as ‘the crystalization of other power relationships and the results of earlier negotiations’ (p. 221).

invoked in their working day (2010, p. 14). Michael Lipsky's concept of street-level bureaucrats aptly invokes this rule-bound yet discretionary element of the clerks' work (Lipsky 1969, 1971, 2010; Weatherley & Lipsky 1977).

Lipsky's framework also allows us to locate clerks and their organisational dilemmas within the larger context of government service internationally. During the 1970s and '80s international focus on rationalising and downsizing were expressed locally in court closures, resulting in a reduced street-level presence that disrupted services and constrained amenity in country towns (Chapter 4). Simultaneously the growth of large multi-jurisdictional suburban and regional hubs created large teams with discrete sub-cultures and a more metrics-driven focus operationally. Chapter 4 also describes the introduction of management technologies and accountability mechanisms that increased efficiency by certain measures but progressively reduced clerks' operational latitude.

First-hand accounts of a culture under stress (Chapters 5 and 6) enable a unique vantage-point from which to view it. Erosion of comfortable certainties created a crisis of faith for clerks of courts and tested their cultural values.[800] Legislative, administrative and structural transformation impacted career aspirations and orientations. Accumulated stresses reached breaking point when clerks lost their exclusive path to the bench (Chapter 5) and almost simultaneously, were faced with progression by seniority being replaced by selection by interview panels. Opportunities to become a magistrate diminished, even for clerks with law degrees. Though the body of clerks saw the string of changes as 'moving goalposts'[801] and broken promises, their leadership also understood that change was inevitable, and recognised the import of developing strategies to reconcile the cohort to these changes and re-energise the culture.[802]

[800] 'Taken-for-granted values, underlying assumptions, expectations, collective memories, and definitions present in an organization' may remain unconscious until challenged (Quinn, RE & Cameron). Challenging these entrenched values and understandings is likened to tinkering with molecular biology: 'shared learning provides meaning and stability and becomes, in a sense, the cultural DNA' (Schein & Schein 2016, p. 7).
[801] 2017. Interview #21.
[802] 'In social exchange relationships, such as in public organizations, trust is the expectation that consensual norms or reciprocal obligations will be lived up to, especially when the rights and interests of others are involved' (Carnevale et al. 2019, p. 176).

Inhouse elected leadership proved pivotal during this crisis in morale, and as in the past, the *Chronicle* was used to inform and rally the cohort. Other forms of viable leadership, however, grew alongside that of the Clerk of Courts Group during this time. The work of Edgar Schein and others (Schein 1996; Schein 2009, 2010; Schein 2011; Schein & Schein 2016) on concepts of workplace leadership and the paradigms of organisational change supply a useful theoretical lens through which to understand the clerks' organisational culture during this time of rapid and dramatic transformation (Carnevale et al. 2019).[803]

Schein and Schein (2016) note that reactions against power and authority provide excellent prisms through which to observe cultures at work.[804] In Chapter 4 we concluded that most clerks pragmatically complied with departmental standards at least as far as it would take to pass an inspection, but would otherwise turn a blind eye to bureaucratic directives.[805] Burns and Stalker (1994) identify workers' rejection of line management or executive authority over their daily work as a form of professional autonomy exercised by lower-level staff. For clerks, lack of real-time communication between senior management and court operatives made this not just easier, but necessary.

Strong cultures are conceptualised as highly resistant to change (Schein and Schein, 2016 and Wilson, 1989). Contrary to such constructs, the magistrates' courts responded comparatively smartly to the impetus for change. Parallel with the diversification of the demographic (Chapter 6), many aspects of court operations were modernised with the Courts Change Program and a new managerial paradigm (Chapter 4). Operational imperatives may be powerful drivers of change (Willis, J 2001), but deeper reform needs the heft of strategic partnerships. These were provided by both the Law Department's

[803] 'Transformation means deep change, fundamental alterations instead of superficial half measures. All change is not transformational. We have argued that the failure of management reforms can be traced to superficial change, failing to take up deeper issues of authority and power' (Carnevale et al. 2019, p. 189).
[804] 'I have found that a good time to observe an organization very closely is when acts of insubordination take place. So much of an organization's culture is tied up with hierarchy, authority, power, and influence that the mechanisms of conflict resolution have to be constantly worked out and consensually validated' (Schein & Schein 2016, p. 192).
[805] 'As such, there can be compliance in resistance and resistance in compliance … Resistance has to be detached from utopian and revolutionary notions and seen as small, messy, fragmented and everyday kinds of subversions, conscious and unconscious' (Davids, Driel & Parren 2014, p. 404). See also Preston-Shoot (2001, p. 11).

Courts Change Program and the service-wide (and indeed, international) push for implementation of neo-liberal managerialist principles.[806]

The 1989 legislation[807] closed a momentous chapter in the history of the Victorian clerks of courts, not only changing their job title, but many aspects of their role; yet as this research shows, much substantial change had already been achieved and the ground prepared for more.

Divided loyalties: clerks and the Law Department

Until 2014, the magistrates' courts - a busy network of judicial operations with complex accountabilities - were embedded in the mechanistic, centralised 'command and control' of the Law Department and a rules-oriented public sector.[808] The culture of court staff was a distinctive combination of public service and legal culture built on localised social and procedural justice traditions and principles (Chapter 5).[809] Significantly, clerks felt primarily answerable to each other and mentored their peers in professional and vocational leadership ('Do We Take Pride?').[810] Community relationships were valued

[806] 'The jurisdiction of the Magistrates' Courts has not been progressively adapted to meet changing community needs. … Existing Courts administrative systems result in each Court operating in isolation and limit effective provision of services' (Law Department Victoria 1985b, p. xi).
[807] *The Magistrates' Court Act 1989* (Vic).
[808] The effects of such regimes are discussed in Alford, Gustavson and Williams (2004); see also Bunjevac (2015).
[809] The culture of the Victorian clerks can be compared with other court cultures internationally, but comparisons are limited and fragmentary both in number and applicability. I. Scott Messinger argues that court clerks in the US have contributed to a national legal culture, but these clerks are legally qualified and assist with drawing up of judgements. 'During the course of over two centuries', he comments, 'the essential role of … clerks as the processors of the courts' business, as the fee-collectors for the U.S. Treasury with respect to that business, and as the institutional memory of our common-law-based judicial system has remained constant' (2002, pp. 2,3,72). In the British context there is a different configuration of tasks: 'The court clerk's myriad of tasks can be grouped into three key responsibilities - orchestrating hearings and ceremonies; serving the judge; and preparing case papers and drafting orders' (Liberman 2017, p. 115). Liberman regards the English Crown (higher jurisdiction) Clerks she has studied as 'cultural custodians', although their role is more akin to that of Tipstaff in the Victorian Supreme Court. Tipstaves in Victoria are employed to provide practical support to a particular judge and they perform a ceremonial function in court. Hilary Astor comments on the influence the (usually) legally-qualified British court clerk has on 'the character of the court'; these clerks, however, support lay magistrates (1984, p. 411).
[810] 1948. 'Do We Take Pride?' *The Chronicle: Journal of the Clerks of Courts,* 1, 2, February p. 1.

and pursued.[811] As we saw in Chapter 4, a clerk could be criticised by central administration for spending 'too much time' with the public.[812]

Chapters 2, 4 and 5 have shown that departmental administration had rarely been in touch with the operational realities of courts, nor with the workers at the lowest rung of the jurisdictional ladder.[813] Departmental insistence on rigorous accounting and regularity in submitting returns easily lent itself to interpretation as promoting an appearance of efficiency over service orientation.[814] 'Going above and beyond' was not encouraged; nor were clerks likely to receive credit for service excellence, which in any case was not defined. Threats of punishment for non-compliance were perhaps the louder for being hampered by distance. In effect, much of the clerks' endeavour to add value to their services was forced underground because it was often carried out at the expense of administrative duties the clerks considered less important.[815]

As seen in Chapters 2 and 5, the Clerk of Courts Group had served sometimes as intermediary, at other times antagonist in the wary balancing act between the powers of

[811] 'We must realise that our work has an important social role in our community. We are not just part of a machine … we are a small group within the community seeking to assist that community to achieve its aims, and to help solve some of its problems'. Quirk 1979. 'Do the courts have an image?' *Chronicle: Journal of the Clerks of Courts*, 19, 9, December p. 115.
[812] 2018. Interview #57.
[813] An apt reflection of the situation is provided by James Q. Wilson: 'Power is lodged at the top so even the most routine decisions and minor memoranda must be referred to the head of the agency. As a result, communication is both slow and difficult, decisions are delayed and often ill-informed' (1989, p. 309).
[814] Wilson (1989) points out the lack of intrinsic motivation for government workers in pursuing economies. 'Why scrimp and save if you cannot keep the results of your frugality?' he asks (p. 116). He notes that an individual bureaucrat cannot 'lawfully capture for their personal use any revenue surpluses. … Should a public bureaucrat be discovered trying to do what the private bureaucrats routinely do, he or she would be charged with corruption'. He cites examples from history (tax collectors, prison wardens and other public officials) of officials being paid that way. In fact, as one interviewee (formally a senior clerk) pointed out, regional managers in the court system were penalised for meeting their financial performance targets - 'rewarded with a ten percent reduction in budget', he remarked ruefully. 2018. Interview #15.
[815] The Victorian Public Service adopted a classification system by Cullen Egan and Dell that analysed the nature and level of work performed (expertise, judgement and accountability); this determined the work value of a job and the applicable salary range. Higher points were awarded to those positions that were judged to exercise a greater level of discretion (defined as complexity, scope and level of challenge). As we have seen, the clerks' manual of instructions and the statutes that dictated work within the magistrates' court jurisdiction were often mute on matters requiring resourcefulness and discretion. Neither was the level of difficulty reflected in clerks' job documentation when job descriptions were first written in the 1980s. This was a recurring source of frustration and disappointment for clerks that found expression via articles in the *Chronicle* and formal requests for reclassification.

the justice system and the executive.[816] Although olive branches were extended from time to time,[817] the risk was always that, under pressure, one side or the other would flex its muscle to the detriment of the relationship, and the branch would snap. The senior clerks' usually disciplined approach is perhaps best appreciated where, by contrast, an occasional lapse allows frustration to spill over into the editorials of the *Chronicle*. Disconnect with the departmental executive could escalate and become overtly oppositional, but seldom gave into the temptation of amplification (Sahlins 2005).[818] An unprecedented and well-attended stop-work meeting called at a time of crisis (Chapter 5) succeeded in derailing the suggestion of a policy to open clerks' ranks to outsiders, but the clerks' actions were primarily geared towards forcing a meaningful in-house dialogue with the executive rather than strong-arming a result. Industrial action was rarely a favoured option for the self-reliant clerks, who had long cultivated their ability to advocate and negotiate on their own behalf (Chapters 2 and 5).[819]

Chapter 5 attempts to document the artifacts and qualities of the clerks' culture, which in turn has informed the culture of the courts. Diana Jones (2012) identifies specific valued and influential cultural components characterised by conflict/cohesion, morale, value of human resources, training and development, quality, flexibility/adaptation, readiness, growth, evaluation by external entities, utilisation of environment, profit, productivity,

[816] Former clerks who participated in this research vividly recalled the stresses of balancing their sometimes ill-matching obligations towards the Department, magistrates, and court users. Some interviewees needed to be reassured there was no head office agenda in conducting this research before they would participate. On more than one occasion I encountered a doubtful pause when it was discovered I had once worked in 'the Department'. One interviewee told me that before agreeing to be interviewed he had telephoned a colleague to check that I was 'OK'. He explained this meant that he had wanted to make sure I was not 'on the side of management'.

[817] In 1979 a newly appointed Secretary to the Law Department attended a Clerk of Courts Dinner and subsequently produced a lengthy letter for the *Chronicle*. He wrote, 'I see the role of a Clerk of Courts as being the "shop window" to our courts system. … The impression I have gained from my contact with Clerks so far is that they are conscious of the importance of tactfully dealing with the public and I am sure they will continue to enhance their reputation in this regard'. He declared himself 'aware of the importance of the role of the Courts Branch and, in particular, the loyalty and dedication given by Clerks of Courts'. Viney 1979. 'Secretary's Letter'. *Chronicle: Journal of the Clerks of Courts,* 19, 9, December pp. 114,5. Viney was, of course, very much aware of the clerks' anxiety and frustration about magistrates' qualifications.

[818] Kirsten Hastrup argues that amplification can lead to 'a loss of flexibility in the response to environmental and other changes' (2006, p. 147). It is what we might call 'painting yourself into a corner'.

[819] Interviewees discussed the clerks' disaffection with the public sector union, averring that clerks would prefer to sort out matters for themselves (2018. Interview #20; 2018. Interview #41).

planning goals, efficiency, information management and communication, stability, and control. Inevitably we find however that 'culture, even a fragment of it, is complex' (Jones 2012, p. 54). The search for an appropriate label for a complex organisational culture is ultimately misguided since we are presented not with an envelope containing a neat truth but a portmanteau of nuanced, variable and interacting phenomena with a multitude of possible motivations and effects.

Quinn and Rohrbaugh (1983) propose a model allowing for the operation of competing values within organisations. The model shows how flexibility and control and internal/external orientation can be incorporated into a cultural dynamic. Schein and Schein (2016) conceptualise three synergetic subcultures (executives, engineers/designers and operators) within most organisations. Culture understood in these terms makes sense, they argue, of what might otherwise be interpreted as disharmony, rivalry and disconnection, since 'every mature organization has a potential disconnect between the executives, the engineers and designers, and the actual operators who do the daily work of the organization'.[820] Although the cultural distance between clerks and the executive was less a product of organisational 'maturity' than of organisational structure, the Schein role descriptions usefully characterise some inherent dissonances and misunderstandings within the magistrates' courts.

'Independent officers of the court': operational autonomy

Misalignment between the responsibility clerks felt towards court users and what they saw as the spurious accountabilities demanded by the Law Department was a continual quandary.[821] To a great extent, this dilemma could be addressed through tacitly authorised operational autonomy.[822]

[820] Schein and Schein (2016, p. 220). Speaking of the operational subculture, they acknowledge that 'This subculture is the most difficult to describe because it evolves locally in organizations and within operational units' (p. 221).
[821] This can be seen as a collateral effect of the larger dilemmas posed by the 'executive model' critiqued by Alford et al in their AIJA study (2004).
[822] Schein and Schein (2016) comment that 'all operators learn how to deviate from formal procedures, usually to get the job done but sometimes to subvert what they may regard as unreasonable demands from management' (p. 60).

Chapters 2, 4, 5 and 6 establish that the world of the clerks of courts was quite unlike the rarefied atmosphere of their head office, and its stresses more immediate. Clerks experienced daily the pressure of street-level work and the urgency of court users' demands. Schein's 'operators' assume that 'we run the place' (2016, p. 59) and this implies that they feel ownership of the services they provide. For operators, there is often little time for reflection: their mantra is 'just do it', indicating the need for transactional rather than transformational leadership at a local level (Bank et al. 2019; Katz, DR 1994). Clerks' operational confidence had grown with disengagement from central authority.[823] A lack of clarity around powers and limitations also increased their operational scope (Chapters 2, 4 and 5).[824]

Given this latitude in formulating and adapting court processes and procedures, clerks of courts also fit squarely within the Schein and Schein concept of 'engineers and designers'. Their capacity to invent and adapt procedure was a professional strength, as seen in Chapters 4 and 6. In the La Trobe Valley a prototype of the Mention System had been implemented in advance of the push towards caseflow management in the mid-1980s.[825] As we found in Chapter 2, being in charge of one's 'own' court was a source of pride and was cited by several interviewees as a career highlight.[826]

Interviewees frequently expressed their motivation to excel for non-monetary reasons, being 'motivated by a need to achieve, to gain intrinsic satisfaction through successfully performing inherently challenging work, to exercise responsibility and authority, and thereby to gain recognition from peers and bosses' (Donaldson & Davis 1991, p. 51). Clerks informally but actively bench-marked the operation of their courts against that of

[823] 'While inconsistent with the bureaucratic ideals of hierarchical control and rationality, empowering street-level workers takes advantage of their experiences and street-wisdom.' Maynard-Moody, Musheno and Palumbo (1990, p. 845). On the governance level, Bunjevac (2015, p. 305) speaks to the 'institutional confidence' that 'judicial control over both the judicial and administrative operations of the courts' has instilled in the Federal Court arena.
[824] Wilson (1989) and Crozier (1973) acknowledge a power that flows from ambiguity.
[825] 2017. Interview #21; 2018. Interview #8. The Mention System allowed the court to control listings instead of allowing police cases to dominate the schedule. Matters likely to require the least court time (such as those where a defendant planned to plead guilty) were prioritised, and more accurate time allocations set aside for longer cases. It meant less waiting and a greater measure of time certainty for parties.
[826] 2017. Interview #31; 2017. Interview #32.

similar courts (Chapter 4). Running a court was emotionally-invested work, like being 'a small business owner - it was your enterprise, you wanted it to be the best, you were in competition with all the other small courts. You compared your business to all the other clerks running their own small businesses in the suburbs'.[827] Professional rivalry of this nature goes beyond the more usual notion of stewardship that is a commonly-encountered feature of public sector cultures; it is arguably more akin to mission-led or profit-with-purpose businesses.[828]

According to Michael Lipsky (1977, 2010), government workers such as court officials are optimally placed at the point of service delivery to determine how, when and to whom court services are provided.[829] Their actions impact substantially on peoples' lives.[830] They often operate with considerable latitude in the interpretation and implementation of policy, making complex and often nuanced decisions quickly and on the spot, face-to-face with those the decision will affect (Lipsky 2010, p. xiii).[831] As 'street-level bureaucrats', clerks shunned bureaucracy *per se* because flexibility and appreciation of local contingency were required to make the rules and regulations workable. In this respect the suburban courts fitted less into the urban scene than into the paradigm of country justice as described in Douglas (1992).[832]

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[827] 2018. Interview #22. 'Since capitalist businesses are measured by their profits, and profits are generated by products (or services), the idea that government agencies are businesses despite the fact that they don't produce profits is equivocal at best.' Carnevale et al. (2019, p. 196). Possibly these clerks' attitudes conceptually prepared the ground for the neo-liberal managerial thinking of the '80s!

[828] 'Perhaps the answer lies more fundamentally in redefining organizations as purposeful, with purpose defining the remit and scope of business activity'. Hollensbe et al. (2014, p. 3). By way of contrast see Sepulveda, Lyon and Vickers (2020).

[829] 'Street-level bureaucrats' interactions with clients tend to take place in private or beyond the scrutiny of supervisors … and under the norms of confidentiality. … Of the street-level bureaucrats we have studied only judges tend to make their decisions in public'. For Lipsky, 'street-level', with its built-in requirement for the exercise of discretion, 'implies a distance from the center where authority presumably resides' (Lipsky 2010, p. 169).

[830] Police, social workers, teachers and court officials are explicitly included in Lipsky's lexicon (2010, p. xiii). These services can impact on a large scale, being 'redistributive as well as allocative' (p. 8).

[831] Susan Silbey also identifies the dilemma of 'working beyond compliance and the formal responsibilities' in a public sector role. She describes 'a strong commitment to practical rather than perfect outcomes, to experimenting with what might work now and dealing with similar or different situations as they arose' (2011, p. 2).

[832] Douglas observes that 'rural culture might be expected to be less supportive of bureaucratic norms than urban culture … rural bureaucrats might be expected to find that departure from strict adherence to bureaucratic norms would pose fewer problems than it might in a more organisationally complex setting'.

Rules and the niceties of their application are key to justice services, but so too for court staff was the exercise of operational autonomy (Bailyn 1985).[833] An article in the *Chronicle* argues against 'slavish adherence to the rules'.[834] As seen in Chapter 4, statute and a set of instructions provided the operational framework and baseline for clerks of courts but often conflicted with or failed to address the unruly realities of street-level service, a recognised feature of the work of street level bureaucrats.[835]

Good operators distinguished between valid application of the rules and the freedom or independence to apply them wholly, partially, or not at all.[836] 'When there is a mismatch between legal rules and bureaucratic realities', Wilson contends, 'the rules get subverted'; best-fit decision making was, for clerks of courts, a logical compromise (1989, p. 338).

He suggests that 'the existence and nature of rural/urban differences are likely to vary from place to place, and that if we want to know the nature of those differences, we should study both rural and urban courts'. Country justice, he asserts, is 'less likely to be rule-bound than urban justice'. Cultures tend to solidify when populations are more stable, but clerks' careers could be peripatetic: they carried their ideas and culture with them and to this extent the differences between country and suburban courts are difficult to pinpoint. Douglas speaks of 'Blurring of difference between rural and urban justice': 'The small size of many of the urban courts meant that even urban justice was likely to resemble a "cottage industry" rather than mass justice' (Douglas, R 1992, pp. 65,6,8,73). Interviewees' comments tend to support the view that there were more differences between the City Court and the suburban courts than between the smaller suburban courts and the country.

[833] Douglas (1992) refers to 'those rules which govern the outer limits of discretion, but also … those which regulate the exercise of discretion within those outer limits' (p. 67).

[834] Quirk 1979. 'Do the courts have an image?'. *Chronicle: Journal of the Clerks of Courts*, 19, 9, December p. 115.

[835] 'Some influences that might be thought to provide behavioral guidance for them do not actually do much to dictate their behavior. For example, the work objectives for public-service employees are usually vague and contradictory. … Thus street-level bureaucrats are constrained but not directed in their work.' Weatherley and Lipsky (1977, p. 172). Michel Crozier's institutional approach to power and agency likens it to a game in which each player makes use of the freedom of action or manoeuvre afforded by uncertainty. 'No human enterprise' he claims, 'can adapt to its environment if it is reduced to its formal power, to the theoretical pact which defines it' (1973, p. 223).

[836] Use of discretion is a constant factor in the justice system. 'For example, mention lists are still manipulated by lawyers to their own advantage and sometimes the law needs to be "bent" a little - to help women who are the victims of violence or in refusing to punish when this would do no-one any good' (Douglas, R & Laster 1992, p. 82). In fact, use of discretion is almost universal in the public sector since 'Despite having to follow orders, there are few if any situations in which all discretion is eliminated. Even the determination to follow orders "exactly" is a choice ... **there is no rule for following a rule**' (Carnevale et al. 2019, p. 191) (my emphasis). This is a discussion about degrees of discretion.

