

Université de Montréal

Criminal Justice, Civil Society and the Local State:
The Justices of the Peace in the District of Montreal, 1764-1830

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présentée par:

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ABSTRACT

This study examines the criminal justice system in Quebec and Lower Canada between 1764 and 1830, focussing on its lower levels, the justices of the peace, their courts, and the police, in the judicial district of Montreal. Using judicial documents and a range of other sources, it seeks to reconstruct the structures, everyday operations, and impact of the system.

Though the formal structures of the criminal justice system in Quebec and Lower Canada were modelled on those of England, both the criminal law and the duties and powers of the justices were substantially reshaped to suit colonial circumstances, and underwent important changes in the period, such as the professionalization of the magistracy. The justices themselves were more active, less ignorant of the law, more Canadian, and of a higher social status than usually assumed, though this did not prevent them from acting arbitrarily at times; as well, by the 1820s there were active justices spread through the district. Similarly, policing throughout the period was dominated by a small number of professionals, as in New France, largely based in Montreal but also in the countryside. Though there were many examples of police malversation, this did not indicate a vacuum in policing.

An overview of the experiences of people who came before the justices suggests that the system was at the same time a tool for resolving disputes, a locus of class conflict, and a heavy burden on those at the margins of society. There were far more cases involving interpersonal violence than property, and prosecutors and defendants were generally similar sorts of people; but contact with the system was biased by factors such as geography, class, and sex. And the large number of prosecutions for crimes against the state or the public, directed primarily against ordinary people; the preponderance of Canadians as both prosecutors and defendants; the qualified ability of the system to enforce its orders; and the willingness of people to bring their most intimate conflicts before the justices with little delay; all argue against the marginality of the criminal justice system.

RESUME

La présente étude porte sur le système de justice criminelle qui prévalait au Québec et au Bas-Canada entre 1764 et 1830. Les études antérieures traitent essentiellement des cours criminelles des instances supérieures qui ne touchaient directement qu'un nombre limité de personnes. Ainsi, cette étude est axée sur les instances inférieures du système judiciaire: les juges de paix, leurs tribunaux et l'appareil policier du district judiciaire de Montréal. À partir de documents judiciaires et d'autres documents provenant pour la plupart de sources officielles, il s'agit ici de procéder, en quelque sorte, à une reconstitution des structures, des activités quotidiennes et du champ d'influence du système de justice criminelle de cette époque.

La plupart des auteurs tiennent pour acquis que le conquérant a imposé son système pénal au Québec/Bas-Canada et que les structures formelles de l'Angleterre furent adoptées et subissent peu de changements entre la Conquête et les Rébellions. Cependant, le droit criminel tel qu'il est appliqué par la magistrature n'est pas entièrement d'inspiration anglaise: un bon nombre de lois anglaises ne s'appliquent pas dans la colonie et le cadre législatif local, particulièrement dans le domaine des relations entre la société et l'État, rappelle à bien des égards celui qui prévalait en Nouvelle-France. De même, bien que les juges remplissent des fonctions analogues à celles de leurs confrères anglais dans les étapes préliminaires d'un procès et qu'ils y rendent justice dans des tribunaux calqués sur ceux de l'Angleterre pendant cette époque, le système judiciaire de la colonie se modifie et s'écarte d'une façon significative de celui importé de la métropole. A l'instar des tribunaux de la Nouvelle-France, les tribunaux formelles des juges de paix sont menés par un petit nombre de magistrats établis en milieu urbain et sont alors beaucoup plus centralisées que ceux en Angleterre. Et l'époque où des juges non-salariés traitent à partir de leur domicile les plaintes qui leur sont acheminées s'achève en 1810 alors que le système judiciaire connaît une transformation profonde avec l'établissement du Bureau de Police, auquel sont affectés deux magistrats salariés et une équipe de professionnels.

Le portrait qu'on a souvent peint des juges de paix d'alors n'est qu'une version de la réalité, car il ne s'agit pas uniquement de quasi-notables incompetents, ignorants et plus ou moins en actifs qui se distinguent de la majorité canadienne par la langue, la religion et l'idéologie politique. Certes, le gouvernement central garde le pouvoir unique de nommer les magistrats et le processus revêt souvent un caractère partisan. Cependant, le plus souvent au cours de la période traitée, la majorité des juges en fonction sont francophones, dont la quasi-totalité sont des Canadiens. Par ailleurs, les juges de paix jouissent généralement d'au moins un certain prestige social et la plupart d'entre eux sont actifs. S'il est vrai que, au XVIII^e siècle, peu d'entre eux sont établis à l'extérieur de Montréal, dans les années 1820, ils sont répartis dans l'ensemble du district, quoique les magistrats urbains continuent de dominer le processus judiciaire. Ils sont bien au fait des lois et des responsabilités qui leur incombent; par contre, de nombreux juges de paix ne peuvent certainement pas être cités comme des modèles d'impartialité et de droiture.

Pour ce qui est des structures policières prévalant alors dans le Québec/Bas-Canada, elles sont beaucoup moins rudimentaires qu'on le présume généralement. Bien qu'il n'existe aucune administration centrale ni de corps constitué comme on en connaît aujourd'hui, la police est présente et s'exerce par des agents ayant pour fonction de faire exécuter les jugements rendus par le système de justice criminelle. Il ne s'agit pas de policiers amateurs agissant plus ou moins contre leur gré, mais d'un petit nombre de policiers professionnels, comme cela était le cas en Nouvelle-France. À tout le moins à Montréal, les juges de paix voient à la professionnalisation de la police, en octroyant un petit salaire à un groupe restreint de huissiers et connétables professionnels chargés de la plupart des dossiers en matière criminelle. Ces officiers sont majoritairement francophones, bien qu'il y ait une forte minorité de non-francophones. La plupart sont issus de milieux populaires. Dans une large mesure, les activités policières sont centralisées, et des policiers de la ville vont jusque dans les campagnes pour y procéder à des arrestations et pour y mener d'autres types d'opérations.

Néanmoins, à partir des années 1820, ce sont de plus en plus les huissiers locaux qui exercent les fonctions de police dans les campagnes. Tout comme la magistrature, la police fait l'objet de plusieurs plaintes et de nombreux cas de malversations sont rapportés; cela ne diminue pas leur impact potentiel sur la population.

On peut mieux saisir l'influence et le rôle du système judiciaire de l'époque en passant par l'expérience des personnes qui y furent confrontées. Pour expliquer la place qu'occupe le système judiciaire dans les sociétés d'Ancien Régime, on peut avoir recours à trois principaux modèles théoriques. Chacun de ces modèles décrit le système judiciaire à sa manière : selon le premier modèle, il s'agit d'un instrument de règlement des conflits accepté par consensus social; le deuxième modèle le représente comme un lieu d'affrontement entre les classes sociales où s'exerce la domination d'un petit nombre; enfin, pour le troisième, il s'agit d'un mécanisme ayant peu d'influence sur l'ensemble de la population et qui est surtout dirigé contre les marginaux de la société. Un examen sommaire des relations entre l'ensemble de la société et le système de justice criminelle, au niveau des juges de paix, nous porte à croire, d'après notre documentation, qu'aucun de ces modèles n'est tout à fait satisfaisant. Pour l'époque étudiée, on rapporte de nombreuses causes où il est question de violence interpersonnelle, mais peu qui ont trait à des infractions contre les biens. Dans de nombreuses causes, les parties qui s'affrontent sont issues de la même classe sociale. Tout cela pourrait porter à croire que le système judiciaire au niveau des juges de paix fait l'objet d'un consensus; mais cela ne signifie pas pour autant que les distinctions sociales n'ont aucune importance. Cela est particulièrement évident pour les causes où les intérêts ou les valeurs de l'élite sont en jeu. D'autres facteurs comme la géographie et le sexe sont aussi déterminants dans le rapport que les gens ont avec le système. Cependant, le nombre important de poursuites dirigées contre le peuple pour crimes contre l'État ou la société; le fait que les parties citées à comparaître (plaignants et accusés) soient majoritairement francophones; la capacité du système de faire appliquer les jugements rendus, du

moins en bonne partie; l'absence d'un «boycottage» important par les francophones avant la fin des années 1820; la volonté de certains citoyens de porter rapidement leurs conflits les plus intimes devant les juges de paix; tout cela plaide contre le caractère marginal du système. En définitive, le paradoxe suivant s'impose: d'une part, ce système se caractérise par le fait que rares sont les procès qui connaissent une issue formelle, ce qui n'amoindrit nullement sa capacité à faire appliquer les jugements rendus; d'autre part, un grand nombre de gens continuent d'avoir recours à ce système, en dépit du fait qu'il ne soit pas facile d'accès et qu'il n'est pas du tout exempt de jugements et d'actions biaisés.

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ABBREVIATIONS AND CONVENTIONS

- QSD: documents of the Quarter Sessions of the Peace, in ANQM TL32 S1 SS1. Documents that are part of case files are referred to by the date of the earliest document, usually but not always the deposition; the names of the parties are not given if they are obvious from the text. Other documents are referred to with a brief description and their date.
- WSD: documents of the Weekly Sessions of the Peace, in ANQM TL36 S1 SS1. References follow the same conventions as for documents of the Quarter Sessions, though the earliest document in case files is usually a summons.
- QSR: registers of the Quarter Sessions of the Peace, in ANQM TL32 S1 SS11. When referring to a case, only the month of the sessions are given, since cases usually spanned several days; for all other references, the exact date is given.
- WSR: registers of the Weekly Sessions of the Peace, in ANQM TL36 S1 SS11.
- KBR: registers of the King's Bench and Oyer and Terminer (both form a single series), in ANQM TL30 S1 SS11.
- SSR: registers of the Special Sessions of the Peace, in AVM VM35.
- SSD: documents of the Special Sessions of the Peace, in AVM VM35.

- ANQM: Archives nationales du Québec à Montréal
- AVM: Archives de la ville de Montréal
- NA: National Archives of Canada
- DCB: *Dictionary of Canadian Biography*
- DRCHC: *Documents Relative to the Constitutional History of Canada*
- JHALC: *Journals of the House of Assembly of Lower Canada*
- PRDH: Programme de recherche en démographie historique
- PUL: Presses de l'Université Laval
- UP: University Press
- UTP: University of Toronto Press

References to money in the sources I used were in three currencies: either the local unit of account, Halifax currency, or the imperial unit of account, Sterling (both divided into pounds, shillings, and pence, abbreviated £ sh d, where £1 = 20sh = 240d); or, more rarely, the pre-Conquest unit of account, *livres*. I have preserved the units found originally in the sources.

Ordinances and acts are identified in the standard fashion, by the year of the sovereign's reign, the sovereign, and the chapter number, followed by the year in parentheses, as in 31 George III c.1 (1791). Colonial ordinances passed before 1777, however, were not assigned chapter numbers; as such, these are replaced with the exact title or an abbreviation thereof, as in 4 George III, "An ordinance for regulating and establishing the courts of judicature ..." (1764). Other

legislative instruments, such as proclamations, are identified by the type of instrument and the exact date, as in Proclamation August 9, 1764.

All places are referred to using their contemporary French names rather than modern toponymy; the only exceptions are William Henry (Sorel), and Saint John (Saint-Jean on the Richelieu).

In general, I have made no attempt to standardize any personal names, but have reproduced them as found in the sources; the only exception is the names of justices of the peace.

Following contemporary usage, Canadien refers loosely to the inhabitants of Quebec and Lower Canada descended from the pre-Conquest European population.

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GENERAL INTRODUCTION

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In a box in the Archives Nationales du Québec à Montréal, in a bundle of folded documents wrapped in dirty buff paper, tied with faded pink ribbon, and marked "October 1810", there are three documents. There is a hand-written record of the deposition made by Ursule Nice of Montreal, the wife of James Fox, against her brother, John Nice, a blacksmith: "Ce jourd'hui la déposante étant dans la maison de son frère ou elle demeure, elle aurait été assailli et cruellement battu et maltraité par le défendeur." Then there is an arrest warrant against John Nice, directed to Claude Thibault, one of Montreal's longest-serving constables: a pre-printed form in French, with blanks for specifics such as the name of the accused and the description of the offence. And there is a £10 bond entered into by John Nice for his appearance at the court of Quarter Sessions of the Peace in Montreal in October, secured by William Wragg, also a blacksmith, and John Martin: another pre-printed form, this time in English. All three documents are dated July 30, 1810, and are signed by Thomas McCord, one of the two newly appointed police magistrates of Montreal.

In the same bundle, there are three other documents, dated August 1, 1810, or two days later. There is a deposition made before François Rolland, another Montreal justice of the peace, by Josette Lachapelle, the wife of John Niece (as his name was now spelled), against her mother-in-law, Ursule Dufaut: "depuis longtemps elle deposante a été à différentes fois injuriée de sottises les plus grossière par Ursule Dufaut femme de John Niece père, notamment Lundi le trente juillet dernier la déposante étant dans la cuisine de la maison quel occupe elle auroit été de nouveau invictisée de sottises et assailli et battu par la ditte Ursule Niece et ce sans aucune provocation de la part de la déposante." Then there is an arrest warrant issued by Rolland against Dufaut, directed to Thibault, the constable. And there is a bond entered into by John Niece père before McCord, the police magistrate, for Dufaut's appearance at October Quarter Sessions.

Elsewhere in the same archives, there is a large, heavy tome, bound in decaying leather: the register of the court of Quarter Sessions of the Peace for 1810 to 1814. In the pages that describe the proceedings of the court in October 1810, beautifully inscribed in the copperplate of the clerk, there are entries that detail the repercussions of the first set of documents. On October 21, the grand jury found the indictment against John Nice for assault and battery to be a true bill, and he pleaded not guilty; and on October 25, after hearing witnesses for the prosecution, and the defence, the trial jury found him not guilty, and he was discharged by Thomas McCord, Jean-Marie Mondelet, and François Rolland, the magistrates on the bench. However, there is no mention at all of either Josette Lachapelle or Ursule Dufaut: it is as if the second set of documents, including the bond for Dufaut's appearance, never existed at all.

Taken together, these documents tell us several tales. From a perspective inspired by structuralism and state-formation theory, they are artifacts of the criminal justice system, an institution central to understanding the underlying structures of power and authority in an early modern society. Thus, they reveal the professionalization and bureaucratization of the police and judiciary; the discourse of adhesion to proper form and due process; and the inherent contradictions of a system that imposed conditions that it could not enforce. From a perspective informed by cultural studies and feminist historiography, they are the traces of an intimate world of people, revealing the tensions, power, and violence in an extended family. Thus, we picture a long-established domestic conflict; a brother hitting his sister; the sister's mother hitting the brother's wife; relatives and acquaintances drawn in by both sides; and the inversion of private and public in open court. And from another perspective again, they are not only artifacts of structures and institutions, or reflections of people's lives, but also the by-products of a process: the interaction between people and the criminal justice system, and more broadly between society and the state. Thus, they tell us about how the members of a family sought to bend an unwieldy, biased, and costly institution to their own uses; about how they encountered not only the institution,

but also the people who made up that institution; and how the latter in turn dealt with them. And they leave us wondering why, when Ursule Nice pursued her brother through the criminal justice system as far as she could, Josette Lachapelle went no further than having her mother-in-law arrested by Claude Thibault.

This is a study of an institution, and of a society's interaction with that institution. The institution is the criminal justice system of the state, and especially its lower levels, centered around the justices of the peace; the society is Quebec and Lower Canada, from 1764 to 1830, or from a little after the Conquest to a little before the Rebellions. However, this is not a self-contained history of criminal justice and the criminal law, where the reification of structures occludes the individuals caught up in them. Nor is it a social history of crime and criminal behaviour, where the institutions are merely the providers of documentation. Rather, it is an examination of the criminal justice system, of the people who made it up, and of the people who came in contact with it. And more generally, it attempts to address the nature of the state in Quebec and Lower Canada, and the relationship between the state and civil society, before the development of the "modern" state of the mid-nineteenth-century.

The state before state formation

There have been relatively few scholars who have attempted to theorize explicitly the nature of the state in Quebec and Lower Canada. Nevertheless, there have been some important recent contributions. Thus, Gérald Bernier and Daniel Salée, adopting the classic marxist stance of such writers as Perry Anderson on the feudal states of continental Europe, have argued that the Lower Canadian state was fundamentally absolutist and oppressive, since it was tightly controlled by the central administration and responsive mainly to its wishes, which were in turn the wishes of the propertied elites.¹ In contrast, the work of Bruce

¹"Social Relations and Exercise of State Power in Lower Canada (1791-1840): Elements for an Analysis", *Studies in Political Economy* 22(1987): 101-143; Perry Anderson, *Lineages of the Absolutist State* (London: Verso, 1979).

Curtis and Allan Greer shows the influence of English state-formation theorists such as Philip Corrigan and Derek Sayer, who emphasized the lack of any machinery of government in the English state until the "revolution in government" in the 1830s, and the latitude that this gave to the men of property who controlled the local mechanisms of government that preceded it, via the system known as "Old Corruption."² Thus, though Curtis' main emphasis is on Upper Canada, he directly attacks the model proposed by Bernier and Salée, stressing that "the capacity of the central authority to intervene practically and continuously at the local level was sharply limited in the period before 1840", though noting that at the same time "the structure of governance characteristic in England, in which local authority was sustained through the social and economic dominance of small elites ... was not replicated in the Canadas."³ And Greer's work on the Lower Canadian state in the period during and preceding the Rebellions similarly emphasizes the weakness of central authority: thus for example, he argues that the essential elements of the criminal justice system, the justices of the peace and the constables and militia captains, can hardly be considered part of the state, since they were so deeply imbedded in civil society.⁴ This general view of the weakness and indeed insignificance of the Lower Canadian state before the 1840s is also advanced by Jean-Marie Fecteau, though his influences are more the studies on power and the ancien-régime state of Michel Foucault.⁵

One of the principal characteristics of this literature is that in many respects, the ancien-régime state is defined largely in opposition to what came

²*The Great Arch: English State Formation as Cultural Revolution* (London: Basil Blackwell, 1985), especially 87-165.

³"Representation and State Formation in the Canadas, 1790-1850", *Studies in Political Economy* 28(1989): 65-66.

⁴"The Birth of the Police in Canada", in Allan Greer and Ian Radforth eds., *Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada* (Toronto: UTP, 1992): 17-49; *The Patriots and the People: The Rebellions of 1837 in Rural Lower Canada* (Toronto: UTP, 1994): 87-119.

⁵*Un nouvel ordre des choses: la pauvreté, le crime, l'Etat au Québec, de la fin du XVIIIe siècle à 1840* (Montréal: VLB, 1989).

afterwards. Thus, one assumption is that in the process of modernization, the state became far more extensive and intrusive, and much attention has been paid to the multiplication and expansion of the various organs of the state, such as the civil service or the police, and more generally, to the way in which matters previously considered "private" or at least "non-state" concerns, such as charity, education, or morality, became the purview of the state; the implication is that the pre-modern state was much more limited both in size and in scope. Similarly, there is a great concentration on the growing centralization of power and control in the modern state; thus for example Curtis' focus on the way in which the modern state sought to centralize knowledge through such disparate means as educational institutions, censuses, and scientific inquiries.⁶ And perhaps most importantly, despite the recognition that the state, especially the ancien-régime state, comprised not only "the most prominent elements in the executive and the legislature, but also ... the constellation of agencies and officers sharing in the sovereign authority",⁷ there is a generalized conflation of the state, and the mechanisms of government controlled by the central administration and the colonial authorities, or at least some level of "government" recognizable as such in modern terms; thus the general unwillingness to recognize the structures of local government run by the justices of the peace as forming part of the state, though administratively the justices filled very much the same functions as the municipal councillors who succeeded them, and were in some ways more closely linked to the central administration through their direct appointment by the king's representative.

The notion of a fundamentally weak state in eighteenth-century England, however, is increasingly being questioned. Thus, for example, John Brewer argues that government administration in England in the seventeenth and

⁶*Building the Educational State: Canada West, 1836-1871* (London: Althouse, 1988), and *True Government by Choice Men?: Inspection, Education, and State Formation in Canada West* (Toronto: UTP, 1992).

⁷Allan Greer and Ian Radforth, "Introduction", in Greer and Radforth eds., *Colonial Leviathan*: 9-10.

eighteenth centuries was in fact a great deal more centralized, bureaucratized, and professionalized than has been assumed, and that the state in some very important respects, such as the collection of excise taxes, was in fact well-organized to impose itself at a local level.⁸ Similarly, Norma Landau's work on the justices of the peace in eighteenth-century England has shown how in their petty sessions, the justices in many areas were dynamic and involved administrators.⁹ And likewise, as we shall see, work on policing in England in the eighteenth century has shown that the police as well were less inefficient and unable to impose themselves than was usually postulated.

It is from this perspective of re-evaluating the "presence" of the state in the society of Quebec and Lower Canada before the rebellions that I approach this study. However, my intention is not to propose a general re-definition of the nature of the ancien-régime state. It is, more simply, to re-examine the structures and operation of one important aspect of that state, the criminal justice system; and to consider how it could, and how it did, have an impact on civil society at large.

Structure and scope

The structure and scope of my study is shaped in part by the work that other scholars have already done. Compared to the vast literature concerning the criminal justice systems of Western Europe in the eighteenth and early nineteenth centuries,¹⁰ the history of criminal justice in Quebec and Lower Canada between the Conquest and the Rebellions has received relatively little attention. Nevertheless, there have been some important contributions. In her classic work on the eighteenth-century judicial system of Quebec, Hilda Neatby devoted a

⁸*The Sinews of Power: War, Money, and the English State, 1688-1783* (Cambridge, MA: Harvard UP, 1990).

⁹*The Justices of the Peace, 1679-1760* (Berkeley: University of California Press, 1984): 209-239.

¹⁰For the scope of this literature, see Xavier Rousseaux, "Criminality and Criminal Justice History in Europe, 1250-1850: A Select Bibliography", *Criminal Justice History* 14(1993): 159-181.

chapter to surveying the criminal justice system established after the Quebec Act.¹¹ More recently, both Douglas Hay and Jean-Marie Fecteau have made detailed studies of the implantation of an English criminal justice system in a French-Canadian society, the former concentrating on the period between the Conquest and the Quebec Act, and the latter as part of a larger study of the Lower Canadian state from the late eighteenth century to the Act of Union.¹² Criminal justice in Quebec and Lower Canada has also been treated in more general surveys of the criminal law in Quebec and Canada, most notably by André Morel and by Louis Knafla and Terry Chapman.¹³ And the political uses to which the criminal justice system was put have been discussed by F. Murray Greenwood for the period of the French Revolution, and by Allan Greer for the Rebellions.¹⁴

Although these works take significantly different theoretical approaches and represent quite different ideological perspectives, most of the historiography nonetheless shares several important structural and methodological characteristics. In the first place, the main focus has been on those elements of the criminal justice system that were closely linked to the colony's central administration: on the one hand, the higher criminal courts, especially the courts of King's Bench and of Oyer and Terminer; and on the other, the apparatus of punishment, most notably the prisons. Thus, for example, the emphasis of Neatby, Morel, and

¹¹*The Administration of Justice under the Quebec Act* (Minneapolis: University of Minnesota Press, 1933): 298-319.

¹²Douglas Hay, "The Meanings of the Criminal Law in Quebec, 1764-1774", in Louis A. Knafla ed., *Crime and Criminal Justice in Europe and Canada* 2nd ed. (Waterloo: Wilfrid Laurier UP, 1985): 77-110; Fecteau, *Un nouvel ordre des choses*.

¹³André Morel, "La réception du droit criminel anglais au Québec (1760-1892)", *Revue Juridique Thémis* 13(2-3)(1976): 449-541; Louis A. Knafla and Terry L. Chapman, "Criminal Justice in Canada: A Comparative Study of the Maritimes and Lower Canada, 1760-1812", *Osgoode Hall Law Journal* 21(2)(1983): 245-274.

¹⁴Although both Greer and Greenwood have published several articles on their respective subjects, their work is summed up in their recent books, F. Murray Greenwood, *Legacies of Fear: Law and Politics in Quebec in the Era of the French Revolution* (Toronto: UTP, 1993), and Greer, *The Patriots and the People*. In the chapters where Greer presents a synthesis of Lower Canadian rural society in the early nineteenth century, he also has a short section on the criminal justice system before the rebellions (*ibid.*: 91-100).

Greenwood on the politics and ideology of the law leads them to use only a few select cases, mainly from the higher criminal courts; and while Hay and Fecteau made a more systematic use of judicial records, much of Hay's study, and almost all of Fecteau's, are based on the records of the higher courts and, in Fecteau's case, the prisons. The lower echelons of the criminal justice system, namely the justices of the peace, their courts, and the various subordinate officers whom they supervised or dealt with, especially the police, are noted and described;¹⁵ but their operation and impact are largely left aside.¹⁶

This focus has led to a particular vision of the nature and meaning of the criminal justice system, and more generally of the state, in eighteenth- and early nineteenth-century Quebec and Lower Canada. Generalizations about how the police and the courts worked, the sorts of crimes they dealt with, the people who came in contact with them, and other crucial aspects have been based largely on the practice and operation of one relatively rarefied element of the criminal justice system. However, while the treatment of David McLane by the chief justice is crucial to understanding political events in Lower Canada in the 1790s, it is only indirectly useful in telling us about what might happen to an unlicensed tavern-keeper, or what a battered wife could expect if she made a complaint. But it is precisely these latter sorts of cases that constituted most of the direct contacts between the people and the criminal justice system: "mundane" in that individually they had little broad impact, but probably no less important to their protagonists, and taken as a whole, arguably just as crucial in matters such as the formation of popular perceptions. Thus, I have turned my focus away from those parts of the criminal justice system that were more directly controlled by the central

¹⁵As in Neatby, *The Administration of Justice under the Quebec Act*: 299-307; Jacques L'Heureux, "L'organisation judiciaire au Québec de 1764 à 1774", in *Revue générale de droit* 1(1970): 275-278; or Fecteau, *Un nouvel ordre des choses*: 98-107, 228-232.

¹⁶The only exception is Hay's study, which is based in part on the records of Montreal's Quarter Sessions between 1764 and 1773; however, he nonetheless concentrates on the King's Bench, asserting that it was "the most important criminal court in Quebec in [the period 1764-1773]" ("The Meanings of the Criminal Law in Quebec": 83).

administration, especially the higher criminal courts and the prisons. Instead, I have concentrated on the criminal justice system at its lower levels, centered around the justices of the peace and their courts. In so doing, I hope to bring a different insight to the structure and nature of the criminal justice system, and the impact of the criminal law on society.

Another common characteristic of the literature is that there has been far more concentration on the rhetoric surrounding the criminal law than on the everyday operations of judicial administration. Thus for example, Neatby's main sources were those that reflect the views of the colony's administrators, such as the deliberations and reports of the Executive and Legislative Councils, or the reports of the governors to their superiors in England. And Fecteau, though he did sample the case files of the King's Bench, bases his account far more on newspaper reports, grand jury presentments, House of Assembly records, and other reflections of elite discourse.

This privileging of discourse over practice is partly a function of the state of preservation of the everyday documents produced by the criminal justice system. Legislation, newspapers, Council minutes, official correspondence, and the like are far more accessible than the disorganized bundles of papers and fragmented series of mouldering registers that make up the bulk of eighteenth- and early nineteenth- century judicial records in Quebec, especially since many of these latter were until recently locked up in archives that were virtually closed to researchers.¹⁷ But at least in the case of Fecteau and Hay, who do make systematic use of some judicial records, it is also derived from a conviction that the rhetoric surrounding the criminal justice system was as or more important than how the system operated day to day.

In this oscillation between discourse and practice, I have paid more attention to practice than to the discourse of elite members of society regarding the

¹⁷Most judicial records for the district of Montreal were until very recently stored at the Centre de Préarchivage of the Ministère de la Justice, where access was severely limited, both because the documents themselves were virtually unprocessed, and for various other reasons such as short opening hours and an extremely unhelpful staff.

criminal justice system. In part, this is because the work of Morel, Hay, and Fecteau has already covered much of that ground, providing an excellent discussion of elite discourse concerning criminal law and criminal justice in Quebec and Lower Canada in the eighteenth and early nineteenth centuries; and nothing that I have seen in my research contradicts the broad outlines of their arguments. But it also stems from my persuasion that while elite discourse can tell us much about elite attitudes, and is invaluable in suggesting why elites attempted to change the structure and practice of institutions such as the criminal justice system, it is a very questionable source for either popular attitudes or popular experience.

There was of course a wholly other discourse, or rather set of discourses, relating to the criminal justice system of the state: that of the ordinary people who came in direct contact with it. Unfortunately, even the rich sources that I consulted provided only scattered evidence of this. Occasional documents in the judicial archives evince this popular discourse: a wife-beater who, when assaulting the constable arresting him, shouts his defiance of the criminal justice system, "qu'il se sacroit des connétables et des balifs";¹⁸ or a habitant who declares of his militia captain that "il y avoit longtemps qu'il lui en vouloit et que si la justice ne le satisfaisait pas il le la feroit lui même."¹⁹ But all such statements were at the very least filtered through the pens of the justices or the justices' clerks who produced the documents that have preserved them; and most were also contained within the statements of others, either accusers or hostile witnesses. More fundamentally, these glimpses into popular discourse are so fragmentary that they did not allow me to make any wholesale reconstruction of it, though they are still precious in themselves. Instead, as Douglas Hay was forced to do for the criminal justice system in the first ten years of English rule in Quebec, I have had

¹⁸QSD, Poitras v. Perrault, 11/6/1805.

¹⁹QSD, Hénault v. Mercier, 24/8/1814.

to arrive at popular perceptions of the justice system more circuitously: not through words, but through actions and experiences.

Hay's work raises another important facet of the literature on criminal justice in Quebec and Lower Canada, for he is one of the few scholars to adopt even in part what I would call an "experiential" perspective in seeking to understand the criminal justice system. One can consider the place of any institution in a historical society from two very different perspectives. On the one hand, one can take a "structuralist" approach, in its broader sense, and concentrate on the abstract structures that compose the institution -- its function, organization, composition, and so on -- detailing their transformations, and then relating these to the characteristics of some broader structure, such as the state, the polity, or civil society writ large. Fecteau's work provides a good example: his main interest is "[l]es rapports entre des phénomènes sociaux, tels la pauvreté et le crime, et l'organisation sociale globale."²⁰ On the other hand, one can concentrate less on these impersonal structures in and of themselves, and more on how that institution looked from the perspective of the people whose lives it touched; in a sense, applying the principals of "history from below" to the history of an institution. Constance Backhouse's examination of women and the law in nineteenth-century Canada, for example, takes this "experiential" perspective: she "explores the legal status of women ... by examining individual women who were swept up into the legal process as litigants, accused criminals, or witnesses".²¹

Many works tend to favour either a structuralist or an experiential approach, in part because of the difficulties of marrying the vastly different methodologies required: the one concentrating on typology, aggregate and composite description, and abstraction, and the other on narrative, individual detail, and concrete happenings. Thus, in Fecteau's work, the experiences of the

²⁰*Un nouvel ordre des choses*: 11.

²¹*Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto: Women's Press, 1991): 1.

people caught up in the institutions he explores are left to a few composite descriptions, graphs and tables; while Backhouse confines aggregate numbers to the endnotes, and actually says very little about the institutions within which the women she discusses were swept up. And yet, both approaches are essential to understanding the complex interaction between an institution and the broader society which formed it and within which it resided. Understanding the structural characteristics of an institution is crucial to placing individual experience in proper perspective: Backhouse can only claim, as she does, that her individual cases are representative of a more general experience by citing other more general studies, and her narrative of the experience of the women is firmly grounded on her detailed understanding of the nature and operation of the courts, the police, the criminal law, and other institutional structures. But on the other hand, too close an attention to the structural details of an institution can lead to the identification of contrasts and changes that, from an experiential perspective, are much less important. Thus, classic legal historiography maintains that the structural characteristics of the criminal justice systems of France and England in the eighteenth century were markedly different: inquisitorial procedures versus private prosecution; centrally appointed and professional judges versus locally notable and amateur justices of the peace; judicial torture versus multiple capital crimes. But whether a person was convicted of petty theft in Montreal in 1755 or in 1765, the effect of the whip on their back was very much the same. Likewise, between 1764 and 1838, police institutions in Quebec and Lower Canada were structurally very different from the *archers de la maréchaussée* before the Conquest, or the rural and urban police forces of the Special Council after the Rebellions: locally rather than centrally controlled, remunerated by fees rather than salaried, informally organized rather than bureaucratically structured. Nevertheless, throughout the period as before and after it, people were regularly compelled by these police to do things that they did not want to do: go to jail, appear in court, pay fines, and so on.