'Poor Man's Lawyer': personal values, public policy

As seen in the foregoing chapters, positional, expert and referent power intrinsic to the job offered the potential for clerks to impact profoundly on the experience of court users. Observes Lipsky: 'street-level bureaucrats often work in situations that require responses to the human dimensions of situations'; this requires the 'correct balance between compassion and flexibility on the one hand, and impartiality and rigid rule-application on the other' (2010 pp. 15,6). Winter (2002) identifies Lipsky's original framework as tending to emphasise hardship ('coping') and thwarted service values ('corrupted worlds of service'). This leaves unaddressed the keen satisfaction that government workers may derive from their work and the latent power of emotional engagement to infuse service values.[837] An example of this uncomfortable theoretical fit is the Poor Box since it suggests a flexible, responsive, redistributive paradigm - driven by court workers' response to the human dimension - rather than the impersonal, adversarial, heavily procedural model of courts decried by critics.[838]

As Alkadry and Tower argue, 'Policy does not interact with citizens, but administrators do'.[839] Kelly (1994) suggests that where operational discretion is customary, 'visions' or 'individual theories' of social justice may impact substantially on policy implementation (p. 138).[840] We therefore turn to complementary theories to explain why clerks might

[837] This dimension of street-level discretion is significantly more involved than Lipsky's initial concept of 'coping', and he acknowledges that this may have been over-emphasised in his original publications. 'When I originally wrote this book, I was intent on elaborating on the coping behaviors of street-level bureaucrats. In doing so I emphasized the gap between the realities of practice and service ideals. … But it led to neglect of an important reality: vast numbers of people in public service on a daily basis go to work at rewarding and fulfilling jobs' (2010, pp. xvii, xv).

[838] See Parker (1998) for his discussion of systemic, legal and perceptual criticisms of the courts (p. 20) and the actual criticisms offered by Australian court users during his research in the body of the report.

[839] The authors elaborate that it is 'interpreting legislative will and laws into actionable rules'. Alkadry and Tower (2014, p. 7).

[840] Kelly's paper results from an empirical study of teachers and bureaucrats working within the California Employment Development Department. The cultures of these officials were at either end of the discretionary spectrum and the author found that those who were able to use their discretion - the teachers - employed their personal social justice beliefs in their daily decision-making. Kelly cites the example of a teacher whose 'understanding of justice first shaped his ideal distributive outcome and then guided his actions when that ideal proved unattainable. He could not completely overcome the resource constraints he faced, but he did have the discretion to solve the ensuing dilemma as he saw fit' (p. 125).

routinely 'choose responsiveness at the expense of compliance with policy' (Winter 2002, p. 1).

Clerks of courts saw themselves as both 'the poor man's lawyer' and 'independent' officers of the court without apparent consciousness of conflict. They worked the system's processes to achieve what they believed to be just outcomes and were able to persuade other players in the courtroom to co-operate in having the game 'played fair'.[841] Teamwork - a dominant cultural feature in the magistrates' courts - was crucial, as seen in Chapter 4. Until the advent of the Courts Change Program, however, the cohort had much difficulty in engaging the most powerful player, the Law Department. In the absence of formal endorsement, they habitually therefore exercised these powers with a lack of basic material resources.

Limits, workarounds and the dilemma of emotional labour

Getting through triage and the daily list presented the dilemma of accommodating parties' sometimes irreconcilable rights, needs and demands. Ostrom et al (2007) consider case management practice an important cultural marker, since culture heavily influences operational priorities.[842] Peter Sallmann claims that in Australia, the introduction of professionally-guided caseflow management acted as a 'cultural transformer' and 'laid the attitudinal basis for various changes to occur' (1995, p. 198). Chapter 4 shows that as the 1980s advanced, the sheer volume of work (especially in the larger courts and court complexes) pressurised the impetus towards cost-efficiency, another managerialist priority.

[841] This was seen in both their journal as a constant theme (for example, in the clerks' 'creed' as previously quoted ('placed in the centre of the scales having no personal or beneficial interest in the final outcome of the matters which come before you officially, but alone the desire for fair play': 1948. 'Editorial: Do We Take Pride?' *The Chronicle: Journal of the Clerks of Courts*, 1, 2, February p. 1) and is echoed in interviewees' comments and anecdotes.

[842] 'To the extent that judges and administrators in one court have particular views on how cases should be resolved, they will organize themselves differently than individuals in another court with different views' (Ostrom et al. 2007, p. 25). In their study of Victorian magistrates' reactions to change, Roger Douglas and Kathy Laster draw attention to the concern that 'the mention system may be producing efficient case-processing at the cost of adequate, sentence-relevant information; also that attempts to abbreviate civil procedures may involve brevity at the price of law' (1992, p. 78).

Lipsky has argued that although government workers may join the service for altruistic reasons, the sheer volume of work and lack of resources to manage it tends to thwart this motivation.[843] We have seen how 'quick and dirty' case management practice was appreciated in some places, but considered discourteous and dismissive by court users in a large country town.[844] A quick outcome in a court matter may benefit some court users at the expense of others, satisfying 'quick' and 'cheap', but not 'just'.[845] Rules of thumb, bulk-processing and less personalised services will be a feature of service. Lipsky's 'coping mechanisms' - workers' compromised reactions to stresses and restrictions - might be expected to figure to a greater degree in busy, centrally-located courts (though this was not always the case).[846]

The other side of the argument is that far from depressing morale, for many clerks operational workarounds afforded considerable job satisfaction as expressions of professional expertise, dexterity and innovation, and benefited court users by saving time. As Chapter 6 shows, such balancing acts would be severely tested with the introduction of the Crimes (Family Violence) legislation because triage was significantly more involved and personally demanding. These efforts required emotional labour, extra work without provision of commensurate resources, and some fundamental attitudinal shifts.

The precipitate focus on metrics and measurement in the 1980s presented as timely and entirely rational but was criticised by many commentators as having missed the point.[847]

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[843] 'To accomplish their required tasks, street-level bureaucrats must find ways to accommodate the demands placed upon them and confront the reality of resource limitations. They typically do this by routinizing procedures, modifying goals, rationing services, asserting priorities, and limiting or controlling clientele.' Weatherley and Lipsky (1977, p. 172).

[844] As Douglas and Laster argue, 'The challenge for the summary jurisdiction would now appear to be, as many of our magistrates recognised, sustaining the current gains without being swamped by managerialist imperatives; if the workload increases too much for example, delays will creep back. If the jurisdiction is further expanded it will no longer remain "a people's court" and will become isolated from the community it once sought to serve' (1992, p. 88); see also Freiberg (2005, pp. 12-8).

[845] The much-quoted term 'just, cheap and quick' comes from s 56(1) of the *Civil Procedure Act 2005* (NSW).

[846] Roger Douglas notes however that the rural courts in his study 'actually handled more cases per sitting day than the urban courts. While this was partly a function of type of case (Rutherglen court, for example, was able to dispose of more than fifty routine traffic cases in an hour and a half), the rural courts also seemed to sit slightly longer than the urban courts studied in 1979' (1992, p. 89).

[847] 'The court performance measures debate is still in its infancy in Australia', notes caseflow management expert Peter Sallmann. 'It is a divisive subject and one that needs to be handled carefully and sensitively' (1995, p. 198).

The apparent point being missed was the (difficult to measure) quality of justice.[848] Clerks prided themselves on adroit problem-solving, which was often a thoughtful response to the distress and urgent need met daily at the counter.[849] Lipsky asserts that 'Street-level bureaucrats exercise discretion because the nature of service provision calls for human judgment that cannot be programmed and for which machines cannot substitute' (2010, p. 161). Belgian ethnographer Jean-Marc Weller adds: 'Certain situations are too complicated to permit a strict adherence to the rules and thus cannot be reduced to a programmatic implementation. Other situations require compassion and flexibility' (2012, p. 4). Nguyen and Velayutham contend more specifically that 'emotional labour, especially when being informed by critical empathy, is an important and effective form of street-level discretion'.[850]

Early in the last century legal philosopher N. Roscoe Pound wrestled a similar dilemma: 'Everywhere we find two antagonistic ideas at work in the administration of justice - the technical and the discretionary' (1905, p. 20). Seventy-four years later, when much that had been taken for granted was being questioned and the clerks' morale was said to be low, a *Chronicle* editorial is devoted to this same question.[851] Clerks are exhorted to balance efficiency with empathy and procedural fairness:

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[848] From a judicial point of view there was disquiet at the widespread focus on metrics as indubitable performance indicators and a primary basis for funding. A Victorian Chief Magistrate warned that 'any attempt by the Executive Government to make courts "accountable" by linking resources to quantitative performance standards may well threaten core judicial functions' (Gray 2003, p. 6). 'Quantitative measurement sometimes provides an entirely fake sense of precision', comments an Australian Chief Justice since it 'appears to be objective and value free. Qualitative assessment appears to be subjective and value laden. In fact quantitative measures contain and conceal important value judgments' (Spigelman 2001, p. 15). Douglas and Laster's magistrates and change study discusses the 'infuriatingly inconclusive' nature of quantitative data: 'Consistency may mean that unjustified disparities are being reduced, but it may also mean that sentencers are failing to exercise their discretion', they suggest (1992, p. 78). Lipsky points out that 'actual performance is virtually impossible to measure' (2010, p. 168).

[849] 'Clerks can't say no to a problem'. 2017. Interview #31.

[850] This, they further assert, enables 'welfare frontline workers … to better support welfare recipients and minimise the punitive aspects of welfare policy'. Nguyen and Velayutham (2018, pp. 158,60).

[851] Clerks were concerned about the likely outcomes of the Solicitor-General's Committee on the Academic Training of Magistrates well before its release. The Clerk of Courts Group had put forward submissions to the Committee in 1976 but claimed to have received no reply before the report was published two years later (1978. 'Editorial'. *Chronicle: Journal of the Clerks of Courts*, 19, 3, May p. 1). This was the report that led to the drafting of the *Magistrates' Court Act 1978* (Vic) and the end of clerks' almost exclusive access to the Victorian bench.

> Being the court of the people, and having only a limited control over its lists, a conflict sometimes arises between pushing cases through and the principle of giving the defendant a full and fair hearing. We, as regular participants in these proceedings, can often forget that for many people, the appearance before a court is an overwhelming experience. ... Whatever may be our reasoning for haste, we must always remember that the defendant is playing our game without knowing the rules. If speed and efficiency, call it what you will, tend to confuse and disturb the person before court into a sense of not having received a full and fair hearing, then surely justice has not triumphed.[852]

Readers of the *Chronicle* were regularly reminded that 'you occupy an important position in the community and … as a Clerk of Courts you are an ambassador in the administration of Justice'.[853] This sympathetic approach and the concern for procedural justice were congruent with clerks' embeddedness within local communities.[854] As we have seen in Chapter 4, many (especially country) clerks considered themselves to be on call beyond conventional business hours and participated generously in community life, often as leaders. Research suggests that the clerks' instincts were existentially sound, since procedural justice - the sense of having been treated fairly - is vital in maintaining the public's faith in and respect for justice systems (Tyler & Sevier 2014).[855]

Another level of discretion involving emotional labour is discrimination between classes of service user and resultant differential treatment. 'The status of "criminal", "juvenile delinquent", "welfare mother" and "slow learner" is stigmatic because it goes beyond mere distinctions among people. Society takes these terms as signals to treat people

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[852] Pilgrim 1979. 'Justice'. *Chronicle: Journal of the Clerks of Courts*, 19, 8, August, p. 93. Similarly, therapeutic justice is predicated upon the key issues behind the offending being identified and considered in consultation with the defendant and experts, and strategies being recommended to address these issues.
[853] 1948. 'Do We Take Pride?' *The Chronicle: Journal of the Clerks of Courts*, 1, 2, February p. 1.
[854] 'Rural life is such that social interactions are more likely to involve people who know each other and who interact on the basis of that knowledge rather than on the basis of the demands of their relevant roles. … The link between rural attitudes and the behaviour of rural courts will obviously depend on the degree to which rural decision makers are integrated into the areas they serve.' Douglas, R (1992, pp. 65,8).
[855] Tyler and Sevier find that legitimacy is established by perceptions of 'the fairness of judicial procedures … In particular, people are concerned about whether they are treated with dignity, courtesy, and respect when dealing with legal authorities' (2014, p. 1129).

differently',[856] comments Lipsky (2010, pp. 68,9). As seen in Chapter 6, a vulnerable court user could be stigmatised by their situation and might be lumped into a certain grouping, for example 'maintenance lady'. An article in the *Chronicle* in 1979 reminded clerks that

> Very often, our clients are the under-privileged or lower-income sections of our community. We must avoid creating an impression of intolerance, arrogance, impatience, stubborness [sic], or even a slavish adherence to the rules. We must take special care that those most in need of our help do not become neglected because they are shy or awkward to deal with, or lack the social or tactical skills to get the best use of our services.[857]

As Chapters 2, 4 and 6 show, in an era where resources for vulnerable citizens were more limited than they are now, many clerks took the opportunity (and sometimes a substantial risk) to prevent wrongs or attempt to compensate for disparities in the courtroom power balance.[858]

In the absence of specific rules or directions, clerks' personal values and those of the culture in which they were fixed played a significant role. Empathy training of any kind was not conceived of, much less actually made available to court staff, until the late 1980s.[859] Many clerks however, in tune with local and overarching court culture, responded positively to this key 'dilemma' of street-level service. Although as discussed in the previous chapters there were less sympathetic behaviours, espoused values favoured choosing to listen to people and treating them with respect rather than allowing them to be stigmatised and processed in a production-line.

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[856] Lipsky observes that American societal norms tend to sheet the causes of social disadvantage back to the individuals who suffer them.
[857] Quirk 1979. 'Do the courts have an image?' *Chronicle: Journal of the Clerks of Courts*, 19, 9, December p. 115.
[858] For example, as seen in Chapter 4, 'Clerks of courts tried to have the game played evenly … "play it fair". … That was pretty much everyone's aim'. 2017. Interview #25.
[859] Such training was programmed for the first time when the then Attorney-General's Department appointed a Manager, Equal Opportunity. Jeanette Lane ran courses in disability awareness, Koori culture and equal opportunity education for managers and staff. Area managers and other senior clerks attended.

A resilient culture

Cultures can influence, even dominate the worldviews of the individuals within them.[860] Many clerks who were working in and prior to the 1970s saw their career as vocational - even fated - and were deeply engaged with their professional identity. Jeanette Taylor (2009) in her Australian study emphasises the importance of pre-existing culture in moulding the motivations of the public sector workers.[861]

Cultural leadership by the Clerk of Courts Group

The influence of the Clerk of Courts Group amongst their small cohort can be viewed in the light of Crozier's proposal that 'The value we attribute to power in the noble sense of the term derives … from the fact that all collective human undertakings have great difficulty in gaining the adherence and conformity of their participants' (1973, p. 223). [862] Mary Douglas argues that 'No one who is interested in explaining collective action can lightly dismiss the formidable problems faced by a small community trying to stay in being' (1986, p. 24). Leadership that promotes development of productive organisational culture is today known to be essential in fostering integrity and organisational success (Schein & Schein 2016).[863]

The modus operandi of the Clerk of Courts Group might today be known as 'facework' (Carnevale et al. 2019; Cupach & Metts 1994; Domenici & Littlejohn 2006). A steady leadership presence was maintained from 1923 onwards,[864] with the *Chronicle* - despite changes in content and tone over the years after 1933 - remaining a trusted agent of

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[860] If, as anthropologist Mary Douglas (1986) asserts, institutions confer identity, it was from the courts as a subsidiary organisation and not the parent Law Department that the clerks took theirs.

[861] 'People can have altruistic and non-altruistic motives for seeking a career in the public sector, and these motives can be influenced by workplace experience and culture.' Taylor (2007, p. 952).

[862] Daniel Denison comments: 'a 'strong' culture that encourages the participation and of an organization's members involvement appears to be one of its most important assets'. His analysis concludes that 'Organizations with a participative culture not only perform better than those without such a culture, but the margin of difference that widens over time suggests a possible cause-and-effect relationship between culture and performance' (1984, pp. 5,20).

[863] In a recent interview Edgar Schein comments, 'Leaders are always the originators and reinforcers of culture' (2017, p. 66). An Australian study has identified values-based leadership as of commensurate importance with specific anti-corruption strategies and compliance frameworks in assuring organisational integrity (Van der Wal, Graycar & Kelly 2016, pp. 14,5). See also Deal and Kennedy (2007).

[864] As seen in Chapter 2, the original Clerk of Courts Association had formed in the late nineteenth century, but we lack documentation as to its early activities.

communication, education and cohort unification. The maintenance of a self-funded journal run by volunteers was in itself no mean feat. It remains a key artefact of the culture.[865]

Many of the Group's campaigns had involved sustained and repeatedly renewed lobbying: in Chapter 5 we saw how the issue of clerks forfeiting their annual leave due to insufficient staffing levels had taken decades of effort to resolve.[866] In Chapters 2 and 5 we found that the allegiance and co-operation of the scattered body of clerks could not be taken for granted, with members often disheartened by long-term staffing deficits, parsimonious resourcing and erosion of their career opportunities. It appeared that the hard work was being performed by the few in the Group for the many, yet the work continued: there were always, it seemed, enough committed people to sustain it.[867] Successive waves of leaders within the cohort engaged in active custodianship of the clerks' culture, working to retain historical strengths whilst engaging with ongoing challenges.

The leadership encouraged a dialogue with members as well as past leaders.[868] We saw in Chapter 5 that Bryan Clothier apparently risked his succession to the bench by seriously displeasing the Law Department with his outspoken editorials. Ten years later, the *Chronicle* in 1979 quotes one of the clerks' heroes, Jack Dillon (then the State's first Ombudsman but formerly a prominent member of the Group's executive) from his speech at a Clerk of Courts dinner: 'responsible persons acting responsibly and without militancy achieve just results in the long run'.[869] This reads as a caution to clerks from a respected senior to pursue their causes rationally and without antagonising powerful

[865] In 1983 the Group produced a Jubilee edition to commemorate 60 years of the *Chronicle*. Schein and Schein consider that material and conceptual 'artifacts' (ranging from a corporate tie to annual events to publications) are important markers of a culture's DNA (2016, p. 17).
[866] A former regional manager commented that, in fact, this issue was still under contention in the late 1980s and into the 1990s. Unresolved, it was bequeathed to the Area Managers, who were sometimes obliged to close courts as a result (2018. Interview #15).
[867] 'As with past Executives, this Executive has striven mightily on your behalf. We have met frequently and often … in difficult and trying circumstances.' Collins, G 1978. 'Secretary's Report (1987 General Meeting)'. *Chronicle: Journal of the Clerks of Courts*, 19, 4, July p. 20.
[868] Not all members felt they were properly heard or taken seriously, however, as seen in Chapter 6.
[869] Pilgrim 1979. 'Editorial'. *Chronicle: Journal of the Clerks of Courts.* 19, 7, April, p. 73.

patrons or undermining the courts' public standing at such a moment. The voices of caution and moderation did not always prevail under the pressures and disruptions of these decades, as the clerks' 1980s industrial action described in Chapter 5 shows.

'Culture at the organizational level … tends to take on moral overtones', comments Robert Quinn (1988, p. 66). As seen in the previous chapters, clerks were regularly urged to look beyond everyday concerns and focus on a high-level outcome. They were reminded to draw upon the dual foundational motivations of serving justice and looking after their colleagues. For decades clerks had trusted and listened to their elders and elected leaders, many of whom displayed characteristics of authentic (conviction) and transformational (often charismatic) leadership styles (Bass & Riggio 2005; George 2003; Shamir & Eilam 2005).

We have seen how this robust cultural leadership was challenged during the eventful decades of the 1970s and '80s: with the legislated change in magistrates' qualifications, clerks of courts were coming to terms with the first in a series of disruptions and bitter disappointments. In the next two decades, cultural schisms and blind spots were exposed by new demands and the diversification of the courts' demographic.

'The Courts was like a family. Cosy.' [870]

Older ex clerks would often proudly describe themselves and colleagues they admired as 'family men'; many male interviewees put forward family reasons as the basis for their career decisions.[871] The ideation of work-life balance[872] and the reconceptualising of the

[870] 2018. Interview #26.

[871] This is in contrast with studies that show how 'Companies bolstered "superwomen" who successfully managed competing demands from their multiple roles, while recasting men as lazy and emasculating "family men", who were often stigmatized more acutely for requesting or using formal and informal provisions for assistance with care. Moreover, men had a greater financial disincentive in taking parental leave or negotiating accommodations for familial or personal matters compared to their female counterparts. Men are simply not recognized as fathers'. Hari (2017, p. 102).

[872] Once seen as the ideal, work-life balance policies are now critiqued as not necessarily guaranteeing a family-friendly workplace and possibly implying career penalties for those least likely to be able to afford them (Alkadry & Tower 2014, p. 86). Men are less likely than women to utilise these policies since, as Hari (2017) argues, masculinist concepts of work, play and domestic responsibility remain immured in the new policies: 'The concept of parenting remains strongly associated with traditional embodied gendered roles … Fathers are more likely to take up WLB [work-life balance] provisions that are specifically targeted at them (e.g. paternity leave) or more universally available measures (flexitime, reduced or compressed hours)

conventional ideology of working men and female home-makers or carers was, however, yet to make itself widely felt in society during the decades of the 1970s and '80s, leaving a net benefit ('the Daddy bonus')[873] for the traditional male worker.

There was also the 'family' at work. Clerks were bound up with each other through a mutual loyalty or 'camaraderie' that as we have seen was sometimes likened to being part of a family.[874] Ostrom et al. (2007) propose a courts-specific cultural typology that resonates with this. Court cultures, the authors argue, may be categorised as predominantly clan-like, networked, autonomous, or hierarchical, depending on the analysis of their value set (or 'work orientation').

Specific values - comprised of 'norms, beliefs, and attitudes' - are associated with each cultural type but they will be expressed according to the area of work, be it case management, judicial-staff relations, change management, courthouse leadership or internal organisation. These values are distributed within a matrix divided by axes of sociability and solidarity;[875] 'clan-like' cultures place the highest value on sociability and strong personal identification (which can tend to 'fierce loyalty') with the organisation and its 'mission' (Ostrom et al. 2007, p. 45).[876] These attributes fit well with the clerks' culture of the 1970s and '80s as evidenced in *Chronicle* editorials, but other findings as

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rather than measures designed specifically for generic parental responsibilities' (p. 102). In similar vein, other critics argue that the glibness of WLB allows 'quick-fix solutions that do not address fundamental inequalities' (Gregory & Milner 2009, p. 2).

[873] Fathers are often seen to benefit from parenthood, as detailed in Hodges and Budig (2010) whereas, as seen in Chapter 6, women in these situations experienced involuntary 'downshifting' (Alkadry & Tower 2014, p. 18). See also Cahusac and Kanji (2014) and Johnson and Duerst-Lahti (1991); also Rivera and Tilcsik (2016) on the 'commitment penalty'.

[874] Interviewees often referred to their 'family culture', intended as a positive comment, but objectively, a term neither positive nor negative since it can just as easily be applied to a climate of protectionism or isolationism.

[875] Goffee and Jones (2003) proposed the model this typology is based upon. They group organisational cultures around a matrix divided into quadrants by the axes of solidarity and sociability. This implies, somewhat counter-intuitively, that the two values are potentially oppositional: an organisation that highly values solidarity might for example require strict conformity with rules not everyone agrees with, whereas an emphasis on sociability might be prepared to forgo orthodoxy for the sake of social harmony, and variations and transgressions might both be tolerated. (In Goffee and Jones, 'communal' corresponds with 'clan-like'.) Ostrom et al. (2007, p. 35) suggest that 'Solidarity is an idea harmonious with the goals of courts to structure the job so as to resolve all cases timely and fairly'; sociability, on the other hand, is a value congruous with staff management and collegiate relationships.

[876] 'Identification' is a post-Freudian concept used by sociologists and psychologists such as Tolman (1943): 'The essence of a group identification is, I would hold, the fact that one desires "to love" and "to be loved" by some group' (p. 142).

seen in Chapter 6 (how the clan treated rebellious insiders and those 'outsiders' who were seen as not belonging to the clan) reveal nuances and counter-currents that call for further interpretation.[877]

Mary Douglas (1986) characterises institutional acculturation as the channelling of a worker's worldview and moulding of their proper place within that world, again invoking the element of belonging. Sharing of skilled practices and engineered, experience-honed techniques of affiliation and acculturation also promote belonging (David 1994), as do rituals (Frederickson 2000).[878] Further, as pointed out by Rutherford (2011), connections provide pathways of influence.[879] Trainee clerks - since one could only enter the career at base grade - were actively received into the culture, but with local variability in practice. They were in general encouraged to join the Clerk of Courts Group, read the *Chronicle*, join in official events, and integrate into the micro-culture or 'family' of their individual court.[880]

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[877] Since 'Many of the strongest emotions people experience, both positive and negative, are linked to belongingness' (Baumeister & Leary 1995, p. 508), this might partly explain why so many men, enjoying their camaraderie, were motivated to remain in the courts, but it does not explain as satisfactorily the decision of some early women clerks also to remain given their alienating experiences. Some did, however, stay long enough to 'find their world' (echoing words from 2017. Interview #47).

[878] H. George Frederickson describes organisational behaviour as 'a system of shared meanings and processes of sense making guided by an artistic grammar and the art of stories, rituals, and metaphors … It is increasingly evident that stories, narratives, scripts, and rhetoric shape organizational culture' (Frederickson 2000, pp. 50,1). Another definition of culture as 'the interweaving of the individual into a community and the collective programming of the mind that distinguishes members of one known group from another' usefully identifies a *process* of assimilation, specialisation and differentiation as an explanation of cultural development (Ogbonna 1992, p. 42). This appears to be an unattributed elaboration of Hofstede's 1980 definition: 'Culture is the collective programming of the mind that distinguishes the members of one group or category of people from others' (1980, p. 25); this is reasserted in Hofstede (2011, p. 3). Michael Piore goes further, describing the development of culture as an 'evolution' influenced by recruitment and selection, which 'determine the understanding and values that [members] bring with them when they join', their socialisation and training that 'adjusts' them to the more influential factors in their new environment, and 'the discussion about practice' that informs members' dealing with the dynamic challenges of their environment (2011, p. 155). Mary Douglas cautions against the use of biological terms such as 'evolution' as inviting 'bad functionalist argument' (1986, pp. 33,4), and it is quoted with caution here.

[879] 'In large bureaucratic organizations where employees remain for a long time, internal networks are usually important for maneuvering one's way through and up the organization'. Rutherford (2011, p. 147).

[880] Institutions are viewed as 'kinship technologies' in Ahmed (2012, p. 38). The data does not support however application of the Burns and Stalker contention that 'The growth in importance of the occupational self implies a closer identification of the whole person with work; the centre of gravity shifts significantly away from family and the outside world and towards his working life' (Burns & Stalker 1994, p. 234). Particularly in outer suburbs and the regions, clerks and their families were deeply integrated within the life of the local community.

Cultural schisms

Clerks saw themselves as dedicated to acting with probity, conscientiousness and a 'deep sense of justice', but as we have seen in the preceding discussions, behaviour did not always measure up to this ideal. Chapters 2, 4 and 6 show that the other side of the clerks' operational freedom was abuse of it.[881] For all the benefits of being in a tightknit cohort, acculturated and constantly affirmed insiders were unlikely to have a clearsighted appreciation of the culture's negative spaces and faultlines, except perhaps in retrospect (Schein & Schein 2016).[882] Recollections of interviewees show that in certain circumstances the cohort's stated values could be egregiously violated - sometimes unconsciously, sometimes with intent.

Since interviewees overwhelmingly expressed their concern for procedural justice and 'playing it fair', inconsistencies in the clerks' operational practice are of interest.[883] 'The way things are done *around here*' implicitly allows for variations and discrete nodes of sub-optimal culture.[884] As suggested by Lipsky, the geographical isolation of workplaces and lack of adequate supervision can feed such anomalies (2010, p. 169). The behaviour and attitudes of the young clerk described in Chapter 5 as 'ahead of his time' were, in

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[881] 1948. 'Do We Take Pride?' *The Chronicle: Journal of the Clerks of Courts*, 1, 2, February p. 1. Carnevale and Stivers comment: 'As bureaucrats we know have argued, if you don't have basic rules in place, some people will try anything … On the other hand, occasional bureaucratic scandals in the headlines illustrate that some people will try anything no matter how many rules there are' (2019, p. 190).

[882] 'Leaders capable of … managed culture change can come from inside the organization, if they have acquired objectivity and insight into elements of the culture.' Schein (2010, p. 376). More recently, Edgar Schein comments bluntly: 'The insider is not going to be very good at major strategic change' (2017, p. 66). An insider's view becomes naturalised, backgrounded as normality: 'When history accumulates, certain ways of doing things seem natural. An institution takes shape as an effect of what has become automatic. … We might describe institutionalization as "becoming background",' argues Ahmed (2012, p. 25).

[883] It might be assumed that most interviewees would have been unwilling to tell their story 'warts and all', but several were surprisingly frank about mistakes and service shortcomings, enough to allow a more balanced picture to emerge.

[884] (My italics.) Within any organisational culture there exist strands, each 'a kind of dialect of the main language as it were. … the variable nature of the work amongst the groups means that behaviours will vary considerably, along with interactions between the players and with colleagues and stakeholders' (Jones 2012, p. 55); see also Wilson (1989) p. 93. 'Street-level influence over the delivery of social policy is paradoxical; it promotes flexibility and innovation, yet allows indifference and abuse.' Maynard-Moody, Musheno and Palumbo (1990, p. 833).

fact, perfectly aligned with the ideals promoted in the *Chronicle* [885] and also with increasingly vocal community expectations of service standards.[886] A graduate, this clerk modelled proactive professionalism in an era when according to the interviewee who made this comment, a culture of 'beer-swilling machoism' was at its peak.[887]

Unprofessional behaviour ('being rude to people') appeared to be localised to certain large and high-volume courts and was attributed by interviewees to poor local leadership.[888] Cultural blind spots, even where clearly detrimental to the interests of a cohort, will linger as long as mechanisms to fix them are inadequate and the code of silence discourages disclosure. As interviewees revealed, the culture was changing however, and court user feedback beginning to cut through.[889] The 'Parker Report' documented court user criticism on a national, system-wide level in 1998.[890]

'The best man for the job'

As seen in Chapters 5 and 6, some clerks found it hard to adapt to the transformation of roles, rules and culture in the Victorian magistrates' courts.[891] The advent of competitive promotion by merit (rather than on the basis of seniority) was one sticking point. We have seen in Chapter 5 that senior and middle-rank clerks felt that they knew 'who is good' and that a selection panel worth its salt should have recognised who was deserving of promotion without the 'snub' of an interview.[892] In fact there was insecurity at the heart of the 'we know who is good' claim since at the start of the 1980s most clerks had

[885] An editorial in the *Chronicle* during this period exhorts clerks to 'attend to that Probate promptly, correctly and with a good attitude, the same again in the Family Law area or for that matter in any area whatsoever no matter how big or small, the public must go away with the impression "what a grand bloke that Clerk of Courts is"'. Pilgrim 1979 *In*: *Chronicle: Journal of the Clerks of Courts*, 19, 7, April, p. 74 (probably paraphrasing part of a Clerk of Courts Dinner speech, 'Change', by magistrate and former clerk Frank Moloney).
[886] As an interviewee explained in Chapter 6, '… our customers had changed. They were no longer just the local feller coming in to pay his speeding fine.' 2017. Interview #46.
[887] 2018. Interview #36. It was noticeable in his interview that the conscientious ex-clerk carefully abstained from criticising his former colleagues. 2017. Interview #32.
[888] 2018. Interview #36; 2018. Interview #48.
[889] 2017. Interview #29, 2018. Interview #36.
[890] *Courts and the Public* (Parker 1998).
[891] 2018. Interview #20.
[892] 1983. 'How I interviewed the CC-5 panel'. *Chronicle: Journal of the Clerks of Courts*, 23, 2, July p. 12.

never sat before a selection panel.[893] Some feared that they might not perform at their best in a formal job interview. Weaknesses invisible until now - acceptable within the cohort but not outside it - might be exposed. Key selection criteria (another new concept) might not favour traditionally-valued operational expertise, giving the ascendancy to new-fangled qualities such as 'interpersonal skills' or 'ability to manage a diverse team'.[894]

Insecurities were exacerbated, naturally enough, by the opening of the bench to candidates from outside the Courts Branch and the consequent reduction of career progression opportunities at the top end of the hierarchy. Yet as the extraordinary number of appeals against selection decisions during the 1983 restructure shows, when career was at stake clerks entered the arena and were prepared to fight it out.[895] Structural change had wrought a revolution in the clerks' culture: it was now work hard, play hard, and compete against 'your best mate'.[896]

Closing ranks

Clerks habitually closed ranks around colleagues who failed to meet acceptable standards.[897] Everyone knew about the clerk in a country location who left a 'back in three days' sign on his door or had heard of someone who was frequently unfit for duty because of a drinking problem. As seen in Chapters 2, 4 and 5, larrikins and likeable rogues who flouted the rules were the stuff of legend, but serious transgressions were concealed from head office. Relieving clerks would quietly attend to the problems they

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[893] Rosabeth Moss Kanter observes that 'those who perceived rigid stratification were more satisfied than those who perceived a mobile system in which they personally were not mobile' (1993, p. 162).
[894] As seen in Chapter 5, a cartoon in the *Chronicle* depicts an applicant on his knees praying to be granted 'good abstract-reasoning ability, interpersonal skills, cultural perspective, linguistic comprehension and a high sociodynamic potential'. N/K. 1983. 'The night before interview'. *Chronicle: Journal of the Clerks of Courts*, 23, 3, September p. 11.
[895] We saw this expressed by interviewees in Chapter 5: 'Then after the restructure we had massive numbers of interviews, and 374 promotion appeals, which took [one person] pretty much three or four months full-time to do' (2017. Interview #33); 'People were fighting each other - you'd be the best of mates; now you're trying to say you're a better clerk than he is because of A, B and C. End of the seniority system' (2018. Interview #12).
[896] 2017. Interview #24.
[897] Other professions, of course, also struggle with the tendency to close ranks to protect the reputation of individuals or a profession (the military, the police, medicine, the law). Whistle-blower legislation was not enacted federally until the *Corporations Act 2001* (Cth) (s 1317AI).

found. Inspectors might report them, but clerks also warned each other about impending inspectorial visits. Within their closed-shop cohort, clerks protected each other against criticism from 'outside'. This expression of uncritical loyalty was to some extent understandable: the very first edition of the *Chronicle* had addressed the issue of 'unfair criticism' (Chapter 2).[898] Warding off criticism that was justified, though, did nothing to encourage better standards across the board.

Misuse of positional power, where it occurred, surely exacted a toll on the professional image of the clerks.[899] This was the very asset that for over a century (as we saw in Chapter 2) the cohort had consistently striven to build, uphold and promote in their push to gain and maintain their status, exclusive career path and rights to the bench. Where there was real malfeasance great damage could result from the resultant publicity, even if these incidences were relatively rare and the risk of disclosure slim.[900] Trust in the legal system itself was at stake, and this, of course, was a very large stake. Arrogant behaviour was called out in the *Chronicle* and criticised: one editorial quotes a prominent legal academic as drawing attention to 'a souring of respect for the law and the men who work it'.[901] Ultimately, however, the Clerk of Courts Group lacked formal authority to tackle the fundamental causes of these problems. Structural, legislative, technical and generational change was required: ironically, this would be achieved in partnership with the bureaucracy.

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[898] At the time Police Magistrates were subject to criticism in the press, particularly by members of the legal profession who resented restricted access to the bench, but also (somewhat more obliquely) by the Attorney-General, for the standard of legal knowledge that allowed them appointment. See article in the *Law Institute Journal* ('Legal Qualifications of Police Magistrates' 1933, pp. 55,6).

[899] Merton (1940) describes the negative effects of positional power in a bureaucracy: 'The bureaucrat, in part irrespective of his position within the hierarchy, acts as a representative of the power and prestige of the entire structure. In his official role he is vested with definite authority. This often leads to an actual or apparent domineering attitude, which may only be exaggerated by a discrepancy between his position within the hierarchy and his position with reference to the public'. Merton (1940, p. 566).

[900] One would expect that the close-knit nature of smaller regional communities might make it more difficult for transgressions to escape notice and sanction (Douglas, 1992), but the Mildura story (see Chapter 4) throws this into question. This speaks to the power of the clerk in these communities, especially when aligned with other powerful local entities.

[901] Weeramantry (1975), quoted in Pilgrim 1979. 'Justice'. *Chronicle: Journal of the Clerks of Courts*, 19, 8, August p. 93. At the time C. G. Weeramantry was the Sir Hayden Starke Professor of Law at Monash University. He had been a Judge in the Supreme Court of Sri Lanka from 1967 to 1972, and moved to Australia before becoming a Judge at International Court of Justice in 1991 and its vice-President from 1997 to 2000.

Camaraderie and the drinking culture

The clerks' organisational ethos of the 1970s and '80s, often referred to by interviewees as 'work hard, play hard',[902] invokes the clerks' seriousness about their work and enthusiasm for spending time together outside it, often in the pub, 'talking shop'.[903]

As we saw in Chapters 5 and 6, alcohol was celebrated as a foundational element of the clerks' camaraderie. If you shared a beer with someone, you entered a tacit pact of allegiance and mutual amnesty.[904] Drinking was a leveller: a former trainee recalled with pleasure having been shouted a beer by the Chief Magistrate (a former clerk).[905] Formidable feats of drinking were discussed and admired (even decades later in research interviews). A session at the local pub that went beyond lunchtime was regarded almost as a rite of passage for young (male) clerks, a symbol of acceptance into the family and its values ('really, I felt like one of the boys from Day One').[906]

In one sociologist's view, eight general orientations lie behind Australian attitudes to drinking, and they tend to be masculine in nature.[907] In general, this behaviour was more prevalent in larger suburban courts where junior staff could be relied upon to 'hold the

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[902] 'If you got the work done, you could go to the pub at lunchtime - "work hard, play hard".' 2017. Interview #16. Deal and Kennedy (1982) brought this term into common use.

[903] Many former clerks still enjoy 'talking shop' with their colleagues from decades ago. It is perhaps a truism to assert that the quality of workplace relationships fosters loyalty and makes an organisation a more vital and attractive place to work: more nuanced views are offered in Chiaburu and Harrison (2008); Ehrhardt and Ragins (2019); Katz, D and Kahn (1978); Stephens, Heaphy and Dutton (2014).

[904] 2019. Interview #58.

[905] 2018. Interview #20.

[906] 2018. Interview #45. 'Even a serious scholar, such as architectural historian J M Freeland, could write about the Australian pub in … celebratory masculinist language and about drinking as "groups of singing bawling customers … voluptuously-shaped bottles … jostling shoulders … battalions of up-ended glasses" the only mention of women being the "buxom, genial barmaids". This style of humour clearly conveys a sense of men's ownership of the Australian pub and an associated camaraderie.' Kirkby and Luckins (2006, p. 75).

[907] These orientations include 'drinking as a symbol of mateship and social solidarity (especially in adult male drinking); drinking for social ease …; drinking as utilitarian (hence it is acceptable to use alcohol to 'drown one's sorrows'); excessive drinking as socially more acceptable as an outlet for deviance than, for example, delinquent acts or schizophrenia; drinking as virile behaviour; 'holding one's liquor' as also virile; adults' opinion that adolescent drinking should as far as possible be supervised; disapproval of heavy drinking and drunkenness in women' (Sargent 1968, p. 150). See Savic et al. (2016, p. 173) for a categorisation of 'heroic drinking in which all instrumentality and critical reflection are absent, … a phenomenon that is essentially constituted by the stories and myth spun around it' and 'Convivial drinking, which tends towards the ritual in the good feeling expected but that is in danger of turning into utilitarian drinking (e.g. Irish)'.

fort' while the drinkers were out of the office,[908] although some three or four-person courts were known to close at lunch time.[909] Brehm and Gates (1999) would label this 'leisure-shirking', another facet of street-level bureaucrats' discretion to work, shirk or sabotage,[910] a choice that could become habit, maybe compulsion.[911] Drinking is of course far from being a rare characteristic of corporate culture globally, nationally or in Melbourne.[912] Drinking habits within other branches of the Law Department (and no doubt other government agencies) could be readily compared with those of the clerks of courts.[913]

Drinking after work could be camaraderie, albeit not including all the comrades, but drinking into the afternoon, often sanctioned by bosses, was a ritual of inclusion and integration - to a point. That point only became visible when women commenced as clerks, because at first they were visibly excluded from the practice. Although drinking

[908] Non-drinkers might also do this, but they were not numerous. One interviewee expressed his surprise at having discovered a teetotaller in the ranks. 2019. Interview #58.
[909] This was discussed at a Group meeting in the early 1990s and was clearly not a new issue. 1992. 'Minutes of the Annual General Meeting of the Clerk of Courts Group: General Business'. *Chronicle: Journal of the Clerks of Courts*, 32, 1, Winter pp. 10,1.
[910] See also Bendor, Glazer and Hammond (2000). Lipsky terms this 'resistance' or withholding co-operation: 'not working (excessive absenteeism, quitting), aggression towards the organisation (stealing, cheating, deliberate wasting), and negative attitudes with implications for work (alienation, apathy)'. He also cites the capacity skilled workers may have for 'using legal loopholes to thwart reforms' (Lipsky 2010, pp. 17, 22,3). Søren Winter finds that 'bureaucrats work, apply leisure shirking or political shirking depending on their own preferences, and that street-level bureaucrats have a more individual, value-based role in policy-making than claimed by Lipsky' (2002, p. 1).
[911] 'So what you'd do is, particularly if you had to drink every day - you'd go down to the pub and get smashed, and then it was usually the women were left to run the court for the rest of the day.' 2018. Interview #52.
[912] A quotation from this American text resonates: 'common talk during appointment panels is about whether such-and-such a candidate will "fit in" with the workplace. The measure of fitting in is indicated by the expression "the kind of person you could take down to the pub"' (Ahmed 2012, p. 39). Increasingly, drinking cultures are becoming globalised, according to Savic et al. (2016, p. 274).
[913] Victorian Titles Office Melbourne branch employees no doubt drank at some of the same pubs as clerks who worked near Queen Street. See Grow (2013); Katz, E (1996). Grow quotes the Titles Office newsletter *Tittle Tattle* from 1985: 'it is pleasing to see that the Titles Office Social Club [created in 1957] continues to thrive and bring closer together the officers of all branches'. He elaborates, 'Of course, there were … many drinking sessions. Alcohol in social events (either formal or informal) played a huge part in the lives of many officers. The Office was surrounded by pubs … Different groups of staff had their favourite drinking-hole. Lunch-time beer drinking was a regular event for many, and it was no secret that some staff were generally inefficient in the afternoon. Other staff (and regular customers) were generally aware of who the big drinkers were, and the behaviour was tolerated, even if disliked by many. … Many drinkers also went to the pub after work … the pubs closed at 6 pm, meaning that staff participated in that most undignified pastime called the "six o'clock swill" - a crush of drinkers trying to down as many beers as possible before closing time'. Grow (2013, pp. 105-6).

was (and of course remains) part of the broader cultural narrative in Australian society and had always been a feature of clerks' 'working and shirking' habits, it came to be regarded by some of the newer demographic as unprofessional, embarrassing and compromising. Rutherford comments that 'culture can be challenged by other non-dominant groups, but for radical change to occur it needs to be in the interests of the dominant group' (2011, p. 31). The rebellion of a few young women was insufficient to disrupt the established lunchtime-and-beyond absentee culture of some magistrates' courts, although it did change later, as noted by those who stayed long enough to see it.

The cultural challenge of women as clerks

As seen in the previous chapter, despite the courts being known as a male bastion the Clerk of Courts Group took upon itself the lobbying of the Public Service Board for the employment of women as clerks. Yet cultural cross-currents created an ambivalent welcome and variability in women's workplace experience.[914] The appointment of senior women in the bureaucracy, however, provided female role models and enabled corporate support not otherwise available. Feminist analysis (Alkadry & Tower 2014; Kanter 1977, 1987, 1993; Rutherford 2011) shapes an understanding of the challenges faced by the first female clerks and directions for the important ongoing work of change.