My study is divided into three parts. The first two, adopting a more structuralist perspective, concentrate on the apparatus of the criminal justice system at its lower levels, namely the justices and their courts, and the police. And the third presents an overview of the system in operation by looking at the treatment of what have often been termed "petty" offences, in other words complaints or prosecutions that were not destined for trial in the higher criminal courts; it adopts a more experiential perspective, concentrating on the people who came in contact with the police, the justices, and their courts. All three parts, however, contain elements of both the structuralist and the experiential perspective. Thus, my basic yardstick throughout for understanding the characteristics of the criminal justice system is what it meant in everyday terms; in other words, not so much the internal organization and logic of the system as what this meant for the face that it presented to society at large. And although in the third part I pay more attention to personal experiences and narratives, the lack of almost any studies of the actual operation of the criminal justice system at the level of the justices leads me to spend a considerable time simply sketching out the overall characteristics of the operation of the police, the justices, and their courts.

Overall, my study remains an institutional history of a formal, official structure, the criminal justice system of the state, rather than a social history of violence, of crime, or of dispute-settlement. This is not because of any paucity of sources in the judicial archives for these other sorts of studies, especially from the 1790s on; indeed, one researcher, Mary-Anne Poutanen, is already using the richness of the judicial archives to explore the nature of prostitution in Montreal from the 1810s to the early 1840s.²² Rather, it is because simply developing an understanding of the nature and impact of the criminal justice system has been a work in itself. In a sense, just as Jean-Marie Fecteau very ably laid out the

²²"Reflections of Montreal Prostitution in the Records of the Lower Courts, 1810-1842", in Donald Fyson, Colin M. Coates, and Kathryn Harvey eds., *Class, Gender and the Law in Eighteenth- and Nineteenth-Century Quebec: Sources and Perspectives* (Montreal: Montreal History Group, 1993): 99-125.

groundwork for an understanding of the upper echelons of the criminal justice system, of the carceral system, and of elite discourse, I am attempting to do the same for the police, the justices, and their courts.

Time and space

The opening date of my study, 1764, is self-evident: the beginnings of British civil administration, and the concomitant introduction of new state institutions based on the English model, including the criminal justice system, to a population that until four years previously had known only the "justice criminelle du Roi." The ending point, 1830, is more arbitrary; in part it was dictated by my limited access to the judicial archives, but it also avoids the period leading up to and including the Rebellions, which deserves a separate study in itself.

As for space, I had initially intended to examine the justices of the peace and their courts in the whole of Quebec and Lower Canada. However, it quickly became apparent that this was an impossibly vast undertaking. As such, I limited the scope of my inquiry to one part of the colony, namely the judicial district of Montreal. This in turn posed certain methodological problems, since the district did not remain constant through the period of my study: up to the end of the 1780s, it comprised all of the colony's territory west of Trois-Rivières, including, from 1775, the military posts of the interior, and in the 1780s, the Loyalist settlements along the upper Saint Lawrence; in 1788 and 1790 respectively, the lands west of what would later become the Upper Canadian border, and east of Berthier and Sorel, were severed to form new districts; and in 1823, the townships east of Lake Memphramagog were detached as part of the inferior district of Saint Francis. For a number of reasons, I chose to define my area of study as the district of Montreal as it existed after 1790: its history as an administrative unit under the French régime; its relative cohesion as a geographical unit; and the current disposition of archival sources. Thus, wherever possible, I have systematically avoided using examples or aggregate data that concerned areas not within the district of Montreal as it stood after 1790, such as Trois-Rivières and

the inland Loyalist settlements, and excluded these from my quantitative analyses, sample populations, and so on.²³ The small part of the district of Montreal that was incorporated into the district of Saint Francis in 1823, most notably the townships of Stanstead and Bolton, posed a particular problem, since the inferior district had its own local court centered at Sherbrooke; in this instance, I chose to include these townships in my study up to 1823, and to exclude them thereafter.

Sources

Two considerations guided me in my choice of sources. Firstly, given my interest in practice and experience over discourse, I privileged sources that were close to the everyday operations of the criminal justice system, such as court records, over sources richer in elite discourse, such as dispatches from the governor to the Board of Trade or the Colonial Office in England, or the journals and minutes of the various branches of the legislature. And secondly, I wanted to use sources that had not before been used to study the criminal justice system, so that, for example, I did not systematically examine the records of the higher criminal courts.

Within these boundaries, I consulted several main sources. First, there were the court records preserved by the clerk of the peace of the district of Montreal, and now held by the Archives Nationales du Québec at Montreal.²⁴ Among these, the most useful for my study were the registers of the Quarter Sessions of the Peace, for which there is an almost complete run from 1764 to 1830 and beyond; the case files of the same court, which date back to 1780, and are relatively complete from 1790; the surviving records of the Weekly Sessions of the Peace, including the register of the court for 1829, and scattered

²³In some instances, however, as in judicial documents where the place of the parties was not given, this proved almost impossible.

²⁴Thanks to the co-operation of Evelyn Kolish, all criminal court records for the district of Montreal up to and including 1843 have been transferred to the ANQM, where Mary-Anne Poutanen and myself are processing them.

summons and other papers from about 1800; and the preliminary documents produced in the Police Office of the city from 1810.²⁵ Second, there were the administrative records of the city of Montreal prior to its incorporation in 1832; in particular, I consulted the registers and papers of the Special Sessions of the Peace in the Archives Municipales de Montréal, covering the period from 1796 and from 1810 respectively; and the accounts and receipts of the road treasurer of the city, which cover the period from 1797 and are scattered between five different collections in two separate archives.²⁶ Third, there were the papers of the receiver general, now in the National Archives in Ottawa, for the period from 1764 to 1830; these include numerous financial papers concerning the administration of justice, most notably claims for expenses and fees by judicial officials, and the returns of fines imposed by the justices of the peace.²⁷ Fourth, there were the calendars and registers of the gaol and House of Correction at Montreal, which again were scattered through various collections and archives.²⁸ And finally, there were various Montreal newspapers, especially the *Montreal Gazette* from 1785 to 1830, the *Canadian Courant* from 1807 to 1830, the *Montreal Herald* from 1811 to 1826, and *La Minerve* from 1826 to 1830. As well, since I had far fewer sources for the eighteenth century, I also examined two more general sources from

²⁵These are in four main *fonds*: the registers of the Quarter Sessions (for which I use the abbreviation QSR) in TL32 S1 SS11; the cases files and other documents of the Quarter Sessions (QSD) in TL32 S1 SS1; the registers of the Weekly Sessions (WSR) in TL36 S1 SS11; and the documents of the Weekly Sessions (WSD) in TL36 S1 SS1. The disposition of the Police Office documents has not yet been decided; they may simply be integrated into those of the Quarter Sessions, which was where the clerk of the peace usually filed them, or they may be isolated into a separate *fonds*, but for the moment they form part of QSD.

²⁶In the ANQM, these papers are in P20 (Fonds Ville de Montréal), P148 (Collection Charles Phillips), and QSD (from the latter of which they will be separated); and in the Rare Book Room of McGill University, they are in MS469 (Montreal, Road Committee) and MS719 (Montreal, Municipal Administration, John Reid fonds). There may be more of these papers still in private hands.

²⁷NA RG1 E15A.

²⁸The most important of these are the monthly calendars of the Montreal gaol from 1810 to 1828, in NA RG4 B22 volumes 1-4; the register of the gaol from 1826 on, in ANQM E17; and the scattered calendars of both the gaol and the House of Correction, especially for 1800-1810, in QSD.

1764 up to 1800: the papers of the civil secretary of the governor²⁹ and the *Quebec Gazette*. Along with a wide range of complementary sources, these form the basis of my study.

²⁹NA RG4 A1.

PART 1. THE JUSTICES AND THEIR COURTS

PART 1. THE JUSTICES AND THEIR COURTS

On January 26, 1765, the encounter between Charles Rhéaume, a Montreal merchant, and the new criminal justice system of the English conquerors ended in Rhéaume's favour. The grand jury of the Quarter Sessions in Montreal rejected the bills of indictment proffered against him by John Williams, a lieutenant of the 28th regiment stationed in Montreal; and the justices of the peace who presided in the court refused to let the matter go any further. The conflict between Rhéaume and Williams may have been an example of the chronic disputes in Montreal between the military and the city's merchants, though this is usually portrayed as being limited to the tiny Protestant community. But Rhéaume's experience in court was clearly shaped by these tensions. Thus, the foreman of the grand jury that rejected the bills was an English merchant, Edward Chinn; and the same grand jury had earlier made a presentment that called for the troops in the city to be moved from private homes to barracks, for part of the guard-house to be transformed into a House of Correction, and for several other measures that impinged on the military's turf. Even more strikingly, the response of the four justices of the peace on the bench of the court reflected these same party allegiances. The only representative of the military among the magistrates, Moses Hazen, a half-pay army officer, tried to reverse Rhéaume's fortunes by proposing that the grand jury be returned to consider the bills further. But he was over-ruled by the other three magistrates, Thomas Lambe, Jean Dumas Saint-Martin, and Francis Noble Knipe, all civilians (a customs officer and two merchants respectively), "who were the majority for the bills being sufficiently considered", much as they had over-ruled the objections Hazen made earlier to the grand jury's presentment.³⁰

A very different experience was reserved six months later for George, a black man accused of stealing two pieces of silk ribbon from John Grant, a

³⁰QSR 1/1765; the grand jury's proposals, and Hazen's objections to them, are in NA RG4 A1: 4541-46.

Montreal merchant, and brought to trial in the Quarter Sessions in July 1765. The grand jury in this instance had no qualms about the bill of indictment, and since George pleaded guilty, his fate was entirely in the hands of the justices on the bench, Dumas, Isaac Todd (another merchant), and Daniel Robertson (a retired army officer). Despite their different backgrounds, there was no division as there had been in Rhéaume's case. The sentence the justices imposed reflected the importance which they placed both on property crime, and on crime by those on the margins of society: George was to be stripped naked to the waist, tied to a cart-tail, and given sixty lashes, ten each in six different parts of the city.³¹

The fates of both Rhéaume and George were bound up in the nature of the criminal justice system that they encountered: in the structure of the courts, which included a Quarter Sessions where many cases were initially screened by the grand jury; and in the character of the justices who presided in the court and imposed sentences. The four magistrates who decided between Rhéaume and Williams had been in office since August 24, 1764, when Governor James Murray appointed ten justices of the peace for the district of Montreal, in accordance with his instructions to implement English law and erect a court system modelled on that of Nova Scotia.³² Murray's appointees were all resident in Montreal itself; five were merchants, four army officers, and one, Lambe, the collector of customs; and all were Protestant, by virtue of the Test Act, with all but Dumas, a pre-Conquest Huguenot merchant, being anglo-saxon or at least assimilated into anglo-saxon culture.³³ The justices' duties, as outlined by Murray and his Council, were based largely on English precedent. They were to receive information regarding known

³¹QSR 7/1765.

³²Murray's instructions are in *DRCHC* I: 187-189; the commission is in NA RG68 (Commissions and Letters Patent) volume 1: 13-17, and was published in the *Quebec Gazette*, 4/10/1764. The commission actually included twenty individuals, but eight were members of Council appointed *ex officio* but resident in Quebec City, and two others, Conrad Gury and Louis Métral, were residents of Trois-Rivières, which was then part of the district of Montreal.

³³Knipe may originally have been of German descent (Knipt), and another justice, Daniel Friesburg, almost certainly was.

criminals and issue warrants for their arrest. They were to judge all crimes not involving loss of life or limb, in courts similar to those in England, as well as small civil matters (the latter Murray's one departure from the English model, but following the practice in Nova Scotia and other English colonies). And in general, they were "to keep and cause to be kept all Ordinances and Statutes for the good of the Peace and for Preservation of the same".³⁴

Murray's first choice of justices, however, was not felicitous. Some, such as the army chaplain, John Ogilvie, left the country with their units; as Rhéaume's case shows, those that remained became embroiled in the conflict between the army and the merchants; and both Knipe and Lambe disqualified themselves by going bankrupt. By mid-1765, Murray had dropped seven of his original ten appointees from the commission, including Lambe and Knipe; and of the other three, only one, Dumas, continued to act as a justice. The change in justices, however, was of no help to George. Todd and Robertson, two of the justices who sentenced him, were both newly appointed; and the sentence they imposed was little different from that imposed a few months earlier by the first crop of justices on "George a Negro" (perhaps the same person) and William and Elinor March, probably for the same sort of offence.³⁵

Seven decades later, on December 13, 1830, there were two separate encounters between members of Lower Canadian civil society and the criminal justice system of the state. In Sainte-Marie-de-Monnoir, Charles Chainé père and François Dumas, both local farmers, appeared before Rémi-Séraphim Bourdages, a local doctor and justice of the peace. Chainé and Dumas complained that Edouard Massé, who had formerly been the indentured servant of each in turn,

³⁴NA RG68 (Commissions and Letters Patent), 3/9/1764 (oath and general instructions to justices of the peace); 4 George III "An ordinance for regulating and establishing the courts of judicature, justices of the peace, Quarter-Sessions, bailiffs, and other matters relative to the distribution of justice in this province" (1764).

³⁵QSR 5/1765. Unfortunately, the register records neither the names of the justices present at the sentencing nor the exact crime, though it is identified as a felony, and the only felony which the justices were competent to deal with was petty larceny.

had stolen from them, and that he "jouit d'une mauvaise reputation". On the strength of this complaint, Bourdages committed Massé to the jail in Montreal; but he was released a month later when neither Chainé nor Dumas appeared in the Quarter Sessions to prosecute.³⁶ In Montreal, Eloi Beneche dit Lavictoire, a mason and militant Patriote supporter, appeared before Denis-Benjamin Viger, a moderate Patriote, member of the Executive Council, and active Montreal justice of the peace. Beneche complained that William Stewart, a Montreal tavernkeeper, had threatened him and struck him on the head with an iron. When Stewart appeared before Viger later the same day, he complained in turn that Beneche, Joseph Parris (a carter) and André Woolscamp (a labourer) had assaulted him in his tavern and broken up his furniture. Viger bound all the parties to appear at the next Quarter Sessions; however, neither Beneche nor Stewart pursued their formal complaint any further, as there is no trace of them in the registers of the court.³⁷

Bourdages and Viger represented a very different sort of justice from that encountered by Rhéaume and George in 1765. Both had been appointed for the first time in the general peace commission for the district of Montreal issued by James Kempt, the colony's administrator-in-chief, on October 15, 1830.³⁸ The commission named 174 individuals, though this included 36 executive and legislative councillors named *ex officio*, of whom only Viger ever acted as a justice with any frequency. Instead of being concentrated in Montreal itself, the justices in the commission were scattered throughout the district, with only 25 in the city. As in 1764 many were merchants; but there were also many professionals and landowners. Further, the Test Act had long ago been discarded,

³⁶QSD 13/12/1830; QSR 1/1831.

³⁷QSD, Beneche v. Stewart, 13/12/1830, and Stewart v. Beneche et al., 13/12/1830. Beneche was one of the Patriote supporters who was indicted for assaulting the returning officer, a justice, and a constable during the 1827 election in Montreal (*JHALC* 38: Appendix Ee, third report (10/2/1829), and testimony of John Delisle (23/12/1828)).

³⁸NA RG68 (Commissions and Letters Patent) volume 11: 394-404, published in *Quebec Gazette* 19/10/1830.

allowing Catholics into the magistracy; and though the systematic francophobia that pervaded appointments by the administration in the 1820s meant that only about 40% of the justices were Canadiens, Kempt's policy of limited conciliation also meant that a handful of these were known sympathizers of the Patriote party, including both Bourdages and Viger. Finally, the justices' theoretical duties in criminal matters were similar to those of their eighteenth-century predecessors, though they had lost their civil jurisdiction. But in practice, the organization of their activities had undergone considerable change, including the spread of the system of the justices of the peace into the countryside, the bureaucratization of their courts, and the creation and then abandonment of a professional magistracy in Montreal.

This transformation of the criminal justice system of the state, at least at the level of the justices, was crucial in determining the experience of the people who came in contact with it. The decision by Chainé and Dumas, the Sainte-Marie farmers, to launch a formal complaint against their ex-servant, was certainly influenced by the proximity of an active justice, Bourdages; had they been faced with the same choice 65 years earlier, when complaining to a justice would have meant a long trip to Montreal, they may not have been willing to resort to the formal apparatus of the state. And had Beneche made his complaint only three months earlier, his experience too would have been very different. Instead of appearing before Viger, who was from his own ethno-cultural group and sympathetic to his political views, if of an entirely different social class, he would have had to deal with Samuel Gale, an ardent Tory and francophobe who, as Montreal's only professional, stipendiary magistrate, was involved in the preliminary steps in most criminal cases in the city, but who disliked his job and was constantly seeking a better appointment.

This section focusses on the criminal justice system that people like Rhéaume, George, Chainé, and Beneche faced, and especially the justices who were its central component. It is divided into six subsections, each of which addresses a different aspect of the system: first, historiographical orientations;

second, the base system, that of England, and its transfer to the colony; third, the criminal law that the justices were meant to apply; fourth, the powers and duties of the justices; fifth, the process by which justices were appointed; and finally, the justices themselves.

I. The justices judged by the historians

The existing literature on the justices of the peace in Quebec and Lower Canada between the Conquest and the Rebellions is not extensive. Much as in the United States, most scholars have described the justices briefly within broader discussions of the criminal justice system or the state, or at best, have limited themselves to more detailed examinations of their work in specific areas, such as municipal government.³⁹ This is in sharp contrast with England, where there is an extensive literature on the justices and their role in the criminal justice system in the eighteenth and early nineteenth centuries.⁴⁰

There are, however, several commonalities in the prevailing view of the criminal justice system at the level of the justices of the peace. Most writers have asserted that the formal structure of the justices and their courts was modelled closely on that of England, and was in essence a foreign system imposed wholesale on Canadian society, though they also note that the system in practice was very different from that in England. Douglas Hay, for example, notes that "on the establishment of civil government in 1764 there was quickly created a hierarchy of criminal courts closely modelled on those of England ... All of this was confirmed in the Quebec Act of 1774 and subsequently modified only in details", and suggests that the Quarter Sessions in Montreal was structurally very similar to a county Quarter Sessions in England; that the system in practice had a very different flavour and impact from that in England he ascribes to its being

³⁹Works that discuss the justices in Quebec and Lower Canada include Seaman Morley Scott, "Chapters in the History of the Law of Quebec 1764-1775" (Ph.D., University of Michigan, 1933), especially 127-136, 150-151, 165-174, 245-252, and 294-301; Neatby, *The Administration of Justice under the Quebec Act*: 298-305; L'Heureux, "L'organisation judiciaire au Québec de 1764 à 1774": 275-278; Hay, "The Meanings of the Criminal Law in Quebec": 85, 87-88, and 97-98; Knafla and Chapman, "Criminal Justice in Canada": 266-268; David T. Ruddel, *Québec City 1765-1832: The evolution of a colonial town* (Ottawa: Canadian Museum of Civilization, 1987): 161-197; Fecteau, *Un nouvel ordre des choses*: 75-145, 227-270 passim; Greenwood, *Legacies of Fear*: 21; and Greer, *The Patriots and the People*: 92-97. On the historiography of the justices of the peace in colonial America, see John A. Conley, "Doing it by the Book: Justice of the Peace Manuals and English Law in Eighteenth Century America", *Journal of Legal History* 6(3)(Dec. 1985): 257-258.

⁴⁰See below, note 60.

imposed on an unwilling Canadian populace.⁴¹ Louis Knafla and Terry Chapman, in their comparative study of criminal justice in the Maritimes and Quebec and Lower Canada in the latter half of the eighteenth century, take a similar approach, noting that the formal court system was "strictly English", though they emphasize that in practice the system was far more decentralized, far less organized, and far less professional than in either England or the Maritimes.⁴² Only Jean-Marie Fecteau is more circumspect, pointing out that there were a number of minor structural modifications to suit local circumstances, most notably at the level of the justices of the peace, though he too asserts that there was a fundamental similarity in the formal structure of the courts, and that it changed little between 1791 and 1840.⁴³

That the institution of the justices of the peace was broadly similar to that in England, as in most other English colonies, is undeniable. As we shall see, all the main elements were there, with the same names, from justices of the peace appointed by royal commission to formal Quarter Sessions with grand and petty juries. But concentrating on these broad similarities downplays how the details of the institution of the justices, such as the way preliminary hearings were organized, could have as much impact on the people caught up in it as its broader form. Thus, it might indeed matter to potential complainants that their cases were heard before a Quarter Sessions composed of three or more amateur justices, rather than a *prévôté* with a single, professional judge; but what also mattered to them were the office hours kept by the officials from whom they had to get the necessary papers. And more generally, the continuity in these broad structures in

⁴¹"The Meanings of the Criminal Law in Quebec": 81-82, *passim*.

⁴²"Criminal Justice in Canada": 272. Knafla and Chapman ascribe this decentralization and lack of professionalism to the continuing legacy of the criminal justice system of New France; but the pre-Conquest system, with its *prévôté* in Quebec City and *juridictions royales* in Montreal and Trois-Rivières, staffed by professional judges, handling most criminal cases, was at least as centralized and professionalized as that of eighteenth-century England, where the vast majority of cases were handled by county Quarter Sessions and petty sessions, both run by amateur justices. On New France, see André Lachance, *La justice criminelle du roi au Canada au XVIII^e siècle: tribunaux et officiers* (Québec: PUL, 1978): 17-20; on England, see below.

⁴³*Un nouvel ordre des choses*: 102-111.

the seven decades following the Conquest masks how significant changes in the details of their operation meant that coming in contact with the justices of the peace in the 1820s was a very different experience than it had been in the 1760s, as the opening examples suggest.

As for the justices themselves, the existing literature follows very closely the lead of the liberal-reformist school in England, especially the work of Sidney and Beatrice Webb in the early 1900s, which informed most scholarship on the eighteenth-century English justices of the peace up until the 1980s.⁴⁴ Like the state-formation school that came later, this liberal literature emphasized the break between the inefficient ancien-régime state, of which the institution of the justices of the peace was a prime example, and the modern, rational state built up by nineteenth-century reformers. Thus, historians of this school characterized English justices in the eighteenth century either as corrupt tyrants or lackadaisical do-nothings. For the first, they pointed in particular to the "trading" justices of urban areas, and especially London, who would do anything for the appropriate fee ("send a dog to a Middlesex Justice with a shilling in its mouth and he'll come back with a warrant"), while also asserting that some country justices were petty local tyrants. And for the second, they pointed to the gentleman-justices of rural areas who attended to their duties at best sporadically, and were more interested in hunting and imbibing than in dispensing justice. This in turn echoed the views of nineteenth-century reformers, whose writings the later historians often cited in support of their views.⁴⁵

The influence of this liberal-reformist critique on Quebec and Lower Canadian historiography is clear in the following quotations from the scholars who have most recently described the men who were justices between the Conquest and

⁴⁴*English Local Government I: The Parish and the County* (London: Longmans, 1906), especially 319-386. In the same vein were Bertram Osborne, *Justices of the Peace, 1361-1848* (London: Sedgwick, 1960), and Esther Moir, *The Justices of the Peace* (London: Penguin, 1969).

⁴⁵For a brief review of some of these contemporary views, see Thomas Skyrme, *History of the Justices of the Peace* (Chichester: Barry Rose, 1991) II: 1-5.

the Rebellions.⁴⁶ From Knafla and Chapman, "The Justices of the Peace who served in Quarter Sessions were almost uniformly lacking in legal education and training"; "Many of them had scant familiarity with the French language, no knowledge of local customs, and little awareness of their functions as Justices of the Peace".⁴⁷ From David-Thierry Ruddel, "Although some justices and especially members of the King's Bench and the Chief Justices, were knowledgeable lawyers, many were notoriously unqualified and inefficient. Most justices were, moreover, known for their self-interest and acrimonious disputes."⁴⁸ And from Allan Greer, on rural Lower Canada, "JPs were usually well-established members of their local communities ... frequently dependent on the goodwill of their neighbours as customers and clients"; "The regulation of taverns was one area where the JPs were notoriously slaves to public opinion"; "Some magistrates were known more for capriciousness and corruption than laxity. J.A. Mathison, for example, was accused of petty tyranny in the parish of Vaudreuil";⁴⁹ and on British North America in general, "Far from being manned by 'professional' servants of government, the machinery of repression was in the hands of somewhat negligent magistrates ... who exercised their powers on occasion rather than continuously ... Justices of the Peace ... were very much members of their respective communities."⁵⁰

Despite these commonalities, there is nevertheless no coherent picture of the individuals who were justices. Thus, Knafla and Chapman suggest that the

⁴⁶Jean-Marie Fecteau's work, though touching on the structural characteristics of the criminal justice system at the level of the justices, makes no attempt to examine the justices themselves.

⁴⁷"Criminal Justice in Canada": 267, 268. Although emphasizing that most justices fit this mould, Knafla and Chapman do note that a few were competent; however, their examples are odd, since the first "competent" justice they describe, Captain John Fraser, never actually acted as a justice, largely because he was so heavily embroiled in the disputes between the military and the merchants at Montreal, and was in fact involved in several direct confrontations with the Montreal justices.

⁴⁸*Quebec City 1765-1832*: 188. Ruddel explicitly cites the Webbs as his main source for understanding the British system (162-163).

⁴⁹*The Patriots and the People*: 95-96.

⁵⁰"The Birth of the Police in Canada": 19.

justices had little knowledge of the society in which they lived, while Greer emphasizes how much rural justices at least were part of their local communities; and while Ruddel argues that the justices were "highly visible both in the town and country [and] probably more powerful than their counterparts in Great Britain" and that "the justices of the peace upheld imperial policies in a local setting",⁵¹ Greer states that they can hardly be considered representatives of the state. In part this stems from the different scope of each work: while Knafla and Chapman's study is an overview of the whole colony to 1812, based largely on secondary sources, Ruddel's research concentrates on Quebec City from 1765 to 1832, and Greer is concerned mainly with rural Lower Canada in the 1820s and 1830s. But there are also internal inconsistencies in each picture. Thus, if the justices in rural Lower Canada were bound by public opinion and a fear of offending their neighbours, as Greer suggests, how did a magistrate like Mathison survive in Vaudreuil, how many others like him were there, and how did this affect the impact of the criminal justice system on civil society? And if many of the justices were unaware of their functions, as Knafla and Chapman suggest, how were they able to organize to impose 488 fines between 1779 and 1787 and to hold Quarter Sessions with "long court calendars", as the authors state earlier in their study?⁵²

Apart from their outright dismissal of the justices as mainly unskilled/corrupt/tyrannical/negligent, another element which links most of the existing studies on the justices in Quebec and Lower Canada to works like those of the Webbs in England is their use of exemplary sources, and in particular their ready acceptance of the views of contemporary reformers and other critics of the justices. As more recent work in England has shown, accepting the information provided by nineteenth-century reformers is at best problematic, so that even the existence of trading justices, described by another liberal-reformist historian, Leon

⁵¹*Québec City 1765-1832*: 167.

⁵²"Criminal Justice in Canada": 266-267.

Radzinowicz, as so notorious that it was not worth investigating, is questionable, at least in the sense of justices who made a living from retailing their services, though there is no doubt that justices were corrupt in other ways.⁵³ Thus, Guy Carleton's oft-quoted assertion, that "there was not a Protestant butcher or publican, that became a bankrupt, who did not apply to be made a justice,"⁵⁴ should be contrasted with James Murray's statement that the justices were "worthy men who very disinterestedly give much of their time and attention to the public".⁵⁵ Likewise, the standard account of the reasons for the removal of the justices' civil jurisdiction in 1770, based largely on the testimony of Carleton and his councillors accusing the justices in general of abusing their powers,⁵⁶ should be placed against the unusual minority report of one of the councillors, Walter Murray, exonerating most of the Montreal justices,⁵⁷ and the indignant response of Pierre Du Calvet, one of the justices who had been highly critical of some of his fellow justices and fully in favour of reforming of the system, who felt that the many had been punished for the sins of the few.⁵⁸ And both should be seen in the context of a power struggle between the administration at Quebec and the colony's

⁵³Leon Radzinowicz, *A History of English Criminal Law and its Administration from 1750* II (London: Stevens & Sons, 1956): 32; for a recent re-interpretation, see Ruth Paley, "'An Imperfect, Inadequate and Wretched System'? Policing London Before Peel", *Criminal Justice History* 10(1989): 98-100.

⁵⁴Cited in Scott, "Chapters in the History of the Law of Quebec": 298; Neatby, *The Administration of Justice under the Quebec Act*: 98; and L'Heureux, "L'organisation judiciaire au Québec": 315.

⁵⁵Murray to Burton, 9/10/1765, in NA MG23 GIII series 1 volume 2.

⁵⁶This is the most commonly cited fact on the justices of the peace in Quebec between 1764 and 1775; see among others A.L. Burt, *The Old Province of Quebec* (Toronto: Ryerson, 1933): 173-174; Scott, "Chapters in the History of the Law of Quebec": 294-295; Neatby, *The Administration of Justice under the Quebec Act*: 98-99; L'Heureux, "L'organisation judiciaire au Québec": 289-290; Robert Rumilly, *Histoire de Montréal* (Montréal: Fides, 1970) II: 34-35; Hay, "The Meanings of the Criminal Law in Quebec": 88; Knafla and Chapman, "Criminal Justice in Canada": 266-267; and Ruddel, *Québec City 1765-1832*: 167.

⁵⁷NA RG4 A1: 6617-21.

⁵⁸On Du Calvet's support for reform, see NA RG4 A1: 6544-45, 6547-49, and 6623-24, and his proposed regulations for the justices, 6551-60; his angry response to the removal of the justices' civil powers, dated 15/4/1770, is in RG4 A1: 6683-83.

merchants, from whom the Montreal justices were largely drawn.⁵⁹ Thus, while the views of Lord Durham and the Patriote press on the ineffectualness and corruption of the justices in the 1820s and 1830s are crucial in reconstructing contemporary reformist discourse, in the way Jean-Marie Fecteau has done for the criminal justice system in general, neither can be considered reliable indications of how the justices actually operated, and what their impact on society really was.

This does not mean that we should believe the Murrays and Du Calvets, for they were probably just as biased; but it serves to illustrate that basing a conception of the practice of the criminal justice system on a foundation of discourse is tenuous at best. Nor is it any indication that the justices of the peace in Quebec and Lower Canada were fair-minded, selfless public servants who impartially judged their fellow citizens, for as we shall see there is ample evidence to the contrary. But to dismiss them out of hand as either ineffectual, or corrupt, or both, based only on a few exemplary cases and the testimony of contemporary critics, is both too easy, and too polemic. And more fundamentally, downplaying their impact on society ignores the experiences of George and the thousands of other people on whom their impact was very great indeed; and it does not explain why, if the system was in such disrepute, Chainé, Dumas, and thousands like them went to the trouble of appearing before a justice to make a complaint.

⁵⁹Du Calvet made this explicit when he noted in 1769, with regards to his fellow justices, that "il est visible qu'il se forme icy un party pour aneantir les ordonnances et se soustraire à l'obéissance que l'on doit au gouvernement, et j'esperre même qu'il est tems que l'honorable gouverneur et conseil y mettent un frein par un règlement dont il ne sera pas permis aux juges à paix de s'écarter sans crainte d'être démis de leur employ" (NA RG4 A1: 6548); an example of the independence of the Montreal justices was in 1768, when after a fire destroyed a large part of the city, the Montreal justices took it upon themselves to write to all the governors on the continent asking for assistance (NA RG4 A1: 6527). On the diverging views between Carleton and the merchants, see Hilda Neatby, *Quebec: The Revolutionary Age, 1760-1791* (Toronto: McClelland and Stewart, 1966): 99-100.

II. The English system and its transfer to Quebec

The justices of the peace were one of the oldest and most fundamental elements of the English state, dating from the late middle ages. In its ideal form, the institution of the justices represented a close intermeshing of the interests of the central administration and of local elites. On the administration's side of the equation, appointing local elites as justices and investing them with the power of the state co-opted them into the enforcement of laws and the application of administrative policies often defined by statutes of the Parliament in London. For the landed gentry and other local notables, appointment as justices served to confirm their status as elites, both through the honour it bestowed and through the power it gave them over the rest of the population, while at the same time ensuring that, as the principal local representatives of the state, they retained their control over local society and local affairs. The system in practice, of course, did not always function so smoothly, especially in urban centres, and especially in the eighteenth century, with the development of judicial corruption in the cities, a shortage of justices willing to act in rural areas, and a general dissatisfaction with the system; but even at its nadir, in the late eighteenth century, it still had the potential to affect the lives of a very great number of people.⁶⁰

The theoretical duties of the justices were extensive and diverse: by the late nineteenth century, one historian could write that "long ago, lawyers abandoned all hope of describing the duties of a justice in any methodic fashion, and the

⁶⁰The best recent general works on the justices in eighteenth-century England are Landau, *The Justices of the Peace*, and Skyrme, *History of the Justices of the Peace*, especially II: 1-163. Although both suffer from a lack of any class analysis, they largely supersede older, more polemic works such as that of the Webbs. Other useful works in understanding the place of the justices in the English criminal justice system include Douglas Hay, "Property, Authority and the Criminal Law", in Douglas Hay et al., *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (Middlesex: Penguin, 1975): 17-64; J.H. Baker, "Criminal Courts and Procedure at Common Law 1550-1800", in J.S. Cockburn ed., *Crime in England 1550-1800* (Princeton, NJ: Princeton UP, 1977): 28-29; Richard S. Tompson, "The Justices of the Peace and the United Kingdom in the Age of Reform", in *Journal of Legal History* 7(3)(1986): 273-292; Dietrich Oberwittler, "Crime and Authority in Eighteenth Century England: Law Enforcement on the Local Level", *Historical Social Research* 15(2)(1990): 3-34; and Robert Shoemaker, *Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex, c. 1660-1725* (Cambridge: Cambridge UP, 1991), although there are also many others. Unless otherwise noted, the information in this section is drawn from these sources.

alphabet had become the one possible connecting thread."⁶¹ In general, they were meant to fill three different roles: performing the preliminary steps in most criminal cases, often referred to as their "ministerial" function; formally judging offenders in a variety of venues; and acting as local administrators in a wide range of low-level matters from the regulation of markets to the supervision of the poor. It is in their first two roles, as agents of the criminal justice system, that they concern us here.

From their close involvement in the preliminary steps of most criminal actions, the justices were at the point of contact between society at large and the criminal justice system of the state. In criminal cases ranging from minor statutory infractions to murder, the justices were either the first or second representatives of the justice system whom complainants and defendants encountered, depending on whether and at what stage police were involved. Justices heard complainants, issued warrants or summonses on the merits of the complaint, examined defendants and witnesses brought before them, either by virtue of their orders or on the initiative of police or private prosecutors, and determined the course of the defendants' criminal process, whether summary judgement before the justices hearing the complaint, binding over by recognizance (bail-bond) to the next formal court, or imprisonment until trial. One scholar has even argued that the justices acted as *de facto* public prosecutors in felony cases, investigating complaints and gathering evidence to be presented to the trial court, although others have suggested that this was uncommon.⁶² For these preliminary proceedings, justices in most areas of the country operated on their own, from their own parlours; the main exception was London, which from the 1730s saw

⁶¹Frederick Maitland, quoted in William Searle Holdsworth, *A History of English Law* (London: Methuen, 1966) I: 286.

⁶²John H. Langbein, "The Origins of Public Prosecution at Common Law", *American Journal of Legal History* 17(4)(1973): 313-335; J.S. Cockburn, "Trial by the Book? Fact and Theory in the Criminal Process, 1558-1625", in J.H. Baker ed., *Legal Records and the Historian: Papers Presented to the Cambridge Legal History Conference, 7-10 July 1975, and in Lincoln's Inn Old Hall on 3 July 1974* (London: Royal Historical Society, 1978): 60-79.

the opening of several public "Police" or "Rotation" offices with magistrates, professional clerks, and constables in regular attendance, at least in theory.

As well, justices were often personally involved in the state's attempts to impose public order. When class and state interests dictated the repression of popular disturbances such as labour confrontations or election riots, it was the justices who had the responsibility of organizing and leading the civil forces of the state, usually constables and special constables. And if these "normal" measures of force failed, it was for them to exercise the ultimate violent sanction, calling in the troops.

There was also another very important aspect to the justices' ministerial function that verged on their judicial role: their power to bind defendants not only to appear in a court, but also to keep the peace and/or be of good behaviour. In a strict formal interpretation of the law, justices in their ministerial function were never supposed to "resolve" cases in favour of the prosecutor. All they could do was ensure that the case went on to trial in the appropriate venue, by issuing the appropriate warrants or summonses, requiring defendants to enter into a recognizance to appear, or committing them to; their only other unquestionably legal option was to stop the proceedings entirely by deciding that there was not enough evidence against the defendant. However, justices acting alone, in their ministerial functions, could also "resolve" a wide range of cases in which they did not have the power to impose a formal judgement, such as threats and assaults, by requiring the defendant to enter into a recognizance to keep the peace towards the prosecutor, or to be of good behaviour in general; and they could enforce these decisions by imprisoning defendants who did not comply. In effect, this was a quasi-judicial function of the justices that lay midway between their ministerial and their strictly judicial functions.

Justices also formally acted as judges in a number of different venues. For common-law crimes, the *mala in se*, that is to say "self-evident" crimes (at least according to Judaeo-Christian standards) such as murder or larceny that were defined by tradition rather than by written law, the justices only held jurisdiction

in their courts of Quarter Sessions of the Peace. The commission that appointed the justices gave any two of them the power to hold a court to try offences committed within their counties; as the courts were generally held every three months, they were known as "Quarter Sessions".⁶³ The general jurisdiction of these county Quarter Sessions extended to all felonies and a range of other lesser offences; as such, in theory it overlapped that of the perambulatory royal courts, the Assizes, that visited the counties once or twice in every year. However, by the eighteenth century, capital offences were in practice reserved for the Assizes, and Quarter Sessions tried crimes whose punishments did not extend to the loss of life and limb: non-capital felonies, such as simple larceny, and misdemeanours, such as assault and battery. The Quarter Sessions were regular, formal courts, complete with grand and petty juries for indictable offences, and a range of lesser officers; most notable among these latter was the clerk of the peace, usually a professional, paid administrator responsible for organizing the court and keeping records of the proceedings.

Apart from the Quarter Sessions, justices also decided cases summarily in less formal hearings, either alone or in combination with other justices; when held more or less regularly by two or more justices, these came to be known as "petty sessions." These hearings were generally held either in the justices' own parlours or, in the case of the more regular petty sessions, often at local taverns, although in London the Rotation offices served as summary courts. The justices' summary jurisdiction had no customary basis, and thus did not extend to common-law offences. Instead, it rested entirely on the numerous statutes that created new offences or re-defined old ones, a practice that began in the late middle ages and reached a crescendo in the eighteenth and early nineteenth centuries. If they were not capital, these new statutory offences, or *mala prohibita*, as they were called, were often placed specifically under the jurisdiction of the justices, sometimes in

⁶³If these courts were held at different intervals, they were properly known as courts of General Sessions of the Peace, although in practice the two names were interchangeable.

Quarter Sessions, but most often in their petty sessions and other hearings. The accretion of such statutes across the centuries led to a vast patchwork of summary jurisdiction for the justices, ranging from infractions of the game laws through disturbances of the peace to breach of conditions of service. When combined with their jurisdiction over common-law offences in Quarter Sessions, this meant that by the mid-eighteenth century, the various courts of the justices were the prime venues for the trial of most lesser criminal offences in England.

The institution of the justices of the peace was transplanted wholesale into most of Great Britain's colonies, as part of the constitutional law of England that was automatically received into all such colonies.⁶⁴ The appointment of justices was considered a royal prerogative, exercised by the king's representative (usually the governor), who named them as he saw fit, without reference to the colonial legislature.⁶⁵ As such, in many American colonies the appointment of justices was never mentioned in colonial legislation, although this did not mean that it was in any way illegal.⁶⁶

The newly conquered colony of Quebec was no exception, and justices of the peace were among the first officials appointed after the formal cession of the colony and the end of the military régime. In August 1764 Murray issued commissions appointing justices in each of the two districts into which he divided the colony, Quebec and Montreal; since the wording of these commissions was almost identical to that used in England, the full panoply of the English justices' ministerial functions was also automatically conferred on the Quebec justices. A

⁶⁴On the legal principles of reception relating to constitutional law, see J.E. Côté, "The Reception of English Law", in *Alberta Law Review* 15(1977): 41-43; citing Dean Walton, he includes among the list of areas where English public law automatically supplanted all previous law "the powers and duties of public authorities" and "administration of justice". For an overview of the introduction of the justices of the peace into English colonies, see Skyrme, *History of the Justices of the Peace* III, although the account is sometimes sketchy.

⁶⁵This power was explicitly established by the governors' commissions; see for example James Murray's commission, *DRCHC* I: 177.

⁶⁶Erwin C. Surrency, "The Courts in the American Colonies", *American Journal of Legal History* 11(4)(1967): 348.

few days later, he issued a proclamation announcing these appointments, and outlining the justices' duties as judges: in civil matters, they were to try all cases up to £30, with jurisdiction varying by the number of justices present; and for criminal cases, they were to sit in two formal courts, Quarter Sessions of the Peace, held every three months in Quebec City and Montreal, and Weekly Sessions of the Peace, essentially regularized petty sessions, held in the two cities every Tuesday. As well, since many of the statutes that conferred summary jurisdiction on English justices were automatically received into the colony, the English system of summary hearings outside of formal courts was also transferred to Quebec.⁶⁷

Apart from the justices' civil jurisdiction, the system of justices and courts implanted by Murray, in its broad outlines, resembled that of England and other English colonies, and remained largely unchanged through to the end of the 1820s and beyond. The justices were lay judges, appointed from among the colony's elites by the central administration and responsible only to it. They were the principal judicial officers responsible for preliminary criminal proceedings, and for maintaining public order. And they also tried offenders in venues similar to those in England, both formal Quarter Sessions and summary hearings.

But despite these broad similarities and continuities, the system of justices in Quebec and Lower Canada was significantly different from that in England, and also changed substantially between 1764 and 1830. Even the desire of the colony's administrators to mirror the situation in England should not be overstated. From the beginning, they and their masters in London recognized that the English criminal justice system and the entirety of English criminal law were not directly suited to the colony, and could not be transplanted wholesale and without

⁶⁷NA RG68 (Commissions and Letters Patent) volume 1: 13-17; proclamation of James Murray, 28/8/1764. These provisions were re-iterated a few weeks later in the ordinance setting up the courts, 4 George III "An Ordinance for regulating and establishing the Courts of Judicature, Justices of the Peace, Quarter-Sessions, Bailiffs, and other matters relative to the distribution of justice in this Province" (1764). On the civil jurisdiction of the justices, see Donald Fyson, *The Court Structure of Quebec and Lower Canada, 1764-1860* (Montreal: Montreal History Group, 1994): 41-48, 59-64.

modification. Thus, for example, James Murray's instructions were to establish a judicial system based not on that of England, but rather of Nova Scotia, where the English criminal justice system had already undergone substantial transformations to suit colonial circumstances, though maintaining many of its basic elements.⁶⁸ And Murray's first commission to the justices of the peace specified that they were to try all offences "against the form of the ordinances and statutes or any one of them therefore made for the *common* benefit [my emphasis] of that part of our kingdom of Great Britain called England and our people thereof or any law, ordinance, rule or regulation of our said province of Quebec hereafter in that behalf to be made", reflecting that, as we shall see, only part of the criminal law of England was introduced into the colony, and that colonial modifications of the law were, within certain bounds, both allowed and expected, though again all on a foundation of English law. Over the next seven decades, the system of justices envisaged by the colonial administrators and the colony's successive legislatures showed this same duality, of an essentially English system being continually modified to suit colonial circumstances, or at least the desires of colonial elites.

⁶⁸*DRCHC* I: 187. For an overview of the criminal justice system in Nova Scotia, see Chapman and Knafla, "Criminal Justice in Canada", and Sandra Oxner, "The Evolution of the Lower Court of Nova Scotia", in P.B. Waite et al., *Law in a Colonial Society: The Nova Scotia Experience* (Halifax: Carswell, 1984): 59-79.

III. Defining the criminal: the criminal law

As André Morel has shown, there was considerable debate as to whether the English public law that was automatically introduced to the Quebec on its cession to England in 1763 also included English criminal law, even though the Royal Proclamation of 1763 seemed clearly to introduce the laws of England in their entirety.⁶⁹ Whatever the legal niceties, the effect of both the cession and the Royal Proclamation was that the entirety of English criminal law, both common law and statute law, as it stood in 1763, became the criminal law of Quebec, so that anything that was an offence throughout England in 1763 was also an offence in Quebec from 1764. There was, however, a very important proviso to this generalized introduction of English criminal law: it did not apply to offences defined by statutes that concerned purely "local" situations in England rather than those "manifestly intended to be of general effect throughout the realm."⁷⁰

The Quebec Act re-iterated the provisions of the 1763 proclamation, although whether it also brought in all statutory modifications to English criminal law between 1763 and 1774 is debatable. The wording of the statute was vague: later nineteenth-century courts generally held that it did; but at least one Montreal King's Bench grand jury in 1826, including some of the city's most active justices of the peace, thought that the criminal law of Lower Canada was based on that of England as it stood in 1763.⁷¹

From 1775, however, it is certain that the only modifications to the criminal law of Quebec and Lower Canada were those made by colonial legislation, apart from a few statutes of the English Parliament that applied generally throughout the empire.⁷² And scholars who have examined colonial legislation are almost unanimous in stating that the changes that it made to the

⁶⁹"La réception du droit criminel anglais au Québec": 453-465.

⁷⁰Scott, "Chapters in the History of the Law of Quebec": 84.

⁷¹Morel, "La réception du droit criminel anglais au Québec": 472; KBR 9/1826.

⁷²For example, the various Imperial statutes concerning desertion, such as 5 George III c.33 (1765).

criminal law were minimal. Thus, Jean-Marie Fecteau states that "aucune modification fondamentale ne sera apportée au code pénal bas-canadien ... jusque dans les années 1820."⁷³ And André Morel concurs, stating that the provisions of the Quebec Act allowing the governor and Council to modify the penal law of England remained a dead-letter until 1792, and underwent only minor modifications up until the Black acts of the early 1840s.⁷⁴

And yet, this appearance of stasis and of strict adherence to English criminal law is misleading. Though what exactly constituted a "local" situation was open to interpretation, in Quebec and Lower Canada it was apparently taken to apply to such important English statutes as the game laws and the poor laws, crucial to defining a large part of the offences tried by justices in England; and as a result, a whole range of activities that the state prohibited in England, such as moving from one parish to another, were not offences in Quebec. Thus, in 1765, to the question of the Council, "Whether or not the Justices of the Peace in this colony ... have not the same powers as those in England?", the attorney general, George Suckling, answered "I do not apprehend that [they] have the same powers as those in England (except such matters as are particularly pointed out in their commission) ... many acts of Parliament have given powers to Justices of the Peace to do, or take cognizance of matters which in their nature being local, cannot extend to the plantations."⁷⁵ Further, between 1764 and 1830, there were over a hundred colonial ordinances and acts that defined new offences and placed them under the jurisdiction of the Montreal justices of the peace, representing perhaps a quarter of all legislation which conferred rights or imposed obligations

⁷³*Un nouvel ordre des choses*: 111.

⁷⁴"La réception du droit criminel anglais au Québec": 473-474.

⁷⁵NA RG4 A1: 5429. For a discussion of the legal authorities, see Scott, "Chapters in the History of the Law of Quebec": 84-87. On a more practical level, there are no examples of either the game laws or the poor laws (apart from the bastardy law) being applied in Quebec and Lower Canada.

on residents of the district of Montreal.⁷⁶ Neither Morel nor Fecteau were unaware of these statutory modifications; the problem is rather one of definition, and specifically the restricted definition that they and other historians have adopted of "criminal" and the "criminal law".

A. Criminal offences: some problems of definition

Defining what constitutes a "criminal" offence is not easy. *Black's Law Dictionary* takes a catholic approach: "any act done in violation of those duties which an individual owes to the community and for the breach of which the law has provided that the offender shall make satisfaction to the public. A crime or public offence is an act committed or omitted in violation of a law forbidding or commanding it and to which is annexed upon conviction either or a combination of the following punishments ...;" but it also prefaces its definition by stating that "'Crime and 'misdemeanour' properly speaking are synonymous terms though in common usage 'crime' is made to denote such offences as are of a more serious nature."⁷⁷ Some historians of criminal justice tend toward the latter definition, and following more or less the old common-law distinction between the *mala in se* and the *mala prohibita*, they distinguish between offences considered self-evidently criminal and not first defined by statute, such as murder, assault, or theft, and those which were not offences until defined by legislation, such as forgery, smuggling, or poaching. While there is nothing inherently wrong with this, they then use these categories to downplay or even exclude from the "criminal" law the *mala prohibita*, and then make generalizations about the criminal law based only on the *mala in se*. Thus, for example, in his study of crime and the courts in England between 1660 and 1800, John Beattie distinguishes between what he describes as "mainstream" or "interpersonal" offences (essentially crimes of

⁷⁶Between 1764 and 1830 there were about 450 such ordinances and acts, excluding those that simply continued previous legislation, or that dealt only with appropriations or other supply matters; of these, about 110 defined new offences and placed them under the jurisdiction of justices.

⁷⁷*Black's Law Dictionary* (St. Paul, MN: West, 1977): 334.

personal violence from murder to assault and the full range of thefts and other property offences) and what he terms "social" crime (his examples being smuggling, poaching, coining, and riot); asserts that the former were "the offenses that contemporaries generally had in mind when they talked about 'crime'" and what they were really concerned about; and then focusses his study only on offences that fell into the first category.⁷⁸

Though historians of Quebec and Lower Canada have been less explicit about defining the "criminal law", many have taken a similar view. Thus, Murray Greenwood states that "the criminal laws were amendable in the colony but local legislation of any substance was very rare. The main concern was to add penal clauses ... to statutes of administrative regulation, applying to such things as the militia, road maintenance, stray cattle, and unqualified medical practitioners."⁷⁹ Similarly, in arguing that there were no changes whatsoever to the English criminal law before 1792, André Morel notes that "le Conseil ne soucia jamais, dans le domaine pénal, d'aller au delà de ce qui entre dans la catégorie des lois de police: réglementation du commerce et des marchés, de la vente d'alcool, du transport et de la voirie;" and elsewhere he refers to "le criminel proprement dit - ce que Gage appelait les 'Crimes atroces Comme assacin, Viol ou autres [crimes] Capitaus'".⁸⁰ The only exception is the study by Knafla and Chapman, which, though making the distinction between the *mala in se* and the *mala prohibita*, nonetheless includes both in the definition of the criminal law.⁸¹

The problem with the more restrictive definition of the "criminal law" is twofold, for it both oversimplifies what contemporaries considered "criminal", and ignores the perspective of those caught up in the criminal justice system. What

⁷⁸*Crime and the Courts in England, 1660-1800* (Princeton: Princeton UP, 1986): 6-8.

⁷⁹*Legacies of Fear*: 20.

⁸⁰"La réception du droit criminel anglais au Québec": 473, 455.

⁸¹"Criminal Justice in Canada": 245-246.

was meant in the eighteenth and early nineteenth century by the term "criminal" is not clear-cut. Thus, in England, the work of historians like E.P. Thompson and Douglas Hay on "social" crimes, such as poaching and smuggling, shows very clearly that many members of the elites considered these actions to be crimes that were certainly more heinous than simple assaults, if only because they made so many of them punishable by death.⁸² And as Robert Shoemaker has argued, "the preindustrial definition of crime was far broader than our own, including offences we would label as sins, torts, or breaches of administrative regulations."⁸³

In Quebec and Lower Canada, the definition of "criminal" was equally fluid. It is indeed possible to find many examples where the term was reserved for more serious offences: in 1764, Murray's Council prepared and had published an abstract of "most of the statute laws relative to criminal offences" which covered statutory provisions concerning everything from treason and murder through the various thefts to burning houses, extortion by threatening letter, and forgery, but none of the myriad lesser statutory offences;⁸⁴ the courts of King's Bench and of Oyer and Terminer, the main venues for more serious crimes, were often collectively referred to as the "criminal" court, distinguishing them from the Quarter Sessions and other courts; and the 1826 King's Bench grand jury declared that since 1763 "our criminal legislation in fact has remained nearly stationary."⁸⁵ But it is equally possible to find examples on the other side, both in legislation and in the views of contemporary jurists. Thus, an 1806 statute declared that persons convicted of adulterating flour were liable to an additional penalty "over and above the punishment to which they are now liable by the criminal laws of

⁸²See for example the articles in Hay et al., *Albion's Fatal Tree*, or E.P. Thompson's *Whigs and Hunters: The Origin of the Black Act* (Harmondsworth: Penguin, 1977).

⁸³*Prosecution and Punishment*: 6. I would argue that even today, breaches of administrative regulations are considered crimes: thus, for example, the major division for offences used by statisticians today is not between crimes and petty offences, but between highway offences and other offences (*Canadian Crime Statistics, 1992* (Ottawa: Statistics Canada, Canadian Centre for Justice Statistics, 1994).

⁸⁴NA RG1 E1 volume 1: 146-159.

⁸⁵KBR 9/1826.

this Province";⁸⁶ a 1795 petition from Montreal's justices of the peace to the House of Assembly noted that "the criminal law of the province is sufficient to punish bakers, as well as all others who fraudulently sell their commodities short of weight";⁸⁷ and in his charge to the Quarter Sessions grand jury in April 1828, David Ross declared that

The Quarter Sessions, tho' an inferior court, has yet very extensive powers; is of great importance in the general administration of criminal justice; and takes cognizance of many municipal matters and regulations ... You will have to pay that particular attention to the minor crimes which they really deserve and require, for if they are not effectually crushed they will probably be but the prelude to crimes of greater magnitude and occupy the higher courts.⁸⁸

This broader definition of "criminal" was perhaps clearest, however, in the response of the chairman of the Quarter Sessions at Quebec City, Jean-Thomas Taschereau, to queries as to charges in his accounts for prosecuting drunks:

Whenever a charge of drunkenness is laid against a person, it becomes the duty of the magistrate (in as much as drunkenness is by law a crime) to inquire into and determine upon the accusation in due course of law ... were police officers to neglect arresting them, the magistrates might with good reason be censured for not employing the powers with which they are by law invested for repressing crime, and the higher authorities of the law have ever urged the magistrates to exercise strictly that part of their duty.⁸⁹

If contemporary usage is of little use in defining what "criminal" meant, what of general acceptance by the community of an action as criminal? Defining criminal offences as those which "most" people considered as such is certainly valid, but it takes the analysis to a whole different level. From the "criminal" we would have to exclude all murders generally considered justified, thefts against highly unpopular landlords or employers, assaults where the party assaulted was generally disliked or shunned, and, in bleaker terms, all rapes where the prevailing community opinion was that the victim had "deserved" or "asked" for

⁸⁶46 George III c.4 (1806).

⁸⁷*JHALC* 4: 15.

⁸⁸*Montreal Gazette* 3/5/1828.

⁸⁹NA RG1 E15A volume 60 file "Quarter Sessions of the Peace 1827".

it, and all domestic violence sanctioned by social norms; and in addition we would have to add the whole series of actions considered "crimes" by the community that were not recognized or sanctioned by the state. This would in effect transform a study of the criminal justice system of the state into something quite different, namely an analysis of the norms of social behaviour, an entirely different problem with very different sources.⁹⁰

Further, from the perspective of those caught up in the system, and especially the accused, that an offence was a *mala prohibita* rather than a *mala in se* did not in any way lessen the impact of the criminal justice system. Thus, a simple assault and battery was certainly prohibited by the "criminal" law, but as we shall see was usually punished by a fine not exceeding £1, and only rarely involved imprisonment; on the other hand, servants or apprentices who disobeyed the regulations established not even by the colonial legislature but by a more local body yet, the justices of the peace, were subject to a fine up to £10 and up to two months in the House of Correction. That the former was an indictable offence tried by jury while the latter was tried summarily by two justices of the peace did not make the impact of an assault and battery accusation any greater.

Because of these considerations, I prefer to include in my definition of a criminal offence anything where an individual performed an action that was expressly prohibited by the state and to which some penalty was attached. This is not to argue that a person accused of murder was regarded as no more criminal than a person who neglected to shovel the snow in front of their lot, or was treated in the same way. But instead of a sharp demarcation between criminal offences and other offences, I would argue that there was a continuous spectrum of offences, from murder and treason down to neglecting to level cahots, that came under the broader rubric of the "criminal" law.

⁹⁰For a modern approach to the problem of accepting community standards as definitions of the "criminal", see Thomas Gabor, *Everybody Does It: Crime by the Public* (Toronto: UTP, 1994).

B. Colonial modifications to the criminal law

Taking stock of all of the modifications to the substantive criminal law, writ large, that were made in Quebec and Lower Canada between 1764 and 1830 is an enormous task, even if it is limited to those provisions which directly concerned the justices. In addition to the hundred or so colonial ordinances and acts which created or re-defined specific offences and placed them under the jurisdiction of the justices, the justices themselves throughout the period had the power to make and enforce regulations for the internal regulation of the city of Montreal, and, more sporadically, other towns and villages in the district. Taken together, these significantly changed the range of offences for which people might appear before the justices.

1. The legislature and the justices

As Fecteau and Morel noted, the various legislatures of Quebec and Lower Canada made almost no substantial change to the definition of the more serious sorts of criminal offences. There were several laws that changed the statutory penalties for various offences: most importantly, for most of the period from 1799 to 1819, in cases of grand larceny, petty larceny, clergiable felonies, and any other crime punishable by transportation, judges could substitute imprisonment in the House of Correction for the usual sentence; and in 1824, the death penalty was abolished for most types of larceny.⁹¹ But the only change to the substantive criminal law regarding the *mala in se* was the 1789 provision that re-defined petty larceny from theft of goods worth under 1sh, to theft of goods worth 20sh Sterling or less.⁹²

⁹¹The provision allowing judges to exercise leniency in larceny and other cases were contained in the various acts setting up the Houses of Correction, 39 George III c.6 (1799), 51 George III c.11 (1811), and 57 George III c.10 (1817). For a description of other changes, see Fecteau, *Un nouvel ordre des choses*: 111-112, and Morel, "La réception du droit criminel anglais au Québec": 473-75.

⁹²29 George III c.3 (1789). In 1817, the provisions of this act that required justices to bail those accused of petty larceny were dropped, but the definition of petty larceny was maintained (57 George III c.30 (1817)).

However, the legislatures of Quebec and Lower Canada made very significant changes to the *mala prohibita*, especially with the creation of new offences which were then often placed under the jurisdiction of the justices of the peace in their various courts.⁹³ Some of these offences involved matters that were arguably just as "serious" as many of the *mala in se*: thus, for example, various ordinances and acts prohibited the forging or debasing of currency and other monetary instruments other than the currency of Great Britain, whose forgery was already considered treason.⁹⁴ Likewise, though most of these offences were punishable by fines, some involved the more serious sanction of imprisonment. Thus, despite the instructions that expressly prohibited both Murray and Carleton from making laws "that shall in any ways tend to affect the life, limb or liberty of the subject",⁹⁵ seven of the forty-odd ordinances passed between 1764 and 1773 specified prison terms for various offences, from ship-masters helping people leave the province without a pass, to fraudulent firewood-sellers.⁹⁶ And between 1777 and 1830, some forty different ordinances and acts defined offences and made them punishable by imprisonment on summary conviction before the

⁹³A complete list of the ordinances and acts which expanded the summary jurisdiction of the justices is presented in Appendix II.

⁹⁴For example, 4 George III "An ordinance for regulating and establishing the currency of the Province" (1764), which prohibited coin-clipping; 17 George III c.9 (1777), 36 George III c.5 (1796), and 48 George III c.8 (1808), which set the penalties for counterfeiting foreign currency; and 51 George III c.10 (1811), which prohibited the forging of foreign bills of exchange.

⁹⁵*DRCHC* I: 185, 304.

⁹⁶The seven ordinances were: 4 George III "An ordinance for regulating and establishing the currency of the province" (1764); 5 George III "An ordinance for preventing persons leaving the province without a pass" (1764); 5 George III "An ordinance to prevent disorderly riding horses ..". (1764); 5 George III "An ordinance, relating to soldiers and seamen ..". (1765); 6 George III "An ordinance for regulating and establishing the admeasurement of fire-wood ..". (1765); 6 George III "An ordinance for the better and more regular providing of fire-wood for the use of His Majesty's forces ..". (1765); and 8 George III "An ordinance for appointing pilots ..". (1768). None of these ordinances were disallowed.

justices, with for example the successive militia laws attaching terms of imprisonment, usually between a week and two months, to various offences.⁹⁷

Some of these "new" offences were hardly novel, since they were analogous to similar offences in England defined by "local" legislation that had not been received into the colony: selling liquor without a license, for example, or selling goods with un-regulated weights and measures.⁹⁸ However, most concerned matters specific to the colony, such as militia service, trade with natives, and the configuration of sleighs. The 1787 ordinance that imposed *corvée* duty on the inhabitants in the service of the army, which was in force through to 1830 and beyond, is a good example. The preamble of the ordinance was very clear on its specificity to the colony:

Experience having demonstrated that, on account of the local position of this province, it is indispensably necessary, upon certain occasions, to quarter the troops at the houses of the country inhabitants; and that, for the same reason, it is impossible to convey, at all times, the ammunition, provisions, and other effects of government, to the different stores or magazines, without the assistance of the inhabitants ...⁹⁹

The ordinance then went on to create offences that were unheard of in England, and enforce them with what were in some cases fairly substantial penalties: £2 to £5 or fifteen days imprisonment for refusing to furnish carriages for the troops; 10sh to 20sh for not providing properly for quartered troops; £2 to £5 or one month imprisonment for refusing to convey military stores; 10sh or eight days imprisonment for disobeying orders while conveying. All of these were triable summarily before a single justice, although larger fines and imprisonment could be appealed to the governor and Council; and as we will see, the justices were not averse to enforcing this law.

⁹⁷Laws that gave the justices jurisdiction over militia offences were passed in 1777, 1794, 1796, 1803, 1812, and 1830 (see Appendix II). Two ordinances in 1787 and 1788, 27 George III c.2 (1787) and 29 George III c.4 (1788), removed militians from the jurisdiction of the justices, but the 1794 law reversed this.

⁹⁸From 1775, selling liquor without a license, punishable by a £10 Sterling fine, was an offence defined in fact by an act of the English Parliament, 14 George III c.88; but since this act only applied to Quebec, it formed part of the substantive criminal law specific to the colony.