Present-day perspective

The court's workforce composition has changed markedly in the years between 1989 (the temporal boundary of this research) and the time of writing (2017-2021).[915] The court now manages its own recruitment and promotion processes. There are more female than male trainee registrars being recruited today in the Magistrates' Court, even though

[914] Edgar Schein comments that in orchestrating change, 'general management theory was useless … you had to get very specific'. Interview in Schein (2017, p. 65).
[915] The 2018-19 *Annual Report* of Court Services Victoria, for example, shows that 95 out of 578 court registrars work part time, and seven out of fifteen executives (2019, p. 37). Interestingly, Amrita Hari's study of ten Canadian ICT companies (2017, p. 100) found that they 'reproduce the assumption that an "ordinary" worker is a man with few obligations outside the workplace since his female partner has assumed primary responsibility for the reproductive realm (including childcare, elderly care and household labour)'. This is despite information technology being reputedly a WLB-friendly industry that offers advanced human resources policies to foster a diverse workforce and retain talent. See also, in the Australian context Todd and Binns (2013); a similar story is uncovered in a recent study of Australian law firms (Thornton 2019).

strategies are being employed to attract men.[916] Between August 2019 and December 2020 only eleven out of the 95 trainees who qualified as registrars were males.[917] There were 561 Court Registrars in Victoria employed at 30 June 2018; 79% of them were female and the average age of registrars was 33.[918] This more than doubling of the ratio of women to men has perhaps taken the challenge to the 'organizational man' to a new level. Does it risk morphing the court registrar role into a female-segregated occupation with the attendant historical risks of disadvantage to status and remuneration, especially given the relative youth of this workforce? [919] As the People's Court, does it risk skewing the representativeness of the court workforce vis-à-vis the community it serves? [920]

By comparison, 61% of the workforce in the Victorian Public Service [921] and 59% of Australian Commonwealth government public service workforce in 2018 were women.[922] Recent research findings (Alkadry & Tower 2014, p. 102) show under-representation of women in regulatory and distributive agencies as defined in Lowi's foundational typology (1985). Staff and potential recruits may recognise a change in the nature and mode of court work towards a more redistributive paradigm: the courts appear to be more socially-oriented and less punitive in orientation, offering broader accessibility and being more inclined to collaborate openly with the community than in the past. Does this make the courts more attractive to women and less so to men, and if so, why? Interestingly, the year 2017 saw an unprecedented number of women occupying top positions in the Victorian legal system: their twenty-one photos emblazon a four-page spread in the August edition of the *Law Institute Journal*. [923]

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[916] 2018. Interview #51. This is against a background of 60.7% women in the Victorian public sector in 2018 (Victorian Public Sector Commission 2018). A 'representative bureaucracy' as discussed by Alkadry and Tower (2014) does not necessarily equal the numbers of men and women in the population since the proportion of people accessing services might also be slanted towards one gender.
[917] 2021. 'Qualified Court Registrars'. *Chronicle: Journal of the Clerks of Courts*, May pp. 4,5.
[918] Victoria Public Sector Commission (2019, p. 26).
[919] See discussion in the chapter 'Segregation and Representation of Women', Alkadry and Tower (2014, pp. 94-6, 106,7).
[920] We are reminded that 'it is possible to argue that organizations or occupations are gendered to the extent that they are male or female dominated' (Britton 2000, p. 420).
[921] Australian Public Service Commission (2019).
[922] Victoria Public Sector Commission (2019, p. 18).
[923] Ford (2017, pp. 10-27 and front cover foldout). Nerida Wallace, a former clerk of courts and daughter of retired magistrate John Wallace, features as CEO of the Law Institute. In this edition the CEO of the

Across Court Services Victoria, women in senior registrar and executive roles numbered nine women to fifteen men (43%) at June 2019 compared with 41% in the Commonwealth public sector at 30 June 2018.[924] For further comparison, across the VPS 46% of executives were women as at January 2017 (Victorian Public Sector Commission 2017).

Only recently have female former clerks or registrars been appointed to the magistracy (after having left to pursue careers outside the courts).[925] This is partly a factor of the time-capsule of the clerk of courts' qualification that maintained a closed system for more than a century; it became as much a career impediment for all clerks as a protection against competition from outside. Yet it was at least as much also a factor of barriers in the Victorian Public Service itself since the entry of women into the generalist administrative stream was delayed for so long.

This discussion is significant in furthering positive developments because 'Understanding the difference women make in public administration, that is the contributions to public administration as defined by the voices of women who have navigated the challenges and obstacles and are currently in leadership positions, provides the possibility for changing the dominant narrative' (D'Agostino 2017, p. 15).

Women as professional peers

Part of the normalising journey of women in the courts during the 1970s and '80s involved the cohort coming to terms with what constituted professional relationships in the workplace, which in turn meant accepting women's status as professional peers.[926]

County Court, Fiona Chamberlain, is quoted as saying, 'We're at a milestone moment for women in the law, a moment we can celebrate for diversity and for the value being brought to bear by female leaders and professionals' (p. 26).

[924] Court Services Victoria (2018, p. 45). Out of the ten senior management/executive positions in the MCV, there were six women, one of whom was a former clerk of courts (Magistrates' Court of Victoria 2018a, p. 12).

[925] As at December 2018, there were two: Tara Hartnett (appointed May 2018) and Sharon McRae (June 2018). Former clerk Shannon Dellamarta has been appointed as a Judicial Registrar (2018).

[926] In Chapter 4 we heard the account of the trainee clerk who was forced by the boss to identify herself as his secretary. Rosabeth Moss Kanter (1977, p. 48) discusses the perils of role entrapment: 'Even when others knew that the token saleswomen were not secretaries … there was still a tendency to treat them like secretaries or to make demands of them appropriate to secretaries'. Hierarchy, she maintains, 'divides opportunity' and 'in turn, affects the person's present behaviour and future prospects' (1993, p. 259).

This was politics at the operational level. Old forms of power were being challenged, broken down and made to accommodate new and needed capabilities at a time of large-scale change both global and local. Raw recruits to the People's Court were providing services to female court users that had previously been performed only by men under male leadership. The strengths they brought to and learned from the job as they arrived in increasing numbers were often deployed to advantage, even if these did not reflect stereotypical expectations of women.

Although it may be tempting to view female clerks and their serendipitous arrival around the time of major changes in family law as an illustration of the efficacy of 'gender matching' (Guul 2018) in representative bureaucracies (Alkadry & Tower 2014), such a linkage does not bear up against the data from the Victorian magistrates' courts. As documented in Chapter 6, evidence suggests that it was the Clerk of Courts Group, not the Law Department or the Public Service Board, that catalysed the recruitment of women in the courts. Although recorded in the *Chronicle* as a pragmatic decision to help address the deficit in staffing numbers, this can be seen as a defining moment in the clerks' history and a rational corollary of an end to the 'all-male' scene, with wives and girlfriends starting to be included in social events from the 1970s.[927]

The phenomenon of 'homosocial reproduction' (Kanter 1977) appeared to be diminishing, at least at entry level, towards the 1980s: many women encountered enthusiastic interview panels when recruited, and parity between numbers of men and women at entry level was reached within a few years.[928] Problems that could probably have been avoided were evidently not part of the planning, however, and were largely ignored when they first materialised at street level. As shown in Chapter 6, some court workplaces harboured sub-cultures, or at least bosses, that were plainly antagonistic towards women.[929]

[927] The first documented inclusion of women in a clerks' social event was in 1973 (Chapter 6).
[928] As seen in Chapter 6, 55 out of 100 new recruits were women by 1989.
[929] 'Identifying the different subcultures in an organization is an important part of any analysis of gender and diversity.' Rutherford (2011, p. 18).

The public sector that included the courts was not only largely staffed by men during the decades of the 1970s and '80s but, like many bureaucracies (and as some scholars would argue, simply by virtue of being a bureaucracy), was itself masculine in essence (Pringle 1989; Stivers 2002).[930] Bureaucracies are claimed by some to be intrinsically oppressive structures and inimical to women (Ferguson 1984), but others argue that since this is the way the world is, ways must be found to work with it (Eisenstein 1995; Gelb 1989; Hart 1992).[931]

The clerks' certainly was, up to a certain point and time, a 'masculine' culture, but like the drinking culture that seemed to be an expression of it, the extent to which this can be differentiated from the bureaucracy itself and society at large is unclear. Interview data from males of the cohort does not reveal systemic bias or resentment against women (several sang the praises of female colleagues), but female interviewees who lived through the period when women were a novelty clearly recall their difficulties.

Resentment and animosity are certainly on display in the anonymous protest poem published contemporaneously in the *Chronicle* and quoted in Chapter 6.[932] This piece, however offensive, misogynistic and unrepresentative, posits a mainstream identity for the clerks.[933] Clerks are men, they know who is who and who is 'good' (there is an

[930] The difficulties experienced by women entering the male sphere of a workplace, Stivers argues, are almost universal. 'Since women first entered government work in the mid-19th century, their experience of life in public agencies has been fundamentally different from men's. Women have been paid less, done a disproportionate share of the routine work, struggled with the question of how to accommodate themselves to organizational practices defined by men, brooded over how to turn aside men's advances without losing their jobs, and fought to balance work demands with what was expected of them - what they expected of themselves - on the domestic front. Those who have made it to the middle ranks find themselves bumping up against a glass ceiling that keeps a disproportionate number of women from top positions.' Stivers (2002, p. 15).

[931] Part of Eisenstein's work relates to the Australian context and she critiques a widely-followed (mainly American) school of thought that embraces Ferguson's definition of bureaucracy as 'the characteristic social formation of modernity, based on the subordination and dehumanization of those subjected to it'; where 'administrative and bureaucratic structures' are seen as 'intrinsically oppressive.' Eisenstein (1995, pp. 69,70). Clegg and Dunkerley make the point that 'all those works which generalize from a single-sex population, be it female or male, are open to criticism. After all, gender differentiation is one of the more obvious features of the social environment' (2013, p. 401).

[932] Anon 1983. 'How not to obtain promotion in the courts' [editor's heading], *Chronicle: Journal of the Clerks of Courts*, July pp. 12,3.

[933] Common characteristics, symbols and rituals, shared goals, replication of family structure and a common enemy can create strong identification of members with their group. Tolman (1943, pp. 143,4).

implicit hierarchy of competence),[934] and they do not take kindly to the opinions and interference of outsiders.[935] Women, if noticed at all, are viewed as 'other' and inferior; they do not have their place in the 'club', but are only on the periphery, 'there to take notes'; or better still would be at home looking after the family ('I gave her a lecture on kids'). While the piece certainly does not 'show clerks in a good light' (as a reply letter pointed out), it plays an unintended role in exposing what needed to change in the culture of the courts: clerks would have to come to terms with women as peers and as bosses, and quickly.[936]

Diversification of a gendered culture

Undeniably, women recruited into the courts as trainees from 1975 were seen from the start as different, and were treated as such, even if with kind intentions.[937] Wacjman points out that 'the construction of women as different from men is one of the mechanisms whereby male power is maintained': it does not have to be intentional to have this effect (1998, p. 1968).

Despite representing the potential disruption of a gendered culture that had become accustomed to the exercise of certain powers in the workplace, the newcomers were not necessarily unwelcome.[938] Exclusionary practices were noticed by female trainees, but they were also aware of efforts to make them feel valued. The efforts of some young women not to appear too 'different' - 'you know, you just kind of snuck through and tried

[934] 'Definitions of competence and commitment in the workplace are based on hegemonic masculine ideals, values and behaviours' (Hari 2017, p. 101).
[935] 'Years on the job we know who is good, we clerks are like a club.' Anon 1983. 'How not to obtain promotion in the courts' [editor's heading], *Chronicle: Journal of the Clerks of Courts*, July pp. 12,3.
[936] Hari (2017) summarises the work of other scholars in the field by arguing that 'masculinity is both materially and ideologically privileged' in many organisations and 'a hegemonic masculine/masculinist gender substructure' is maintained, no matter what euphemisms are employed to assert it is not so (p. 100).
[937] Kanter cautions against the differentiation - albeit well-intentioned - of women in the workforce: 'Distancing men and women as if they were different species undercuts the move to find common ground'. She argues that advantages conferred by even favourable stereotypical concepts are 'temporary' at best (1993, pp. 311,2).
[938] As seen in Chapter 6, a research interview comment was made that some of the older clerks resented 'A woman in the man's domain ... It was the opening for women into men's jobs' (2019. Interview #59).

to be as unobtrusive as you could'[939] - may have allowed some to avoid being targeted for discrimination.

Recruitment alone was not always recognised by their peers as proof of proficiency: trainees were often expected to earn acceptance by undergoing further tests and trials. Some of these ordeals appeared motivated by expectations of stereotypical feminine sensibilities (young women being assigned to bench-clerking in a sodomy case, being confronted with pornography and exposed to cadavers) rather than designed to assess aptitude. Others seemed intended to put women in their place, and a minority were downright malicious.[940]

Studies show that 'sexual harassment often occurs in group settings where "boys will be boys"' (McLaughlin, H., Uggen & Blackstone 2012, p. 637) and may be 'institutionalized' (Dellinger & Williams 2002, p. 243).[941] The 2021 report *Preventing and Addressing Sexual Harassment in Victorian Courts and VCAT* does not pull its punches in declaring that 'These behaviours create personal and organisational risk and can damage lives, divide teams, and undermine the operational effectiveness of organisations'.[942]

Perpetrators of sexual misconduct may be likely to downplay it as low-level harassment or humorous horse-play even when it could justifiably be reported to police (Quinn, BA 2000). An Australian study (Ely 1995) found that 'women in male-dominated firms emphasized the role of sexuality in gaining favor with senior men and, compared to women in sex-integrated firms, rated sexual involvement with co-workers as less detrimental to success' (p. 627). The implied disadvantage for those who do not accede to sexualised interactions with colleagues is echoed in data from this research.

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[939] 2018. Interview #26. Camilla Stivers comments, 'women still find themselves in organizational systems of meaning that make femininity problematic and its open exercise - by women and men - risky. Yet, destabilization is important' (2003, p. 227).
[940] Kanter speaks of 'status leveling', where it was easier for workers to see their new female colleagues in terms of secretaries, wives or girlfriends and as less deserving of respect (1993, p. 231).
[941] 'Deleted out of the bureaucratic model, sex, like emotion cannot be deleted out of human beings' (Rutherford 2011, p. 165).
[942] Szoke (2021, p. 34).

Ely (1995) further argues that many studies have made the mistake of treating gender 'as an objective property of individuals synonymous with biological sex and universal across organizational settings'.[943] This study on the clerks of courts has found data to support the contention that the variation that exists amongst a cohort may be iteratively, but is not inherently, 'gendered': both men and women could be capable of sensitive and caring as well as discriminatory, insensitive and damaging behaviour. All clerks had to learn 'game face', dissimulating their emotions in order to manage the realities of work (Guy, Newman & Mastracci 2014). As seen in the accounts of young women managing the Poor Box and maintenance applications (Chapter 6), women did not always engage in or find natural what may be thought of as the feminine behaviours of nurturing, serving others and performing emotional labour; on the other hand, some interviewees asserted that there was work that simply could not be done as well or at all well by 'the men'.[944]

This is complex and disputed terrain. Behaviours are a product of specific social and organisational settings, and particularly the power and sheer survival dynamics that operate in these settings: 'an achieved product of situated conduct' (Fenstermaker & West 2013, p. xv).[945] The profound effects of organisational settings on the attitudes and conduct of staff are a significant focus of this research.

Acculturation

The 'pub acculturation' of young women that became normalised in the courts' workforce as more women arrived gave them at least partial access to the social benefits of the culture.[946] As seen in Chapter 6, the interviewee who had fallen in 'drink for drink, innuendo for innuendo' with her colleagues' pub behaviour said that she changed as she matured and became a non-drinker for a while.[947] She recognised the associated

[943] 'I explore gender as an ongoing social construction, the meaning, significance, and consequences of which vary for individuals across settings' (Ely 1995, p. 590). An identity theory explanation is that 'as a reflection of society, the self should be regarded as a multifaceted and organized construct' (Hogg, Terry & White 1995, p. 256).
[944] 2017. Interview #28; 2017. Interview #29.
[945] As Britton expresses it, 'advantage and disadvantage, exploitation and control, action and emotion, meaning and identity are patterned through and in terms of a distinction between male and female, masculine and feminine' (2000, p. 419).
[946] 'When we talk of a dominant group imposing a culture on outsiders, it is not necessarily a coercive regime.' Rutherford (2011, p. 24).
[947] 2017. Interview #29.

transactional costs. As Atkinson and Sumnall point out, although social drinking is evidence of women's economic progress and social freedom, they must negotiate 'sexual/ gender double standards as traditional notions of respectable … femininity are unsettled'; women 'self-govern their behaviours' because of the limitations imposed by 'traditional conceptualisations'. It was easier for this young woman not to participate than to navigate the 'highly negotiated, contradictory and dilemmatic' degrees of difficulty within the drinking scene (2016, p. 51).

Chapter 6 also discusses the introduction young male clerks to stripper pubs. Rutherford (2011) argues that sexual entertainment is 'patriarchal exclusion' that is 'based solely on gender' (p. 161). In the clerks' situation it was not (as in Rutherford's discussion) entertainment provided by the organisation to woo clients, but a relic from a time when women were not an essential part of the workplace and could be glibly objectified. It appeared that nobody in authority was paying attention anyway. Perhaps this was not a widespread behaviour across the courts, but such practices were well known and appeared to elicit no response from management.

Criticism, even when invited, was not always sympathetically received. As seen in Chapter 6, some of the incoming younger and more diverse demographic of the 1980s were prepared to object to unprofessional behaviour and unfair treatment. They called out practices that discriminated against women and families.[948] Women who rebelled or reported experienced seldom-used sanctions (David 1994, p. 211), both overt and covert, such as a threatened 'blackballing' from the Clerk of Courts Group, ballot-box tampering to prevent a troublesome candidate from winning a position on the executive, or more conventional punishments such as bullying and poor performance reports.[949] The clerk who declared at a Clerk of Courts Group meeting that the 'party culture' had gone too far and that the behaviour of her colleagues was 'out of control' was ridiculed for her

[948] The comments that 'the choice between family and career tests our human rights as individuals … Injustice occurs at the moment we are forced to make that choice' apply equally to women and men. Alkadry and Tower (2014, pp. 169,70).

[949] 2017. Interview #28; 2018. Interview #52. We know that many organisations have been known to 'penalise women when they do ask ... They frequently see themselves ostracised or excluded'; punitive responses to assertive behavior are 'a product of society's ingrained expectations about how women should act'. Babcock et al. (2003, pp. 14,5). Sadly, this cluster of issues has been identified as very much alive and problematic in a recent review of Victorian court and tribunal culture (Szoke 2021).

remarks.[950] Ignoring or sidelining such criticism and designating these people - men or women - as 'troublemakers' deprived the culture of valuable input and feedback.[951]

Young women who joined the courts from 1975 fell into a cultural blind spot. They had to work hard to overcome the exclusionary aspects of a self-styled 'family' culture where unquestioning loyalty was a primary virtue and feminine /junior subservience assumed.[952] As seen in Chapter 6, some acquiesced and became part of it; others participated to a point. The sense of conscious choice to protest, accept/adapt or leave was more obvious in female interviewees than in the males.[953] It is likely that they viewed the culture more critically due to the vantage-point of their putative exclusion from its more 'masculine' aspects and associated privileges. Whether these young women survived that initial period of transition largely depended on their alliance with powerful leaders or mentors and their acceptance, to some tolerable degree, of an evolving culture in which their influence was gradually expanding.[954]

We also saw that adapting to emerging cultural and operational realities (such as the new diversity within the cohort and the serious nature of domestic violence presentations) proved difficult for some of the cohort. Aberrant behaviours of male clerks towards their female colleagues speak of attitudes that were incompatible with respectful workplace relationships and with the service clerks were supposed to be rendering to their female

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[950] 2018. Interview #52.

[951] 'When you lose out on women's voices you lose out on the issues that they have to deal with'. Eveleth (2015) quoting futurist Madeline Ashby; no pagination. Problem drinking during work hours was a pervasive problem that remained unaddressed for many years, even as an occupational health and safety issue. Looking back, some interviewees accepted this criticism, but they still lamented the demise of the old pub culture.

[952] 'Most of the organizational culture literature refers to the inclusionary nature of culture, yet its function is also exclusionary.' Rutherford (2011). She further comments, 'Today we talk of "inclusive culture" and acknowledge that there are zones of exclusion but we rarely discuss exactly what it is that people want to be included in, or what women and minorities are being excluded from. The answer is power and privilege' (pp. 19,23).

[953] 'Sometimes you had to let it go - I'm part of this - it's like embracing a family - and then other times - you can't anymore … things that I think are wrong' (2018. Interview #52). As seen in Chapter 5, one male interviewee did reveal that he had left because of the drinking culture: he enjoyed it, but he was ambitious, and it prevented him from engaging with study (2018. Interview #40).

[954] Kanter identifies situations where uncomfortable change is beginning to occur and 'Status lines are being crossed and blurred' (1993, p. 315). In a recent study, it was found that mentoring is just one of many strategies (or factors) required for women to break through the 'glass ceiling' (Caprice, Nayyara & Bryan 2018).

publics.[955] Women are often before the court precisely because of such attitudes of disrespect in their lives. A lack of critical insight hampered therefore the meeting of multiple challenges during this period of radical change.[956]

Women and change

Academic literature increasingly turns its attention to the difference women make to government service (D'Agostino 2017). There is however an (often hidden) history that backgrounds women's presence in any previously male-dominated workplace (Burnier 2003), and the accounts of the early female Victorian clerks provide fresh insight into the broaching of new territory as the first wave of women in a previously untested capacity.

Despite the quality of recruits and the goodwill of most clerks, the formula 'add women and stir' boosted equal opportunity statistics but did not change a great deal at first. 'The men' were still in charge and had things done their way.[957] Naïveté, the code of silence or fear of repercussions prevented complaints, and some women departed.[958] Others established their credentials as excellent operators; female clerks were in demand by magistrates to bench clerk in their courts and some worked with the Courts Change Program. Apparently 'strong' qualities rather than traditionally 'female' attributes were valued, at least operationally ('They'd call me, because I was the hard-arse. … most of the women were probably stronger like that').[959]

Several interviewees both male and female expressed their feeling that discrimination against women in the courts was not widespread; they claimed, in addition, that it lessened over time. As evidenced in the interview data, male clerks of courts were some of the biggest champions (not just mentors) of successful female clerks and were also

[955] 'A psychodynamic approach does not see organizations as centers of rationality as espoused by Max Weber, but often as activities driven by emotion and the unconscious.' Rutherford (2011, p. 22).
[956] Schein and Schein argue that an organisation's lack of awareness as to how values are actually being practised makes change more difficult (2016, p. 247).
[957] 'They were the men, they were in charge, they called the shots' (2017. Interview #29).
[958] A contemporary comment on the era in which women first began to take their place as responsible officers of the court reads, 'The exclusion of women and minorities from the rich and supportive life of an organization's culture begins the day they walk in the door. Most don't even know it's happening to them'. Deal and Kennedy (1982, p. 67).
[959] 2017. Interview #46.

supportive of the first female magistrates, who additionally had not come from their ranks.[960] We see accelerated progress of some female clerks towards the end of the 1980s.

Arguably the empowerment of its female contingent meant a formidable augmentation of the cohort's capability. Perhaps this, together with definitive demographic and generational change, explains why a profound and pervasive feminisation was ultimately so successful, leaving little trace in interviewees' accounts or in the *Chronicle* of the palpable malice and resentment of that protest poem.[961]

Adaptability and tradition

The field of public administration, apparently, is rich with contributions from a daunting range of disciplines few studies are able to straddle.[962] Despite this epistemological wealth, however, according to Mahoney and Thelen (2010), 'the vast literature that has accumulated provides us with precious little guidance in making sense of processes of institutional change' (pp. 1,2).[963]

Institutions are 'carriers of history' (David 1994, p. 205) and therefore of continuity, yet ultimately 'stability is no more than change at its slowest and most quiet pace', assert Jordan and Hodgetts (1993, p. 74).[964] Courts were of necessity established early in the

[960] An oblique comment in the *Chronicle* however suggests that criticism of appointments for women was not allowed: 'The dishonesty of certain sections of the legal profession in their clamour to get jobs for the boys may have to be exposed in the press. Jobs for the girls is a more political concern, so we are told.' Ryan K 1980. *Chronicle: Journal of the Clerks of Courts*, 20, 2, June p. 161.
[961] A similar kind of cultural change is evidenced in the magistracy: see Douglas, R and Laster (1992); Laster and Douglas (1995).
[962] Kenneth Meier notes that 'many of the contributions to the scientific study of organizations, including public organizations, have occurred outside the field of public administration in sociology, psychology, economics, business, and other disciplines … public administration is a very diverse field ranging from those who are concerned about the relationship between bureaucracy and democracy to those interested in what motivates workers to those focused on optimal governing structures to those concerned with ethical issues' (2015, pp. 16,7). According to Frederickson, 'The big problem in the field of public administration is not that we lack theory; the problem is one of surfeit rather than deficit' (2015, p. ix). Camilla Stivers speaks of public administration's being afflicted with 'a hollowness at its core' which scholars have attempted to fill with the theory of other disciplines (2003, p. 210). Some speculate that this is due to the scarcity of empirical research in public administration (Bozeman & Feeney 2014; Pettigrew 1990).
[963] The authors use the example of the British House of Lords, a much older institution than the Victorian magistrates' courts.
[964] The original quotation has 'then' instead of 'than'; I have corrected this here.

history of Australia and, as we saw in Chapter 2, quickly became embedded in the most stolid of bureaucracies. Yet as we see in the three Findings chapters, cyclic and sometimes seismic change was inevitable, and led to both loss and renewal. As Leavitt argues (2003, p. 98),

> organizational pyramids … despite their reputations - have proven themselves quite capable of change. Indeed, many of the large organizational 'dinosaurs' have demonstrated impressive adaptability.

Some of the clerks' work was mundane, repetitive and not inherently motivating, but the percentage of it that challenged, provoked and engaged them was substantial enough to keep alive a sense of mission, even vocation for many individuals.[965] Ultimately, there would be narrower latitude for the individual virtuosity of 'gun clerks' and increasing emphasis on collaboration as more evidence-based and standardised procedures were mainstreamed. Despite the fact that reforms were in general taken up with enthusiasm, some interviewees commented that daily work lost some of its challenge and stimulus.[966] Of more immediate concern for clerks in the 1970s and '80s, though, was the threat to their careers posed by legislative and administrative reforms.

A crisis of morale: cultural leadership and the Clerk of Courts Group

Interviewees agreed that the courts had 'a strong culture'.[967] Wilson (1989) notes that 'a strong sense of mission may blind the organization to changed environmental circumstances so that new opportunities and challenges are met with routinized rather

[965] Wilson (1989) comments that 'a strong sense of mission' is not precluded by the existence of core tasks that are 'prosaic, even dull' (p. 99).
[966] Peter Sallmann, commenting on the take-up of caseflow management practice in Australia, remarks that 'a pressure cooker situation developed; strong forces both within and outside the system could only be resisted for so long and, frankly, there was much about the operation of the judicial system that cried out for the quiet revolution which has occurred' (1995, p. 194).
[967] Denison explains strong culture as a powerful asset that encourages 'the participation and involvement of an organization's members' (1984, p. 5). The 'strong culture hypothesis' in organisational scholarship argues cultural strength as necessary for 'effective and lasting performance' (Deal & Kennedy 1982, 2007; Denison 1984). This nexus has been critiqued as an oversimplification (Saffold 1988; Smart, JC & St John 1996; Sørensen 2002) but persists into current thinking about organisational effectiveness and resilience - see Zurek (2017) - and in popular management literature. An enduring culture need not however be immutable (Wilkins, AL & Ouchi 1983); arguably, the more adaptable it is, the longer it will survive.

than adaptive behaviour' (p. 110).[968] Edgar Schein comments (2017, p. 65): 'In every change program, there will be cultural elements that will be seen as dysfunctional and in need of change, but that doesn't mean the culture is being changed'. Appearance without actuality of change might be, for example, an improvement in equal opportunity statistics that fail to show how a minority cohort is faring in reality (they may remain in lower-paid jobs year after year).

In many respects, operational innovation is less challenging than cultural change, but ultimately, both were inevitable in the courts. Operationally, the clerks had always been agile. John Willis argues that the magistrates' courts by virtue of their modest status and the lack of attention paid to them have been able to innovate under the radar, as it were: 'The Magistrates Courts can also be seen as having greater flexibility than the Higher Courts. They are less rigidly contained by precedent and tradition. Strict legalism has not always promoted justice and efficiency' (2001, p. 136).[969] Long before the popularity of bench-marking, relievers duplicated best practice learned on their travels, and teams were proud of substantial innovations that were implemented in advance of officially-endorsed change agendas (Chapter 4).[970]

The momentum and imposed accountability of the Courts Change Program allowed to some extent a bespoke response to the neo-liberal management paradigm that was making its influence felt throughout the public sector.[971] Benchmarked caseflow management and metrics developed during this period leveraged the inherent adaptability

[968] Lawrence Lynne refers to Robert F. Coulam's study on the F-111 program, arguing that in organisations 'underlying structures of routines, incentives, and beliefs' are so deeply-entrenched that administrative reforms are likely to be thwarted unless 'disruptive external events' can force a 'consensus for change that undermines bureaucratic fiefs' (1994, p. 237).

[969] Interestingly, in contrast, writing about American criminal courts in the 1980s, Church complains that 'Experiences with court reform over the past several decades demonstrate the extraordinary ability of criminal courts to absorb reform efforts, both large and small, without substantial change in operation' (1985, p. 507).

[970] 2017. Interview #3. 2017. Interview #21; 2018. Interview #8; 2018. Interview #14. Some noted that being ahead of the program was not always well-received because it inflamed professional jealousies (2016. Interview #2; 2017. Interview #50). The impetus to innovate was service-driven rather than motivated by career aspirations (or, of course, the profit motive), but professional competitiveness was an important factor (2018. Interview #14; 2018. Interview #8).

[971] Camilla Stivers pictures this as a battleground between the boundaries real or imposed between administration and management: 'Public administration can never win its battle with management. It will never be harder, more objective, more scientific, more businesslike than its opponent, nor should it try to be' (2003, p. 228).

of the cohort, effecting changes that were 'rapid and profound' (Sallmann 1995, p. 94). Although a culture with a deep and multi-layered history might be 'stable and hard to change' (Schein & Schein 2016, p. 343),[972] the disruptions of the 1970s and '80s forced change upon even the most unready and unwilling. This research demonstrates nonetheless that there was willingness amongst the clerks to expedite it.

Editorials of the *Chronicle* from the late 1970s show that the Clerk of Courts Group leadership had a formidable repositioning task ahead of it. Long-held opposition to the professionalisation of the magistracy was destined to fail; the change had already taken place in most Australian states and territories. The Group was faced with the painful challenge of rebuilding the morale and standing of their 'ambassadors in the administration of justice'.[973] Before this change, the leadership could argue that clerks 'are magistrates in the making and much of the respect that will be shown to them when they ultimately ascend the Bench will find its foundation in the impressions that were gained while serving their apprenticeship for the Magistracy'.[974] After the 1978 and subsequent legislation this argument lost much of its leverage.[975]

As seen in Chapter 5, despite the assurances of the Attorney-General in Parliament fewer and fewer clerks ascended the bench, even though qualified. Clerks were conscious that competition for jobs from 'outside' was growing. They had to come to terms with the realisation of a long-fought cause irretrievably lost, and with it some of the rationale for being a clerk of courts at all. Many now faced the inevitability of leaving the job they loved to further careers in the uncertain world outside.[976] A widespread depression

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[972] In a mature company with a strong culture, claim Edgar and Peter Schein, 'Most executives will say that nothing short of a "burning platform" or some major crisis will motivate a real assessment and subsequent change process.' Schein and Schein (2016, p. 247).

[973] Schein's original thinking on change was influenced by Lewin's 'unfreezing, changing and refreezing' theory (Lewin 1947). He comments, 'The key, of course, was to see that human change, whether at the individual or group level, was a profound psychological dynamic process that involved painful unlearning without loss of ego identity and difficult relearning as one cognitively attempted to restructure one's thoughts, perceptions, feelings, and attitudes'. Schein (1996, p. 27).

[974] 1948. 'Do We Take Pride?' *The Chronicle: Journal of the Clerks of Courts,* 1, 2, February p. 1.

[975] The *Magistrates' Courts (Stipendiary Magistrates) Act 1978* (Vic) opened the bench to the legal profession in December of that year, and the *Magistrates' Court (Appointment of Magistrates) Act 1984* (Vic) mandated a law degree and separated magistrates from the public service.

[976] Turner, in Tajfel (2010, p. 19), suggests that 'social identity may on occasions function nearly to the exclusion of personal identity … at certain times our salient self-images may be based solely or primarily on our group memberships'.

amongst the cohort was acknowledged in *Chronicle* editorials. 'Our future as Clerks of Courts is bleak. … Morale in the Courts is at a low ebb', wrote an editor when the legislation was anticipated.[977] As outlined in Chapter 5, strategies had to be found to change clerks' mindset, rebuild their sense of pride in their profession and hope for its future.[978] Many clerks were never going to be magistrates, but not all had joined the courts for that reason alone; the 'foot soldiers' and career clerks still had to be engaged.

The Group's interventions helped stave off the worst consequences for the cohort at this low water mark, but other forms of grass-roots leadership emerged during this period that were not dependent on the Group. This gave agency to a broader band of capability and perspectives. The new and purposeful consultative management in Courts Administration and the appointment of senior women and other talent from outside accelerated this push.

The Courts Change Program set up career opportunities for clerks that, while helping to alleviate the disappointment of those who had aspired to the bench, required managerial rather than judicial skillsets, with courtcraft however remaining a valued asset. Regionalisation - a structural compromise between rigid, centralised executive control and untrammelled discretion - allowed the development of an empowered but more bureaucratically accountable leadership group amongst the clerks.[979]

Despite disappointment at the loss of their sole right to the magistracy being sharpened by growing competition from 'outsiders', clerks would quickly come to realise that with their transportable skills and expertise they themselves could compete 'outside', progress faster, and earn more.[980] Interviewees claim this remains a factor in staff turnover and is

[977] 1978. 'Editorial'. *Chronicle: Journal of the Clerks of Courts*, 19, 5, September p. 37.
[978] For example, as seen in Chapter 5, clerks did not recognise the skills they were habitually deploying as managerial, whereas they would have embraced 'professional' unquestioningly. See Dweck (2012) on the effects of psychological mindsets.
[979] As an illustration of this, senior clerks as regional managers were given carriage of the implementation of the Mention System as it was rolled out across the state (2020. Personal communication, 22 September). Maynard-Moody et al. advocate more participatory forms of management that harness the use of well-judged discretionary action rather than stifling it with a surfeit of controls: 'street-level influence should lead to greater implementation success' (Maynard-Moody, Musheno & Palumbo 1990, p. 843).
[980] 2018. Interview #36, 2018. Interview #18, 2017. Interview #25, 2018. Interview #44, 2018. Interview #53.

part of the reason registrars are now likely to have shorter stints in the Magistrates' Court instead of lifetime careers.

Conclusion

This study allows us to view the impact of change on an important but little-known service culture from the perspective of knowledgeable insiders who do not usually share intimate knowledge of their world.

Since clerks of courts were both public servants and officers of the court, their culture could not be categorised as either wholly legal or entirely bureaucratic.[981] Culturally, they were clearly uncomfortable with bureaucracy and chafed against its restrictions. There is a valid argument that between layers and sections of any bureaucracy, 'The organizational norm … is mutual mis-trust' (Carnevale et al. 2019, p. 195). Clerks' creation of their discrete culture shielded them, to some extent, from what Reina and Reina (2015) designate as the pathologies associated with a culture of mistrust - stress, hypervigilance and lack of innovation - but not necessarily from the often-accompanying pathologies of inordinate self-protection and blaming.

The bureaucracy of state government was not, in many important ways, unkind to court personnel; it offered more than a century of employment (including for the socially and economically disadvantaged), job security, a career path (albeit slow-moving) and some conditions of employment that were not as readily or uniformly available to workers in other sectors.[982] It eventually supported the employment of women and established family-friendly leave and working conditions - long before these were formally available in the private sector.[983] Yet many of the securities that other public servants took for

[981] Carnevale and Stivers call front-line workers 'organizational border-crossers': 'This strategic position at the outside-inside boundary is a source of the considerable power workers possess'. Carnevale et al. (2019, pp. 48,9).
[982] '… government policy provides a basic framework of equity principles to which leaders in organizations and individual employees can appeal for remedy in a specific situation … it provides the means of forcing organizations to at least change the artifacts of their culture - their formal procedures - to conform to the law.' DeLaat (2007, p. 106).
[983] A 1998 study that compares the career success (participation and promotion rates) of Australian women engineers in the public sector and women lawyers in private practice highlights superior success of the engineers that could not be accounted for by any differential in the level of qualifications and expertise. In

granted - the right to annual leave, a safe and comfortable workplace and a settled place of residence, for instance - were not a reality for many clerks.

Throughout the history of the summary jurisdiction it had never been enough to know the law and its matrix of rules.[984] Experience, discernment, resourcefulness, community connection and empathy were always and increasingly required.[985] In the 1980s clerks also had to come to terms with recognising themselves as managers of diverse teams in an increasingly complex environment (Barzelay 1992).[986] Regionalisation and the closure of many small courts reduced the space in which clerks could exercise their administrative and para-legal independence, but not the extent to which the concept of the street-level bureaucrat would apply. This remains a valid frame through which to view the operation of court administrators in their day-to-day work, although court registrars today are arguably both more accountable and better supported than were their forbears the clerks of courts.

The motivations and mindsets of those who provide street-level public services are vital considerations for recruitment, induction and employee development.[987] Lipsky's original model as it applies to the cohort is limited insofar as there is much more to court workers' lives than mere 'coping'. In the face of low formal status and poor resourcing, court staff had to be resourceful. What clerks did with their discretional time was also an

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the public sector, 'formal rules govern recruitment and promotion, … equal opportunities legislation literally applies, and … a strict separation is maintained between public and domestic spheres. By contrast, law is practised in collegial partnerships where informal judgements govern recruitment and promotion, where the letter of equal opportunities legislation need not be applied, and where advancement depends on the subordination of the domestic to the public sphere'. Cook and Waters (1998, 2002, p. 314).

[984] Wilson (1989) notes that professionals in government agencies 'bring esoteric knowledge to their tasks - they know how to do things that others cannot easily be taught - and … they are expected to regulate their own behaviour on the basis of professional norms' (p. 149).

[985] Carnevale and Stivers call this 'experiential expertise' (2019, p. 49).

[986] 'The rhetoric of diversity as empowering individuals rarely travels from words into practice. In that sense managing diversity is simply managing people well.' Rutherford (2011, p. 54).

[987] Bruno Frey (1997) for example argues that higher remuneration may, in fact, distort and undermine ('crowd-out') intrinsic motivation (Part I, p 7 onwards). A 1998 study suggests that where in the 1970s and '80s having an interesting job was most highly valued, the preference had moved towards job security and good wages (Karl & Sutton 1998). Clerks however placed a high importance on interesting and intrinsically worthwhile work. Goodsell (2015) devotes a chapter to the motivations of American bureaucrats. He finds that for some of them 'the appeal of broad social causes is evident' and for others their motivation is to 'serve other human beings on a person-to-person basis'; others sought 'personal vocational fulfillment' (Chapter 3: 'The Bureaucrats Front and Center'. No pagination).

important element of their relationship with the communities that came to depend on them.

Subordinates' exercise of power has been invisible and out of scope for most academic studies.[988] As subordinates in a powerful institution, clerks of courts expressed ingenuity and power in ways that were neither formally documented nor sanctioned by the authorities. Lipsky's framework assists in coming to terms with the leverage clerks exercised in their subsidiary role by explaining the geographically-facilitated power vacuum in which they cultivated their exercise of discretion.

Government agencies, it is said, can only be known via their metaphorically 'exotic and distant native culture' (Wilson 1989, pp. x, 292,3). As 'the secret sauce'[989] that enables an enduring and successful organisation, culture is characterised as mysterious, complex and hidden, a challenge for outsiders to understand. Wilson points out that the public service has a multiplicity of goals and more constraints than private enterprises and that the efficiency algorithm of resources used in relation to outputs achieved is difficult to compute (1989, pp. 317,8).[990] Often 'the government can't say yes' because there are so many people and bureaucratic impedimenta along the decision-making chain (Thompson 1980). By contrast, court staff have been characterised by interviewees as 'people who can't say no to a problem'.[991] This is a significant cultural asset and strength.

The analysis provided in this chapter takes advantage of a rare opportunity to view from insiders' perspectives a pivotal period of change that highlights a cohort's cultural resilience and agility. It has also delivered a compelling account of the resourcefulness, people skills and compassion that the best of the clerks felt impelled to bring to their

[988] Carnevale and Stivers note that 'a central problem with public bureaucracies is that direct experience and the knowledge and skills it produces and relies on to achieve results have been demoted to the bottom of the pecking order, or even ruled out of order entirely'. Carnevale et al. (2019, p. 49). Yet 'An argument … can be made for an alternative epistemology including a focus on human agency, informal organisation and process as essential for an understanding of factors affecting the successful delivery of organisational change' (Green 2019, p. 78).
[989] Smith, G (2012, p. 2) used this term in explaining why he was leaving Goldman Sachs because he no longer respected or identified with its culture.
[990] Constraints include cost minimisation, avoidance of waste, fraud, and abuse, achievement of various social goals, and productivity maintenance of key contractors (p. 323).
[991] As previously quoted from 2018. Interview #53.

work - a picture attenuated by the attendant revelations of fallibility. Interviewees have brought the benefit of thirty-plus years of experience and hindsight to bear upon these significant decades and have provided frank and revealing accounts of a dynamic and disruptive period. Studies allowing us such keen insight are few, but we need more, because the issues are ongoing and evolving.[992]

[992] 'Courts need to continue working on issues of internal culture and how they see themselves' Parker (1998, p. 163).

Chapter 8:

Conclusion: from clerk to registrar

> *Although many critical problems face us today, most of the problems as well as proposals for their solutions are defined and shaped in bureaucratic organizations .... Our capacity to understand and modify bureaucracy in the present decade will greatly determine our capacity to solve our problems and thus shape the decades to come.* Littrell (1980, p. 263)

This thesis began with an abiding interest in the history of the courts and affection for its people. Its process has been sustained not only by robust methodology and planning, but through the active and generous participation of interviewees and support from associated colleagues past and present. Something of the spirit of the institution was expressed in the process undertaken: a problem (nobody has researched the clerks of courts), an opportunity (here is the chance to tell the story as it really was), a pause to reflect (this is where we contributed; this is where we failed) and the enjoyment of connection in that process. One thing is clear: once having worked in the courts, the interest endures.

Legal philosopher Friedman writes that he puts 'little emphasis on great thinkers, on theoreticians and philosophers. Despite their brilliance, when all is said and done, they too are constrained by the world they live in; they accept (as they must) most of its cultural baggage. In this regard, they live in the same invisible cage as their more humble fellow citizens' (Friedman 2014, p. 419). Clerks were presented daily, at street level, with an at times visceral pressure to respond and to problem-solve, and over time evolved a specialist lens with which to appreciate and address these problems. For some this meant they could, even if only occasionally, see beyond and reach outside the cultural cage.

Despite the challenge of maintaining a sense of mission over time (Wilson 1989, 95), steady, committed leadership and the medium of the *Chronicle* enabled the cohort to keep theirs alive. Hamel (2015, p. 33) writes:

> One of the most fundamental management problems we have today - and very few people talk about this - is how do you rouse the human heart at work? How do we rehumanise our organisations? It starts by admitting that what we hold important as human beings, the deep principles, the values of love and beauty and truth and justice, these are things that have to show up in the workplace and yet we can hardly even use that language at work today. The work environment has become so profane that we can't bring our deepest passions to work. And that has to change.

Or - in the case of registrars - revert? If 'Justice, lodged in the dehumanized interstices of bureaucratic institutions, appears as power without passion' (Silbey 1998, p. 49), vocationally committed clerks of courts and their use of street level discretion largely succeeded in humanising justice for court users. And if 'The legal arena is a type of temple where its high priests often use language in ways that are foreign and incomprehensible to their subjects' (Shuy 2017, p. 2), clerks of the People's Court spoke Law in the people's vernacular.

Significance of the research

Once highly visible in smaller communities, the influence of court administrators past and present is yet to be fully appreciated.[993] Yet as this thesis shows, individually and as a group clerks of courts exercised some important powers, and their work has had a profound impact on the delivery of justice to Victorians.

Legal philosopher David Nelken declares that 'patterns of legal culture can and must also be sought both at a more micro as well as at a more macro level' (2004, p. 3). Literature has 'probably provided less helpful guidance for managers and other practitioners faced with implementing organisational change … [and] … ignored the potential power and

[993] The few works that have made some inroads include Douglas, R and Laster (1992) and Laster, McKinna and Wade (2013) and Wallace, Mack and Anleu (2014). John Willis' characterisation of magistrates as the 'under-valued workhorse of the court system' applies equally to the staff who support them (Willis, J 2001).

influence that could be and was wielded by employees' (Kearney & Hays 1998, p. 39).[994] Empirical research, uncommon in this sphere (Bozeman & Feeney 2014; Pettigrew 1990), has so far focused mainly on 'the dominant role of managers and supervisors in the ethical culture of organisations… while neglecting employees as professionals who can behave as determined, effective and active moral agents' (Hiekkataipale & Lämsä 2017, p. 13). In examining the agency of a discrete cohort of sub-executive workers within a public sector setting, this research offers a unique contribution in an important but erstwhile neglected space.