⁹⁹27 George III c.3 (1787).

The *corvée* ordinance also illustrates another very important feature of these colonial modifications to the criminal law: many, and especially those imposing substantial penalties, concerned the definition of the relationship between the state and society at large. Militia and *corvée* laws, licensing provisions, regulations on aliens, all concerned offences that most directly involved the interests of the colonial state. And a substantial part of this relationship, even as defined by the colonial administration itself, was not simply copied from the English experience, but was shaped by circumstances specific to the colony. There was simply no equivalent to the compulsory *corvée* and militia laws in eighteenth-century England, where the civilian population was largely exempt from any such military service;¹⁰⁰ instead, these harkened more to the relationship between state and society under the French régime.

The colonial penal code also involved the definition of the relationship between various groups in society. Perhaps the most obvious of these was the relationship between masters and servants, and especially the laws against seamen, apprentices, and other *engagés* deserting their service.¹⁰¹ Various English statutes already regulated parts of this relationship, but colonial legislation modified these to suit colonial circumstances, for example prohibiting voyageurs from deserting on their voyages inland, and attaching penalties up to three months in jail and £20 to those who did, again triable summarily before a single justice. And similarly, two laws in the eighteenth century sought to regulate contacts between the European population of the colony and natives, in particular banning the sale of alcohol to natives and prohibiting Europeans from settling in native villages.¹⁰²

¹⁰⁰Brewer, *The Sinews of Power*: 48-49.

¹⁰¹Laws on this subject were passed in 1765, 1788, 1790, 1796, 1800, 1802, 1807, and 1817 (see Appendix II). In addition, as we shall see, the justices themselves passed regulations concerning master/servant relations.

¹⁰²These laws were passed in 1764 and 1777. In 1791, another law (31 George III c.1 (1791)), removed most of these restrictions.

2. The justices as legislators

An even more specific example of the way that the penal law was modified to suit local circumstances was in the legislation made by the justices themselves. I have not touched on the administrative role of the justices, since that would require a study in itself. But this aspect of their administrative activity directly affected their activity in the criminal justice system; for in making rules and regulations, they effectively created a whole new series of offences which they then tried themselves.

In England, justices of the peace had no formal legislative authority to promulgate legislation of any sort. Nevertheless, by the eighteenth century, many Quarter Sessions had assumed this power, in effect constituting themselves as local legislative authorities and passing local ordinances on a wide variety of subjects, from road-mending to vagrancy. As a recent historian of the justices has pointed out, this was in fact an unconstitutional arrogation of the legislative powers of Parliament; but since Parliament was itself drawn from the same class of local gentry that dominated the peace commissions, there was apparently little objection.¹⁰³

Though as in England there was at first no legislative authority allowing the justices in Quebec to promulgate local legislation, the justices in Montreal seem to have assumed that they too had this power. Thus, in October 1765, the justices in Quarter Sessions issued an order that all horses were to be hobbled, and fixed a fine of 20sh for each offence.¹⁰⁴ And the following April, they issued a series of seven orders that established what was in effect a municipal code for the city.¹⁰⁵

¹⁰³Skyrme, *History of the Justices of the Peace*: II: 59-62.

¹⁰⁴QSR 13/10/1765.

¹⁰⁵QSR 10/4/1766. The justices in Quebec City also assumed this power and made regulations, which they even published in the *Quebec Gazette*, 16/5/1765.

This first set of regulations is worth describing at length, because in many respects it set the tone for all that would follow. The first two orders set the fees to be paid by butchers, bakers, and market-vendors to the clerk of the markets, ordered the clerk of the markets to examine and stamp all weights and measures and to report all frauds, and prohibited empty carts from standing on the market-place; the third ordered all inhabitants to keep clean the streets in front of their houses; the fourth prohibited tavernkeepers from entertaining any servants or slaves, under a hefty fine of £5, a provision that extended to the entire district of Montreal; the fifth ordered all freeholders to pave or flag the footpaths in front of their houses; the sixth prohibited the disposal of live cinders out of doors; and the seventh prohibited private lotteries in the city or district, except if approved by the justices. They were thus a combination of practical administrative measures, local-improvement initiatives, and attempts to impose a particular moral vision, and in that sense reminiscent not only of similar laws in American colonial towns, but also of the police regulations in the towns in New France before the Conquest.¹⁰⁶ Further, their relationship to the "formal" criminal law of the colony showed a combination of borrowing, complementing, and local initiative. Thus, the order on the responsibilities of the clerk of the markets regarding weights and measures simply echoed a colonial ordinance passed two years earlier,¹⁰⁷ while that on lotteries referred specifically to an English statute; on the other hand, the colonial ordinance which regulated the markets made no mention of the fees to be paid to the clerks of the markets, or the disposition of carts, a gap the justices' orders were clearly meant to fill; and the order against tavernkeepers harbouring servants was a purely local initiative.

That the justices assumed this legislative authority does not seem to have raised any objections. Thus, in the late 1760s, while Montreal's merchant-justices

¹⁰⁶John Dickinson, "Réflexions sur la police en Nouvelle-France", *McGill Law Journal* 32(4)(1987): 497-512.

¹⁰⁷George III "An Ordinance Relating to the Assize of Bread, and for ascertaining the Standard of Weights and Measures in the Province of Quebec" (1764).

were engaged in their struggle with the administration in Quebec, they found themselves under attack for a wide variety of actions, including denying the clerk of the peace his fees, and, more seriously, abusing the limited civil jurisdiction granted to them; but there was no mention of their legislative activity. Instead, when in 1777 the administrative structure of the colony was re-vamped following the Quebec Act and the American invasion, the Legislative Council confirmed the justices' powers over local regulation, at least in the cities themselves, by allowing them, in Quarter Sessions, "to make such rules and orders touching the police necessary to be maintained and observed" in Quebec City and Montreal, with the only provisos being a 40sh ceiling on fines imposed through the regulations and the requirement that these not run contrary to the existing ordinances; all offenders were to be tried summarily before one justice, who also had the authority to order goods seized to satisfy the fine.¹⁰⁸

Although the measure was apparently initially meant to be temporary, it was renewed in a string of bi-yearly acts up until 1791. In that year, a permanent ordinance expanded the justices' legislative powers: it raised the ceiling on fines to £5; it declared the rules and regulations to be "as valid and binding in the law as of the same was specifically enacted by an Ordinance of the Provincial Legislature;" it provided a partial listing of affairs which fell within the jurisdiction of the justices; and perhaps most importantly, it allowed the justices to promulgate rules and regulations for any town or village with more than thirty houses when a majority of the householders filed a petition to that effect.¹⁰⁹ The ordinance appeared to remove from the justices the power to judge offences where the fines were 40sh or under, giving it instead to a single judge of the Common Pleas; however, the wording of the ordinance was confusing, since at the same time it also continued without reserve the previous ordinance, which itself allowed the justices to judge these offences. Thus, while the justices in Quebec City

¹⁰⁸₁₇ George III c.15 (1777).

¹⁰⁹₃₁ George III c.3 (1791).

thought that they did not have the power to judge offences under the police regulations they made, the justices in Montreal apparently thought that they did, and continued through the 1790s to enforce the police regulations they made; that this had some basis in law is suggested by the fact that there was never any appeal of these convictions on the grounds that the justices were not competent, though a few convictions were appealed on other grounds.¹¹⁰ The provisions of the 1791 ordinance were essentially repeated by an act of 1802, which nonetheless clearly gave jurisdiction over offenders to the justices; however, offenders were to be judged not before a single justice, but in Weekly Sessions in the cities and before any two justices in the towns and villages, and the justices were also required to submit all regulations to the King's Bench for approbation. As well, a separate act in the same year also gave the justices in Quarter Sessions the power to make regulations for master-servant relations to be in force throughout their respective districts, allowing them to impose fines up to £10 on masters, and fines up to £10 along with imprisonment up to two months in the House of Correction on journeymen, apprentices, and servants.¹¹¹ Nine years later, in 1811, the House of Assembly refused to continue the justices' legislative power over smaller towns and villages, on the grounds that it had led to abuses of power,¹¹² however, the justices retained their legislative powers over the cities, and over master-servant relations throughout their districts, powers which were confirmed once again by an act of 1817.¹¹³

The net effect of all of this was that, between 1765 and 1830, the justices in Quarter Sessions had broad legislative powers over local matters in Montreal, although subject from 1802 to a "watchdog" function from the King's Bench. The

¹¹⁰In December 1795, the Quebec City justices presented a petition to the House of Assembly complaining of the necessity of having recourse to a judge of the Common Pleas, and stating that in consequence they had rarely enforced the police regulations (*JHALC* 4: 33-41).

¹¹¹42 George III c.8 (1802); 42 George III c.11 (1802).

¹¹²*JHALC* 19: 490-492; this was formalized by 51 George III c.13 (1811).

¹¹³57 George III c.16 (1817).

Montreal justices were not at all averse to exercising these powers, and made regulations on about eighty different occasions, including eleven full sets of regulations that were essentially codes of municipal by-laws.¹¹⁴ In addition, from 1791 to 1811, the justices also had similar powers over smaller towns and villages; and while between 1791 and 1802 the householders of only two towns, L'Assomption and William Henry, went through the necessary formalities to obtain such regulations, and in the case of William Henry the regulations were only in force for a few years,¹¹⁵ between 1802 and 1811 the justices made regulations for Berthier, L'Assomption, Boucherville, Laprairie, Saint-Denis, and Terrebonne, though many major towns and villages did not have such regulations.¹¹⁶ And from 1802, the justices had the power to regulate master-servant relations.

An exhaustive analysis of all of the rules and regulations made by the justices would be a study in itself. Instead, to illustrate their potential impact and the significant way in which they could represent a substantial modification of the criminal law, I will concentrate on two areas of conduct which the justices sought to regulate: on the one hand, the enforcement of public morality; and on the other, the proscription of begging.

In the eighteenth century, all of the rules and regulations that concerned morality targeted those who were supposedly profiting from immoral acts. Thus, the 1766 regulations prohibiting lotteries and restricting the access of apprentices and slaves to taverns were directed only against those who ran such lotteries and taverns; a regulation in 1777, in force through to 1783, reiterated the provisions

¹¹⁴After the first full sets of regulations in 1766 and 1777, the justices issued new full sets in 1783, 1786, 1789, 1797, 1800, 1803, 1810, 1817, and 1821; for a complete list, see Appendix III.

¹¹⁵The rules and regulations are given in QSR 20/4/1790 (L'Assomption) and 18/11/1791 (William Henry); those for William Henry were continued until 1796, and those for L'Assomption until 1799.

¹¹⁶QSR 19/7/1802 (Berthier), 30/4/1803 (L'Assomption), 30/4/1804 (Boucherville), 19/7/1805 (Laprairie), 30/10/1805 (Boucherville), 23/10/1806 (Saint-Denis), 19/1/1807 (Berthier), and 29/4/1809 (Terrebonne). Major towns and villages that did not have regulations included William Henry, Lachine, Saint John, Longueuil, Varennes, and Chambly.

of the 1766 regulation on taverns;¹¹⁷ another regulation in 1779, which was repeated in every subsequent full set of regulations, prohibited all persons keeping billiard tables from allowing playing on them on Sundays;¹¹⁸ a regulation in 1782, in force for only a year, re-iterated the provisions of the 1766 proscription of lotteries, and extended it to wheels of fortune;¹¹⁹ and regulations in 1783 and 1789 respectively, and repeated in every subsequent full set of regulations, prohibited carters from carting on Sundays, and anyone at all from selling in the markets or streets of the city on Sundays.¹²⁰ This also held true for the regulations made for other towns and villages: thus, the only "moral" provisions in the regulations made for L'Assomption and William Henry in the early 1790s were those against Sunday sales, carting, and billiard-playing, all copied more or less directly from the Montreal regulations.

Around the turn of the nineteenth century, however, the tone of these moral regulations began to change, and the justices' attention turned more and more to regulating spontaneous actions on the part of the populace as a whole which did not fit with their conception of a well-ordered society. The first indication of this shift came in 1799, when "idle boys" were prohibited from playing on Sundays in the Place d'Armes, with constables assigned to ensure that they did not;¹²¹ and the new moralistic tone directed at the population at large was clear in a regulation of 1803:

¹¹⁷In the following section all regulations are referred to by their date of promulgation; for exact references, see Appendix III. The 1777 regulation, 5/5/1777, was repeated 30/4/1781 and 16/4/1782, but not in the general regulations of 30/4/1783.

¹¹⁸20/7/1779. In an echo of the 1777 regulation on tavernkeepers, a regulation of 16/4/1784 also prohibited billiard-table keepers from allowing journeymen, labourers, servants, or apprentices to play at any time, but this provision was not taken up again in the full set of regulations of 1786.

¹¹⁹16/4/1782; this provision was not taken up again in the full set of regulations of 1783.

¹²⁰30/4/1783, 17/11/1789.

¹²¹30/4/1799.

The magistrates, seeing with concern that many young and other idle persons assemble together in numbers, on Sundays and holidays, for the purpose of play and amusement, in the streets, squares, and other places of the town and suburbs, instead of attending divine worship; and being determined to put a stop to this growing evil, do prohibit in the most positive manner all such assemblies during divine service, or from nine in the morning until five in the afternoon, under the penalty of ten shillings upon every offender, and if apprentices or minors, the penalty shall attach upon their respective masters or parents; and it is also forbidden to all and every person or persons to permit or suffer, within the city or suburbs, on Sundays, any balls, assemblies, or dances, at or within their houses or outhouses, under the penalty of forty shillings on each and every person permitting or suffering the same in his or her house or outhouse.¹²²

This pattern of direct intervention of the state into the private morality of its citizens continued in the thirty years that followed, with ever-increasing penalties. Thus, a regulation in 1806 made it illegal to bathe nude in the Saint Lawrence, on a penalty of up to 20sh;¹²³ the full set of regulations in 1817 also outlawed *charivaris* (on a penalty of 20sh or more), skating or sliding with a sledge in the city (on a penalty of 10sh) and playing at marbles or cards in the marketplace (on a penalty of 20sh) while also reviving the 1784 prohibition against wheels of fortune (on a penalty of £5 or one month in the House of Correction);¹²⁴ and the full set of regulations in 1821 added prohibitions against throwing snowballs and playing with hoops, while increasing the fines for *charivaris* to £5.¹²⁵

The new attitude is also evident in some of the rules and regulations for the towns and villages in the first decade of the nineteenth century. Thus, the 1804 regulations for Boucherville reproduced the clause of the 1803 Montreal regulations concerning amusements on Sundays; and the 1806 regulations for Saint-Denis went even further, imposing fines not only on those who kept billiard

¹²²30/4/1803.

¹²³19/7/1806.

¹²⁴30/4/1817.

¹²⁵19/1/1821.

tables and so on and allowed play on them on Sunday, but also on those who took part in such play, and included a clause regulating behaviour in the parish church:

tous ceux qui au mépris du bon ordre et du culte divin, sortiront de l'église pendant les offices sans aucune nécessité, mais pour visiter leurs chevaux ou voitures ou se promener, ou qui se tiendront pendant les offices divins du Dimanche hors de l'église seront tenus d'y entrer ou de se retirer immédiatement du terrain d'icelle, et toute personne qui se tiendra indécemment dans l'église ou qui y fera quelque insulte, ou y entrera yvre sera incontinent [sic] mis hors de l'église et du terrain d'icelle et en outre sera sujette à l'amende cy après mentionné. Chaque contravention sous la pénalité de dix chelings, et si la faute est commise par des apprentis ou mineurs la pénalité sera de dix chelings et demi pour la première contravention et de dix chelings pour chaque récidive et payable par leur maître, parents, ou tuteurs.

This clause in fact was essentially copied two years later in the first act of the House of Assembly on good order in churches, applying to the entire colony; perhaps not surprising, since Louis Bourdages, the member of the House who brought in the bill, was one of the householders who signed the original petition for the Saint-Denis regulations.¹²⁶

It is tempting to ascribe these regulations to the proto-development of Victorian bourgeois morality. However, the substance of the rules and regulations harkened as much backwards as forwards. Thus, for example, the Saint-Denis regulation for good order in churches was similar to regulations on the same subject under the French régime, as was the Montreal prohibition of *charivaris*;¹²⁷ children in colonial New York were prohibited from playing on Sundays;¹²⁸ and even the outlawing of snowballs echoed a regulation made in Boston over a century earlier.¹²⁹ The revival of this attempt by the elites to impose their particular moral vision on society may have heralded the nineteenth-century

¹²⁶The petition, dated 15/9/1806, is in QSD; the act in question was 48 George III c.26 (1808).

¹²⁷Dickinson, "Réflexions sur la police en Nouvelle-France": 502.

¹²⁸*Laws, Statutes, Ordinances and Constitutions, Ordained, Made and Established by the Mayor, Aldermen, and Commonalty of the City of New York* (New York, 1763): 5.

¹²⁹*Several Rules, Orders, and By-Laws Made and Agreed upon By the Free-Holders and Inhabitants of Boston ...* (Boston, 1702): 11.

"moral police"; but the inspiration for the content of the regulations was very largely historical.

Just as individual conduct judged "immoral" was increasingly targeted by the justices' regulations, so too were specific groups that embodied such immoral principles, at least to the elites, gradually brought under tighter legislative control. One group in particular that was regulated to a greater and greater degree was the indigent poor, beggars and vagrants.

Begging and vagrancy were illegal under English criminal statutes that were in theory in force Quebec in the eighteenth century, but in practice this was impossible to enforce, since the penalty attributed by the statutes was imprisonment in the house of correction, an institution that did not exist in eighteenth-century Quebec.¹³⁰ Thus, the first series of regulations made by the Montreal justices in the 1760s applied instead a solution used in New France, and simply required all beggars to have a pass from the local Anglican curate, although prohibiting outright any begging by children "as it may incite them to idleness to hinder which they are to be driven away and threatened to be chastized."¹³¹ As Jean-Marie Fecteau has pointed out, even this more limited sort of regulation was largely ineffectual;¹³² and indeed, the rules made by the justices after 1777 did not even try to regulate begging. This did not indicate a generalized toleration of beggars on the part of the justices, but more a recognition of their own impotence; thus, the committee of Montreal merchants who reported to the governor and council in 1787 on the best means to improve the administration of the city, which included most of the city's active justices, noted that

¹³⁰The English laws against vagrancy are described in Richard Burn, *The Justice of the Peace, and Parish Officer...* 16th ed. (London, 1788) IV: 355-376.

¹³¹10/4/1769. On New France, see Dickinson, "Réflexions sur la police en Nouvelle-France": 511.

¹³²*Un nouvel ordre des choses*: 43.

The number of poor is become very considerable many of them no doubt are real objects of charity, but there are others who impose on the credulity of the humane part of the community; they come from all parts of the District, and infest the streets of town, nor can the Magistrates put an effectual stop to this evil, there being neither poor house wherein to provide for real poverty, nor work-house to confine vagrant imposters.¹³³

In 1802, however, a House of Correction was finally established in Montreal, and the justices moved quickly to regulate begging; however, what they introduced was not the total ban on begging specified under English criminal law, but rather a re-formulation of the licensing system in place in the late 1760s and before the Conquest. Thus, after noting that the establishment of the House of Correction meant that "several provisions of the existing law in criminal cases will have effect, which by reason of the want of such houses have hitherto been dormant", they summarized the provisions of English statute law that outlawed begging, and declared their intent to put the law against vagrants and idle and disorderly persons into effect; but they went on to declare that "proper objects of charitable relief" could beg, as long as they appeared every twelve months before a committee of justices to receive permission, and wore a large cloth P and M on their shoulder, in the same fashion as paupers receiving parish relief in England. All who did not comply with these regulations, or who begged without such a permission, were to be apprehended by the city's constables and taken before a justice to be dealt with as vagrants.¹³⁴

This licensing system persisted until 1819, when, following the establishment of a House of Industry in the city, the justices immediately outlawed all begging in the city. Commenting that it was "an object of great importance to abolish as soon as may be the pernicious practice of street-begging", they declared the regulation to have effect as soon as the wardens of the House had proved the

¹³³NA RG1 E11 volume E: 246.

¹³⁴19/7/1802. These provisions were repeated 17/1/1812, which added the provision that constables were allowed 2sh 6d for each arrest; and in the full set of regulations of 30/4/1817, which changed the maximum length of the permissions to six months.

institution capable of supporting all the indigent poor.¹³⁵ Six months later, the justices ordered that these regulations be published and put into force, with constables allowed 2sh for arresting each beggar.¹³⁶ And the 1819 regulations were repeated in the full set of regulations passed in January 1821, which also increased the penalty for begging from the one month's imprisonment specified by English law to three months in the common gaol.¹³⁷

Very soon, however, it became obvious that the ban on begging was not having the intended effect: the grand jury presentment to the January 1821 sessions pointed out that while street beggars had initially disappeared after the law was passed, they were now back in full force, and "sont encore tous les jours à la porte de ces mêmes habitans et ne cessent de supplier qu'après avoir obtenu quelques aumones, dont ils font souvent le plus mauvais usage."¹³⁸ The justices' response, in 1822, was to reinstate the original licensing system of 1802, while at the same time not abrogating the article of the 1821 regulations prohibiting begging; thus, the next full set of regulations issued by the justices, in 1831, included both the prohibition against beggars, and the licensing system for beggars, as chapters eight and nine of the regulations.¹³⁹ This seeming contradiction was perhaps made possible by the wording of the two articles, since by the first it was "prohibited to beg or ask alms in the city", while the second allowed permission to "proper objects of charitable relief, for publicly applying for the same to the well-disposed in the city;" what it meant in practice was the coexistence of a licensing system and a convenient means of arresting and imprisoning those not judged "proper".

¹³⁵19/1/1819.

¹³⁶SSR 25/6/1819.

¹³⁷19/1/1821.

¹³⁸QSR 19/1/1821.

¹³⁹30/4/1822; *Canadian Courant* 24/8/1833.

Whatever the reasoning, however, begging in Montreal was criminalized and decriminalized not according to English law, but to the regulations made by the justices themselves. The justices made reference to the English statutes, but they modified and circumvented them according to local circumstances.

Taken by themselves, neither the variable prohibition on begging, nor the outlawing of snowballs, nor even the *corvée* laws, marked a fundamental transformation of the criminal law of Lower Canada. However, it was not through major overhauls that the criminal law was modified to suit colonial circumstances and the wishes of the colony's elites, but through these sorts of piecemeal measures. The cumulative effect was such that by 1830, the range of actions that the state considered offences and attached penalties to was substantially different than it had been in 1764. And this piecemeal approach to modifying the criminal justice system also applied to the formal powers and duties of the justices themselves.

IV. The duties and powers of the justices

A. The "ministers of justice"

Up until 1789, there was no colonial legislation modifying the "ministerial" duties of the justices of the peace in Quebec, the whole range of functions, from hearing complaints through issuing warrants to granting bail, that made the justices the main administrators of preliminary steps in criminal cases. As such, these remained identical to those of their English counterparts as of the date of reception of English criminal law, 1763 or 1774. Thus, the instructions drawn up for the new justices in 1764 by George Suckling, the attorney general, were cribbed directly from English legal authorities;¹⁴⁰ and similarly, though Joseph Perrault's 1789 edition of Burn's *Justice of the Peace* noted that many English laws did not apply in Canada, its sections on the ministerial functions of the justices were direct translations of its English source.¹⁴¹

After 1789, the situation remained essentially similar, although there were a few significant secondary modifications to the justices' preliminary duties in criminal cases. The most important of these was the 1789 ordinance re-defining petty larceny: after noting that the detention of prisoners until the sitting of the criminal courts was putting a strain on the limited resources of the province's prisons, and that "it often happens that persons committed for simple larceny are either acquitted or only found guilty of petty larceny", and the re-defining theft of goods worth under 20sh Sterling as petty larceny, it required the justices to give all people arrested for petty larceny 48 hours to find bail rather than imprisoning

¹⁴⁰NA RG4 A1: 4360-63.

¹⁴¹Joseph-François Perrault, *Le juge à paix et officier de paroisse, pour la province de Québec* (Montréal, 1789): vi, *passim*. There is almost no difference between the sections Perrault translated and their equivalent in the closest edition of Burn, *The Justice of the Peace* (the 1788 16th edition); indeed, Perrault even went so far as to translate and include references to English institutions and concepts that had no application in eighteenth-century Quebec, such as counties and mayors, and kept references to other sections of Burn that he did not translate.

them at will.¹⁴² This was not a radical departure from English precedent: in England justices were required to allow bail in cases of larceny where the suspicion was not strong, and cases of petty larceny (defined as goods valued under 1sh) where the accused was not a repeat offender and the offence was not manifest; and they were subject to criminal prosecution if they did not.¹⁴³ Further, it was virtually identical to the provisions of an act passed by the legislature of New York almost fifty years earlier.¹⁴⁴ However, by its re-definition of petty larceny the Quebec ordinance substantially broadened the number of larceny cases in which the justices were, in theory, required to give bail.¹⁴⁵

In a more substantial departure from English precedent, an act of 1795 allowed justices to commit to gaol anyone who had committed a crime anywhere in the colony, as long as they had been arrested within the justices' own district, and also to take evidence in the case and bind witnesses over to trial.¹⁴⁶ This gave justices jurisdiction over all crimes committed outside of their districts as long as they had the accused in hand. It thus considerably simplified the process of sending fugitives to jail: in England, justices only had jurisdiction over crimes committed within their own counties, and cases where suspects crossed into another county required the joint action of a justice from each county involved.¹⁴⁷

¹⁴²29 George III c.3 (1789).

¹⁴³Burn, *The Justice of the Peace* I: 143-151.

¹⁴⁴The New York act was passed in 1744 (*Laws, Statutes, Ordinances and Constitutions, Ordained, Made and Established by the Mayor, Aldermen, and Commonalty of the City of New York*: 74-75).

¹⁴⁵Most of the provisions of this ordinance were repealed in 1817 by 57 George III c.30 (1817), but not the definition of petty larceny, which when combined with the existing English provisions still meant that the justices were in theory required to allow bail to most first-time offenders accused of stealing goods worth less than 20sh Sterling.

¹⁴⁶35 George III c.1 (1795).

¹⁴⁷In England, the arrest warrant had to be issued by a justice from the county where the crime had been committed, and then endorsed by a justice from the county where the suspect was to be arrested (Burn, *The Justice of the Peace* II: 10-11).

Finally, in a reflection of what Murray Greenwood has termed the "garrison mentality" that enveloped the colony's English-speaking elites in the 1790s, in face of the perceived threat of French and American invasion, a number of acts in force between 1793 and 1812 prohibited justices from granting bail on their own initiative to people accused under the acts respecting treasonable practices and aliens.¹⁴⁸ As Greenwood has pointed out, this in effect allowed the administration to imprison suspects without charging them;¹⁴⁹ and it also removed the possibility of interference from Canadian or other magistrates who might not be sympathetic to the administration's cause.

None of these modifications substantially changed the preliminary functions that justices of the peace were expected to fill in the criminal justice system. And as for the justices' responsibilities and powers for keeping public order and suppressing popular challenges to state authority, these remained identical to those of their English counterparts, with no colonial modifications whatsoever to the basic English laws. Indeed, the only legislative change to the powers of public authorities that referred specifically to public order was a provision in 1825 that allowed returning officers at elections to commit to jail for up to 24 hours anyone involved in election violence, election disturbances, or even exhibiting partisan sentiments.¹⁵⁰

What did change substantially, however, was the way that the justices were organized to perform their ministerial functions. This was especially true in Montreal itself, with the development of a professional magistracy in the city; but it also applied to a lesser extent in other areas of the district.

In England, the professionalization of the system of justices of the peace stemmed from two separate but inter-related concerns: on the one hand, ensuring

¹⁴⁸Among others, 34 George III c.5 (1794), 37 George III c.6 (1797), 43 George III (4) c.2 (1803), and 51 George III c.3 (1811).

¹⁴⁹*Legacies of Fear*: 117.

¹⁵⁰5 George IV c.33 (1825).

that there were enough active magistrates to take care of criminal matters, without encouraging judicial corruption; and on the other, ensuring that these magistrates were available when needed, both to preserve public order, and to deal with complainants and accused who came or were brought before them. While the informal preliminary hearings held by justices in their own parlours may have been sufficient for rural England in the eighteenth century, the increasing volume of the criminal work of the justices in London in the eighteenth century, coupled with rising fears among the elites concerning crime and public disorder, led to the establishment of public offices with magistrates in attendance at regular hours, beginning in the late 1730s. As well, to address the problem of active magistrates, the government and, in some cases, private interests paid salaries, expenses, and other emoluments to especially active magistrates, such as Thomas de Veil, who founded the public office in Bow Street in 1739, and his successors, the Fieldings. The two measures came together in 1792, with the establishment of seven "Police Offices" in the metropolis, each with three salaried magistrates and a salaried staff of clerks, messengers, and constables; though this had been foreshadowed by the establishment of similar offices in Dublin six years earlier.¹⁵¹

In the district of Montreal following the Conquest, there were no such public offices, even in Montreal, and preliminary proceedings were presumably dealt with mainly before justices in their own houses. Outside of Montreal itself, there is no evidence that this changed significantly up until the 1830s. The only change was that by the 1820s, some justices outside of Montreal were assisted by clerks. Thus, depositions and other documents sent in to Montreal by justices elsewhere in the district were frequently not in their own hand, but appear to have been drawn up by somebody else and simply signed by the justices; in the case of two Saint-Eustache justices, William Smith and Nicholas-Eustache Lambert

¹⁵¹On London, see Beattie, *Crime and the Courts in England*: 65-67; Paley, "Policing London Before Peel": 98-102, 105-111; and Radzinowicz, *A History of English Criminal Law* II: 187-194, and III: 29-62 and 108-137. On Dublin, see Stanley H. Palmer, *Police and Protest in England and Ireland, 1780-1850* (Cambridge: Cambridge UP, 1988): 99-100.

Dumont, documents that each produced separately in both 1815 and 1820 were in the same distinctive hand, suggesting that both used the same clerk. There are also more specific indications: thus, a deposition before Joseph Vignau of Boucherville in 1830 was marked "pour vraie et fidele copie de l'original demeuré au greffe du sousigné, Antoine Delisle, greffier";¹⁵² and similarly, in the same year a copy made of a summons issued by Louis Barbeau of Laprairie was signed by "Joseph Hébert, greffier."¹⁵³ And the practice was also recognized by the legislature: the 1824 act that sought to regulate agricultural practices and gave country justices the power to indenture forcibly anyone found begging allowed the justices to employ clerks in such matters, and set fees for them;¹⁵⁴ and in 1833, an act was passed to regulate the fees of clerks employed by country justices in general.¹⁵⁵

Since in most cases we do not even know the names of these clerks, it is difficult to say who they were. When justices were notaries or merchants, they may simply have been their business clerks; this may have been the case with Hébert, since Barbeau was a Laprairie notary. But as well, many justices in the 1820s were also commissioners for the trial of small causes, the local small-claims courts, and may also have employed the clerks of these courts in their business as justices; such was the case with Delisle, whom Vignau and his fellow commissioner and justice, René de Labruère, had appointed as their clerk in 1827.¹⁵⁶

In Montreal, the situation was quite different. From 1768 at least, as part of his duties as the chief administrator and clerk of the justices' courts, the clerk

¹⁵²QSD, Corbeau v. Pinet et al., 29/1/1830. Though not identifiable, Delisle was not a notary.

¹⁵³QSD, record of conviction filed by Joseph Vignau, 4/1830.

¹⁵⁴4 George IV c.33 (1824).

¹⁵⁵3 William IV c.10 (1833).

¹⁵⁶De Labruère and Vignau to the civil secretary, 10/9/1827, summarized in NA RG4 A3 volume 19 (the index to RG4 A1).

of the peace did keep a public office, the Peace Office, where he made out and stored the records of the courts, dealt with administrative matters such as the swearing in of tavern-keepers, and where he was as well in theory available to draw up preliminary judicial documents such as depositions, arrest warrants, bail bonds, and the like, on payment of the appropriate fees by the parties.¹⁵⁷

However, since all documents in criminal cases had to be signed by a justice, and depositions in particular had to be taken before a justice, a plaintiff needing a judicial document had to find a justice willing to act, which usually meant going to the justice's house. As a result, in the 1760s the justices themselves apparently made out all preliminary process, pocketing the fees, which led John Burke, the clerk of the peace, to complain on two separate occasions that since entering office in 1764, he had never been allowed to issue any preliminary process.¹⁵⁸

By the late 1770s and 1780s, however, the accounts of the clerk of the peace show that he was more involved in the preliminary stages of criminal cases, since he regularly charged fees for drawing depositions, making out warrants, and the like, although the procedure apparently still involved going to the house of a justice with the plaintiff.¹⁵⁹ As well, the Peace Office became more central to the preliminary functions of the justices; in particular, it was to the Peace Office that justices outside of Montreal sent in depositions and other documents taken before them. On the other hand, there is no evidence that the Peace Office was ever anything like the rotation offices in London, with justices in regular attendance, so that the preliminary steps in criminal matters retained the characteristic informality that they had in England outside of London.

The first suggestion for professionalizing the magistracy in Montreal involved not the establishment of a rotation office, but rather a combination of

¹⁵⁷*Quebec Gazette* 14/4/1768.

¹⁵⁸The petitions of Burke, dated around 5/1767 and 18/8/1769, are in NA RG4 A1: 5466, 6562-64.

¹⁵⁹The clerk of the peace's accounts for fees from 1778 to 1789 are in NA RG1 E15A; several mention attending in the houses of various magistrates in the city.

political considerations and concerns with ensuring both the quality and quantity of the city's justices. Less than two years after Murray appointed his first justices, in March 1766, Adam Mabane reported to Murray and his Council on the political situation in Montreal. After describing the continuing tensions between the English merchants (who by then composed most of the active magistracy), the military, and the French seigneurial and other elites, Mabane made the following observations:

The foregoing narrative points out the necessity, and nature of a remedy for these disorders at Montreal: the only effectual; the only permanent one, is the establishing a proper magistracy. Salaries will be necessary to engage persons to accept, who are qualified for the office; and the circumstances of that district absolutely require it. This province differs much from every other on the continent; the people are numerous, of a different religion, and language; and the persons to be made choice of as magistrates, are few in number, and all engaged in business. Half-pay officers do not reside in town; they might revive the authority of the civil magistrate, which at Montreal has from very opposite causes been almost annihilated. There appears to be only this alternative to maintain good order and tranquility at Montreal, which is, either to make the Roman Catholics magistrates, or allow salaries to proper persons who will give attention to the duty. The first is absolutely forbid by the instructions, and is perhaps improper; the second is liable to many objections, being without precedent, and this province being without funds; however the advantages will in the end be found to counterbalance these considerations, as nothing but that measure can prevent the new subjects from looking upon our government and laws as a scene of anarchy and confusion.¹⁶⁰

Neither of Mabane's suggestions were implemented, and the duties of the magistrates in Montreal continued to be performed by unpaid or at least unsalaried Protestant justices; although Mabane's other solution, appointing Catholic justices, was adopted ten years later under the Quebec Act.

More immediately, the notion of paying a magistrate a salary to ensure that he performed certain duties was applied to a very different circumstance. The Kanasetake natives in the Lac-des-Deux-Montagnes seigneurie had complained to the administration in Quebec that traders were selling liquor to them, despite a 1764 ordinance which banned the trade. In response, the administration in May 1767 first wrote to the existing Montreal justices asking them to enforce the law,

¹⁶⁰NA RG4 A1: 5718-19.

and when this apparently had no effect, appointed Captain John Schlosser a justice of the peace in August, and paid him £100 to live at Lac-des-Deux-Montagnes for the following year.¹⁶¹ Whether Schlosser had any impact on the illicit trade is unknown; but the measure does not seem to have produced any long-term effects, since by 1770, Chartier de Lotbinière, the seigneur of Vaudreuil, was complaining that the trade was as strong as ever.¹⁶²

A more deliberate attempt to professionalize the magistracy of Montreal came in 1794, when Stephen Sewell, the solicitor general, and Thomas McCord, another active Montreal justice, established a Police or Rotation Office in Sewell's house in Montreal.¹⁶³ From the name, we may assume that they were directly inspired by the English or Irish models, the latter perhaps through McCord's strong business and family ties with Ireland. The immediate impetus, however, was not crime in general, but rather the fear of popular unrest following the riots against the militia orders in May and June 1794, as well as the more generalized fear of American and French infiltration and secret societies.¹⁶⁴ Thus, Sewell noted in late September that, in response to rumours of a plot to free the prisoners accused of participating in the earlier riots and to massacre the English population, "Mr. McCord sat up the whole night in the office nor did I take off my clothes;"¹⁶⁵ and once the Police Office was set up, McCord took over from the clerk of the peace the business of taking declarations from aliens.¹⁶⁶

Sewell and McCord's Police Office, however, did not last, in large part because of the unwillingness of the administration in Quebec to provide the

¹⁶¹NA RG4 A1: 6016; RG1 E15A volume 2 file "Receiver General 1768".

¹⁶²Chartier de Lotbinière to Allsopp, 4/7/1770, in NA RG4 B22 volume 1.

¹⁶³The office was probably established in late August or early September; the first mention of it is in a letter from McCord to George Pownall, the provincial secretary, dated September 4, 1794, and enclosing alien declarations taken before him (NA RG4 B45).

¹⁶⁴Greenwood, *Legacies of Fear*: 80-83, 106-107.

¹⁶⁵Sewell to Jonathan Sewell, 18/9/1794, in NA MG23 GII10 volume 3: 875-877.

¹⁶⁶NA RG4 B45.

necessary financial backing. Following the easing of tensions later in 1794, Sewell lost interest, and in October wrote to his brother, the attorney general, "As for the Rotation Office I have in a manner given it up. I shall neither get credit or cash by it and even if I continued in it it is impossible for me to have it in my house. I told Mr. McC sometime ago, in consequence of which I am more at my ease."¹⁶⁷ McCord, however, persisted for another year, perhaps in the hopes of getting a salary like the police magistrate at Quebec City,¹⁶⁸ although there is no evidence he was ever paid. He apparently attempted to transform the office into a more regular Police Office: echoing De Veil in 1739, he hired a house, and employed three constables to summon witnesses and arrest suspects.¹⁶⁹ However, at about the same time McCord's personal finances were becoming increasingly precarious, with the failure of the Montreal Distillery, his principal business venture; and by the end of 1795 he had abandoned the Police Office. At the end of 1796, following riots against the implementation of the roads act,¹⁷⁰ there was one further attempt to revive the office; but as John Richardson noted to Jonathan Sewell, the attorney general:

I am ... unable to say who is a proper Magistrate for the Police Office - Mr. McCord is certainly capable, but having now some other object in view in point of business, than he had at the time of his former appointment, has insinuated to me, on sounding him, that it would not be an object to him, if he was to give it his attention as a primary object of employment, for less than £200 per annum ... I could wish the Magistrates to have time between this and next post to reflect about a fit person for the Police Office - perhaps some one may thought of [sic] at the stipulated salary.¹⁷¹

¹⁶⁷Sewell to Jonathan Sewell, 8/10/1794, in NA MG23 GII10 volume 3: 879-882.

¹⁶⁸According to the payment warrants granted by Dorchester, Alexis (or P.L.) Descheneaux received £50 in 1794 and £12 7sh /d in 1795 on account of his salary as "Police Magistrate at Quebec", although the period which this covered is unclear (*JHALC* 3: 83-88 and 4: 147-155).

¹⁶⁹This is clear from the accounts submitted by McCord to the Sheriff in late 1795, in NA RG1 E15A volume 14 file "Judicial Establishment 1795". On the constables, see Part 2.

¹⁷⁰Greenwood, *Legacies of Fear*: 89-92.

¹⁷¹Richardson to Sewell, 3/11/1796, in NA MG23 GII10 volume 3: 1010-1011.

The attempt apparently did not succeed: McCord almost immediately left for Ireland, probably in order to escape his creditors, and there is no further mention of the Police Office.

McCord's experience in the Police Office in the 1790s, however, served him in good stead fifteen years later when a Police Office with salaried magistrates was permanently established in Montreal. Again, the initial establishment was less in response to crime in general than to perceived threats to the Lower-Canadian state. In January 1810, following petitions from justices in Quebec City and Montreal that they were over-worked, Governor James Craig had appointed Ross Cuthbert to act as presiding judge in the justices' courts in Quebec City, at a salary of £400 and with the title chairman of the Quarter Sessions.¹⁷² Almost immediately afterwards, Jean-Marie Mondelet, a notary and Montreal justice who had been highly active between 1802 and 1810, petitioned Craig for the equivalent post for Montreal.¹⁷³ However, the real impetus came two months later, when James McGill, one of Montreal's most active justices in the eighteenth century but by 1810 the chief executive councillor resident in the city and one of the leaders of the Tory faction, wrote to Craig regarding two suspected French agents whom he had just interrogated; in closing, he added that:

¹⁷²Dalhousie to Liverpool, cited in Fecteau, *Un nouvel ordre des choses*: 105. The exact date of Cuthbert's appointment was January 30, 1810 (*JHALC* 28: Appendix L).

¹⁷³Mondelet to Craig, 12/2/1810, in NA RG4 A1: 33869-72.

under the present circumstances, great benefit, if not indispensably requisite legal exercises, would arise from the daily attendance in a public known office in this city, of one or more Justices of the Peace to transact the duties that must and ought (at least in the first instance) to come under the immediate cognizance of such Magistrates ... It is not merely the increasing duties, of a correct, systematic police in the city of Montreal that at present requires such services but that Magistrates of confidence zeal and intelligence with occasionally professional assistance might offer such aid to other Magistrates and public officers in this District, as would not only give greater efficiency to [the late proclamation against sedition] but protect with this aid their [fellow] magistrates and officers in a legal and correct execution of their several [functions] and duties.¹⁷⁴

After mentioning that this was to be regarded as a temporary measure, McGill went on to recommend that McCord and Mondelet be appointed jointly. Craig complied, and on April 7, 1810, appointed McCord and Mondelet police magistrates of Montreal, at a salary of £250 Sterling each.

The difference in the titles given to Cuthbert and to McCord and Mondelet was not unimportant, for it reflected a real difference between the two posts. Cuthbert's post as chairman of the Quarter Sessions related only to his position as judge in the various formal courts of the justices, in effect representing only a professionalization of these courts. McCord and Mondelet, on the other hand, were expected to operate a full-fledged Police Office, with one or the other of them in constant attendance to receive depositions, issue summonses and warrants, and the like; in addition, they seem to have taken for granted that they would also fill the role of chairmen of the Quarter Sessions, although they did not formally hold that position until 1821.¹⁷⁵

Almost immediately following their appointment, McCord and Mondelet opened the Police Office in a room of the court-house,¹⁷⁶ and according to their

¹⁷⁴McGill to Ryland, 29/3/1810, in RG4 A1: 34203-06.

¹⁷⁵The first reference to McCord and Mondelet as chairmen of the Quarter Sessions is in the report of a committee of the House of Assembly's on the public accounts for 1817, in *JHALC* 28: Appendix L. Their formal appointment by commission was in October 1821 (NA RG68 (Commissions and Letter Patent) volume 6: 390-392).

¹⁷⁶According to an account rendered in November 1810, the Police Office was established on April 7, 1810, the same day as McCord and Mondelet's appointment; however, the first concrete indication that it was in operation dates from May 1, 1810, when it published a list of the defendants brought before it (*Montreal Gazette* 7/5/1810, 26/11/1810). A petition from McCord and Mondelet to the Executive Council in

assertions some years later, kept it open every day from 9:00 in the morning until 3:00 in the afternoon.¹⁷⁷ As well as the police magistrates themselves, the Police Office had a small, salaried staff. In May 1810, McCord and Mondelet had been promised additional funds to pay for the operating expenses of the office,¹⁷⁸ but apart from a payment of about £30 in 1811 for construction work in the office,¹⁷⁹ they received no funds from the administration until 1812. This, however, did not stop McCord and Mondelet from employing a clerk and at least one constable in 1811, paying the latter in part from funds that were under their control as administrators of Montreal's municipal government.¹⁸⁰ By 1812, however, as McCord explained a decade later, "the multiplicity of business which was caused by the war in our office rendered [additional money] absolutely necessary, nor could the business be carried on without it",¹⁸¹ and on the recommendation of a committee of the Executive Council at Montreal, the Police Office was allowed £100 per year to cover its expenses. This amount was continued through to the

1820 mentioned that they had first established the office in the court-house (NA RG1 E15A volume 37 file "Quarter Sessions of the Peace 1820"), and it was still there in 1820 (Thomas Doige, *An Alphabetical List of the Merchants, Traders and Housekeepers Residing in Montreal. The Second Edition* (Montreal, 1820): 12).

¹⁷⁷Petition from McCord and Mondelet to the Executive Council, 3/7/1820, in RG1 E15A volume 37 file "Quarter Sessions of the Peace 1820".

¹⁷⁸McCord and Mondelet to Brunton, 25/6/1811, in NA RG1 E15A volume 23 file "Quarter Sessions of the Peace 1811".

¹⁷⁹McCord and Mondelet to Brunton, 9/12/1811, in NA RG1 E15A volume 23 file "Quarter Sessions of the Peace 1811".

¹⁸⁰The accounts of the Police Office are scattered through NA RG1 E15A, and though only one has survived from before 1818, they are complete from 1818 to 1829. That the Police Office had a regular clerk from 1811 at least is suggested by a proposed plan for the office dating from December 1811, which showed a desk for the clerk; as well, in testimony before the House of Assembly in 1829, John Delisle, then clerk of the peace, stated that before entering that office (in September 1814) he had been employed in the Police Office, although his assertion that he had been employed there since 1800 must have been either an error in transcription, or a lapse on his part (*JHALC* 38: appendix Ee, 22/12/1828). The other Police Office clerks were John Tanner (1813), P.B. Rossiter (1818), Frederick Goedike (1819), Charles Mondelet (very likely a relative of Jean-Marie Mondelet) (1819-1820), J-E Faribault (1820-1822), James Prest (1822-1829), and Hypolite Saint-George Dupré (not the justice of the peace) (1829 and possibly later). The Police Office runners were Owen Sullivan (1813-1814), Claude Thibault (1814 and possibly later), and Louis Marteau (1817-1829 and possibly earlier).

¹⁸¹McCord to Cochrane, 18/7/1821, in NA RG1 E15A volume 40 file "Quarter Sessions of the Peace 1821".

1820s, and the regular accounts submitted by McCord and Mondelet show that they hired both a clerk and a messenger, the latter of whom also acted as a constable; they also occasionally paid constables for making arrests and serving summonses. As explained elsewhere, the payment of constables led to a severe financial crisis in the office in the early 1820s,¹⁸² but in 1823, the House of Assembly voted to increase the funding of the Police Office to £200 Sterling per year, to cover all expenses including the arrest of criminals; this funding continued through to the abolition of the office at the end of the 1820s.

The division of responsibilities in preliminary judicial matters between the Police Office and the Peace Office is not entirely clear, but it seems that after the establishment of the Police Office, the clerk of the peace, who by that time was also usually the clerk of the crown (the clerk of the higher criminal courts) and the road treasurer of Montreal (the municipal administration's chief financial officer), limited himself to the more serious criminal cases that were destined for trial by the higher criminal courts, as well as the voluminous business associated with the justices' administration of the city. Thus, in defending their hiring of a clerk, Mondelet and McCord noted in 1820 that "au moyen des contingents du bureau [de Police], tels qu'alloués, le Greffier de la Paix n'a aucune réclamation contre le gouvernement pour les affaires criminelles, et le gouvernement ne peut qu'y gagner;" and in 1821, Mondelet observed:

the duties of the Clerk of the Peace in proceedings preliminary to the prosecution of offences brought before the Criminal Courts in cases of felony and high misdemeanour are not susceptible of that regularity required by the Police Magistrates ... it is difficult, not to say impossible, for the Clerk of the Peace to divide his time between his office and that properly termed the Police Office, where one is occupied with common misdemeanours, the keeping of registers, and other multiplied and minute details.

At any rate, since the Peace Office and the Police Office were both in the courthouse, this did not make very much difference to those who had to do business with them.

¹⁸²See below, page 230.

This is not to say that there was general satisfaction with the structure of the Police Office. The police magistrates themselves thought that the office was chronically underfunded: in 1818, in response to queries from the bureaucracy in Quebec as to certain irregularities in the accounts, McCord noted curtly that "when the Legislature thinks proper to establish the office with salaries to a clerk, officers and runners, things will be done as in other offices."¹⁸³ Further, once the immediate crisis of the war with the United States had passed, the Police Office and the police magistrates came under increasing criticism in the city's Tory press. Thus, as early as 1814, a correspondent of the *Montreal Herald* noted "That infinite advantages would be derived from such an office, is certain, if men of integrity and talents, could be prevailed on to accept the trust, and discharge the duties thereof with zeal and attention to the public interests. And on the contrary such an office may be converted into the greatest engine of extortion and abuse, that was ever introduced in any state", and went on to suggest the latter.¹⁸⁴ This criticism increased in the early 1820s. On the one hand, the insufficiency in the Police Office's funding was a favourite target, especially in 1822 and 1823 when there was no funding at all for police officers.¹⁸⁵ And on the other, the criticism of the police magistrates themselves continued: a correspondent of the *Herald* in 1822 complained of "the circumstance of the Gentlemen now holding the situation of Police Magistrates being seldom to be found; and, of whom one [Mondelet] actually resides at Sorel ... the Honor of presiding four times a year at the Quarter Sessions, alone, induces him to make his appearance."¹⁸⁶ While this

¹⁸³RG1 E15A volume 32 file "Quarter Sessions of the Peace 1818".

¹⁸⁴*Montreal Herald* 19/11/1814; see also 29/7/1815.

¹⁸⁵Among others, see *Canadian Courant* 13/11/1822, 14/12/1822, 16/1/1823, 22/2/1823, 15/3/1823, and *Montreal Herald* 11/1/1823.

¹⁸⁶*Montreal Herald* 3/8/1822.

latter was an exaggeration,¹⁸⁷ it was symptomatic of the general dissatisfaction with the criminal justice system in the 1820s.¹⁸⁸

The dissatisfaction with the Police Office, however, reached its zenith in the late 1820s after Governor Dalhousie summarily removed McCord and Mondelet from their positions as police magistrates and chairmen of the Quarter Sessions and replaced them with Samuel Gale, a virulent Tory and francophobe. Although their removal was partly rooted in a long-standing conflict between the largely francophone, largely pro-reform justices who controlled Montreal's magistracy in the 1810s and early 1820s, and a smaller number of anglophone Tory justices, and was related to the more general political manipulation of the peace commission by Dalhousie,¹⁸⁹ the specific confrontation that led to their dismissal revolved around the choice of a new high constable for Montreal, following the suspension of the previous office-holder, Archibald Henry Ogilvie, in November 1823. The Montreal justices, led by McCord and Mondelet, appointed Adelphe Delisle, the son of the clerk of the peace, to fill the position temporarily, to which Dalhousie agreed; but when a few months later the justices tried to name Delisle to the position permanently, Dalhousie refused to sanction the appointment, and attempted to force the justices to appoint his own candidate, William McCulloch, a recently immigrated ex-army officer. When the justices would not comply with Dalhousie's wishes, asserting that from the 1790s they had always chosen and supervised the high constable, Dalhousie responded first by refusing to pay Delisle the salary usually attached to the post of high constable,

¹⁸⁷Gaol registers and Quarter Sessions and Special Sessions records show that Mondelet was actually out of Montreal only for June and part of July and August, and was as active as always throughout the rest of the year.

¹⁸⁸As demonstrated by Fecteau in *Un nouvel ordre des choses*, especially 147-261.

¹⁸⁹On the composition of Montreal's magistracy, see below, section VI.

and then, a few weeks later, by removing McCord and Mondelet from their positions and appointing Gale in their stead.¹⁹⁰

Under Gale and David Ross, another long-time servant of the administration who replaced Gale while he was in London in 1828-1829 testifying on Dalhousie's behalf,¹⁹¹ the Police Office and the post of police magistrate and chairman of the Quarter Sessions came under even greater criticism, although now not from the Tory press, who supported Gale and Ross, but from those members of the elites sympathetic to the Patriote cause. Thus, the Tory version of the *Quebec Gazette* in 1827 defended Gale against attacks from Samuel Neilson's *Quebec Gazette*, noting that Gale's "well known and well appreciated utility puts him far above any attack on his motives from such a quarter. As a public servant, his remuneration is earned by important duties, honorably discharged."¹⁹² On the other hand, the two committees of inquiry of the House of Assembly in 1828-1829 that touched on the state of the magistracy in Montreal heard witness after witness, including a number of Montreal's Canadian justices of the peace, declaim upon the evils of the Police Office and in particular the office of chairman of the Quarter Sessions. The testimony of Louis Guy, a moderate reformer and an active Montreal magistrate (though only active, since 1815, in administrative matters) summed up the prevailing opinion of most witnesses called before the committees, apart from Ross himself:

¹⁹⁰Most of the documents relating to this dispute were reprinted in *JHALC* 38: Appendix Ee, appendix G. McCulloch's petition to the justices, dated 17/4/1824, is in SSD dossier 34-1824-1.

¹⁹¹Ross had been the provincial agent in Montreal since the early 1800s, and King's Counsel and acting attorney general in the mid-1820s. He was appointed chairman of the Quarter Sessions on March 15, 1828, and relinquished the post to Gale once again on July 9, 1829.

¹⁹²*Quebec Gazette* 13/12/1827.

The creation of the place of Chairman of the Quarter Sessions has not been as advantageous to the public as they had a right to hope; and has had the effect of diminishing the consideration with which the Magistracy of Montreal was regarded. With respect to the establishment of the Police Office at Montreal, the general opinion is that it is more hurtful than advantageous, as concentrating in the person of the Chairman or Chairmen the whole Police of Montreal, which is by Law confided to the body of the Magistracy ... I do not believe that the body of the Magistrates of Montreal enjoy the confidence of the Public ... In the opinion of the public, [this] is principally owing to the empire which the Chairman of the Quarter Sessions [referring to Gale] has acquired over the majority of the Magistrates of Montreal, which is such that he is able to carry all the measures, which he has in view.¹⁹³

Most of the witnesses nevertheless at least partially exonerated McCord and Mondelet: thus, Pierre de Boucherville, another active Montreal justice and a committed supporter of the Patriotes, added "I ought on this occasion to do justice to Messrs. McCord and Mondélet, and to state that these gentlemen always yielded to public opinion when it was clearly expressed, and that they are supposed to have been the victims of an independent action."¹⁹⁴ But the sentiment against Gale was almost universal. This led to the abolition of the post of police magistrate and chairman of the Quarter Sessions in September 1830 (by the simple expedient of the legislature refusing to vote the necessary salaries), and, of necessity, the Police Office,¹⁹⁵ and after Gale was dismissed as a justice in October 1830, his duties were once again re-distributed among the magistrates, as they had been before 1810, and the functions of the Police Office, along with its funding, transferred to the Peace Office.

Despite all of this rhetoric, however, Montreal from 1810 to 1830 had a fixed, public office, staffed with stipendiary magistrates and a small professional staff who were in theory available every day to hear complainants, issue warrants

¹⁹³*JHALC* 38: Appendix Dd, 20/1/1829. Guy had already voiced similar sentiments before the other committee (Appendix Ee, 16/1/1829); and his feelings were echoed by Jean-Philippe Leprohon and Pierre de Boucherville, two other active Montreal justices (Appendix Dd, 9/1/1829, and Appendix Ee, 27/12/1828 and 7/1/1829) and by Jacques Viger, Montreal's road inspector (Appendix Ee, 7/1/1829).

¹⁹⁴*JHALC* 38: Appendix Ee, 27/12/1828. Of the other witnesses, only Viger did not in some measure exonerate McCord and Mondelet, if only indirectly, and lay most of the opprobrium on Gale.

¹⁹⁵Robert Christie, *A History of the Late Province of Lower Canada* (Quebec, 1848-1854) III: 251.

and summonses, act to impose public order, decide whether defendants should be bailed or committed to jail, and so on. This professionalization was not unique to Montreal: not only did London and Dublin have their Police Offices, but much closer, Halifax from 1815 had an establishment that was very similar, and also came under very similar criticism.¹⁹⁶ But it marked a significant departure from the earlier practice, dependant on the willingness and availability of unpaid justices and usually conducted in their homes, and which still persisted outside of Montreal through to the end of the 1820s. And more generally, it signified an increasing formalism and bureaucratization of the work of the justices.

There was another, more concrete indication of growing formalism in the justices' preliminary functions, both in Montreal and outside of it: the growing use of pre-printed forms by the justices instead of the traditional long-hand documents. At first, these forms were only used by justices in Montreal itself, where from the mid-1780s, they were used for many common preliminary documents such as arrest warrants, summonses, and recognizances.¹⁹⁷ This greatly simplified the work of the clerks of the peace and, from 1810, the clerk of the Police Office, both of whom charged for these forms in their accounts;¹⁹⁸ but it also ensured that the justices did not make errors of form. From 1810, the indictments for the most common type of case heard in the Quarter Sessions, assaults and batteries, were also usually pre-printed forms, and from 1820 this was also true of many other

¹⁹⁶Oxner, "The Evolution of the Lower Court of Nova Scotia": 70-72.

¹⁹⁷The few documents I have found from before 1785 were all hand-written; the first pre-printed forms were recognizances, in 1785. That pre-printed forms were not used by the justices in the late 1770s at least is suggested by the detailed accounts of stationary for the justices courts prepared by Fleury Mesplet, Montreal's only printer, and submitted by the clerks of the peace in their accounts; these included blank books, large amounts of blank paper (including "4 mains de papier pour les ordres et ordonnances des commissaires et leurs warrants et copie") and posters advertising various orders of court, but no pre-printed forms (NA RG1 E15A volumes 4-5 files "Judicial Establishment" 1776-1780). On the other hand, in the 1760s tavernkeepers' license issued at Montreal by the clerk of the peace were pre-printed forms (NA RG4 B28), though these must have been prepared in Quebec City, which had the colony's only printing-press.

¹⁹⁸From the mid-1780s, at about the same time that the first pre-printed forms appeared, the clerk of the peace was allowed £12 Sterling per year by the central administration for stationary. The various accounts of the Police Office include charges for blank warrants, recognizances, summonses, and so on. The accounts of both the Peace and Police offices are scattered through NA RG1 E15A.

types of offences. Finally, from 1825 even the official records of convictions in Weekly Sessions cases were entered on pre-printed forms. By the end of the 1820s, the only documents that were still regularly written out in full in Montreal were depositions, since these did not follow any particular form; and even these were usually written on paper which, on the back, had pre-printed spaces for the names of the parties, the date, and the offence.

Up until about 1815, justices outside of Montreal did not use pre-printed forms, and all documents they produced were written out in full. However, from 1815 at least, some justices in other parts of the district, including some consistently active justices such as William Macrae of Saint John, the comptroller of customs, and Joseph Vignau of Boucherville, also began using pre-printed forms, especially for recognizances but also for warrants.¹⁹⁹ Sometimes these were identical to those used in Montreal, including typesetting errors, though with the name of the place of issuing left blank, suggesting that the printer who prepared the Montreal forms simply ran off extra copies for the use of non-Montreal justices. Others, though, appear to have been specially printed, such as the warrants used by Lawrence Kidd of Laprairie in 1825, which were printed up with his name already filled in. Most documents prepared by or for justices outside of Montreal, even in the 1820s, were still long-hand; but the spread of pre-printed forms into the Lower Canadian countryside was one indication of the beginnings of the formalization of the magistracy outside of Montreal as well.

B. The justices as judges

The basic tri-partite court structure established in 1764, Quarter Sessions and Weekly Sessions in the city and summary hearings elsewhere, remained in place through to the early 1830s. But the intricacies of the formal structure of the courts showed two significant trends: on the one hand, as in the justices'

¹⁹⁹I identified fourteen justices outside of Montreal between 1815 and 1830 who used pre-printed forms.

ministerial functions, an increasing formalization; and on the other, a continuing centralization of the justices' formal courts at Montreal.

The Quarter Sessions established in Montreal under Murray's initial proclamation was modelled directly on the English county Quarter Sessions, with jurisdiction over the entire district of Montreal.²⁰⁰ There was no specific reference to the court's criminal jurisdiction, which as in England was defined instead in the commissions of the justices; and since these were almost identical to those used in England, substituting districts for counties, and with the proviso that the justices were to follow the laws in force in the province, the jurisdiction of the Montreal Quarter Sessions was equivalent to that of its English predecessors as of the date of reception of English law into the province, either 1763 or 1774, and as modified by later colonial legislation.²⁰¹ In practice, this meant that the Montreal Quarter Sessions could deal with three types of cases: those involving common law offences that did not lead to the loss of life or limb, especially assault and battery and petty larceny; those involving offences such as bastardy, vagrancy, or breaches of service over which Quarter Sessions had jurisdiction under English statutes; and those involving statutory offences defined by colonial legislation and then specifically placed under the jurisdiction of the Quarter Sessions.

Though its jurisdiction resembled that of English Quarter Sessions, the Montreal Quarter Sessions differed in other ways. One departure from English precedent lay in the obligations that colonial legislation placed on the justices with regards to when they were to hold Quarter Sessions. Initially, the justices were not obliged to hold Quarter Sessions at any particular time, or even to hold them at all, since Murray's ordinance simply allowed them to hold them every three

²⁰⁰Jean-Marie Fecteau suggests that the Quarter Sessions in Quebec and Lower Canada were mainly a function of municipal power and erected for the cities, since the county, fundamental in defining the Quarter Sessions in England, had no equivalent in the colony (*Un nouvel ordre des choses*: 103); but this contrast is more apparent than real, since the districts into which Murray divided the colony were direct equivalents of counties, at least judicially, and always treated as such.

²⁰¹This was explicitly confirmed by 17 George III c.5 (1777) and 34 George III c.6 (1794).

months.²⁰² The more rigorous administrative structure adopted in 1777, however, also applied to the justices' courts, and the new ordinance on the criminal courts put the Quarter Sessions on almost exactly the same footing as those in England, obliging the justices to hold Quarter Sessions on the second Tuesday of every January, April, July, and October, but not fixing how many days they were to sit.²⁰³ The formalization of the courts was increased again two decades later, when the judicial re-organization of 1794 specified that the Quarter Sessions be held every year from January 10 to 19, April 21 to 30, July 10 through 19, and October 21 through 30, apart from Sundays and holidays, provisions that were in force through to the 1830s and beyond.²⁰⁴

Another difference was in the number of justices required to hold the Quarter Sessions. In England, the constant practice, in the eighteenth century at least, was that a Quarter Sessions needed only two justices to be competent.²⁰⁵ In some English colonies in North America, however, the number of justices required to hold Quarter Sessions or their equivalents was raised to three.²⁰⁶ Up until 1794, the situation in Quebec and Lower Canada was unclear. The ordinance of 1764 allowed any three justices to hold Quarter Sessions, implying

²⁰²It might be argued that in theory the statute that required the English justices to hold General or Quarter Sessions every three months or sooner, 12 Richard II c.10, also applied in Canada; however, it is clear that since in practice the governor and Council had the power to alter the administrative structure of the English court system to suit local circumstances, and that Murray's ordinance was specific about the justices having a right rather than an obligation to hold Quarter Sessions, this over-rode the English statute.

²⁰³17 George III c.5 (1777). In England, the Quarter Sessions were to sit for at least three days, but only "if need be".

²⁰⁴34 George III c.6 (1794).

²⁰⁵Burn, *The Justice of the Peace* IV: 196.