This is also a case study that explores how a tight-knit cohort came to terms with institutional transformation.[995] Summary courts have in their history been less an 'overtowering force' (Wilson 1989) than a weathervane, albeit at times a majestically slow-turning one. They have been present to their publics in eras of stasis, and responsive during disruptive change (Frederickson 2000; Roach Anleu & Mack 2007).[996] Victorian clerks of courts faced their own monumental changes at a time when the entire public sector was learning to accommodate revolutionary neo-liberal management methods and priorities. The concepts of organisational culture, cultural change and the exercise of power are familiar, but here we see them play out in the context of a distinctively influential, previously unresearched cohort in an important civic role. In this way the research makes an original contribution to knowledge.

This study is significant because change is now part of every organisation's reality.[997] Indeed, this thesis is being written amidst the radical disruption of a pandemic.[998] The

[994] An exception to this neglect is the corporate culture genre, two of the best-known works of this kind being Deal and Kennedy's *The Rites and Rituals of Corporate Life* (1982) and Kanter's *Men and Women of the Corporation* (1987). Though focussing mainly on the private sector, the insights from this field have changed the landscape of management literature by arguing the importance of understanding and harnessing the power of organisation culture, staff knowledge and involvement.
[995] 'Transformation means deep change, fundamental alterations instead of superficial half measures. All change is not transformational. We have argued that the failure of management reforms can be traced to superficial change, failing to take up deeper issues of authority and power' (Carnevale et al. 2019, p. 189).
[996] After all, 'a static organization will soon be out of touch with its dynamic environment' (Frederickson 2000, p. 51).
[997] As expressed by Michael Barzelay, 'an intelligent public administration is one that manages change intelligently' (2006, p. 11).
[998] Sourdin, Li and Burke (2019, p. 17) note that 'disruption' has become a 'catchword' for the unceasing pressure to reform and innovate.

courts, like all other organisations and businesses, are pivoting - even uprooting established practices - to adapt to a 'new normal' where technology and inventiveness again play a central role and the very customs of community connectedness must be reconsidered. Some of these changes unevenly impact court user groups, with uptake by non-digital natives yet to be understood. It is unlikely that we will see again long periods of stability or attendant complacency in public administration.

Summary of findings

The flashpoint of change in the Victorian magistrates' courts corresponded with a pattern of exogenous shocks impacting the public sector and society in the 1970s and '80s. Legislative change and technical innovation challenged certainties and patterns of court operation built up over more than a century. Transformations during the period covered by this thesis included the professionalisation of the magistracy, advancement of women in careers within the courts, court closures and the advent of regional court complexes, the introduction of computer technology and the creation of a single Magistrates' Court of Victoria.[999] Until now the agency of Victorian court staff has remained largely unexamined; this dissertation has put forward five sets of important findings that are derived from the prominent themes arrived at through the analysis of data in NVivo. Their significance is highlighted by analysis of scholarly sources indicated by these themes.

From 'inferior office' to Registrar of the Magistrates' Court of Victoria

Clerks to the Bench were present from the time of Captain Lonsdale and were instrumental in the development of the institution that delivers the Victorian court system (Chapter 2). In partnership with magistrates, clerks established the jurisdiction's processes, service standards and culture. Despite unassuming beginnings, the clerk's role came to exert a considerable authority that was governed but not limited by statutes, regulations and a handbook of instructions. Geographical separation from the executive of the Law Department left the clerks' role largely unregulated in practice and provided scope for initiative, as well as for mistakes and errors of judgement (Chapter 4).

[999] *Court Services Act 2014* (Vic).

Clerks' contribution to the justice system and local communities

Research suggests that a legal system that is respected by citizens contributes to the efficacy of the rule of law more than does the threat of punishment (Tyler 2006). Courts were for nearly two centuries the hub of local communities and their personnel linked with local businesses, sporting clubs and charities. Clerks and their families voluntarily performed key leadership roles in local communities as coaches, club presidents, campaigners and committee members. With the closure of their local court, communities often lost critical capacity, connections and services.

The clerk of courts was a person considered trustworthy, knowledgeable, adept at courtcraft and responsive to the concerns of local people. A subordinate position with little apparent formal authority, the role evolved as a counterbalance against the differentially-weighted powers of the justice system. The clerk was known not only as the local representative of justice services but as 'the poor man's lawyer' and a welfare resource - seemingly incompatible roles (Chapter 4). Known over decades as 'the People's Court', the summary jurisdiction became recognised, especially in regional areas, for a style of service that transcended the grim, punitive model inherited from colonial times (Chapter 2).

As far back as 1976, the Royal Commission on Australian Government Administration ('Coombs Report') recommended decentralisation, empowerment of middle and lower levels of staff and greater flexibility in providing government services (Coombs 1976, p. 26). Modern courts are asked to be connected with society's needs and timely in responding to them (Flango & Clarke 2015).[1000] Courts are reconceptualised as agile institutions that support long-term stability - no longer as icons of adamantine rigidity. As the data supporting this thesis indicates (Chapters 2 and 4), a large measure of this agility has depended upon the discretionary capacity - the scope and power to plan and respond - of street-level court staff (Lipsky 2010).

[1000] 'Effective courts are responsive to emergent societal issues, including everything from drug abuse to gender bias to consumer rights ... Indeed, Standard 4.5 of the Trial Court Performance Standards … requires courts to recognize and respond to emergent issues in order to provide a stabilizing force in society - consistent with its role in maintaining the rule of law.' Flango and Clarke (2015, p. 27).

Discretionary decision-making - face to face with those it impacted - was a hallmark of the clerks' 'street level' operation. Combined with the factors of camaraderie and career aspiration, this freedom to employ professional and values-infused judgement created for many a passionate identification with 'the job'. Although it is said that 'every man invested with power is apt to abuse it, and to carry his authority as far as it will go',[1001] power was, in the main, used responsibly by clerks even in the absence of effective controls and accountability measures. Though procedurally connected with the other justice system functions - investigation, prosecution, enforcement and punishment - the work of clerks largely escaped the often-negative connotations of police and prisons.

Impact of the severance of clerks' nexus with the magistracy

The demise of the master-apprentice relationship between clerks and magistrates was a major shock for staff within the jurisdiction, but a long-anticipated opportunity for the legal profession, including women (Chapter 5).

Since until 1980 in Victoria clerks had been almost the sole source of candidates for the bench, the role of clerk and the office of magistrate were for 150 years structurally and culturally melded; magistrates had grown up in the world-view of clerks.[1002] A government-appointed review of the civil service in 1859 (Chapter 2) had identified the position of clerk of courts as an 'inferior office' to which, paradoxically, 'a superior class of men' could be recruited if a proper system of pay and promotion were put in place.[1003] This apparent contradiction points to greater expectations of an otherwise junior role as 'ambassador in the administration of justice'[1004] and magistrate-in-training. This pact between clerk, executive and bench contributed to effective collegiate relationships between street-level and judicial work groups in the courts. As the demographic and

[1001] Montesquieu and Nugent (1966).
[1002] Douglas and Laster comment in 1992 that 'The Anglo-Australian tradition is to make heroes of our judges rather than our bureaucrats, but the structural and perhaps even the psychodynamic, basis for commitment to law is likely to be similar'; they further remark that 'For our magistrates the "new" reformist objectives of "efficiency" and "accountability" are easily absorbed because they are understood within the "old" traditional value system of the courts - fairness, respect for the law and service to the community'. Douglas, R and Laster (1992, pp. 80,1).
[1003] Civil Service Commission (1859, p. 94).
[1004] 1948. 'Do We Take Pride?' *The Chronicle: Journal of the Clerks of Courts*, 1, 2, February p. 1.

fundaments of the culture changed, a key challenge amidst the disruptions of the 1980s was therefore to re-establish the basis for effective working relationships (Chapter 5).

The proclamation of the *Magistrates' Courts (Stipendiary Magistrates) Act 1978* (Vic) was viewed by some as the beginning of a decline of the Clerk of Courts Group's agency as the cohort's heart and voice. This change was, as we have seen, experienced by many clerks of courts as an existential threat, even though successive waves of legislation would at meta level effect an improvement in the status of the jurisdiction. As seen in Chapter 5, some strategic battles were lost, but the Group's response ultimately expressed a pragmatic recognition of both 'the legitimacy of constraints and guidance imposed by other officials and top administrators' and 'the creative potential and the pragmatic wisdom of street-level judgment' (Maynard-Moody & Musheno 2000, p. 356). The role hewn out by the Clerk of Courts Group over decades may be seen as a mature contribution towards the resolution of one of the key 'dilemmas' of Lipsky's street-level bureaucrats: their relationship to power both as minions in a bureaucracy and as court officials. Its work during this period positioned the cohort for even more significant changes to come.

Case study of a unique legal-institutional culture under challenge

The investigation of micro-cultural anomalies and subcurrents is an enlightening aspect of this research. If, as David Nelken claims, 'legal culture, like all culture, is a product of the contingencies of history and is always undergoing change' (2004, p. 6), this research shows how such a culture may respond and evolve. Three decades and multiple generations of a unique public sector and legal culture are investigated in this thesis. Focus on the clerks of courts presents the opportunity for a singular case study of legal culture and the relationship between 'law in the books' and 'law in action' (Pound 1910).

Courts are known to be steeped in legal tradition and to 'lean back towards [their] historic default position of uniqueness and isolationism' (Laster, McKinna & Wade 2013, p. 95), yet the speed and alacrity of response that was so evident in the 1980s argues a culture

essentially receptive to change.[1005] I contend that in the Victorian magistrates' courts, the managerialist 'gales of destruction that … swept through the traditional public service' (Spigelman 2001, p. 9) resulted in some losses, but also in significant positive change technically as the courts adopted more professional, better-informed practices. In so adapting, clerks were obliged to relinquish aspects of their identity as amateur lawyers and autonomous operators of discrete courts. The consequent recultivation of cohort unity and establishment of more professional practices, stronger skills-base and appropriately focused performance metrics grew capability and credibility. Ultimately this enabled courts to mount more effective arguments for program and infrastructure funding.

Case study of women's entry into a male-dominated workforce

Late in arriving though they were, women brought another dimension of agency to the role of clerk with their perspectives, life experience and skills (Chapter 6).[1006] As we have seen, women in the courts were preceded in the 1940s by earlier pioneers in clerical roles, by special magistrates in the Children's Court and female JPs as early as the 1920s. This did not appear to smooth the path for the first female trainees, and nor did young women fresh from school automatically succeed at roles requiring emotional intelligence; they nevertheless came to play a prominent role in the jurisdiction's adaptation to challenge and change.

Diversity in the courts' demographic presents access to justice as a less alienating prospect for marginalised members of society. Diversity attracts diversity, but the marker of its meaningful accommodation is, of course, that it be active, engaged and engaging - not tokenistic. It should promote the participation of minorities and women as empowered and recognised contributors (Alkadry & Tower 2014; D'Agostino 2017).

[1005] This aligns with the findings of the 1992 study of Victorian magistrates' reactions to this period of unprecedented change: 'The reform of the Victorian Magistrates' Courts is a useful case-study of the organisational culture which can sustain and absorb dramatic organisational change'. Douglas, R and Laster (1992, p. 11).

[1006] The observation was also made of female magistrates: 'The advent of women as judicial decision makers was perceived [by magistrates] to have improved the work environment of the courts'. Laster and Douglas (1995, p. 177).

One significant indicator is that as of mid-2021 the President of the Clerk of Courts Group is a woman (Karen King), and its Executive all-female.[1007] Ultimately, diversity in terms of gender, ethnicity, ability and socio-economic background 'has been shown to strengthen organizational outcomes' (Alkadry & Tower 2014, pp. 16,53) and continues to be aspired to and used as a key organisational statistic in the workforce of courts and other governmental services and institutions.

Future research pathways

This research leaves the cohort at the decisive moment of the 1989 legislation. Did the changes described in the foregoing chapters and refashioning of their role as registrars and the creation of a single Magistrates' Court of Victoria keep open a channel for the expression of clerks' organic service ethos?[1008] In 1998 the Australian Institute of Judicial Administration's report *Courts and the Public* (the Parker Report) expressed serious concerns about Australian courts' responsiveness to their publics, quoting sources describing the courts as 'a very masculine environment': 'The architecture is formal and cold. Authoritarian and intimidating. … People are not treated with sufficient respect. ... At the moment, the court doesn't just intimidate the wrongdoer, the court intimidates everyone'.[1009] The intimidation effect is magnified for some user groups such as Indigenous people, those for whom English is an unfamiliar language and people with complex needs. While the jurisdictions that attracted these comments are not specified, the message is clear and unsurprising: we must continually strive for more accessible and inclusive justice services.

[1007] 2021. *Chronicle: Journal of the Clerks of Courts*, May. The first woman on the executive was elected in 1983, followed by a second nominee in 1987. These honorary positions are elected by the membership and are not subject to outside influence or externally applied rules.

[1008] The term 'organic' is used here in the sense explained by Miriam Green (2019) and Burns and Stalker (1994): 'a structure with a looser definition of roles, more decentralised decision-making and more leeway for expertise over formal authority' (Green 2019, p. 19). Michael Barzelay gives us an itemised description of what organic management might look like: 'Informed public managers today understand and appreciate such varied role concepts as exercising leadership, creating an uplifting mission and organizational culture, strategic planning, managing without direct authority, pathfinding, problem setting, identifying customers, groping along [sic], reflecting-in-action, coaching, structuring incentives, championing products, instilling a commitment to quality, creating a climate for innovation, building teams, redesigning work, investing in people, negotiating mandates, and managing by walking around' (1992, p. 132).

[1009] Parker (1998, p. 146).

The context of government policy itself has become more specialised and responsive, benefiting in no small part from the increasingly active strategic and program engagement of court administration and judicial experts from the 1980s. The operation today of specialist courts and lists that did not exist in the period under study - the Koori Court, Drug Court, family violence courts, the ARC list[1010] - is testament to this legacy. Melbourne Magistrates' Court was sitting seven days a week and some nights before the advent on online hearings. There are newer, purpose-built facilities and better signage. The gender balance in both administrators and judiciary has changed for the better. Yet contemporary courts are larger, busier, and more pressurised places, with digitisation improving efficiency but de-emphasising the personal.[1011]

The theme of women in the courts with its challenging aspects and complementary successes represents a singular picture of cultural change that merits a study in itself. Male-dominated for more than 150 years, the demographic's turnaround has been a remarkable one in an era where women are still under-represented and under-promoted in many traditionally-male professions (Alkadry & Tower 2014, p. 113). The courts compare favourably with other workforce sectors in this regard (as discussed here in Chapter 6); some industries that publicly embrace equal opportunity principles may not have fared as well.[1012] Britton makes the point that, counter-intuitively, it has been found that 'in some cases, *more* bureaucracy, rather than less, appears to reduce gender inequality' (2000, p. 430). Future research might seek to ascertain to what extent the findings from this case study represent an anomaly in state bureaucracies, Australian courts and internationally; and where there are similar outcomes of demographic disruption and accommodation elsewhere, how this has been achieved.

[1010] The Assessment and Referral Court is a specialised court list for accused persons with a mental illness and/or cognitive impairment (Magistrates' Court of Victoria 2018b).

[1011] 'Facilitating access to the law … does not necessarily equate to the blanket application of court methodologies' (Popovic 2013, p. 201).

[1012] A recent study on the banking sector found that a top-rated bank which had been awarded 'best practice in gender equity' was found to be paying lip-service to these principles and not making any significant inroads in improving the status of its female employees. 'The concepts of gender culture and gender subtext are particularly useful for stripping back the facade of commitment to gender equity that organizations such as Townbank are allowed to perpetuate without having to undergo any meaningful change. … women managers are still experiencing a high degree of pressure to accept and conform to masculine norms and behaviors, and those who do so, wittingly or unwittingly contribute to the maintenance of the cultural processes that produce and reproduce gender distinctions' (North-Samardzic & Taksa 2011, p. 213).

Government services can be criticised as unresponsive, as well as ham-fisted and expensive (Wilson 1989). Yet Victorian regional and local courts have tended to defy the truism that dissatisfaction with government services is inveterate (Coombs 1976, p. 31). Ongoing research is indicated to assess the quality of engagement by the People's Court with its users and how the ability of registrars to 'say yes' - to respond positively to daily demands and the evolving needs of our community - is enabled or undermined under the circumstances we face today.

Future studies will no doubt take cognisance of rapid transformations in the work of court staff since 1989.[1013] The court's rapid, technology-driven response to the Covid-19 pandemic supports the contention that 'Organizations are no longer about a fixed structure at a certain time, in a certain place, but modes of organizing across time and place' (Hearn 2019, p. 34).[1014] Susskind and Susskind (2015, pp. 70,228) presciently ask 'whether court is a service or a place; whether people and organizations in dispute really need to congregate in physical courtrooms to settle their differences'. The authors suggest that algorithms may soon be used to predict decisions that would otherwise be made in court. How will the role of the registrar and other 'street level bureaucrats' and their relationship with court users respond to the changes wrought by automation, digitisation, the gig economy and the virtual workplace, where the physical absence of the street-level worker may become as common as the invisibility of the executive?[1015] This has ramifications for all workers and its effects are yet to be examined comprehensively, particularly in respect to those whose grip on employment and career is

[1013] Of course, this is a worldwide issue. From the European perspective: 'Courts are turning to information technology to keep their business open. Staff and judges may be able to work from home. Some courts allow filing documents by (more or less secure) email to keep contaminated paper out of the courts. Various videoconferencing tools are in use to for hearings when necessary. Courts find them surprisingly easy to use. The hardest problem to solve is public scrutiny' (Reiling 2020). https://doryreiling.blogspot.com/ April 8 [accessed 3 February 2021]

[1014] See also Frederickson (2000): 'organizations are not as fixed and rigid as the conventional wisdom holds' (p. 49).

[1015] An example of this is 'NewLaw', an operational paradigm where the 'maximisation of flexibility … allows lawyers to choose their assignments, their hours of work and the site of work. Thus, it may be possible for a lawyer to live and work at a beach resort or interstate by accessing and storing documents on the Cloud; there is no longer even any need to see clients face-to-face when all communications can be effected on-line' (Thornton 2019, p. 20); see also Susskind and Susskind (2015).

loosened due to life circumstances, structural change and an uncertain post-pandemic economic climate.

Research limitations and issues

Interviewees have volunteered information that has never appeared in the public domain. In the current context and with the insight of retrospect some of this data may seem extraordinary. As with any culture, there are blind spots and matters not discussed outside close circles. We noted in the Methodology chapter that this opacity was a key challenge of the research and would always be in research concerning humans.

At the time of writing this concluding chapter (mid 2021) it is clear that, although much has changed for the better in terms of cohort diversity, health and safety and organisational culture, not all is well in the Victorian courts, with several issues of concern having recently been brought to public attention. The suicides of a magistrate and former magistrate and of a Coroner's Court solicitor,[1016] and allegations of sexual harassment and problematic relationships between magistrates and registrars,[1017] point to the need for renewed attention to some of the issues canvassed in this thesis. The recent report, *Preventing and Addressing Sexual Harassment in Victorian Courts and VCAT*, identifies that this problem is endemic across the legal system, that the Victorian courts still lack specific and well-promulgated policies and procedures to deal with it and that people are afraid to report it either as victims or witnesses.[1018]

[1016] A judicial wellbeing committee has since been established in the court, and chamber days and well-being days instituted to relieve some of the stress associated with onerous workloads and adverse publicity (Magistrates' Court of Victoria 2019, p. 20). At staff level, a vicarious trauma prevention and management program is planned, along with ongoing wellbeing focussed information sessions (2019, p. 27).

[1017] See Flower (2019) and Fyfe (2021) for newspaper coverage of a relationship between a junior court administrator and a magistrate that had tragic consequences. Another article quotes law firm partner Andrew Jewell as saying, 'From an employment law perspective, the actual relationship is not a significant issue, but conflict of interest, favoritism, undue influence and power imbalance leading to sexual harassment are all very real concerns when a senior employee is in a sexual relationship with a more junior employee' (Doraisamy 2019). Such problematic relationships, though not of course illegal where consensual, are now covered in the abstract by a Victorian Public Sector Commission 'model policy' that identifies a potential for conflict of interest in some workplace relationships, including those that involve a hierarchy differential (Victorian Public Sector Commission 2016, pp. 4,5). The courts are no longer part of the state public service, but government departments have been encouraged to adopt and adapt the policy.

[1018] 'It is clear from firsthand accounts, institutional submissions and academic research that despite recent initiatives, the current culture, systems and processes do not do enough to protect people who work in the courts and VCAT from sexual harassment' (Szoke 2021, p. 59).

Some issues that have not been addressed (such as contrapower harassment) are also on the radar.[1019] Worldwide attention focussed on the problem of sexual harassment has by no means eliminated its incidence.[1020] These issues may occur in any workplace, but the added dimension of trust in and respect for the institution of the courts and in the independence of its decision-makers adds weight to their consideration - as do the long term effects on individuals personally and professionally. This continues to be backgrounded by the reality of a workplace in which emotions run high and can be expressed through threatened or actual physical violence.[1021]

Any future meta-analysis of the themes raised in this thesis should not neglect groups that many researchers acknowledge have been under-represented in studies for many years (Ringquist & Anderson 2013). As early as 1944, J. Donald Kingsley wrote: 'The democratic State cannot afford to exclude any considerable body of its citizens from full participation in its affairs. It requires at every point that superior insight and wisdom which is the peculiar product of the pooling of diverse streams of experience. In this lies the strength of representative government.'[1022] None of the interviewees for the current study identified as Indigenous.[1023] For much of court history the First Peoples were on the 'wrong side' of the law, and the law and its agents were instruments of cultural

[1019] 'For women who become bosses, their positions create a paradox of power in a gender system that continues to subordinate women. In taking on positions of authority, they also take on a greater risk of sexual harassment' (McLaughlin, H., Uggen & Blackstone 2012, p. 642). See also Rospenda, Richman and Nawyn (1998).
[1020] 'Conversations about sexual harassment dominated the latter half of 2017 and much of 2018, including prolific detail of victim experiences of sexual assault and harassment via the #metoo movement. In universities, as elsewhere, sexual harassment continues. Why is that? Social researchers have concluded that - irrespective of policy provisions - norms of conduct sanction sexual harassment … and penalize both those targeted by harassment and those who speak up on their behalf' (Young & Hegarty 2019, p. 454).
[1021] 'Some Australian courts do not appear to be safe places … people who are deeply antagonistic towards each other are closely confined together for lengthy periods' (Parker 1998, p. 161).
[1022] J. Donald Kingsley *In*: Dolan and Rosenbloom (2015, p. 18).
[1023] There are no statistics available as to numbers of Indigenous people working in the courts during the period under study. Persons who identified as Aboriginal or Torres Strait Islander were at 7.4% of Victoria's population in 2016. In 2018 just 1.1% of Victorian court registrars identified as Indigenous; in 2019, 46 staff identified as Aboriginal and/or Torres Strait Islander, representing a 2.09% Indigenous employment participation rate across Court Services Victoria (2% cent Indigenous employment is targeted across the jurisdictions). Sources: Australian Bureau of Statistics (2017b); Victoria Public Sector Commission (2019, p. 26); Australian Bureau of Statistics (2017a); 2019, p. 19).

oppression and material dispossession.[1024] In my experience Koori applicants for magistrates' court positions in the 1980s (long before the advent of the Koori Courts) expressed a strong motivation to assist their community in engaging with the justice system, a goal that was rarely if ever articulated by other applicants in respect of their own communities. The story of Indigenous engagement in the justice system as court workers represents another significant research gap.