²⁰⁶In Nova Scotia, from which Murray and his Council drew much of their inspiration in erecting the courts in Quebec, the County Courts established in 1749, which had roughly the same jurisdiction as the Quarter Sessions, had to be held by three or more justices, although after this court was replaced in 1754 by a court of General Sessions the number of justices required was lowered to two (Oxner, "The Evolution of the Lower Court of Nova Scotia": 61-66). In North Carolina, the commissions of the peace required that three or more justices, acting in court, try petty larcenies, assaults, trespasses, breaches of the peace, and misdemeanours, essentially the practical jurisdiction of the English justices in their county Quarter Sessions (Donna Spindel, *Crime and Society in North Carolina, 1663-1776* (Baton Rouge: Louisiana State UP, 1989): 26).

that two could not; however, the commissions issued to the justices in 1764 and 1765 all followed the English form, which allowed two justices to hold Quarter Sessions. The 1777 ordinance that re-established the justices was even vaguer, stating only that the Quarter Sessions were to be held by the justices "or so many of them, as are, or shall be limited in the commission of the peace;" and the commissions themselves were inconsistent, with those of 1776, 1788, and 1794 allowing two justices to hold Quarter Sessions, while that of 1785 raised the number to three. The legal situation was only clarified in the judicial re-organization of 1794, which explicitly raised the number of justices required to hold Quarter Sessions to three.²⁰⁷

The final important feature of the Quarter Sessions was its centralization at Montreal, and its resulting domination by urban justices. In England, many county Quarter Sessions were held on a rotating basis in the various towns and cities, though some were held only in the county's principal locality; in either case, counties were small enough so that travelling to the Quarter Sessions was relatively easy. As a result, many rural Quarter Sessions were attended by justices from throughout the county, and it was not uncommon to see twenty or thirty justices on the bench.²⁰⁸ In Quebec and Lower Canada, however, there was no provision for perambulatory Quarter Sessions; and the district of Montreal, even if restricted to its populated areas, covered an area roughly equivalent in size to the whole of southern England, with its furthest populated places by 1810, Barnston and Hull, being respectively 90 and 120 miles from the seat of the Quarter Sessions in Montreal. Though this was the subject of many complaints,²⁰⁹ the only measure that was taken was the creation in 1823 of the inferior district of Saint Francis, with its own Quarter Sessions in Sherbrooke, which only covered

²⁰⁷34 George III c.6 (1794).

²⁰⁸Skyrme, *History of the Justices of the Peace* II: 41-45.

²⁰⁹See for example the 1819 petition from the inhabitants of the Eastern Townships (*JHALC* 28: 143-145), or the 1824 inquiry of the House of Assembly into the petition of the inhabitants of the county of York above Petite-Nation (*JHALC* 33: Appendix Tt).

those townships to the east of Lake Memphramagog;²¹⁰ and though in 1824 the House of Assembly resolved that Quarter Sessions should be established in the country parts of the province, this project was not put into law until 1832.²¹¹ The effects of this centralization on those who came before the justices I will leave for later; but for the justices themselves, it meant that few justices from outside the city ever bothered to attend the Quarter Sessions, which was left almost entirely to justices from Montreal itself.

Though the Quarter Sessions were the only courts in which the justices could act as judges in cases which involved trial by jury, the main venue for the trial of the vast range of offences which the justices could judge summarily was not the Quarter Sessions, but the justices' summary courts, both the Weekly Sessions and the other summary hearings. As we saw, a large part, though not all, of the summary jurisdiction of the English justices was transferred to the justices in Quebec and Lower Canada; and the successive legislatures of the colony expanded this summary jurisdiction greatly.

Unlike the Quarter Sessions, the Weekly Sessions were not based on any equivalent court in the English court system, though they were not entirely without precedent. In England, petty sessions, the regular meetings of two or more justices, had by the eighteenth century become so formalized that some counties were divided into clearly defined geographical jurisdictions, each with its own petty sessions, clerks, and so on, and dealt with a large portion of the justices business, both administrative and judicial.²¹² Similarly, there were regular weekly courts held in many American colonial towns.²¹³

In theory, the Weekly Sessions in Montreal were held every Tuesday by any two justices of the city. Initially, the justices were chosen by rotation among

²¹⁰George IV c. 17 (1823).

²¹¹*JHALC* 33: Appendix Qq; 2 William IV c.66 (1832).

²¹²Landau, *The Justices of the Peace*: 209-239.

²¹³Surrency, "The Courts in the American Colonies": 351-52.

the city's active justices, and were sometimes known as the "Justices of the Week". As well, whenever the "Justices of the Week" felt it necessary, they held additional sessions usually known as "Special Sessions", not to be confused with the regular meetings the justices held from 1796 to deal with municipal administration and which constituted the fore-runner of Montreal's municipal government. In a classic instance of legislative sanction following constant practice, these Special Sessions were not recognized by colonial legislation until the re-organization of the courts in 1794, when the clause re-establishing the Weekly Sessions stated specifically that this was in no way to interfere with the holding of Special Sessions by the justices "for the purposes and in the manner by law allowed."²¹⁴

The Weekly Sessions were very much a formal court. Like the Quarter Sessions, they were held in the court-house in Montreal. They also shared many of the same inferior officers: one of duties of the clerk of the peace was to attend the Weekly Sessions and keep its registers and other documents; the crier of the Quarter Sessions was also the crier of the Weekly Sessions; and up until 1821 at least, the constables who from 1787 were required to attend the Quarter Sessions were also required to attend the Weekly Sessions. The Weekly Sessions were thus not very different from the summary hearings of the Quarter Sessions, though with only two justices present; indeed, between 1779 and 1784, the clerk of the peace entered at least some of the records of the Weekly Sessions in the same register he used for the Quarter Sessions, often not even bothering to distinguish between the two.

The general jurisdiction of the Weekly Sessions in Quebec and Lower Canada was only vaguely defined. As established in 1764, they had jurisdiction over the "regulation of the police and other matters and things"; this was reiterated in 1777 and 1793, adding "other matters and things belonging to their [the justices of the peace] office." However, since they were held by two justices,

²¹⁴34 George III c.6 (1794), repeated by 42 George III c.8 (1802).

they could also in effect try any offence that had been placed under the summary jurisdiction of one or two justices, which included most such offences; the only notable exception was the summary trial of petty larceny, which required the presence of three justices.

This broader implicit jurisdiction for the Weekly Sessions was the foundation of an important difference between the Weekly Sessions in Montreal and petty sessions in England: the geographical area over which these courts exercised their jurisdiction. Petty sessions in England had jurisdiction only within specific subdivisions of the county. The Weekly Sessions, however, operated under no such restraint, and throughout its existence determined cases from the entire district. In effect, in a further example of the centralization of justices' courts, the urban justices in Montreal arrogated to themselves a summary jurisdiction that in England was usually exercised by local rural justices. As we shall see, this had a considerable effect on the ability of the Lower Canadian state to impinge upon civil society in the countryside, for it allowed urban justices, with no ties to the local community to restrain them, to enforce such unpopular legislation as the liquor licensing provisions.

The other summary hearings held by justices differed quite substantially from the Weekly and Special Sessions. In the first place, these summary hearings were almost exclusively a phenomenon of the justice system outside of Montreal itself. In Montreal, justices almost never judged offenders outside of the Quarter Sessions or the Weekly Sessions and their subsidiary Special Sessions. Thus, for example, the Montreal justices who in 1791 answered an query from a committee of the Executive Council on the collection of fines unanimously declared that they had only ever imposed fines in the Weekly or Quarter Sessions;²¹⁵ and in 1833, of 52 justices from the district of Montreal who reported imposing fines in summary hearings, only two were from the city.²¹⁶

²¹⁵NA RG1 E15A volume 13 file "Committee on Revenue 1793".

²¹⁶JHALC 42: Appendix Hh.

Until 1824, summary hearings outside of the formal courts in Montreal were almost entirely unregulated, at least under colonial legislation. The only proviso, included in the justices' commissions, was that justices who imposed fines submit accounts of these to the central administration, usually through the office of the receiver general. However, few justices did so, and the records of the receiver general and the other officials to whom fines were meant to be paid contain only scattered traces of the justices' summary judgements outside of Montreal.²¹⁷ In all, the official records of fines received show only 35 justices from outside of Montreal remitting fines in the entire period, out of a total of 222 justices active²¹⁸ outside of the city; and of these, only two justices made regular returns, William Macrae of Saint John (who was also one of the justices outside of Montreal who made the most use of pre-printed forms), and Joseph Douaire de Bondy of Berthier.

Probably in response to this, an act of the legislature in 1824 attempted to impose a formal structure on the summary hearings of the justices. Thus, it required justices to keep a record of all their proceedings and to submit detailed reports of all fines they collected to the clerk of the peace; and it also appended a general form of conviction that the justices were meant to use.²¹⁹ However, at least as far as the accounting of fines was concerned, the act made little difference, with the accounts submitted by the clerk of the peace to the receiver general showing few payments to him by justices; and as for the records to be kept by the justices under the 1824 law, none seem to have survived.

Given the justices' non-compliance with the reporting and record-keeping rules, it is very difficult to gauge how many justices outside of Montreal held summary hearings, and how often. Summary hearings were apparently rare in the

²¹⁷The receiver general's records are now in NA RG1 E15A; there are also a few accounts of fines in QSD and QSR; and summaries of amounts received from fines were included in the annual summaries of public accounts that were published in *JHALC*.

²¹⁸On the definition of active justices, see below, page 112.

²¹⁹4 George IV c.19 (1824).

eighteenth century. Of thirteen justices from outside of the city who answered the query of the Executive Council in 1791, only four declared ever having imposed fines, and only one, René Boucher de La Bruère de Montarville of Boucherville, with any regularity: between 1787 and 1789, he had imposed fines on at least 23 individuals, for breaking the peace, refusing to work on the roads, and refusing to *corvée* for the king. Patrick Conroy and Henry Ruiters, justices from Caldwell's Manor (the seigneurie of Foucault), were more typical:

We never received any money for forfeitures, fines, or otherwise, therefore have had none to pay into his majesties Receiver General ... for any breaches of the peace, or other complaints, where any fine was likely to be enacted, we generally make it a rule to bind the parties over to the Quarter Sessions.

However, there are several indications that in the nineteenth century, more and more justices outside of Montreal were imposing and collecting fines, and simply not bothering to account for them. Thus, in his report of his visits to the various parishes of the district in 1804, the *grand-voyer* of the district of Montreal, René-Amable Boucher de Boucherville, noted that justices in the seigneuries of Chateauguay, Sorel, and Verchères had imposed several fines but had not remitted the money to him as required by law.²²⁰ Likewise, the rough notebook kept by Henry Crebassa and Robert Jones of William Henry, covering at least part of their activity as justices between April 1822 and December 1823, shows that they imposed at least eight fines, ranging from 5sh to 20sh; but there is no record of either ever submitting any fines to the receiver general.²²¹ And from lists prepared by the 1833 inquiry of the House of Assembly into the collection of fines, we can calculate that of 103 justices outside of Montreal who replied to the committee's query, 43 reported having received fines in 1832 or 1833 but not accounted for them, along with only nine who had both received fines and

²²⁰QSD, "Rapport de la visite des chemins et ponts de la partie du sud district de Montréal avec les noms des inspecteurs et sousvoyers des différentes paroisses pour l'année 1804-5-6.", bundled in the packet for 4/1805.

²²¹NA MG8 F89 volume 6: 3657-87.

accounted for them.²²² Finally, as we saw above, not all of the offences that the justices could try summarily were punishable only by fines, with many also punishable by imprisonment, and which show up not in lists of fines, but in the calendars and registers of the Common Gaol and the House of Correction.

Drawing on all of these sources, it is possible identify some 67 justices outside of Montreal who imposed summary judgements in the 1820s, whether fines or imprisonments; this represented about half of all such justices active in the same period.²²³ For some, like Bondy, and Macrae, this was a regular pursuit, but for most others it was far more intermittent, with at most one or two fines or imprisonments per year. The contrast to the more formalized summary court of the justices in Montreal is striking: even in the late 1820s, the business of that court far outweighed any summary hearings by individual justices. However, when all the various summary hearings are taken together, a different picture emerges, at least at the beginning of the 1830s. Thus, for the six months between October 1829 and April 1830, the clerk of the peace received some £148 for fines imposed in the Weekly Sessions, out of a total of £385 imposed by the court,²²⁴ and for the twelve months between October 1831 and October 1832, he received some £137 from the fifteen country justices who sent fines in to him, while another 37 reported having imposed fines but not accounted for them.²²⁵ Comparison is difficult because of the difference and uncertainty in the sources; however, it is safe to say that by the beginning of the 1830s, the summary hearings of the justices outside of Montreal were probably beginning to approach the volume of the Weekly Sessions in the city.

²²²*JHALC* 42: Appendix Hh.

²²³131 justices were active outside of Montreal between 1820 and 1830.

²²⁴QSD, "Statement of fines received by John Delisle ...", 4/1830.

²²⁵*JHALC* 42: Appendix Hh. The appendix actually listed 46 justices from the district of Montreal who had not accounted for their fines, but one of these was a repeat, two were actually from the city of Montreal, and six were listed later in the same appendix as having accounted for their fines earlier in 1832.

These details of the powers and duties of justices, the structure of their courts, and so on are admittedly fastidious. But they illustrate some specific trends, namely the increasing formalism of the justices' courts, the continuing concentration of the formal courts at Montreal, and the beginnings of a spread of summary hearings into the other parts of the district. And their very specificity demonstrates how these finer details of the criminal justice system could show significant changes that the overall structures did not. There were few John A. Mathisons, the terror of Vaudreuil cited by Greer, in the eighteenth century, or at least few that we have record of; but by the end of the 1820s, they had become increasingly common.

V. The potential magistracy: the appointment of justices

As in England, justices in Quebec and Lower Canada were appointed by and entirely responsible to the central administration; but this meant something very different in a colony without responsible government. In England it was the Lord Chancellor who determined the composition of the commission; and since this official was in effect appointed by the party in power in Parliament, the process of appointing justices, at least in the eighteenth century, largely reflected the battles between Whigs and Tories.²²⁶ In Quebec and Lower Canada, however, despite the existence of an elected House of Assembly from 1792, it was the executive, the governor and his administration in Quebec City, who as part of the general policy of yielding as little as possible of the royal prerogative retained complete control over the appointment and, just as importantly, the removal of justices.²²⁷

The formal process of appointing justices was virtually identical to that in England. Periodically, the governor issued a "general commission of the peace" revoking all previous commissions and naming those listed in the commission as justices, a process sometimes known as "renewing the commission", with "commission" used attributively to refer to the body of appointed justices. In between these general commissions, the governor also added individual justices as necessary by what were usually known as "commissions of association," since they "associated" the named justices to the last general commission.²²⁸

In the seven decades following Murray's first commission, the various governors and administrators sporadically issued new general commissions: twice

²²⁶On the politics of the commissions of the peace in England, see Lionel K.J. Glassey, *Politics and the Appointment of the Justices of the Peace, 1675-1720* (Oxford: Oxford UP, 1979), and Landau, *The Justices of the Peace*: 69-169.

²²⁷Though the House of Assembly could make laws relating to the appointment of justices, as we shall see it did not exercise this power until 1830. Further, the justices were in no way responsible to the House, despite David-Thierry Ruddle's assertion to the contrary (*Québec City, 1765-1832*: 167); had they been so, this would have been a very early concession of an important royal prerogative.

²²⁸The commissions of the justices are scattered through NA RG68 (Commissions and Letters Patent).

in 1765, in 1776, 1785, 1788, 1794, 1796, 1799, and 1810, twice in 1821, and in 1826, 1828, and 1830.²²⁹ As in England, they also issued large numbers of commissions of association in between the general commissions: some 337 appointments of justices were made in this fashion between 1764 and 1830, especially between 1799 and 1821, when the commission was renewed only once; and more than half of the 562 justices named between 1764 and 1830 were first appointed in this fashion.²³⁰ As Table 1.1 shows, the number of justices in the commission rose steadily through to the beginning of the 1820s, from ten in 1764 to 179 in 1821, although levelling off and even declining slightly in the 1820s. By comparison with the estimated population of the district, however, the number of justices on the commission showed a slightly different trend: a comparatively small number of justices from the 1760s to the mid-1780s, followed by a rapid increase that far outstripped the growth in the district's population, followed by a slow decrease in the 1820s.²³¹

The administration issued new general peace commissions for a variety of reasons. Sometimes the decision to renew the commission was informed by practical considerations, in response to administrative changes that rendered the old commissions obsolete. Thus, the Quebec Act's abolition of all existing public offices as of May 1, 1775 included the justices, although the administrative chaos caused by the American invasion delayed the issuing of a new peace commission

²²⁹NA RG68 (Commissions and Letters Patent) volume 1: 13-17 (24/8/1764), 53-57 (11/1/1765), and 84-87 (23/5/1765); volume 2: 36-39 (14/8/1776); volume 3: 19-22 (18/4/1785), and 267-271 (24/7/1788); volume 4: 110-115 (2/4/1794), 258-264 (22/10/1796), and 380-386 (22/5/1799); volume 5: 205-209 (10/7/1810); volume 6: 276-285 (28/6/1821), and 379-388 (19/10/1821); volume 9: 127-137 (21/10/1826); volume 10: 10-22 (14/3/1828); and volume 11: 394-404 (15/10/1830).

²³⁰290 justices were first named to the commission by commissions of association; 47 of the appointments by commission of association represented justices named in this fashion a second or subsequent time.

²³¹The population estimates used are for the post-1790 district of Montreal and are based on the censuses or estimates of 1765, 1785, 1790, 1822, 1825, and 1831, and assuming steady growth between periods (*Census of Canada 1871. Volume 4: Censuses of Canada 1665 to 1871* (Ottawa, 1876); *JHALC* 41: Appendix Oo; Louise Dechêne, "La croissance de Montréal au XVIIIe siècle", *RHAF* 27(2)(1973): 163-179).

TABLE 1.1: JUSTICES IN THE GENERAL COMMISSIONS, 1764-1830*

Commission date	# of justices	Population per justice	Francophone	Non-francophone
24/8/1764	10	2600	1 (10%)	9 (90%)
11/1/1765	13	2100	1 (8%)	12 (92%)
23/5/1765	14	2000	1 (7%)	13 (93%)
14/8/1776	14	3000	7 (50%)	7 (50%)
18/4/1785	22	2600	11 (50%)	11 (50%)
24/7/1788	38	1800	25 (66%)	13 (34%)
2/4/1794	72	1200	44 (61%)	28 (39%)
22/10/1796	78	1200	42 (54%)	36 (46%)
22/5/1799	85	1200	37 (44%)	48 (56%)
10/7/1810	122	1200	51 (42%)	71 (58%)
28/6/1821	179	1200	79 (44%)	100 (56%)
19/10/1821	152	1400	64 (42%)	88 (58%)
21/10/1826	178	1400	70 (39%)	108 (61%)
14/3/1828	173	1500	55 (32%)	118 (68%)
15/10/1830	139	2000	59 (42%)	80 (58%)

*excluding ex officio justices, justices outside of the post-1790 district of Montreal, and justices in the inferior district of Saint Francis after 1823.

until August 1776.²³² Similarly, in announcing the commission of 1794, Dorchester noted that "since the issuing of the last General Commissions of the Peace [in 1788] a division of the province had taken place as well as many casualties which may render a revision thereof advisable."²³³ And though by an act of 1760 the death of a monarch did not automatically nullify the justices' commissions,²³⁴ the first commission of 1821, and that of 1830, were issued as part of the general renewal of all royal commissions following the deaths of George III and George IV respectively.

²³²In the interim, criminal matters were handled by specially appointed "Conservators of the Peace" who, despite Hilda Neatby's assertions, were not at all analogous to justices of the peace; see Fyson, *The Court Structure of Quebec and Lower Canada*: 42.

²³³NA RG4 A1: 18567.

²³⁴Skyrme, *History of the Justices of the Peace* II: 10-11.

Some general commissions, however, were unnecessary from a practical perspective and were issued largely to further the political agenda of the administration. This was the case with Murray's two commissions in 1765, less than a year after that of 1764, which removed several justices who had been too closely involved in the disputes between the military and the English merchants in Montreal.²³⁵ Similarly, in 1796, in response to the popular riots around Montreal against the roads acts, the administration under Robert Prescott issued a new commission in an unsuccessful attempt to co-opt two of its more vocal Canadien opponents by naming them justices, while at the same time dropping two other Canadien justices and adding a number of hard-line Tories to the magistracy.²³⁶ And most notably, as we shall see, Dalhousie issued the commission of 1828 specifically to purge the magistracy of a number of Patriote sympathizers and, more generally, anybody who opposed his autocratic administration.

While the decision to issue a new general commission was only sometimes political, the choice of who to include in or exclude from the commission was always heavily influenced by political considerations, much as in England, though the specifics of political manipulation of the commission in the colony were quite different. Thus, though the first commission issued by Murray was dictated by the practical necessity of appointing justices of the peace in order to implement his instructions, his choice of justices, five merchants, four soldiers, and a civil official, was an obvious attempt to balance the two main English factions at Montreal, the merchants and the army.²³⁷ As Murray noted in 1764:

²³⁵Thus, for example, both Thomas Lambe and Thomas Walker, who had been at the center of especially bitter disputes with the military, were dropped by Murray from the commission. On Lambe, see NA RG1 E1 27/11/1764 and RG4 A1: 5286-87, 5307-10, and 5329; on Walker, see Lewis H. Thomas, "Thomas Walker", in *DCB* IV: 758, and Scott, "Chapters in the History of the Law of Quebec": 165-174.

²³⁶The two Canadiens who were dropped were Gabriel Franchère (the elder) and Pierre Guy, both highly active justices; Guy at least was well known for espousing the cause of the Canadien *petite bourgeoisie*. The two Canadiens courted by the administration were Joseph Papineau and Joseph Périnault, both of whom declined to act as justices. On the latter, see Greenwood, *Legacies of Fear*: 91.

²³⁷On the rivalries in Montreal, see Burt, *The Old Province of Quebec*: 114-120.

we may hope to find the people at Montreal very tractable; to contribute to it I have made Walker and Knipe [both Montreal merchants] justices of the peace, the first is certainly a sensible man and with proper management may be kept within the bounds of moderation and made an useful member of society; the man is proud and wants not perhaps more than a moderate share of ambition.²³⁸

The most obvious example of the administration's political manipulation of the commission on a broad scale, however, is reflected in the proportion of francophone justices in the commissions, representing the inclusion of elites from the colony's predominant cultural group.²³⁹ Thus, as Table 1.1 showed, the administration's policy in the eighteenth century of co-opting part of the *Canadien* elites extended to the peace commissions, which from 1776 to 1796 always included a majority of francophones, reaching a high of two-thirds francophone justices in 1788.²⁴⁰ But the development of what Murray Greenwood has termed the "garrison mentality" among the English elites and the administration in the mid-1790s, however, and the concomitant desire to anglicize (or at least de-frenchify) the colony as much as possible, were also reflected in the peace commissions.²⁴¹ The new attitude with regards to the justices is suggested by the response of Jonathan Sewell, the Tory attorney general, in 1797, to a request from the civil secretary for a recommendation for a new justice for the county of Warwick (around Berthier): after recommending Alexander Hay, an English merchant, and Jacques Joran, a Swiss Protestant and former mercenary, he added:

²³⁸Murray to Fraser, 11/9/1764, NA MG23 GIII series 1 volume 2.

²³⁹For a discussion of my use of this analytical category, see below, page 115.

²⁴⁰It is certain that there was a far higher proportion of non-francophone justices than there were non-francophone inhabitants: even in 1788, with 34% non-francophone justices, the population of the district of Montreal was probably 90-95% francophone (Greenwood, *Legacies of Fear*: xiv). However, given the importance of social place in determining the choice of justices, it is more difficult to state unequivocally that francophone elites were under-represented on the commission: in 1785, for example, of 341 men in the town and vicinity of Montreal who had sufficient property qualifications to serve as jurors, 141, or 41%, were non-francophones (NA RG4 A1: 9000-9007), while only 37% of the justices for Montreal in 1788 were non-francophone.

²⁴¹On the anglicization policies of late eighteenth and early nineteenth centuries, see Greenwood, *Legacies of Fear*: 177-184.

There are many shopkeepers and substantial farmers in the County of Warwick, who are I am told (many of them) sensible and worthy men, but for want of knowledge in the English language they are not likely to acquire the forms of office which are frequently essential, nor competent information on the criminal law which they are to administer which is entirely in English.²⁴²

Knowledge of English had never been an over-riding consideration in choosing justices before; further, less than a decade before a substantial part of Burn's *Justice of the Peace*, the premier manual for English justices, had been translated and published by Joseph Perrault, including forms for arrest warrants and other documents,²⁴³ and as we shall see, most of the business of justices was with cases such as assault and battery and larceny, which in their definition were little different under English law than under French, or with offences defined under colonial legislation, which was always published in both English and French. But the francophobic attitude evinced by Sewell's report persisted, and from 1799 to 1830, francophone elites were consistently under-represented on the commission; this culminated with Dalhousie's commission of 1828, which reduced the proportion of francophones to less than a third, almost exactly reversing the situation of 1788.

Dalhousie's blatant manipulation of the 1828 commission provided considerable ammunition to his Patriote opponents in the House of Assembly, and in particular the two committees appointed by the House in late 1828 to inquire into his administration.²⁴⁴ With regards to the 1828 commission, the committees' reports and the testimony heard before them focussed in particular on the dismissal of four Canadien magistrates from Montreal, Jean-Marie Mondelet, Hugues Heney, François-Antoine Larocque, and Thomas Barron. The four were all moderate reformers who had opposed the autocratic proceedings of Samuel Gale, the ardent Tory whom Dalhousie had appointed in 1824 to replace Mondelet

²⁴²Sewell to H.W. Ryland, 23/8/1797, in NA MG23 GII10 volume 10: 4896-97.

²⁴³*Le juge à paix et officier de paroisse.*

²⁴⁴JHALC 38: Appendices Dd and Ee. The committees sat from November 1828 to February 1829.

and Thomas McCord as chairman of the Quarter Sessions following the confrontation over the nomination of the high constable.²⁴⁵ Other testimony identified ten other justices who were dropped from the commission for participating in protests against the administration, such as Ignace Raizenne of Saint-Benoît, who chaired the local meeting called to protest Dalhousie's actions.²⁴⁶ There are also hints that some committee-members also thought that Dalhousie had made similar use of the second commission in 1821 and that of 1826, although nothing was made explicit in the testimony; certainly, at least five of the justices appointed in the first commission of 1821 who were not included in the second one of the same year are identifiable as Patriote supporters.²⁴⁷ And it was largely in response to this that the commission issued by Kempt in 1830, while not only re-instating most of the justices dropped by Dalhousie in 1828, also included for the first time a number of prominent Patriotes, such as Augustin Cuvillier and André Jobin.

Other broad political considerations also came into play in the appointment of justices, such as the question of putting clergymen on the commission. In England, clerical justices became increasingly popular with the administration in the late eighteenth and early nineteenth centuries, since they were more likely to act than the rural gentry who had previously dominated the commissions, and by 1830 clergymen composed perhaps a quarter of those on the commission.²⁴⁸ In Quebec and Lower Canada, however, there were only ever two clergymen appointed justices, John Ogilvie, the garrison chaplain appointed by Murray in

²⁴⁵See above, page 77.

²⁴⁶Of 25 justices on the 1826 commission who were not on the 1828 commission, three had died, one had emigrated, one, François Rolland, had declined to act as a justice, and one, François-Hyacinthe Séguin, was a strong anti-Patriote, leaving nineteen who may have been purged. Of these, fourteen were specifically mentioned in the minutes of the committee of the House of Assembly as having been removed for political reasons; one more, Louis-Marie-Raphael Barbier, was very likely so, since he was active as a justice before 1828, was still alive in 1828, and was a Patriote sympathizer; and the status of the remaining four is unsure.

²⁴⁷These were Ignace Bertrand, Jean Dessaulles (Louis-Joseph Papineau's brother-in-law), Joseph-Toussaint Drolet, Louis de Fleury Deschambault, and François Mercure.

²⁴⁸Skyrme, *History of the Justices of the Peace* II: 29-36.

1764, and John Doty, the Anglican minister of William Henry who was appointed a justice in 1786; and of these two, only Doty ever acted as a justice.²⁴⁹ Doty's appointment proved to be an unmitigated disaster from the administration's perspective: he became heavily embroiled in the disputes between the different Loyalist factions at William Henry, and used his powers as a justice to further the faction he supported, for example ordering the felling of a maypole that had been erected by Loyalists of the opposing camp in honour of their leader, Captain Alexander White. As the board of inquiry on the state of the William Henry Loyalists noted in its 1787 report:

We are induced to believe that the ministry of the gospel is disturbed, and that in the present circumstances the publick receives little benefit from the magistracy being vested in the hands of the clergy, when other subjects can be found, and we suggest to your Lordship that a transfer of the duties of the magistrate for this settlement from Mr. Doty to Mr. Delancy, might be attended with good effect.

As a result, Doty was dropped from the commission in 1788, and replaced by Stephen DeLancey, the inspector of Loyalists for the district of Montreal.

There were probably other political reasons why the successive administrations avoided appointing clerical justices, though I have not found explicit mention of them. Proselytizing Protestants like Doty, a member of the Society for the Propagation of the Gospel, could hardly have been expected to be impartial in cases opposing Catholic Canadiens and Protestant immigrants; and Catholic *curés*, under the theoretical jurisdiction of the pope, were not suitable as representatives of the anti-papist English monarchy.²⁵⁰ But whatever the reasons, the successive administrations, even under Dalhousie, consistently avoided appointing any clergymen to the commission.

²⁴⁹Testimony to the committee of the House of Assembly in 1829 did identify one Reverend Jackson, an Episcopalian minister in William Henry, as a justice of the peace though noting that he had never acted as such; however, this must have been an error, since Jackson appeared in none of the commissions that I found, although he may have been appointed a justice elsewhere than in the district of Montreal. The Anglican archbishop, from 1794, and the Catholic archbishop, in the 1820s, were *ex officio* justices of the peace, but they never acted as such, at least in the district of Montreal.

²⁵⁰It is possible that Jean-Baptiste Bruguières, the *curé* of Chateauguay, was appointed a justice in 1812, though the commission probably referred to his father, a L'Assomption merchant of the same name, who had been a justice since 1790.

The politicization of the commission was also furthered by the process by which the administration determined who, specifically, should be named a justice. Although a complete examination of how justices were chosen is inseparable from broader questions of patronage that I have not addressed, a few general statements illustrate how the process worked. In the eighteenth century, the choice of justices for Montreal was made either by the governor himself, as in the cases of Walker and Knipe noted above, or, more usually, by a committee of the Executive Councillors resident at Montreal, who made personal inquiries and presented a list of potential justices to the governor.²⁵¹ By the 1820s, however, the growth in the number of justices, especially outside of Montreal itself, made such personal knowledge by the governor and Council difficult. For justices outside of Montreal, the usual course seems to have been for local notables to petition the governor with the names of proposed justices, and for the governor to pass these petitions along for information either to the solicitor general, during the times that that official was resident in Montreal, or otherwise to the chairmen of the Quarter Sessions in Montreal. Thus, in 1824, the then-chairmen, McCord and Mondelet, wrote to the governor that they had enquired into the petition that Mr. Thomas Jones of Sabrevois be made a justice, and were informed that he was "a very good and peaceable subject but totally unqualified for that office;" as a result, he was never appointed a justice.²⁵² In some cases, however, the chairmen of the Quarter Sessions initiated the communication with the administration themselves. Thus, in late 1819, McCord and Mondelet wrote to the governor representing the necessity of a justice on the upper Ottawa River, and recommending John Le Breton; their recommendation was passed along to the solicitor general for his comments,

²⁵¹See, for example, the report of the Montreal committee for choosing the justices for the commission of 1794, NA RG4 A1: 18659-76.

²⁵²McCord and Mondelet to Cochrane, 29/3/1824, in NA RG4 A1 volume 224. With regards to the solicitor general, there are copies of a number of such references attached to his accounts from 1818 on, in NA RG1 E15A. It should be recalled that I did not systematically consult the main source for understanding this system of patronage, the papers of the civil secretary (NA RG4 A1), after 1800.

though Le Breton was not appointed until 1821.²⁵³ The influence of the chairmen of the Quarter Sessions eventually aroused the ire of the Patriote-controlled House of Assembly, especially after 1825, when in both Quebec City and Montreal the chairmen in office were ardent supporters of Dalhousie's administration; and the report of the committee of the House of Assembly on the justices of the peace in 1829, though focussing in particular on the actions of Robert Christie, the chairman of the Quarter Sessions at Quebec, concluded that these officials had far too much influence over the process of selecting justices.²⁵⁴

Decisions on who to include in the commission, and especially on which existing justices to drop from the commission, however, were not always determined by political considerations. Throughout the period, another guiding principle was that those appointed justices must be willing to act as such, or at least to show themselves willing by taking the oaths of office, and not simply to regard their inclusion in the commission as an honour. Thus, in renewing the commission in 1788, Governor Dorchester was "of opinion ... that none of the Commissioners of the Peace for the District, who reside in the Town of Montreal, and do not officiate as Magistrates, should be in the Commission."²⁵⁵ The same principle was applied in theory even during Dalhousie's administration in the 1820s: before the 1826 commission was issued, justices previously appointed who had not yet qualified received a circular letter asking them to inform the administration whether they were willing to take the oaths and act as justices, so as to determine whether they should be included in the new commission.²⁵⁶

It is clear, however, that this practice was not consistently followed. Thus, a petition from Hatley in 1820 complained that Robert Vincent, appointed a justice in 1814, had not yet qualified himself, and asked that another justice be appointed;

²⁵³NA RG1 E15A volume 37 file "Solicitor General 1820".

²⁵⁴JHALC 38: appendix Dd, *passim*.

²⁵⁵Edward William Gray to Henry Hope, 24/1/1788, in NA MG23 GII3 volume 4.

²⁵⁶NA RG1 E15A volume 54 file "Civil Secretary 1826".

but though the administration complied and added an extra justice for Hatley in 1821, Vincent was also re-appointed.²⁵⁷ Similarly, William Hallowell, though first appointed for Montreal in 1822 and re-appointed in 1826 and 1828, had still not qualified himself by 1829.²⁵⁸ More generally, in the only period for which I have relatively complete information on which justices took the oath, 1803 to 1820, of 33 justices appointed who did not take the oath, twelve were nonetheless included in the next general commission.²⁵⁹ And overall, of 148 justices appointed between 1764 and 1830 whose commissions were not cancelled the same year, and for whom I have found no evidence of their ever qualifying or acting as justices, some 77 were re-appointed when the commission was next renewed, of whom 49 were re-appointed two or more times.²⁶⁰

The process of appointing justices, and the importance of political manipulation in the process, thus resembled that in England, but was substantially reshaped by local political imperatives. An even larger departure from English precedent lay in the formal criteria applied by the administration in the choice of justices; in other words, who could and could not be named a justice, political considerations aside. In the first place, Catholics were excluded from the magistracy in England by virtue of the Test Act. This was initially applied in Quebec, thus barring from the commission all but the handful of Protestants in the colony, almost all of whom were British or American. However, the Quebec Act removed this disability, allowing Catholics to be named justices. This was in

²⁵⁷The petition is in NA RG1 E15A volume 30, file "Solicitor General 1820". Vincent was also re-appointed in 1826 and 1828, but since from 1823 Hatley lay within the district of Saint Francis, whose Quarter Session records I did not consult, I cannot be certain of his activity after that date.

²⁵⁸*JHALC* 38: Appendix Dd, 3/1/1829, testimony of David Ross.

²⁵⁹The record of which justices had taken the oath are in NA RG1 E11.

²⁶⁰This excludes a number of justices who were appointed in a commission that was almost immediately superseded by another commission in which they were not named, and thus did not really have the opportunity to act; thus, in 1821, thirteen justices were appointed for the first time in the first commission in June, but were not named in the second commission in October. It also excludes justices appointed for the first time in 1830, since my research period, ending less than three months after the commission was issued, does not allow me to be certain about their activity.

marked contrast to England's other predominately Catholic colony, Ireland, where the Test Act continued to bar Catholics from the magistracy. The importance of this cannot be overstated, for as we shall see, a strong francophone presence in the magistracy was one of the fundamental factors that shaped contacts between the criminal justice system and society at large.

The other important difference between England and Quebec and Lower Canada was the relative disregard in the colony of the property qualifications that were in theory attached to the office of justice of the peace. In England, property qualifications were supposed to ensure that justices were drawn only from the propertied elites. Thus, under a statute of 1745, all English justices had to possess property yielding an annual income of £100 Sterling, although this could be either rural estates or urban property, and held in virtually any manner; they had to swear an oath to that effect; and they were in theory subject to heavy penalties if they acted without being so qualified. However, Norma Landau has argued that this in fact made very little difference to the English magistracy, since most of those who usually composed the commissions easily met the qualifications; further, she points out that there is no record of any justice ever being tried for acting without being qualified.²⁶¹

In Quebec immediately after the Conquest, the rigorous application of the property qualifications, amounting to about £110 currency, would have excluded almost all of the Protestants in the colony; Murray thus disregarded it, and appointed propertyless merchants and army officers as justices.²⁶² After 1775, when the re-habilitation of Catholics meant that all landowners in the colony were eligible to become justices, this should have been less of a consideration:

²⁶¹*The Justices of the Peace*: 161-162.

²⁶²It is impossible to be certain about the property holdings of the first justices appointed by Murray; however, a search in the *Parchemin* database of all notarial acts between 1759 and 1764 shows only two of the Montreal justices named by Murray in 1764, Daniel Friesburg and Moses Hazen, buying any property before their appointment, while at least one of the appointees, Thomas Walker, was still renting houses in the city while a justice. Though I have no firm proof, it is my sense that at the time of their appointment, only Hazen, who had purchased extensive seigneuries along the Richelieu River, could have filled the theoretical property requirements.

estimating how many members of the elites in the district of Montreal could meet the English property qualifications is difficult, but certainly by the 1820s, there should have been more than enough individuals who filled the property requirements.²⁶³ However, the successive administrations continued to ignore the property qualifications, presumably in order to preserve their freedom to name whomsoever they chose to the magistracy.²⁶⁴

As with Dalhousie's manipulation of the commission in 1828, this also provided his Patriote opponents with considerable political ammunition. Thus, the 1829 inquiry by the House of Assembly into the appointment of justices of the peace found that several justices owned no property in the district of Montreal whatsoever, and that at least two Montreal justices were bankrupt.²⁶⁵ The result was an act in 1830 which set the qualification for justices at £300 total worth of property (or £150 in the Eastern Townships and the Gaspé), held in any manner.²⁶⁶ But even at an extraordinary annual yield of 10%, this was only equivalent to an annual value of £30, far less than that in England. To put this in context, as early as 1813 the average annual rental value of a stone house in the city of Montreal itself was £60 to £65,²⁶⁷ and as for rural areas, Christian

²⁶³Unfortunately, there exists no large-scale study of property holdings between the Conquest and the Rebellions. In 1790, in the district of Montreal, there were 21 Canadian seigneurs and six English seigneurs with annual incomes of £110 or over (Ivanhoë Caron, *La colonisation de la province de Québec. Volume 1: Débuts du régime anglais, 1760-1791* (Québec: L'Action Sociale, 1923): 281-287), but this does not include urban *rentiers* or rural land-holders who were not seigneurs. The 1813 jury list for Montreal (NA RG4 B19 volume 1) listed 38 proprietors of houses and lots with an annual value over £110; by the c.1817-1818 jury list (NA RG4 B19 volume 2), this had jumped to 240; and by 1828, Jacques Viger calculated that there were, in the town and suburbs of Montreal, 226 individuals with individual valuations of £100 or more, roughly half of whom were Canadiens ("Conseil de Ville de Montréal", Archives du Seminaire de Quebec, fonds Viger-Verreau, boîte 66, liasse 9). My thanks to Allan Stewart for providing me with this information.

²⁶⁴I have found no reference whatsoever of any justices taking the property oath before 1830, though they were regularly required to take the oaths of office and allegiance.

²⁶⁵JHALC 38: Appendix Dd, *passim*.

²⁶⁶10&11 George IV c.2. The exact wording was "a real estate either en fief, en rôtur, in free and common soccage, in absolute property, or by emphytéose, or lease for one or more lives, or originally created for a term not less than twenty-one years, or by usufruit for his life, in lands, tenements, or other immoveable property", thus covering just about any type of landholding.

²⁶⁷This figure is based on research in progress by Allan Stewart.

Dessureault's research on Saint-Hyacinthe shows that in the period from 1805 to 1814, 8% of habitants had property worth more than 8000 *livres*, equivalent to about £330.²⁶⁸ As Lord Durham noted a few years later, "The real property qualification required for the magistracy is so low, that in the country parts almost everyone possesses it," though he added that it did exclude some people in the cities;²⁶⁹ hence, as in England, the property qualification was set low enough so as not to exclude almost any members of the elites who owned property.

Nevertheless, the 1830 commission which followed the new property qualifications suggests that a significant number of the justices previously appointed could not meet even these limited requirements. Of the 173 justices named in the 1828 commission, 92 were not named in the 1830 commission, and the removal of 82 of these, or almost half of all the 1828 justices, cannot readily be explained by death, emigration, or other causes that automatically disqualified them; by contrast, Dalhousie's purge of 1828 resulted in at most nineteen justices being dropped from the commission.²⁷⁰ Further, of the 82 justices who seem to have been purged, 52 had previously acted as justices, and were thus not removed because of their failure to qualify themselves; the remaining thirty do not appear to have been active before 1830, so that they may have been removed because of their inactivity. Nor can the removal of the 52 be attributed to any particular attempt to appease the Patriotes by removing noted Tories: though a few prominent Patriote opponents who very obviously met the property requirements were among those dropped, such as Eustache-Nicholas Lambert Dumont, the co-

²⁶⁸"La propriété rurale et la paysannerie dans la plaine maskoutaine, 1795-1814", in François Lebrun and Normand Séguin eds., *Sociétés villageoises et rapports villes-campagnes au Québec et dans la France de l'Ouest, XVIIe-XXe siècles* (Trois-Rivières: Presses de l'Université de Québec, 1987): 49.

²⁶⁹Cited in Greer, *The Patriots and the People*: 93.

²⁷⁰Seven justices on the 1828 commission were deceased by 1830, one had emigrated to London, one had declined to be named again in 1830, and one had been appointed to the Legislative Council and had thus been moved from the regular clause to the ex officio clause of the commission. This represented an attrition rate roughly the same as that between 1826 and 1828, since at most eight justices appointed in 1826 were removed from the 1828 commission because of death or other causes that were not directly political. On Dalhousie's purge and the 1828 commission, see above, page 97.

seigneur of Mille-Isles in the heart of Patriote territory, many more prominent anti-Patriotes were continued in the 1830 commission, such as Eustache-Antoine Lefebvre de Bellefeuille (Lambert Dumont's co-seigneur), and James Brown and Frédéric-Eugène Globensky (two other virulent anti-Patriotes from the Saint-Eustache/Argenteuil area); also among those continued was John N. Mathison of Vaudreuil, the "petty tyrant" described by Greer.²⁷¹ Thus, apart from a few specific cases like Lambert Dumont, most of the 52 were probably removed because of the property qualifications, so that perhaps a quarter of the justices appointed by Dalhousie in 1828 probably did not own even minimal property in the district of Montreal, again a substantial departure from English precedent.²⁷²

A final way in which the commission in Quebec and Lower Canada differed from that in England was the revival in the colony of the quorum clause. In England, justices could legally take certain actions, especially the holding of Quarter Sessions, only if one of them was "of the quorum", in other words mentioned in a specific clause of the commission. The quorum clause was initially designed to ensure that these more significant actions could not be done without the presence of the experienced or knowledgeable justices to whom quorum status was usually restricted; however, the practice had become meaningless by the mid-eighteenth century, since it was usual to include all but one justice in the quorum clause.²⁷³

²⁷¹That the exclusion of anti-Patriotes was not a major factor in the makeup of the 1830 commission is also suggested by the way the 1830 commission was described by Robert Christie, one of the Patriotes' strongest opponents and a favourite target of their attacks on the administration: while noting that Kempt had sought to appease the Patriotes by re-appointing the justices dismissed by Dalhousie in 1828, he made no mention of any dismissals for political ends, and instead attributed what he called the "reformulation" of the magistracy to the effects of the 1830 qualification law, of which he approved in principle (*A History of the Late Province of Lower Canada* III: 283, 295). The *Montreal Gazette*, a Tory mouthpiece, also took the same line: though it did not comment directly on the reasons for the change in the Montreal commission, noting instead that there were more Canadiens, it attributed an equivalent attrition in the commission for the district of Quebec at the same time to the effects of the qualification act, though in contrast to Christie it deplored this (18/10/1830, 25/10/1830).

²⁷²Of the 52, eleven were specifically mentioned in the 1829 committee's report as not having enough property; one, Samuel Gale, was disqualified because he was a practising lawyer; and six seem to have been removed for other reasons, since they manifestly owned enough property to meet the minimum requirements.

²⁷³Skyrme, *History of the Justices of the Peace* II: 9.

meaningless by the mid-eighteenth century, since it was usual to include all but one justice in the quorum clause.²⁷³

The quorum clause in Quebec and Lower Canada was at first also a mere formality: though in the first general peace commission in 1764, only four of the ten justices were included in the quorum clause,²⁷⁴ the four commissions from 1765 to 1785 included all justices in the quorum. In 1788, however, the new administration under Dorchester limited the number of quorum justices to four, probably as part of the general attempt to reform the colony's administration in the late 1780s; and the practice of limiting the number of justices on the quorum continued sporadically through the 1820s. The commissions of 1796 and 1799 included so many justices in the quorum clause, more than half of all justices, as to render the distinction virtually meaningless; but as Table 1.2 shows, in the commissions of 1788 and 1794, and those between 1810 and 1830, the number of quorum justices was restricted to a third or less of all justices. In the district of Montreal at least, the administration did not use the quorum clause to exclude justices on the basis of ethnicity, except in the broader way in which francophones were excluded from the commission in general, since the proportion of francophones in the quorum was consistently higher than their proportion in the commission.²⁷⁵ On the other hand, the quorum was heavily weighted towards urban justices, who, up to the commission of 1830, regularly comprised half or more of the quorum, though in the 1810s and 1820s they made up a quarter or less of appointed justices.²⁷⁶ In itself this was not very significant, since it took only one justice of the quorum to hold Quarter Sessions; but it reflected the

²⁷³Skyrme, *History of the Justices of the Peace* II: 9.

²⁷⁴This did not include *ex officio* justices such as judges and members of Council, who were always of the quorum.

²⁷⁵For the proportion of francophone justices in the commission, see Table 1.1.

²⁷⁶In 1810, 23 of the 117 appointed justices whose residence can be located, or 20%, were from Montreal; the equivalent figure for the second commission in 1821 was 35 of 147, or 24%; and in 1828, 27 of the 173 justices appointed, or 16%, were from Montreal.

centralization of the system of the justices' courts in Montreal, as described above.

TABLE 1.2: JUSTICES OF THE QUORUM, 1788-1830*

Commission date	Justices in the commission	Quorum justices		
		Total	Urban	Francophone
24/7/1788	38	4 (11%)	3 (75%)	2 (50%)
2/4/1794	72	17 (24%)	10 (59%)	8 (47%)
10/7/1810	122	31 (25%)	20 (65%)	17 (55%)
28/6/1821	179	14 (8%)	14 (100%)	8 (57%)
19/10/1821	152	39 (26%)	24 (62%)	22 (56%)
21/10/1826	178	52 (29%)	29 (56%)	22 (42%)
14/3/1828	173	45 (26%)	24 (53%)	16 (36%)
15/10/1830	139	41 (29%)	17 (41%)	25 (61%)

*excluding *ex officio* justices, justices outside of the post-1790 district of Montreal, and justices in the inferior district of Saint Francis from 1823.

Overall, the makeup of the commission in Quebec and Lower Canada was entirely under the control of the colonial administration: unlike in England, where control of Parliament meant control of the commission, the legislature in Lower Canada had no say in who was appointed to the magistracy, and the first step in that direction, the act setting property qualifications for the justices, did not come until 1830. Further, with the disregard of the property qualifications and the inclusion of Catholics, the administration from 1776 could appoint just about whomsoever it chose to the magistracy - as long, of course, as they were Christian and male. And at the same time, the successive administrations, from Murray to Dalhousie, showed a ready willingness to manipulate the commission for political ends, while paying lip-service to the principle of appointing only those who were willing to act. Taken together, these three factors should have produced exactly the sort of magistracy that many writers have assumed and then condemned: of low status and little competence, grossly unrepresentative of the predominant

culture, dominated by administration yes-men, and of very little consequence. But they did not.

VI. The actual magistracy: active justices

Historians who have tried to understand the character of the men who were magistrates in Quebec and Lower Canada have had to rely largely on exemplary cases and the generalizations of contemporaries, for there has never been an attempt to identify the actual magistracy in Quebec and Lower Canada, in other words the justices who actually carried out their duties and were thus those with whom defendants and complainants actually came in contact. The only historian who looked in detail at the justices themselves, David-Thierry Ruddel, simply collated everyone named in the commission for Quebec City, and then analyzed them by such factors as ethnicity, occupation, and education.²⁷⁷ The problem with this approach is that not all justices appointed to the commission acted as justices. In the district of Montreal at least, this was especially true of *ex officio* justices, since all peace commissions in the colony included all higher court judges, all members of the Executive and Legislative Councils, and a number of other high officials, whatever their actual residence: it is highly unlikely that the Reverend Lord Mountain, the bishop of Quebec, though named in every peace commission for Montreal between 1794 and 1821, ever had any thought of acting as a justice in the district of Montreal. In gauging the character of the magistracy, it is thus important to exclude justices who were only ever appointed *ex officio* and who never acted in the district. But these reservations also apply to regular justices, since not all those appointed acted, or even qualified themselves to act by taking the oaths of office. Thus, when the committee of the House of Assembly in 1829 used William Hallowell's bankruptcy as an example of the disrepute of the magistracy, it was largely hyperbole, since Hallowell never acted on his commission;²⁷⁸ and more generally, stating that the magistracy was consistently controlled by anglophones, based only on the names in the commission, as does Ruddel, is potentially misleading if anglophones were less likely than others to

²⁷⁷ *Québec City 1765-1832*: 168-169.

²⁷⁸ *JHALC* 28: Appendices Dd and Ee.

act. Before undertaking any examination of the men who were justices, it is thus crucial to separate active justices from those who, though named in the commission, never acted as justices.

The few scholars who have addressed the question of the activity of the justices have in fact tended towards assuming that most justices in Quebec and Lower Canada never acted. Thus, in noting an enquiry of the House of Assembly in 1833 that found that of 220 justices throughout Lower Canada, 142 had imposed no fines at all, 66 had imposed fines but not remitted the state's portion, and only twelve had remitted fines, Allan Greer suggests that "the majority of justices of the peace seem to have been either corrupt or inactive."²⁷⁹ And though careful to draw no such direct conclusions about the activity of the justices in Lower Canada, Jean-Marie Fecteau, in describing the English system he sees as fundamental to that in the colony, cites a study by J.M. Beattie on eighteenth-century Surrey that found less than 5% of appointed justices acting in criminal matters.²⁸⁰ That historians have held this view is not surprising, given that it was shared by some contemporary administrators: in 1827, Dalhousie complained to his superiors that because of the size of the districts, there was great expense and loss of time involved in acting as a justice, so that "very few individuals therefore can be induced to take the oaths and act, except those alone who reside in the principal towns where the Quarter Sessions are held."²⁸¹

On the other hand, other studies of England and English colonies have suggested that the proportion of active justices was higher than usually assumed. Thus, Beattie's figures appear anomalous for England, with other studies placing the proportion of acting justices in eighteenth-century England from 25% to 60%, depending on the county and the period, though there were still many areas

²⁷⁹*The Patriots and the People*: 96.

²⁸⁰*Un nouvel ordre des choses*: 78.

²⁸¹Dalhousie to Bathurst, 27/5/1787, in McCord Museum, Judge Samuel Gale Collection, folder 2.

without active justices;²⁸² and in parts of Upper Canada, about 90% of appointed justices actively carried out their duties.²⁸³ And this also held for the justices in the district of Montreal.

There are two main ways of measuring which justices regarded their appointment as more than simply honorary. The first is to look at how many justices went to the trouble of actually qualifying themselves to act, by swearing the oaths of office. Unfortunately, the records of oaths sworn by the justices of the district of Montreal are only relatively complete from September 1803 to July 1820; but during that period, of 159 justices appointed for the first time, at least 113, or 71%, took the oath of office, a proportion somewhat higher than the highest estimates for England.²⁸⁴ As well, of these 113, almost half took the oath within three months of being appointed, three quarters within a year, and all but twelve within two years.²⁸⁵

The second way is to look not at the capability of the justices to act, but at their activity itself, based on the complete range of sources that I consulted for this study. From this information, justices can be divided into three groups: active justices, or those who performed at least one action directly connected with the criminal justice system, such as examining a complainant, committing a prisoner, or attending a formal court; apparently qualified justices, or those for whom I have found no record of their ever acting in criminal matters, but who from their other actions, such as signing an administrative document, attending an

²⁸²Landau, *The Justices of the Peace*: 137-140 and 392; Skyrme, *History of the Justices of the Peace II*: 26-27.

²⁸³From research in progress by Susan Lewthwaite of the Center for Criminology of the University of Toronto.

²⁸⁴This is based on the records of oaths sworn by justices at Montreal, in NA RG1 E11 volume 7. This figure may be slightly low, since some justices may have taken the oath elsewhere, for example in open court. This may have been the case for the three justices appointed during this period who were active without any record of their taking the oath, although it is also possible that they acted without qualifying themselves; I have found no evidence either way.

²⁸⁵Of the 113, 23 took the oath within thirty days, another 27 within ninety days, another 38 within a year, another thirteen within two years, and twelve in over two years.

administrative meeting, or, between 1803 and 1820, taking the oath of office, were qualified or at least apparently considered themselves qualified; and inactive justices, those of whom there is no mention in any of the sources I consulted.

As Table 1.3 shows, the justices appointed in the district of Montreal between 1764 and 1830 were far more likely to act than has been previously suggested. Overall, between 1764 and 1830, 565 individuals were appointed justices in the district of Montreal as it stood after 1790, excluding justices only ever appointed *ex officio* and those appointed after 1823 in the inferior district of Saint Francis. However, of these 565, 21 had their commissions annulled almost immediately,²⁸⁶ and 51 were appointed for the first time in October 1830, less than three months before the end of my research period, so that I cannot accurately gauge whether they were active. As such, there were 493 justices appointed who had the opportunity to act, and whose activity the sources I consulted allow me to measure, if only partially. Of these, 299, or over three-fifths, were active at least once in criminal matters, 43 apparently qualified but not active in criminal matters, and 151, or less than a third, apparently not active at all; and given the incompleteness of the sources, my estimate of the proportion of inactive, unqualified justices is probably a little inflated. There was some variance between periods, but this was mostly between justices whom I can prove were active in criminal matters and those who had apparently qualified but whom I cannot prove were active in criminal matters; the proportion of inactive, unqualified justices stayed steady at slightly under a third. Hence, the overall picture remained constant, of a magistracy whose members were mostly at least willing to act as justices.

²⁸⁶These included one justice named in a commission of association in May 1788 but not in the general commission two months later; eight justices named in a commission of association in May 1806 that was explicitly revoked by another commission of association three months later; and twelve justices named only in the general commission of June 1821 that was superseded by that of October 1821.

TABLE 1.3: ACTIVE AND QUALIFIED JUSTICES, 1764-1830

	1764-1830	1764-1787	1788-1809	1810-1830
On the commission*	493	56	222	364
Active at least once in criminal matters in the period	299 (61%)	37 (66%)	123 (55%)	207 (57%)
Apparently qualified but not proven active in criminal matters	43 (8%)	3 (5%)	38 (17%)	54 (15%)
Not proven active or qualified	151 (31%)	16 (29%)	61 (27%)	103 (28%)

*Note that justices are included in each period during which they were on the commission

But this quantitative measure is not only significant for countering the picture of a magistracy largely unwilling to act; it also allows for the identification of 299 individuals who were active as justices. If we add the nine active justices who were only ever appointed *ex officio*, and the seven justices appointed for the first time in 1830 who were active before the end of the year, this gives us a group of 315 justices who composed the active magistracy of the district of Montreal between 1764 and 1830.²⁸⁷

Of course, not all "active" magistrates were equally active. Signing one arrest warrant during twenty years on the commission hardly made a justice "active" in any meaningful sense for those twenty years, nor placed him in the same position as a justice who signed a hundred warrants a year; and the relative activity of different justices is an important question to which I will return. On the other hand, given the state of the sources and of my access to them, I have only been able to grasp a fraction of the total activity of the justices, so that a justice for whom I have only found one arrest warrant in a period of ten years may in fact have signed five or six, and imposed fines on a dozen people, although probably not much more than that. Nevertheless, in order to avoid making generalizations about the character of the magistracy based on justices who may have acted only once or twice, I have also identified 111 justices who were consistently active, and whom I have used as a sub-group when necessary to test

²⁸⁷A complete list of these active justices is presented in Appendix I.

the validity of generalizations based on the larger group of "active" justices.²⁸⁸ And to err on the side of underestimating which justices were active in any particular year, I have only considered a justice's period of activity to be those years where I have proof of his having acted in criminal matters, rather than assuming that a justice active in, for example, 1810 and 1812 was also active in 1811; and I have also constructed aggregate indicators where the relative activity of individual justices is less important.

Finally, a word on one of the categories of analysis that I have adopted, ethnicity. The classic approach in Quebec historiography, polarizing the colony's society into "French" or "francophone" and "English" or "anglophone", is far too crude for the society as a whole, which included natives, blacks, Jews, and others who would be referred to today as "allophones".²⁸⁹ However, there was less ethno-cultural diversity in the magistracy, since the dominant power structures meant that up to 1830 at least, all justices were white and Christian, and those few justices who were of neither French nor British descent had almost all integrated themselves at least in part into one or the other of the two dominant ethnic groups. As such, I have retained the classic division, although in recognition of the diversity even within the two dominant groups, I prefer the terms "francophone" (including both native-born Canadiens and French-speaking immigrants) and "non-francophone" (in theory everyone else, though in practice almost exclusively those of British descent).²⁹⁰

²⁸⁸The criteria for this group of consistently active justices were that they committed ten or more prisoners to gaol, or signed ten or more preliminary documents, or imposed fines on ten or more people, or attended ten or more Quarter Sessions days, or were active in criminal matters in ten or more separate years. While an arbitrary measure, I feel that any justice filling one or more of these criteria demonstrated a consistent willingness to act, especially since the sources I used represented only a fraction of the justices' total work.

²⁸⁹As pointed out by Ronald Rudin in "Revisionism and the Search for a Normal Society: A Critique of Recent Quebec Historical Writing", *Canadian Historical Review* 58(1)(1992): 36-38.

²⁹⁰To check on the validity of this division, and especially the "francophone" category, I compiled demographic data on the 133 "francophone" justices active between 1764 and 1830, primarily from the *Registre de population du Québec ancien* of the Programme de recherche en démographie historique (PRDH). Of the 133, I positively identified 89 who were baptised as Catholics in the colony; in addition, another 28, though I could not positively identify their baptismal records, had typically Catholic Canadian names, making

A. Some thumbnail sketches of active justices

To begin this examination of the men who acted as magistrates in the district of Montreal, consider the following brief biographies of six justices, all consistently active magistrates. Three were from the city of Montreal itself: Daniel Robertson, Jean-Marie Mondelet, and Samuel Gale. And three were from the rest of the district: Michel-Eustache-Gaspard-Alain Chartier de Lotbinière, of Vaudreuil, Calvin May, of Saint-Armand, and Joseph Douaire de Bondy, of Berthier.²⁹¹

Daniel Robertson was appointed a justice in 1765, part of Murray's attempt to renew the commission following the problems with the first set of justices. Robertson was in a peculiar position at the juncture of three of the main elite factions at Montreal: he was an ex-army officer, having been present at the capture of Montreal and subsequently fought in the Caribbean and against Pontiac; at the same time, he had connections to the colony's English merchant community, engaging in land speculation with Benjamin Price, the Quebec City merchant, and later signing the merchants' petitions calling for a house of assembly; and through his marriage to Marie-Louise Réaume in 1760, with whom he had six children, he was connected to an important pre-Conquest merchant family, including Charles Réaume, the merchant assaulted by Lieutenant John

together 117, or 88% of the whole. Another thirteen, or 10%, were Catholic immigrants, all but one from France, and almost all of whom had integrated into elite Canadien society by marriage or otherwise; the remaining three were Protestant immigrants, two from France and one from Switzerland. Lumping these latter with Canadien justices is perhaps problematic, but there were equally a few active "non-francophone" justices who were at least partly integrated into Canadien society: for example, James Cuthbert junior, the seigneur of Berthier, who was educated in France, renounced Protestantism to embrace the Catholic faith, married into a Canadien family, and lived the life of a seigneur in his manor in Berthier; or Jacob Barcelo, a Sainte-Scholastique merchant who became an active Patriote during the rebellions. As for the "non-francophone" category, there is unfortunately no equivalent source, but judging from their names, of 183 active between 1764 and 1830, all but ten were almost certainly of British descent, and most of the remainder, such as Henry, Jacob, and Philip Ruyter, Albany Dutch Loyalists who settled around Missisquoi, were very largely integrated into English culture.

²⁹¹Unless otherwise noted, the following biographical sketches are based on the *DCB* articles on Robertson, Mondelet, Gale, and Chartier de Lotbinière; on information from the *PRDH* database; and on the prosopographical database that I built up on the justices.

Williams, who was his wife's uncle. Robertson was a highly active magistrate through the 1760s, attending almost every Quarter Sessions and performing many additional duties out of sessions. However, he too became embroiled in the local political battles: despite his army background, he sided firmly with the other merchant-magistrates in disputes with the military over matters such as billeting and the power to issue impress warrants, and with the clerk of the peace over fees,²⁹² and he was one of justices who formed a common front against the Council's investigation into their alleged abuse of their civil jurisdiction.²⁹³ After this jurisdiction was stripped from them in the 1770s, Robertson, like most of the other anglophone justices who had been active in the 1760s, ceased to act as a magistrate. Almost thirty years later, after a long career in the military, he returned to Lower Canada and settled in the township of Chatham, where he was re-appointed a justice; but there is no evidence that he ever took up again his former role.

Jean-Marie Mondelet was born in Saint-Charles or Saint-Marc in about 1771, the son of a local doctor, and educated in the seminary system in Montreal and Quebec City, returning to Saint-Marc to practice as a notary in 1794. His local prominence and education, along with important connections in Montreal, probably led to his appointment as a justice in 1798, at the very young age of 27; however, he does not seem to have acted until he moved to Montreal in mid-1802. He almost immediately became one of the city's most active magistrates, forming, with others such as Louis Chaboillez, Jean-Baptiste Durocher, and François Rolland, a small group of francophone, largely Canadien justices who dominated the city's magistracy in the first decade of the nineteenth century. Like most of these others, Mondelet was a moderate supporter of the Canadien party, though he shied away from its more radical actions, for example refusing to endorse the confrontation with Governor James Craig. It was probably this moderation,

²⁹²NA RG4 A1: 5361-62, 5424, 5437-43, 6018-19.