Conclusion

This dissertation is written at a time when the stresses upon judicial operations are acute (Murray, S, Tulich & Blagg 2017; Wilmoth 2018). Work volumes, as shown in the Annual Reports of all jurisdictions, are rising, not steadily but exponentially, and the nature of court business is becoming ever more complex. Registrars continue to shoulder a share of these pressures and support the judiciary in bearing their larger and more public share.

Unless we take the opportunity to capture it in time, the generations pass and take with them valuable institutional and community knowledge. Key aspects of the clerks' history and culture have left little trace in the formal record. With this study we have, however, been given privileged insight into 'something that is so intrinsically systemic and so infused with insider meaning that outsiders may never grasp' (Schein & Schein 2016, p. 266). Derived directly from its custodians, this interrogation of living memory and contemporaneous sources breathes life into the bare bones of a timeline as no other method could. In both its particularity and its applicability, it makes an original, significant and timely contribution to our legal, institutional and cultural understandings and the processes and nuanced impacts of change.

[1024] Indigenous men, for example, were employed as Mounted Police by the Police Magistrates to hunt and round up Aboriginal people.

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Appendix 1
Numbers and details of early clerks, 1837 - 1856

This chart shows the names and dates of appointment of the earliest clerks and the importance and proliferation of regional courts, most of which were established earlier than suburban courts. Sources: NSW, Australia, 'Returns of the Colony, 1822 - 1857, Police Establishments'; *New South Wales Gazette*; *Port Phillip Government Notices*; *Victoria Government Gazette*.

Date	City/suburbs	Name, salary	Country location	Name, salary
1837		E. J. Foster 5s/day, replaced by James Hill for 2 months	Geelong 13/9	Charles Wentworth £100 p/a - till 31/3/39
1837 (23/10) [1025]	Replaced by	James Hill (acting), £45, 12s 6		
1838 (3/1)	Replaced by	Benjamin Baxter £100		
1838 (7/11)	Replaced by	James Smith £150 (temp)		
1839 (1/2)	Replaced by	Horatio Nelson Carrington (less than 1 month)		
1840 25/1		Richard O'Cock (till May 1841) Also Registrar	16/10 Portland	Daniel Primrose (resigned 1841) £100 Also Postmaster from 1/11 & A'g Sub-collector Customs 13/10)

[1025] Appointment dates do not coincide with dates in the *Gazette* - they are usually earlier dates in the returns, suggesting either that incumbents were not 'gazetted' until they had undergone a period of probation or a delay in getting the appointments ratified? Where there is a contradiction, I have used the dates from returns in preference to dates in the *Gazette*. E.g.: Henry Marlay, 1/1/46 in the returns; 10/9/47 in the *Gazette*. Some appointments cannot be located in the *Gazette* indexes (e.g. the first clerk of courts at Port Phillip and the first clerk of courts at Fitzroy Court in 1862, H V Duigan. There is a photo of him with the full bench). He had other government appointments and was probably an acting clerk as well.

			12/2 Geelong	Alfred John Eyre (Jan: replaces Wentworth. Appt also Reg Geelong 22/1/41) £100 and Postmaster from 1/10/41 – 1/1/42)
1841 7/6 - 1/12 1/1 - 31/5 1/12 - 7/1842	(Replacing Kirkland)	Kenneth M Kirkland £150 (Melb & Williamstown) Asst clerk George P McKelvey £100 (went to Post Office) John McLauren,[1026] (dismissed - 7 months)	Portland	James Allison (replacing Primrose) 1/12, £100, then £150 from 1/7/42; extra £30 for Registrar Court of Requests
1842 1/1 - 10 1/11		Asst clerk George Wise (£91.5, then £100 from 1/4), dismissed - 10 months.[1027] Replaced by 'extra clerk' William Redmond Belcher £100		
1843 1/11 1/11		William Redmond Belcher £120 'Extra clerk' Robert Cadden		
1845 1/1	Bourke	Robert Cadden £150		
1846		Belcher and Cadden Belcher has pay rise (extra £91.17.1)	Geelong	Eyre still at Geelong doing both jobs Allison still at Portland (till 1848)
			Port Albert	Henry Bailey Charles Marlay (last appt 14/4/52)

[1026] Had been working in the office of the *Port Phillip Gazette* and was brought in to replace Mr Kirkland during an illness (1841. *Port Phillip Patriot and Melbourne Advertiser*, 18 November p. 2). Possibly dismissed for misconduct at the theatre or the controversy so occasioned.
[1027] Dismissed for "highly improper conduct in the theatre": 1842. *Port Phillip Gazette*, 12 October p. 2

			Port Fairy, 1/1 (aka Belfast)	Andrew W Hume (became Coroner 22/10/51)
1847 1/5		Robert Jerrome (Extra Clerk) £120	12/2 Grange Macedon Pyrenees (/Chepstowe) Broken River Flooding Creek and later Alberton	All@£100 Thomas Butterworth, William Jones, Edward Carey Dunn,[1028] Robert Garnsey Meade[1029] Robert Edmonston[1030]
			Horsham 10/8/ Mount Macedon, 10/8	Patrick McLachlan[1031] George Blackmore
1848			(Replacement) The Grange, Portland Bay 1/2	Robert Savage[1032]
1849			Pearsons Station 13/3 18/7 Lake Colac 1/1 All ROCRs as well	Henry B Kampf Francis S Ingram Frederick William Eicke
			Port Albert 1/11 Eyre at Geelong now paid £150	Robert Ewing[1033] (replacing Marlay[1034])
1850[1035]		Belcher (now paid £250)	All @£100 except Allison £200 Geelong Portland Belfast Grange Burn Chepstowe Benalla, Broken River	 Alfred John Eyre[1036] James Allison Andrew Nelson Hume[1037] Robert Savage Edward Carey Dunn

[1028] Also appointed postmaster at Chepstowe 31/1/49; returning officer Geelong West 20/1/1864; magistrate 5/1/1869
[1029] Also appointed CPS Swan Hill 9/2/53 and Electoral Registrar, Longwood, 12/3/1869 and 15/9/1871
[1030] Also appointed CPS at Alberton, 22/9/1847
[1031] Again in 14/4/1852
[1032] Better known as an inventor (O'Neill)
[1033] Appointed Horsham, 12/1/53 and again 16/3/55. Succeeded by Marlay at Flooding Creek 1/7/50.
[1034] 'Mr. Marlay allowed 12 months leave of absence to assist Mr. Commissioner Tyers on a Trigonometrical Survey of Gipps Land.' Return, Colonial Secretary's Office (1822-1857), 1849 p. 454
[1035] All officers bound with two sureties (bonds) deposited in the Superintendent's Office
[1036] Appointed Acting Police Magistrate in 1851, then Asst Commissioner for Crown Lands at Ballarat and Buninyong, then Deputy Sherriff in 1853.
[1037] Later appointed Coroner for Belfast, 22/10/51

			Mount Macedon 1/10 Horsham Flooding Creek Kilmore 26/2 Pearsons Station (Mosquito Creek) Colac 1/1	Robert Garnsey Meade[1038] Thomas Rutherford 17/1/50,[1039] then Fergus McIvor Hughan Patrick McLachlan Henry Bayley C Marlay John Martin Ardlie[1040] Francis Seymour Ingram Thomas Muspratt[1041]
1851			Colac 3/1/51 Pearsons Station 15/1 Alberton 10/1 Belfast 17/1 Warrnambool 17/1 Bacchus Marsh 17/1 4/3 Hexham 19/3 Carisbrook 2/4 29/12	James S Farrer Steadman Benjamin Bonsfield Creagh Hedley George Dixon John Adam Walpole James McKay James Gordon Lyndon Phillippe Poingdestre Thomas Dennis Lyndon Phillippe Poingdestre Stratford Heron George Lindley
1852			Alberton 7/1 Belfast 24/3 Bacchus Marsh 7/4 Bendigo 12/4 Castlemaine 4/5 Carisbrook 12/5 Alberton 4/6 Benalla 15/9 Kilmore 29/9 Grange 6/10 Bacchus Marsh 13/10 Horsham 13/10	Peter Campbell George Robinson Read Ferdinand Philpott John Thomas Sanders Thomas D S Heron John K Jacob Hood William Hogarth[1042] Hiller Goodman Thomas de Courcy Meade Richard Garton Archibald Minchin

[1038] Also appointed Electoral Registrar for Longwood, 12/3/69 and 15/9/71. His son, Frampton Garnsey Meade, established a scholarship in his parents' honour (https://scholarships.unimelb.edu.au/awards/rg-and-au-meade-scholarship-in-surgery)

[1039] *Gazette* date used here as it is earlier than the date in the Return (1/2/50)

[1040] Known for being one of the first men to bring camels to Australia. His great-nephew, V. John Ardlie, was also a clerk of courts from 1961. He retired as an executive in 2011.

[1041] Also appointed Chief Constable. Several non-court-related appointments follow

[1042] Promoted in Feb 1858 to Clerk in Crown Solicitor's Office (Appt Book), 400 pounds.

			13/10 Warrnambool Williamstown 3/11, then 19/11 Ovens Gold Fields 3/11 Kyneton 10/11 Lexton (Burn Bank) 19/11 Ballaarat and Buninyong 1/12 8/12 Castlemaine 22/11 Bourke	James Mackay[1043] John Martin Ardlie[1044] Frederick R Caffrey[1045] John J Shillinglaw William Alexander Abbott[1046] Wellesley Fletcher Roe Fitzherbert R Caffray[1047] Arthur P Akehurst Charles Edward Calton Thomas Ingram
1853	Heidelberg 7/3 20/12 Dandenong Williamstown 30/12	William Abbott Arthur Drury Edmund Burke	Horsham 12/1 Hexham 2/2, then 22/8 May-Day Hill (Beechworth) 7/2 Seymour Gisborne Burnbank The Leigh Wangaratta7/2, then 16/3 Mackay's Inn 7/2 Kyneton Swan Hill Carisbrook Maiden's Punt 9/2, then 7/3, then 20/12 Castlemaine 9/3 Wangaratta 16/3 Pearson's Station 13/4 Heathcote 11/5	Robert Ewing[1048] Henry Matthews, dec'd, then Richard Kirk George Cue Charles August Henry Carroll George Watson Frederick Charles Hebert Maurice Frederick Ximenes,[1049] then Graham Colville James Mackay John Apperley[1050] Robert Garnsey Meade Wellesley Fletcher Roe Charles Berkely, then George Evans, then Robert Garnsey Meade R A Montgomery Graham Colville George Cue

[1043] Also Registrar of the Small Debts Court.
[1044] From Kilmore.
[1045] Also Registrar of the Small Debts Court. Moved to Lexton same year
[1046] Also Registrar of the Small Debts Court.
[1047] Listed as 'Frederick R Caffrey' in previous appointment, but the same person.
[1048] Vice McLachlan
[1049] https://eurekapedia.org/Maurice_Ximenes. Active in police force (sub-inspector) during the Eureka rebellion and promoted in recognition. Had fought in Carlist Revolution in Spain.
[1050] Apperley was a victim of an attempted highway robbery by six men, one of whom shot at him (5/5/1855). *Gazette* 44, May 18 1855.
[1050] Graham Colville deceased.

			Hepburn's Spring Creek 18/5 Beechworth 8/6 Amherst, Daisy Hill 8/6, then 17/8 Lexton 29/6 Wedderburne, Kerang 17/8 Belfast 22/8 Hexham 24/8 Kyneton 19/10 Barrow's Inn 20/12 Buninyong Maiden's Punt Wedderburn Hepburn Bacchus Marsh Elephant Bridge 30/12	Hodson Peters John O'Mullane John William Waldon Heaton Champion De Crespigny, then Wellesley Fletcher Roe John Deane Wells Heaton Champion De Crespigny William Edward Wheeler[1051] Richard Kirk Andrew Strahan Robert McPherson Richard E Minchin Robert G Meade William Samuel Kightly George L Hutchinson Charles Bushe Plunkett James Prendergast
1854	Warringal (Heidelberg) 13/1	Edward Bathurst	Bacchus Marsh 7/2 Wangaratta 28/3 Maldon 5/4 Harrow 30/5 Wedderburn 28/6 Avoca 4/7 Creswick's Creek 20/12	T J W D'Iffanger Albert Llewellyn Ely Henry Nathaniel L Kentish Benjamin Bousfield Creagh Thomas Henry Probert[1052] Wellesley Fletcher Roe George L Hutchinson (vice Homan)[1053]
1855	Heidelberg 26/6	G A Bartrop	Chepstowe 2/1 Hepburn 8/1 Swan Hill 15/1 Ballaarat (Alma) 12/1 Carisbrook 12/1 Kilmore 1/2	B S Homan (vice Dunn) James Stephen C Coffin[1054] Stephen Walcott H Le Poer Trench Wesley Fletcher Roe A'g Frederick Coster

[1051] (Vice GR Read)
[1052] William Samuel Keightley deceased
[1053] Original appointment of Homan not found. Resigned in 1856.
[1054] Vice G L Hutchinson

			Carisbrook & Amherst 12/2 Carisbrook & Alma 16/2 Ballaarat (Alma) 10/9 Mt Blackwood 10/9 Maryborough 10/9 Swan Hill 10/9	Christopher George Plunkett Francis Ross Lempriere[1055] Arthur Drury John G August Thomas Henry Probert Robert McPherson[1056]
1856	5/5 Collingwood and Prahran St Kilda and Emerald Hill	John Barlow G F Bartrop	Alma, Carisbrooke, Maryborough 15/2 Moliagul 15/2 Castlemaine 5/5 Winchelsea5/5 Mount Egerton and Steiglitz 5/5 Ballan 5/5 Maryborough and Alma 5/5 Cathcart, Mount Ararat 5/5 Buninyong & Meredith 10/6 Raglan Horsham 13/3 Hexham 13/3 Carisbrook 10/3 Avoca and Lexton Swan Hill 2/5 Maryborough 16/6 Alman16/6 Maldon 16/6 Buninyong 30/9 Bourke 14/11	Thomas Henry Probert Corker W. Minchin Edward Townsend Thomas Jardine Henry Poole John Cooper T W McCullogh Corker W Minchin William Lindsell Thomas Henry Probert George McKay[1057] Robert Ewing Wellesley F Roe[1058] Francis Ross Lempriere[1059] George B Perkins Henry N L Kentish Corker W Minchin John Nugent Woods Frank Arthur Hasleham William Lindsell

[1055] Vice John Wells, resigned
[1056] Plunkett transferred
[1057] Vice George Ewing
[1058] Vice Lempriere
[1059] Vice Roe

Appendix 2
Profiles of three early clerks of the Victorian summary jurisdiction

Benjamin Baxter, first gazetted clerk of courts

Benjamin Baxter (1805 - 1892), born in Fermoy, Ireland, was the first person to be announced as a clerk of courts in Victoria in the government *Gazette*, although he held the position for only ten months.[1060] Sailing to Sydney in 1837 as a Captain with the King George 50th Regiment and some 250 convicts,[1061] he joined his wife and two children who had arrived shortly beforehand. Rather than move his family on to India with the regiment, he accepted the combined offices of Clerk of Petty Sessions and Postmaster[1062] in Melbourne at a salary of £200 per year,[1063] sailing on to that new-founded city with his family on the *James Watt*.[1064] He took up residence in a wooden cottage built and owned by John Fawkner,[1065] and he and his wife Martha conducted the business of the Post Office from there until March 1839. Baxter is described by the chronicler Garryowen as 'a smart, gay, good-looking fellow, more at home in the club-room, on the race-course, or running private theatricals, than in the Post Office hole'.[1066]

[1060] 1838. *Port Phillip Gazette*, 17 November, page 4.
[1061] The Prince George sailed from Torbay, Devon on 20 December 1836 and arrived in Sydney on 8 May, 1837 (Thomas, S).
[1062] Other examples of this court clerk/postmaster role dichotomy exist. Henry Turner was Clerk of the Bench and Deputy Postmaster at Wellington Valley from 1838, and Allan Williams was appointed Registrar of the Court of Requests and Deputy Postmaster at Scone in New South Wales in October 1841 (*New South Wales Government Gazette*, pages 152 and 1361 respectively). The Baxters had two children when they arrived, and eventually nine, so the family could not have stayed there long term. Finn (1888) relates Baxter stepping in to financially support the production of *The Widow's Victim*, a 'Laughable Petite Comedy', in 1843 (p. 453). Horatio Nelson Carrington was a steward at the event.
[1063] 1921. Howard, E. *Argus*, Saturday 21 May, p. 6; http://victoria.mypeoplepuzzle.net/getperson.php?personID=I130&tree=VictoriaPioneers, viewed 13 June 2018. Papers held at the NLA.
[1064] Street (2016, p. 36).
[1065] 'A substantial Weatherboarded house 27 feet by 14 feet divided into 2 rooms below and one upper room the whole length [sic] it is well Floored Bricknogged and plastered.' Fawkner's advertisement, cited in Cuthill (1973, p. 35).
[1066] Finn (1888, p. 57). Garryowen cites numerous examples of Baxter's engagement in civic life, being a trustee of the first State Savings Bank in 1838 (p. 326), a member of the Pastoral and Agricultural Society from 1840 (p. 427); he was also instrumental in setting up the Melbourne Club in November 1838 and was one of its inaugural members (p. 417).

Even with the assistance of his wife in taking up most of the postal duties, the combined jobs apparently proved 'impossibly onerous'.[1067]

A report in the *Port Phillip Patriot and Melbourne Advertiser* is critical of Benjamin Baxter and all who profited from the use (and most likely abuse) of convict servants. 'Mr B Baxter charged his assigned servant (IS IT TRUE that this gentleman has NINE CONVICT servants and NOT a ROOD of LAND) Thos. Cowen, with being drunk and absent from his work, FIFTY LASHES on his NAKED back. We earnestly pray the proper Authorities to REMOVE ALL the ASSIGNED servants from this DISTRICT, forthwith. why [sic] are a few individuals permitted to brand the Colony with OBLOQUY, merely to save them a few Pounds a year in wages. Convict SLAVES! do not receive Money WAGES, but the LASH, is not spared upon them.'[1068] Robyn Annear has 'Ben Baxter' appearing as a witness in front of a magistrate who had been awarding the lash all day (mostly in batches of 50 per conviction).[1069] Baxter was outraged that his 'two assigned servants, Joseph Richardson and Hanson Haworth, [were] still asleep in their hut at the brickfield at seven-thirty a.m. "They ought to have their breakfasts and be ready for work at six o'clock," boomed Baxter. "Quite right," agreed the magistrate, "Fifty lashes … ah, there's two of the lazy wretches - make it twenty-five apiece. Next!".' If the story has a basis in truth, we may wonder whether Baxter was bench clerk at the time and recused himself for that one matter; whether he used his court skills (including the booming voice) to present the case to advantage as both plaintiff and prosecutor; and what was the nature of the relationship between Baxter and the magistrate.[1070]

[1067] The words are those of the compiler of Liardet's watercolours and are quoted in Cuthill (1973, p. 36).
[1068] Wednesday 20 March 1839, p. 4.
[1069] Annear (2005, pp. 112,3).
[1070] Of course, there is also the barbaric, arbitrary and idiosyncratic nature of the punishment overall. Ward (2013) points out that the over-zealous application of the cat o'nine tails to convicts by NSW (lay) magistrates had in 1832 been limited by legislation to no more than 50 lashes; the standard had been 100 (p. 156). Rangelov comments poignantly: 'They punished those who shirked work in the stifling Antipodean heat, those who disobeyed orders or were insolent to their masters' (2005, p. 146). Until 1846 there were stocks still standing by the entrance to the police court complex 'erected for the public persecution of the town drunks and rogues. These were a direct relic of medieval England'. John P Rogan's *Melbourne* (National Trust Guides) (1970) quoted in Cuthill (1973, p. 41). Police Magistrate James Blair, a

As with many Melbournians at the time, Baxter showed a keen interest in land speculation;[1071] in 1840 he was active at land auctions in the County of Bourke, paying £525, £1,448 and £727 for lots of land in Melbourne (his status as a retired Lieutenant in the Army earning him a £100 discount on one of the purchases). These were large sums many times greater than his salary and must have put pressure on his finances. This commitment was in addition sadly ill-timed, as the Depression of the 1840s and the resultant crash in land prices was about cast its shadow over the economy of the colonies.[1072] In December 1843 Baxter was declared insolvent, and during 1844 his name appeared in the Sequestered Estates columns in the *Port Phillip Notices* several times. Nonetheless, by October 1848 his fortunes had recovered sufficiently for him to have leased the land near Frankston that became his family estate, 'Carrup Carrup' at Baxter's Flat.

He was appointed Commissioner (Assistant) of Crown Lands for Gold-diggings in 1851, and ultimately became a (probably lay) magistrate on 18 February, 1852; his last

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man of old-fashioned methods, had stocks erected in Cliff Street, Portland, at the location of the courthouse as late as 1854, but they were soon removed on orders from Melbourne (Challinger 2001, p. 156).
The magistrates assigned convicts to settlers and granted tickets-of-leave. Garryowen explains the presence of the convict servants thus: 'The convict prisoners, sent in small drafts from Sydney, varied in number, never perhaps exceeding forty or fifty. These were intended for Government work and (exclusive of two or three hundred ticket-of-leave holders) for private service. They performed any mechanical or menial work required for the Government; some of them were transferred into the mounted police, and others were formed into a gang to make and repair the streets. As a rule, they were a little-good-for blackguard lot, and only for fear of the cat-o'-nine tails, never could be kept within any reasonable bounds of subordination' (1888, p. 40). Magistrates also had servants but were not allowed to flog them, but Ward (2013) notes that 'two ingenious magistrates' had an arrangement to flog each other's convicts 'regularly' (pp. 156,7); also see Neal (1985, p. 67).

[1071] One of his holdings was a large parcel of land that came to be called 'Baxter's Lot', today part of what is known as Collingwood and Fitzroy. At the time of writing, there is a bar called Baxter's Lot in Fitzroy, so in some ways the name has stuck, or at least been remembered as part of the heritage of the place.

[1072] 'Economic conditions began to turn in 1840. The wool industry had reached the bounds of profitable expansion onto new land. Severe drought in 1838-1840 necessitated wheat imports and payment for this drained liquidity from the colonies. The British financial crisis of 1839 heightened British investors' sensitivity to declining returns in the colonies, which in turn slowed capital inflow. A slump in land sales, falling prices and incomes culminated in an upsurge of insolvencies that substantially weakened the banks' (Fitz-Gibbon & Gizycki 2001). According to Finn (1888), total liabilities from 1842 to 1845 were £812,785 7s 6d, but very little was realised by creditors because assets had been overvalued and property had been mortgaged beyond its true value, or dividends absorbed by legal costs. He explains, 'During 1841-3 commercial trading had been greatly overdone, and most of the merchants and settlers of the time had got their affairs into such labyrinths of intricacy and roguery that it became almost an impossibility for any Judge, not gifted with the patience of a Job, to tangled mazes of chicanery, sharp-practice and swindling disclosed by the Nisi Prius, Equity, and Insolvency suits which engaged the attention of the court' (1888, pp. 67,8).

appointment appears to have been as magistrate for Carrup-Carrup in 1875.[1073] Benjamin Baxter was probably the first former clerk of courts to progress to a magisterial appointment (albeit honorary in this case). He is celebrated today as a Mornington Peninsula pioneer; that he was also a pioneer in the Victorian court system is not so well known.

William Belcher, the first 'career' clerk of courts

The son of a solicitor, William Redmond Belcher was born Protestant and Irish in 1814 Dublin. After immigrating, he commenced in the Colonial Service in 1834.[1074] As with many other colonists during that decade, he became insolvent - in 1842, the year he was married to Grace Power.[1075] In the same year he was appointed Assistant Police Clerk, replacing George Wise (Wyse), who had been dismissed by the police Magistrate for 'improper conduct in the theatre'.[1076]

According to Garryowen (1888), Belcher 'had been an auctioneer and transferring his abilities to the Police Court, applied the mental hammer there for so many years that he got to be regarded as one of the best-known men in town. He was not a very pleasant man to look at, and used to "ride the high horse" with the Bench, some of the members of which were rather cowed by him'. This suggests that as an experienced civil servant and clerk of courts, Belcher exerted a certain authority over the unpaid justices.

His letters (some of which may be seen in the Correspondence Book at the Public Records Office) testify to confidence, a level head and a sound grasp of his work. In one letter he argues convincingly for augmentation of the staff, in the process allowing us a glimpse into the busy environment of the court in the 1840s. His time is so taken up by

[1073] Victorian Government (1852, p. 174).
[1074] His parents were Joseph William Belcher and Elizabeth Austin. He was one of 11 children (six boys and five girls). His younger brother George Frederick Belcher (1823 - 1909) was prominent in colonial society, being appointed as Vice-Consul to Norway, Sweden and Denmark at Geelong and Mayor of Geelong (1881 and 1883). His nephew Sir Charles Belcher OBE (George's son) became a judge and took up various postings overseas including that of Chief Justice of the Supreme Court in Cyprus (Brown, L 1969; Walker 1999). Other source: Ancestry.com, 'William Redmond Belcher', accessed online 4 February 2021.
[1075] His Honour Paul R Mullaly QC in (Willis, JW 1841); Cuthill (1973, p. 59). The couple eventually had seven children.
[1076] 1842. 'Semi-Weekly Abstract', *Port Phillip Gazette*, 12 October p. 2.

‘writing for [the justices] …, either in taking depositions, making records of decisions receiving and reporting upon applications drawing up informations preparing committals and a variety of business connected with the Bench’ that the accounts and numerous other paperwork has fallen into ‘disorder and confusion’. He draws attention in particular to the increasing quantum of fines imposed, to the growing incidence of disputes due to people having fallen on hard times, and the business of the ‘convict branch’, with 300 ticket-of-leave holders convicts and 150 assigned servants on the books.[1077]

Garryowen (who had been a newspaper man) relates about Belcher, ‘The newspaper reporters and he often had a tiff, but they were too many for him, or, rather, they had power to carry their wordy war out of Court in a way denied to him, and a caustic paragraph or cutting remark made him cut up anything but comfortably. Belcher was a thorough man of work, an indefatigable official, and at heart a kindly good fellow. It was easy to get up a breeze with him, but when the squall blew over he was not unwilling to forgive and to forget. He held the office of Chief Clerk of the City Court for many years, from which he was deservedly promoted to a Police Magistracy …, and an efficient and impartial Magistrate he made’.[1078]

Belcher seems to have been civic-minded. He was an office-bearer in the (Masonic) Lodge of Australia Felix (No. 474) and an inaugural member and board of management member of the Australia Felix St Patrick’s Society and the Victoria Benevolent Asylum.[1079]

The *Victorian Government Gazette* shows that subsequent to his appointment as Clerk of Petty Sessions at Melbourne on 22 December 1843, he was appointed Acting Chief

[1077] 1844. Letter 121, Correspondence Book, PROV, 16 January.
[1078] Finn (1888, p. 98). Garryowen himself was one of these reporters who was able to air opinions frequently and freely, a privilege not accorded to officers of the civil service!
[1079] Finn (1888, p. 250); also pp. 613 and 646. Established in 1842, the Society was nationalistic and humanitarian rather than religious in tone (only about a quarter of the group being Catholic), stating as its aims ‘the encouragement of national feeling, the relief of the destitute, the promotion of education, and generally whatever may be considered by its members, best calculated to promote the happiness, the honour and the prosperity of their native and adopted lands’. The Society built the Egyptian-styled St Patrick's Hall in 1847 at 470 Little Bourke Street; it was also used as a school for Irish children. It became the first home of the Victorian Parliament from (1851 to 1856), and after its demolition the building that housed the Law Institute of Victoria from 1978 to 2018 took its place (Derkley 2018).

Inspector of Distilleries in 1858, Crown Lands Commissioner and Collector of Customs (1860), and then became Justice of the Peace for the Belfast district (which had been settled by many Irish) in 1869; he was Acting Police Magistrate and Warden of the Gold-fields in 1871 at Alberton, and Coroner later that year. He had numerous appointments as Electoral Registrar before his death in 1873, at the age of 58.

Robert McPherson, Swan Hill: buried in the cemetery he established

The costs of living were higher in the country, since the difficulty and expense of transporting goods to remote areas was prohibitive. Support from the authorities in Melbourne was not readily forthcoming. The story of Robert McPherson shows how problematic this made life and work for a country clerk.

McPherson, born in 1827, was a Cambridge graduate from Scotland who decided to take up a Victorian country posting in the belief that the country air might be good for his 'frail constitution'. His first appointment was as Clerk of Petty Sessions at Barrow's Inn (in northern Victoria on the Campaspe River) in late 1853, after paying two sureties of £500;[1080] the salary was just £300. He took up the position at Swan Hill in 1855.

According to local historian Arthur Feldtman, the only accommodation available at the settlement for McPherson and his wife was 'a miserable hut' (there being only eight houses in Swan Hill at the time). Supplies were meagre and expensive: 'there was no bread, and flour could only be obtained at over £5 per bag. Butter always fetched 2/6 a pound and was seldom available. The standard price of hay, usually brought by river steamer from Adelaide, was £19 per ton, and the publican would charge 15/- a night for stabling a horse. Shoeing a horse at the time cost 16/-, plus sundry drinks for the farrier during or after the operation at 1/- a pot'.[1081]

[1080] A surety was a bond payable by higher-level government employees upon taking up office to guarantee correct performance of duties and discourage them from leaving too soon. Although this seems an extraordinary impost in the light of the relatively low civil service salaries, it shows what men were prepared to do to secure a government position. It is not known whether McPherson's surety was returned to his widow.

[1081] Feldtmann (1973), quoted in an article by Pilgrim L, 1979. *Chronicle: Journal of the Clerks of Courts*, April pp. 85,6. McPherson had selected the site for the cemetery and organised its proclamation by the

When McPherson was asked to service the court at Kerang once a month in addition to his usual duties at Swan Hill, he had to hire a horse at one sovereign per day (police troop horses could not be spared) and pay for accommodation at the public house, a cost of £7 for the three-day exercise (so at least £84 per year). He complained to the Minister that he could not make ends meet, but was told that a change to his salary could only be made by parliamentary vote. One day in April 1859, he collapsed as he was dismounting his rented horse, and died shortly afterwards at age 32. He was the first citizen to be buried in the cemetery he had been instrumental in establishing.

His obituary appeared in the local press: 'Mr. McPherson has for the last five years filled the office of Clerk of Petty Sessions, and Registrar in this district, and the exact and conscientious manner, in which he discharged his duties, has given the utmost satisfaction to all interested parties. Mr. McPherson was but recently married, and we regret to say leaves behind him a young widow to mourn his loss, while his urbanity of manner, and gentlemanly demeanor in private life, had drawn around him a numerous circle of admiring friends, by whom his early death will be long and sincerely regretted. His remains will be interred on Sunday, the 3rd, in the New Cemetery, which he marked out himself, and which is not yet fenced in'. 1859. 'Swan Hill'. *Bendigo Advertiser*, 2 October p. 2.

Governor in Council as one of his diverse duties. See also Swan Hill Genealogical & Historical Society (2007, p. 3).

Appendix 3 Establishing the authorising environment

SIR ZELMAN COWEN CENTRE
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The Head of Jurisdiction

Dear [name],

I trust all goes well with you. I write now to advise that work is about to commence on a history of the Clerks of Court of Victoria. The project is being undertaken by a PhD student, Elizabeth Wade, under the supervision of myself and Adjunct Professor Simon Smith.

This project has been under discussion for some time, largely with the Magistrates' Court of Victoria. The Chief Magistrate has now kindly endorsed the project which will involve interviews with for the most part, retired Clerks of Court and small numbers of judicial officers who were formerly Clerks of Court.

We believe this work will augment the community's understanding of a significant element of Victoria's legal history which has been under researched.

The PhD student is well qualified to undertake this work as she was previously employed in the Department of Justice and Regulation and Court Services Victoria. The researcher also has a significant personal interest in the topic, as members of her family were clerks and magistrates.

I would be pleased to provide any further information you may require about this research.

Yours sincerely,

Professor Kathy Laster

Director, Sir Zelman Cowen Centre

Victoria University

Appendix 4a

CONSENT FORM FOR PARTICIPANTS INVOLVED IN RESEARCH

INFORMATION for PARTICIPANTS:

We would like to invite you to participate in research into the history of Clerks of Courts in Victoria.

The role of Clerks of Courts (now known as Registrars) has been a foundation stone of the administration of justice for more than 170 years but has not yet been methodically researched and documented. The study will enable us to close this gap in our historical knowledge and show the contribution clerks of courts and registrars have made to the administration of justice in this state and to the development and enrichment of local communities. We will explore how this unique group managed court business in times of administrative and technological change.

An important part of this research is the writing of an oral history of Clerks of Courts that will gather the recollections and reflections of senior, retired and ex clerks and those who worked with them. Participants may be working within the court system or elsewhere in the public sector, or may have retired.

Interviews may be by phone or face to face depending on the preferences and situation of the participant.

The researchers undertake to ensure privacy of participants unless their express permission is given to be quoted or identified.

CERTIFICATION BY PARTICIPANT

I, ……..

of ……

certify that I am at least 18 years old and that I am voluntarily giving my consent to participate in the study:

"A History of the Clerks of Courts of Victoria" being conducted at Victoria University by Elizabeth Wade, PhD Candidate, under the supervision of Professor Kathy Laster, Director of the Sir Zelman Cowen Centre.

I certify that the objectives of the study, together with any risks and safeguards associated with the procedures (explained below) to be carried out in the research, have been fully explained to me by Elizabeth Wade, Doctoral Researcher, and that I freely consent to participation involving:

- An interview or interviews with the researcher(s), which may be sound-recorded.

I certify that I have had the opportunity to have any questions answered and that I understand that I can withdraw from this study at any time and that this withdrawal will not jeopardise me in any way.

I have been informed my privacy will be respected and that I will not be identified in publications except with my permission.

Signed:

Date:

Please direct any queries about your participation in this project to researcher Elizabeth Wade, Elizabeth.Wade1@live.vu.edu.au; ph 0428 889 985.

General questions may be directed to Dr Kathy Laster, 9919 1842; email Kathy.Laster@vu.edu.au.

If you have any queries or complaints about the way you have been treated, you may contact the Ethics Secretary, Victoria University Human Research Ethics Committee, Office for Research, Victoria University, PO Box 14428, Melbourne, VIC, 8001, email Researchethics@vu.edu.au or phone (03) 9919 4781 or 4461.

Appendix 4b

INFORMATION TO PARTICIPANTS INVOLVED IN RESEARCH

You are invited to participate

You are invited to participate in a research project entitled "A History of the Clerks of Courts of Victoria".

This project is being conducted by student researcher Elizabeth Wade as part of a PhD study at Victoria University under the supervision of Professor Kathy Laster from the Sir Zelman Cowen Centre.

What is the project about?

The project is to write a history of the Clerks of Courts in Victoria, focusing on recollections from senior and retired clerks of courts and those who worked with them.

The role of Clerks of Courts (now known as Registrars) in the administration of justice in Victoria has been significant and influential for 170 years but has not yet been methodically researched and documented. This project will explore the contribution clerks made to the administration of justice and to the enrichment of communities and aspects of life in Victoria in a time of significant change.

What will I be asked to do?

We would like to invite you to be a part of this study by participating in an interview about your experience in the courts.

The interview will explore your recollections of people, events and important changes during the time you worked in the courts.

Interviews may be by phone or face to face according to your preference and situation. We expect that most interviews will take between 45 minutes and an hour.

We understand that participants' time may be limited, but every effort will be made to accommodate your requirements.

What will I gain from participating?

Your contribution will help us document the untold history of the Clerks of Courts over the last 170 years.

This history may be known by some but is not recorded for all. As someone who has played a part in this history, to the extent you are able to share your stories and recollections, this becomes a permanent part of the record and helps make the story more complete, relevant and alive.

All contributions to this research (including information, photos and other documents) are valued and will be acknowledged in the resulting publication(s).

Participation is entirely voluntary and is not remunerated.

How will the information I give be used?

The information you provide will be used to form a body of research that will result in the publication of a PhD on the History of the Victorian Clerks of Courts. Other publications (such as journal articles) will also be produced.

The information you provide will only be used for the purposes of research. We will not identify you if you do not wish to be identified.

Are there any risks in participating?

- *Your privacy*

Your privacy will be respected throughout the process. We will seek your permission if we need to identify you in any written material that results from the research, unless this information is already on the public record.

You are free to withdraw from any part of the study at any time. Audio-recorded material is kept for reference purposes only and will not be published.

- *Change of mind about participating*

You are free to cancel or terminate the interview at any time.

If you have any objection to the particular researcher interviewing you, we will appoint an alternative interviewer.

- Storage of data

Storage of the data collected from the interviews will comply with the University regulations and kept on University premises in a locked cupboard/filing cabinet for 5 years by Dr Kathy Laster, the Chief Investigator for this research project. Interview data will destroyed after this time has lapsed.

How will this project be conducted?

The researcher will telephone and/ or email you to arrange an interview either by phone or face to face at a time and location convenient to you. A list of the core interview questions will be sent to you once the interview is arranged.

The interview will be conducted in a professional but relaxed manner and you will be free to answer or not answer any questions, and also to share written material and photographs if you wish. The interview will be sound-recorded to ensure the accuracy of the record.

Who is conducting the study?

The study is being conducted by the Sir Zelman Cowen Centre at Victoria University.

The researcher and project contact is Elizabeth Wade, 0428 889 985, email Elizabeth.Wade1@live.vu.edu.au.

Any general questions about the project can be addressed to Dr Kathy Laster, Director of the Sir Zelman Cowen Centre: 9919 1842; email Kathy.Laster@vu.edu.au.

If you have any queries or complaints about the way you have been treated, you may contact the Ethics Secretary, Victoria University Human Research Ethics Committee, Office for Research, Victoria University, PO Box 14428, Melbourne, VIC, 8001, email researchethics@vu.edu.au or phone (03) 9919 4781 or 4461.

Appendix 5

Interview framework

A. Clerks of Courts of Victoria: Interview questions (detailed version)

- Career timeline (including date appointed, date finished – retirement, promotion, left the courts for another job or took leave, and why/ what were the circumstances of the "separation")
- What were the reasons that led you to choose a job or career in the courts?
- Did you see it as a job, a stepping stone, or a career, and why?
- Did or do you have relatives or friends in the courts? To what extent, if any, did this influence your choice to join the courts or to stay there?
- Was your decision to choose a job or career in the courts influenced in any way by family, friends, media or the reputation/standing of the courts? Was this helpful or otherwise, and why?
- Please describe your time in the courts, including:
- Your first impressions and experiences
- Your first job (where and what role)
- Your first boss and the team you worked with – what were they like
- Career highlights – what are you proud of/ what is your legacy and why – what was the impact of these achievements
- Black spots – what would you have done differently/prefer didn't happen or what were some of the things you found difficult or unpleasant; frustrations (examples: unsuitable court buildings; chain of command; access to promotion or job enrichment and training; recognition of talent and achievements; relationships with colleagues; community expectations; stresses at work; ethical issues; health and wellbeing; availability of resources to get the job done and assist the public)
- When and where did you qualify to become a Clerk of Courts or registrar and how well do you think you were prepared (skills, expectations, support from colleagues)
- The sequence of jobs you held (including when and where), including the jurisdictions
- What was the "culture" like, and did it change over time?

- Did you and your colleagues socialise after work and on weekends? To what extent were friendships and relationships tolerated and encouraged?
- What was the nature of the relationship between clerks/registrars and other people in different arms of the justice system? Collaborative, matey, collegiate, antagonistic at times? How would you describe the relationship between clerks/registrars and the magistracy/judiciary?
- How much movement was there between jobs and sectors? If you left the courts, would you be welcomed back?
- Who were the memorable people or unsung heroes you encountered during your time in the courts, and what made them so?
- How do you think your role and the role of the courts impacted on the community? In what ways did you and the courts work productively with the community?
- What were the significant changes that occurred during your time in the courts? What did you think about these changes, and did you play a role in bringing them about? To what extent did you/your colleagues welcome or resist these changes? (examples: changing of the entry, training and qualification requirements, regionalisation, admission of women into the career stream, case flow management, technology, the role of The Department, court closures, problem-solving courts)
- Clerks of Courts used to be known as "the poor man's lawyer". To what extent do you think this was true, and why? To your knowledge was this different for clerks or registrars in other states?
- Did you ever experience conflicts of interest in your worklife, and if so what were these about?
- How did working in the courts affect your family life? To what extent did you achieve a work/life balance over time?
- What contribution do you think Clerks of Courts/Registrars have made to the administration of justice and the life of the Victorian community?

B. Clerks of Courts of Victoria: broad research questions for magistrates

- How did you come to work in the courts?
- Career timeline (including date appointed, date finished – retirement, promotion, left the courts for another job or took leave, and why)
- Did or do you have relatives or friends in the law or the courts?
- Please describe your time in the courts, including:
    - Your first position – where, when, first boss, mentors, colleagues - your first impressions and experiences
    - Career highlights – what are you proud of/ what was the impact of these achievements
    - Black spots – frustrations, what would you have done differently/prefer didn't happen or what were some of the things you found difficult or unpleasant (examples: unsuitable court buildings; chain of command; access to promotion or job enrichment and training; recognition of talent and achievements; relationships with colleagues; community expectations; stresses at work; ethical issues; health and wellbeing; availability of resources to get the job done and assist the public)
    - When and where did you qualify to become a Magistrate and how well do you think you were prepared (skills, expectations, support from colleagues)
    - The sequence of positions you held (including when and where), including the jurisdictions
    - What was the "culture" like in the courts, and did it change over time?
    - Friendships and socialising
- What was the nature of the relationship between magistrates, other judiciary, clerks/registrars and other people in different arms of the justice system? Collaborative, supportive, collegiate, antagonistic at times?
- Who were the memorable people or unsung heroes you encountered during your time in the courts, and what made them so?
- How do you think your role and the role of the courts impacted on the community?
- What were the significant changes that occurred during your time in the courts? What did you think about these changes, and did you play a role in bringing them about? (examples: legislative changes; centralisation/regionalisation; changing role of women in the workplace; technology; the role of the Department; government policy and public sector change)
- How did working in the courts affect your life? To what extent did you achieve a work/life balance over time?

C. Clerks of Courts of Victoria: broad research questions

- Why did you choose a career in the law?
- Career overview (including dates appointed, transitions).
- Please describe your time in the courts, including:
    - Your first appointment – where, when, mentors, colleagues - your first impressions and experiences with clerks and registrars
    - Career highlights – what are you proud of/ what was the impact of these achievements
    - Black spots – frustrations, what would you have done differently/prefer didn't happen or what were some of the things you found difficult or unpleasant (examples: unsuitable court buildings; innovations frustrated; chain of command; access to promotion or job enrichment and training; recognition of talent and achievements; community expectations; stresses at work; ethical issues; health and wellbeing; availability of resources to get the job done and assist the public)
    - What is the "culture" like in the Magistrates' Court, and has it changed over time? How important are friendships/socialising/the collegiate aspects?
- What is/was the nature of the relationship between magistrates and clerks/registrars and other parties in different arms of the justice system? Has this evolved over time, and how could it be improved?
- Who are/were the memorable people or unsung heroes you have encountered during your time in the courts, and what makes them so?
- How do you think your role and the role of the courts impact or have impacted on the community? Have Registrars/Clerks of Courts left a legacy for the Victorian community, and if so, what kind?
- What are the significant changes that have occurred during your time in the courts? What do you think about these changes, and did clerks or registrars play a role in bringing them about? (examples: diversion programs; education and empowerment of court users; changing of the entry, training and qualification requirements in the magistracy; unionisation of staff; legislative change; centralisation/regionalisation; judicial and administrative independence; changing demographic in the workplace; technology; the role of the Department; public sector change)

(Themes to explore: how clerks/registrars impact on access to justice; the concept of the Poor Man's Lawyer; Poor Box/Court Fund; why clerks/registrars are/were known for their passion for the job; how the job of clerk of courts or registrar and magistrate have changed over time, and your thoughts on this aspect; other themes important to you.)