²⁹³NA RG4 A1: 6541-42, 6544-45.

combined with his experience as both a justice and a notary, that led Craig to appoint Mondelet in 1810 as joint chairman of the Quarter Sessions and police magistrate for Montreal, along with Thomas McCord, a position which allowed him to continue to dominate the magistracy in Montreal between 1810 and 1824. Mondelet was the most conscientious justice in the district of Montreal, attending almost every session of the justices' courts, and from 1810 sitting daily at the Police Office to receive complaints and deal with defendants. This dedication to the "public service", however, did not stop him from acting in his own interests when necessary: in April 1811, at his own trial before the Quarter Sessions for assault and battery, he continued to sit on the bench during the proceedings, and even delivered the charge to the jury, though when found guilty he did not participate formally when the other justices imposed a minimal 1sh fine on him. Despite holding many government posts, including coroner, Mondelet was never a committed supporter of the administration and maintained his ties to the moderate wing of the Canadien party. This created the curious effect of one of the key representatives of the state in Montreal being constantly the target of veiled criticism in the Tory press, while coming in for lukewarm praise from moderate reformers. Along with the other Montreal justices, Mondelet frequently asserted the magistracy's independence from the administration in Quebec City, much as Robertson had in the 1760s; and though tolerated in the 1800s and 1810s, this led in the 1820s, under the more centralist administration of Dalhousie, to a series of conflicts with the governor. As noted above, two such confrontations led in 1824 to Mondelet and McCord being dismissed as chairmen of the Quarter Sessions, and in 1828 to Mondelet being dropped from the peace commission entirely, along with several of his colleagues. Unlike most of the other targets of Dalhousie's purge, however, Mondelet was not re-instated in 1830, since the bill for the qualification of justices of the peace specifically excluded coroners from the magistracy.

Samuel Gale was in many ways the opposite of Mondelet. Though born in Florida in 1783, he was by upbringing an Anglo-Canadian, since his parents,

ardent Loyalists, moved to Quebec soon afterwards, where his father occupied a variety of high positions in the bureaucracy. Gale himself studied law and began practising in Montreal in 1807, where his clients ranged from Lord Selkirk to parties in assault and battery cases in the Quarter Sessions, where he argued (and lost) many cases before Mondelet. Gale was a committed Tory, strongly opposed to the Canadien/Patriote party and its supporters, and with views that were unabashedly francophobic: in 1825, for example, he declared that should the "frenchification" of the province continue, he would rather return to the United States than remain in an only nominally English colony.²⁹⁴ This ideology, along with a strong commitment to the colonial administration that had employed his father, made Gale popular with Dalhousie, and was no doubt the principal reason that the governor chose Gale to replace McCord and Mondelet as chairman of the Quarter Sessions in 1824. Gale and other similarly-minded Tory justices, such as Thomas Andrew Turner (the one-time owner of the *Montreal Gazette*), dominated the commission in Montreal through the late 1820s, which as we saw became a focal point for Patriote attacks on Dalhousie's administration. Gale, however, was not happy with his position and constantly seeking betterment: in 1824, when first appointed, he had to be promised a higher place within two years; in 1827, he apparently threatened to resign after Dalhousie appointed Louis Guy sheriff of the district of Montreal, a position Gale coveted; and he was still angling for a judgeship in 1829.²⁹⁵ Gale was dropped from the commission in 1830, when the act for the qualification of the justices specifically barred practising lawyers from

²⁹⁴Gale's statement, to the bishop of Quebec regarding the erection of a college in the Eastern Townships, is worth quoting in full: "Should the plan for the college in the Townships fail, and French influence prevent improvement and the progress of the province as it has hitherto done, I think it not unlikely that I may take up my abode in the United States as soon as circumstances will permit. The United States form one member of the great English national family in all that distinguishes Englishmen from foreign nations and should the advance of frenchification in this country proceed as it has hitherto done since the Conquest, I would much rather preserve for myself and those who come after me my English education and characteristics by living in the United States than lose them by residing in what is called an English colony; I would not willingly lose the reality for the name". (Gale to Stewart, 4/7/1825, in McCord Museum, Judge Samuel Gale Collection, folder 5).

²⁹⁵Henry Mackenzie to Gale, 8/5/1824, in McCord Museum, Judge Samuel Gale Collection, folder 5; Dalhousie to Gale, 3/3/1827 and 10/7/1829, in *ibid.*, folder 2.

becoming justices, a provision that may well have been directed specifically at him and the chairman of the Quarter Sessions in Quebec City, Robert Christie; however, his loyalty was eventually rewarded, and he was appointed a justice of the King's Bench in 1834.

The three justices from outside of the city were of a different sort. Michel-Eustache-Gaspard-Alain Chartier de Lotbinière, the seigneur of Vaudreuil and Rigaud, and of Lotbinière in the district of Quebec, was from a long-established pre-Conquest seigneurial family; indeed, two of his ancestors had been *lieutenants-généraux de la Prévôté* under the French régime. In many ways he fit the stereotype of the post-Conquest Canadian seigneur: a military background, including service during the Seven Years War (though he was only twelve at the fall of Montreal); a brief sojourn in France; the assumption of control of the family's estates, which he acquired in 1770 after his father was forced to sell them; and a ready willingness to accommodate himself with the new English masters. The latter was certainly a factor when in 1785 he was first appointed a justice, as it was in the case of the other similar conservative seigneurs whom the administration appointed justices in the 1780s, such as Joseph Boucher de La Bruère de Montarville (the owner of several seigneuries on the Richelieu), Eustache Lambert Dumont (the seigneur of Rivière Duchesne), and Pierre-Paul Margane de Lavaltrie (the seigneur of Lavaltrie and others); and in 1796 it gave Chartier de Lotbinière a seat on the Legislative Council. Along with all this came a paternalistic attitude which certainly informed his actions as a justice: as he explained in 1806, after granting bail to an accused rapist (in direct contradiction of English criminal law) "[le] magistrat ... suivant moi, doit être le protecteur et non le tiran des sujets de sa majesté."²⁹⁶ Chartier de Lotbinière acted as a justice regularly but infrequently from the mid-1780s to the mid-1810s, leaving most of the judicial business to another Vaudreuil justice of lower social status, Louis-Mars Decoigne, a retired military officer. Chartier de Lotbinière's attitude

²⁹⁶QSD, Chartier de Lotbinière to Reid, 9/4/1806.

towards his position as a magistrate was perhaps best summed up in the opening line of a letter to the clerk of the peace in Montreal in 1809: "Je me suis trouvé obligé d'agir comme magistrat dans une affaire très désagréable..."²⁹⁷

There is far less information about Calvin May. May was most likely a Loyalist immigrant, related to several other Mays who arrived from the United States in the late 1780s and early 1790s, and was apparently established in the Eastern Townships by 1792. By the end of the 1790s, he had settled at Phillipsburgh in Saint-Armand, where he practised as a doctor. Like many other substantial Loyalist settlers, he engaged in land speculation in the townships: in 1792, he was one of the associates who petitioned for the township of Bury, in the district of Trois-Rivières; in 1797, he signed the petition opposing the freeze on the granting of township lands; and in 1803, he and several associates were granted almost 24000 acres in Bury, about half of the township, though by 1815 it was still entirely undeveloped, and at some subsequent point he sold his interests to the British-American Land Company. His appointment as a justice in 1797 was in conjunction with five others in the Brome-Missisquoi area who fit the same profile of land speculator/professionals, including two township surveyors (Jesse Pennoyer and Nathaniel Coffin), and Thomas Dunn's seigneurial agent for Foucault, Philip Ruyter. This marked the beginning of the administration's attempts to implant an active magistracy in the area along the American border: in 1796, there were only four appointed justices in the area, three of them in Foucault; but by 1810, there were more than 25. Many of these appointees were only sporadically active, if at all; however, a few, including May, were active through to the 1820s. Like Mondelet and Chartier de Lotbinière, May's interpretation of the criminal law was sometimes flexible: in 1824, for example, he signed the warrant by which the high constable of Montreal, Archibald Henry Ogilvie, the deputy quarter-master of the Montreal watch, Benjamin Schiller, and a police constable, Antoine Lafrenière, seized one John Johnson in Montreal and

²⁹⁷QSD, Chartier de Lotbinière to Reid, 14/10/1809.

forcibly ejected him into the United States for an offence committed there.²⁹⁸ This led to the dismissal of Ogilvie, Schiller, and Lafrenière, but May himself was apparently exonerated, and continued acting as a magistrate until 1830, when his name was dropped from the commission, possibly because he could not fill the property qualifications.

Finally, Joseph Douaire de Bondy was born in Verchères in 1770, the son of a local merchant. Like his elder brother, he too became a merchant, though while his brother moved to Montreal he moved to Quebec City, where he married and had several children. Sometime between 1798 and 1806 he moved again, this time to Berthier, where he apparently established himself in the village, and remained until the late 1820s at least, though it does not appear that he put down any permanent family roots. Bondy nonetheless fit the classic pattern of a local notable: in addition to being named a justice in 1806, he was also a commissioner for the trial of small causes between 1808 and 1810, and again from 1821, and a member of the House of Assembly from 1816 to 1820. Politically, he was apparently sympathetic to at least one wing of the *Canadien* party: though he was often absent from the House, in the few votes in which he did participate he voted consistently with one of the leading members of the *Canadien* party, Louis-Joseph Borgia. And he was certainly opposed to the more extreme brand of Toryism that characterized Dalhousie's administration, for he was among the justices dropped from the commission in 1828 whom the committee of the House of Assembly identified as having been targeted by Dalhousie for political reasons. His political leanings, however, did not deter him from being one of the most active justices outside of Montreal, and one of the few who regularly accounted to the central administration for the fines he imposed and collected.

The six justices shared some important characteristics: all were drawn from the colony's elites, and were men of some local prominence at least; and all had

²⁹⁸The incident is partially described in SSR 4/11/1823 and 6/11/1823; May's involvement is noted in a reference from the civil secretary to the Attorney General, 20/3/1824, in NA RG1 E15A volume 49 file "Attorney General 1824".

enough education to complete complex legal forms. But within the elites they ranged in social place from Bondy, the local merchant, to Chartier de Lotbinière, the seigneur and member of the Legislative Council, with political views from extreme Toryism to moderate reformism; they represented both of the colonists' dominant ethno-cultural groups; they lived both in Montreal itself and in the other areas of the district; and their legal training and competence spanned the spectrum from Gale, the professional lawyer, to Chartier de Lotbinière, who applied his own rules of common sense and equity whatever the formal law. And these elements of commonality and diversity were characteristic of the active magistracy as a whole.

B. Social place

Some historians have argued that the justices in Quebec and Lower Canada were generally of lower social status than the justices in England.²⁹⁹ It is undeniable that the colonial justices could not match the grandeur of the English county commissions, which usually included most of the local nobility and the more substantial gentry. However, the prominence of the English justices in the eighteenth century, and especially those who acted, should not be overstated. After the Restoration, the importance of party politics in determining the composition of the commission, and the increasing unwillingness of many of the established country gentry to act as justices, meant that the relative social status of the active magistracy declined, and the commission included more and more justices who, while still members of the elites, were not of the first rank, with clergymen being the most obvious example; and in London, justices on the commission were most often substantial tradesmen rather than gentlemen.³⁰⁰ Further, the lower relative status of colonial justices was no more than a reflection

²⁹⁹Greenwood, *Legacies of Fear*: 21; Knafla and Chapman, "Criminal Justice in Canada": 268.

³⁰⁰Skyrme, *History of the Justices of the Peace* II: 23-37; Landau, *The Justices of the Peace*: 140-144; Paley, "Policing London Before Peel": 99-100.

of the fact that colonial elites were less wealthy than those in the *métropole*; what mattered more was their relative place within the society of which they were a part.

It is clear that the men who acted as magistrates in the district of Montreal were, virtually without exception, drawn from the colony's elites. As Table 1.4 shows, the active justices were almost all businessmen, landowners, or professionals, both private and government; the one artisan was René Beauvais dit Saint-Jacques, a successful Saint-Vincent-de-Paul woodcarver. The occupational structure that I used is admittedly crude, especially the category of "merchants": these ranged from large-scale import/export merchants such as Alexander Auldjo and William Maitland, of Auldjo, Maitland and Co., to Philip Luke, who owned a general store and potash-works in Philipsburgh; and many merchants also owned property of one type or another, though I have attempted to reflect this by grouping under a separate category justices whose property ownership was as important as their mercantile concerns, such as Pierre Foretier and Pierre Guy of Montreal. Further, the fact that I have not been able to determine the occupation of about a fifth of justices overall, and almost a third of non-francophone justices and justices active after 1810, adds a degree of uncertainty, especially since many of those for whom I could not find such information were probably less prominent. But keeping these limitations in mind, it is possible to make a few observations about the social place of the magistracy in the district of Montreal.

In the first place, the occupational structure of the active justices was significantly different from that in England. Most obvious was the much smaller place of landed gentry, reflecting the smaller number of large landed estates in the colony, and the importance of merchants and professionals among colonial elites. Another very important difference, however, was the absence of clerical justices, who in England were usually among the most active justices; as we saw above, this was because, for political reasons, the successive colonial administrations almost never appointed clergymen as justices. Thus, whereas English justices, outside of London, were most often landholders and clergymen, in Quebec and

TABLE 1.4: PRINCIPAL PROFESSIONS OF ACTIVE JUSTICES, 1764-1830

	1764 to 1830				1764 to 1787	1788 to 1809	1810 to 1830
	all	consistently active	franco-phone	non-franco-phone			
Active justices	315	111	133	182	42	128	216
Profession unknown	70 (22%)	15 (14%)	12 (9%)	58 (32%)	2 (5%)	13 (10%)	62 (29%)
Profession known	245	96	121	124	40	115	154
Business	112 (46%)	48 (51%)	48 (40%)	64 (52%)	18 (45%)	61 (53%)	64 (42%)
Merchants	86	39	36	50	15	43	49
Merchant/landowners	26	9	12	14	3	18	15
Land	45 (19%)	13 (14%)	26 (22%)	19 (15%)	5 (13%)	22 (19%)	31 (20%)
Seigneurs	25	7	20	5	5	13	16
Rural landowners/farmers	11	3	2	9	-	4	9
Urban rentiers	1	1	1	-	-	1	1
Seigneurial agents	8	2	3	5	-	4	5
Liberal professions	54 (22%)	21 (22%)	36 (30%)	18 (15%)	3 (8%)	18 (16%)	43 (28%)
Notaries	29	10	27	2	1	10	24
Lawyers	5	4	3	2	1	-	4
Doctors	12	6	2	10	-	7	9
Surveyors	7	1	4	3	-	1	6
Clergy	1	-	-	1	1	-	-
Government	33 (13%)	14 (15%)	10 (9%)	23 (19%)	14 (35%)	14 (12%)	15 (10%)
Civil	22	10	5	17	9	10	11
Military	11	4	5	6	5	4	4
Other	1 (1%)	-	1 (1%)	-	-	-	1 (1%)
Artisans	1	-	1	-	-	-	1

Lower Canada, they were most often businessmen and professionals, especially in the nineteenth century.

There were some differences between francophone and non-francophone justices, with fewer francophone justices in business and government, and more being members of the liberal professions (especially notaries) and landowners. There was also some variance between periods, most notably with more members of the liberal professions in the magistracy in the nineteenth century than in the eighteenth, and fewer government officials; this may have reflected the growth of the liberal professions, but it should also be kept in mind that the liberal professions were the one category whose members I was probably able to identify almost completely.³⁰¹ On the other hand, there was little difference between active justices in general and the group of 111 consistently active justices, though with slightly more merchants and fewer landowners among the latter, largely a result of the fact that justices in Montreal itself, who tended to be merchants, were more likely to be consistently active than those outside of the city. And overall, the occupational structure of the magistracy retained broad similarities across periods and between different groups: about 40% to 50% merchants, about 15% to 20% landowners, and the remainder professionals of one sort or the other, whether private or in government.

Though the justices were thus drawn from the elites, determining their relative position within the elites is more difficult. Some active justices were very clearly at or close to the top of colonial society: Chartier de Lotbinière has already been mentioned, to whom may be added many of the other seigneurial justices, such as Jacob Jordan, the owner of Terrebonne, or the various members of the Hertel de Rouville family; and some of the colony's most important merchants were highly active justices, such as James McGill, John Richardson, and Pierre de Rocheblave. As one very rough indicator, about a third of active

³⁰¹This is because notaries, lawyers, surveyors, and doctors were all licensed or commissioned, so that it is relatively easy to determine whether or not a justice was part of one of these professions.

justices in the district of Montreal merited full biographies in the *Dictionary of Canadian Biography*, and 38% of consistently active justices; by comparison, less than 10% of justices in the Niagara district in Upper Canada did so.³⁰² Similarly, about 10% of active justices became members of the Executive or Legislative Councils, the most powerful political bodies in the colony before responsible government.³⁰³

Most active justices were not of this exalted status, with Joseph Douaire de Bondy and Calvin May being good examples: the one a local merchant and the other a local doctor, and neither meriting more than a passing mention in the local histories of their respective areas.³⁰⁴ On the other hand, most were of at least some local prominence. Being appointed a justice of the peace was itself a reflection of this prominence, but there are other indications of it as well. Thus, about 20% of all justices active after 1791, and more than a quarter of consistently active justices, were elected to the House of Assembly between 1792 and 1836; and when the members of the Executive and Legislative Councils are added, about a quarter of all active justices, and a third of consistently active justices, played some part in the Lower Canadian legislature.³⁰⁵ Overall, in addition to the third of active justices whose prominence in colonial society is indicated by their having a full article in the *Dictionary of Canadian Biography*,

³⁰²From work in progress by Susan Lewthwaite. Of the 315 active justices, 98, or 31%, had full articles in the *DCB*; of 111 consistently active justices, 42 had full *DCB* biographies.

³⁰³27 of the 315 active justices, and eleven of the 111 consistently active justices, were appointed to the Executive or Legislative Council before the Rebellions. Though some, like John Richardson, largely stopped acting as justices after their appointment, others, such as James McGill or Chartier de Lotbinière, continued to be consistently active justices; similarly, a few councillors who had never been appointed justices except by virtue of their appointment to Council, such as Charles William Grant and Denis-Benjamin Viger, were quite active as justices.

³⁰⁴Bondy is not mentioned at all in any of the local histories of Berthier that I consulted; and of the various histories of the Eastern Townships, May is only mentioned in passing in Cyrus Thomas, *Contributions to the History of the Eastern Townships* (Montreal, 1866): 28.

³⁰⁵Of 280 justices active after 1791, sixty were members of the legislative assembly up to 1836 and 22 members of the Executive and Legislative Councils, though since eleven of the latter had also been MLAs, 71 in all, or 25%, had been parliamentarians. Among 97 consistently active justices who were active after 1791, 27 were MLAs and eleven councillors, with an overlap of seven, giving 31 parliamentarians in all, or 32%.

another quarter are identifiable from other sources as being especially prominent locally, accounting for almost 60% of all active justices; and among consistently active justices, this figure was 80%.³⁰⁶

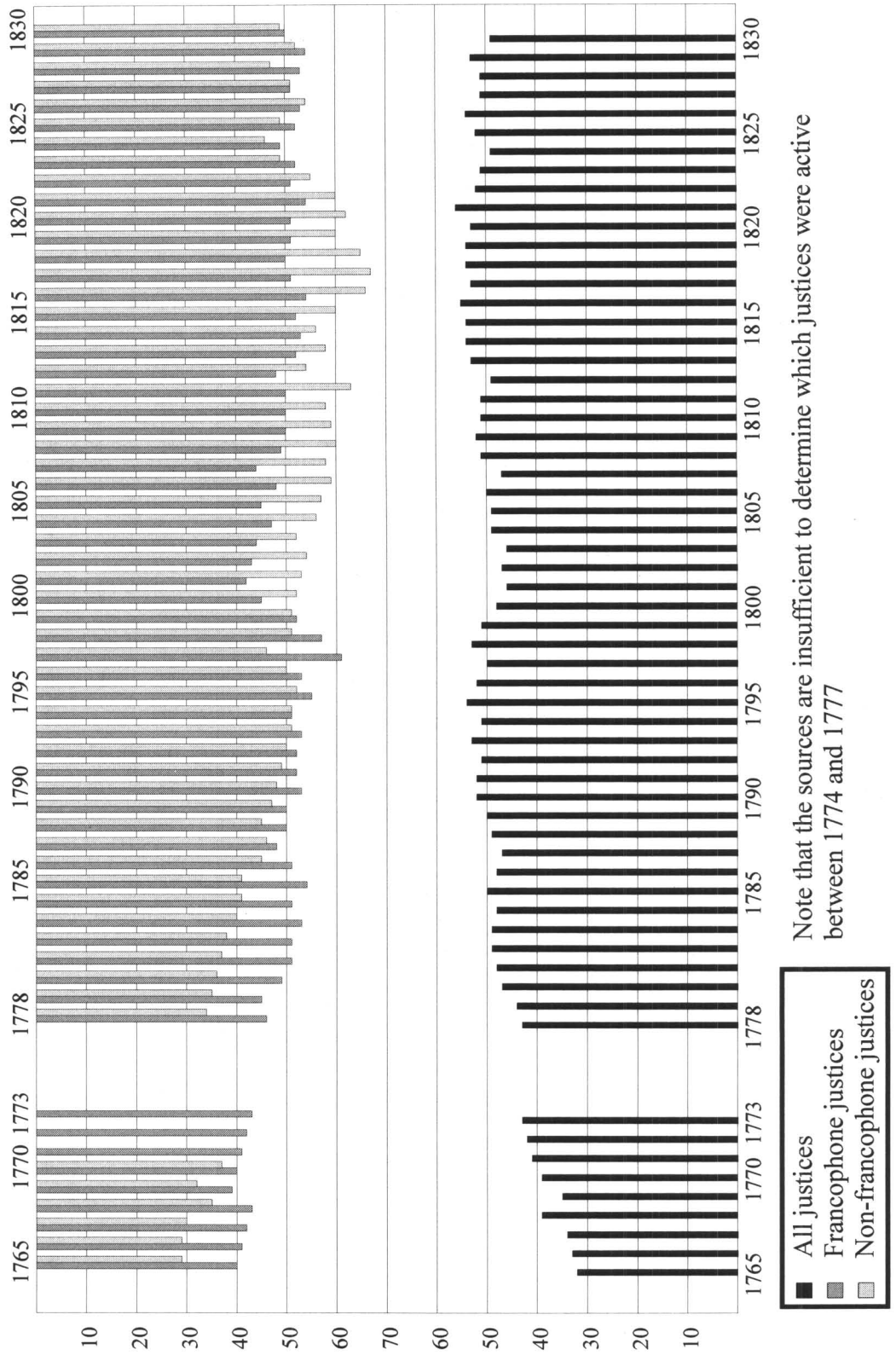
There were of course some justices whose local prominence was questionable, especially at the very beginning and end of the period. Thus, it is hard to argue that Francis Noble Knipe, a merchant-justice who went bankrupt in 1766, was in any sense a prominent figure, although most of the active justices in the district of Montreal up to 1775 were fairly successful merchants. And the fact that a substantial number of the justices appointed by Dalhousie apparently lacked even the minimal property requirements set by the 1830 qualification act also suggests a certain lack of prominence; although again some justices who were technically unqualified were actually very prominent, such as Thomas Andrew Turner, the one-time owner of the *Montreal Gazette*, or Thomas Porteous, the proprietor of the Montreal Waterworks, and had just not invested their capital in property. But overall, most justices were very likely men of at least local importance; and a substantial minority were prominent at a colonial level.

A final consideration with regards to the justices' social status is that in most cases, the men who acted as justices were already well-established before being appointed as justices. This is clear from the age of the active justices. Among justices whose birthdates I was able to determine, the average age of first appointment to the commission was 42, with little variance between francophones and non-francophones, or, after the initial decade of English rule, by period.³⁰⁷ More importantly for the character of the magistracy, the average age of justices active in any particular year, as Figure 1.1 shows, ranged from the mid-forties to

³⁰⁶ Apart from the 98 active justices who has full *DCB* articles, there were eighty who were otherwise identifiable as being especially prominent locally. My criteria for determining this were as follows: that they receive a full biography in a local history, or otherwise be explicitly identified as locally prominent; or that they be members of the legislature; or that they be seigneurs of substantial seigneuries. Of the 111 consistently active justices, only 22 did not fit into any of these categories.

³⁰⁷ The average age at first appointment was 41 for francophones (of 91 in all, with a range of 26 to 66) and 43 for non-francophones (of 59 in all, with a range of 23 to 66). After 1775, the average age at first appointment was consistently around the early forties.

FIGURE 1.1: AVERAGE AGE OF ACTIVE JUSTICES, 1765-1830



the mid-fifties, depending on the period. Again, the only notable exception was the period before the Quebec Act, when the exclusion of Catholics from the commission limited the choice of justices to the 500-odd Protestants in the colony, so that there were some especially young justices; Isaac Todd, who was only 23 when he first acted as a justice, was the most extreme example, but several other justices active before 1770 were in their early thirties.³⁰⁸ And there was also some variance between francophone and non-francophone justices, with the former tending to be older than the latter in the eighteenth century, but with the situation reversed in the nineteenth. Overall, however, the men before whom complainants and accused appeared were middle-aged or older, with on average only 15% of active justices in any year being under forty.

C. Ethnicity

If the social place of the active justices in the district of Montreal was relatively stable between 1764 and 1830, apart perhaps from the first decade, the same cannot be said of ethno-cultural character of the magistracy. Most scholars who have examined the criminal justice system between the Conquest and the Rebellions have contended that it was grossly under-representative of the colony's Canadien majority, with the justices themselves being a prime example. Thus, in unfavourably comparing criminal justice in Quebec and Lower Canada between 1760 and 1812 with that in the Maritimes, Knafla and Chapman contend that "the men who served as Justices of the Peace and jurors represented less than one per cent of the racial, cultural and social matrix of Lower Canada. This failure of the criminal justice system to reflect a sufficient participation, and identification, of the local populace with the law contributed to the failure of English courts to win the allegiance of the Province."³⁰⁹

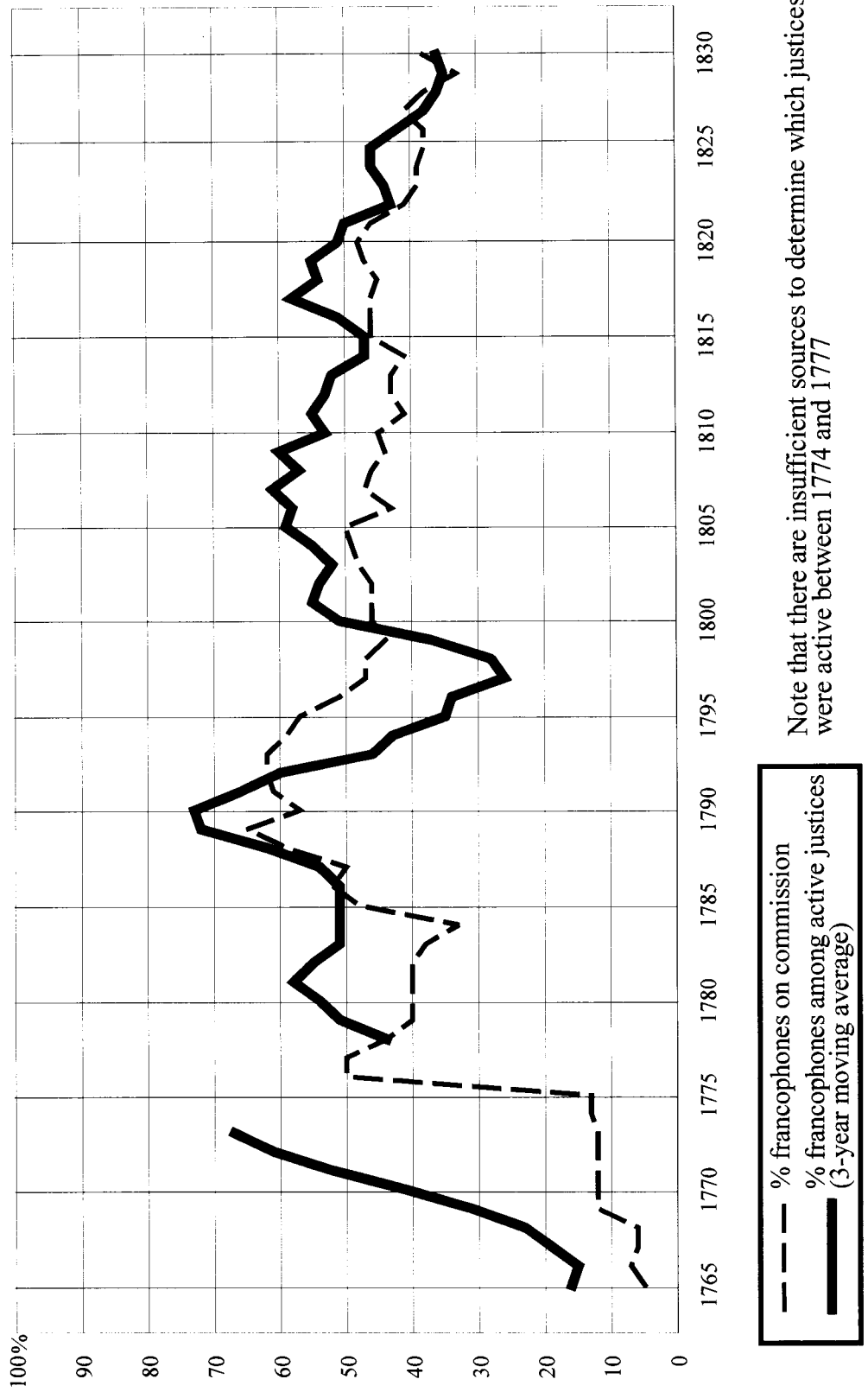
³⁰⁸Thus, Moses Hazen, Daniel Robertson, and Pierre du Calvet were 31, 32, and 33 respectively when they first acted as justices.

³⁰⁹"Criminal Justice in Canada": 272.

In the district of Montreal, the situation was not nearly so clear-cut. Even among those simply named on the commission, though francophones were grossly under-represented between 1764 and 1775, they were in the majority between 1776 and 1799, though once again under-represented from 1799 to 1830, and especially, under Dalhousie, from 1821 to 1830. But since inclusion in the commission did not necessarily mean activity as a justice, a more precise picture of the ethnic character of the actual magistracy must therefore be based on justices who were actually active, and on the periods of their presumed activity. This is presented in Figure 1.2, which contrasts the proportion of francophone justices on the commission in each year (including both general commissions and commissions of association and excluding justices after the year of their death or emigration) with the proportion of francophones among justices known to have been active in that year. The importance of this measure is evident: apart from the late 1790s and the late 1820s, more active justices were francophones than their place on the commission might suggest, so that between 1800 and 1825, for example, while the proportion of francophones on the commission was between 40% and 50%, the proportion of francophones among active justices was between 50% and 60%.

But while general activity is one important measure, there are other, more specific ways to gauge the character of the justices that defendants and complainants were likely to meet at the various stages of the criminal process. Although the existing sources are incomplete, they do allow three such measures: the proportion of francophones among justices performing preliminary procedures, such as taking depositions and recognizances and issuing warrants, for cases in the justices' courts in three aggregate periods from 1780 to 1799 (where the surviving documentation is sparse) and every fifth year from 1800 to 1830 (where the documentation is copious); the proportion of francophones among justices committing prisoners to the common gaol between 1810 and 1830; and the proportion of francophone justices on the bench of the Quarter Sessions between

**FIGURE 1.2: PERCENTAGE OF FRANCOPHONES
AMONG APPOINTED AND ACTIVE JUSTICES, 1765-1830**



1764 and 1773, and between 1779 and 1830. These are presented in Figures 1.3 through 1.5.³¹⁰

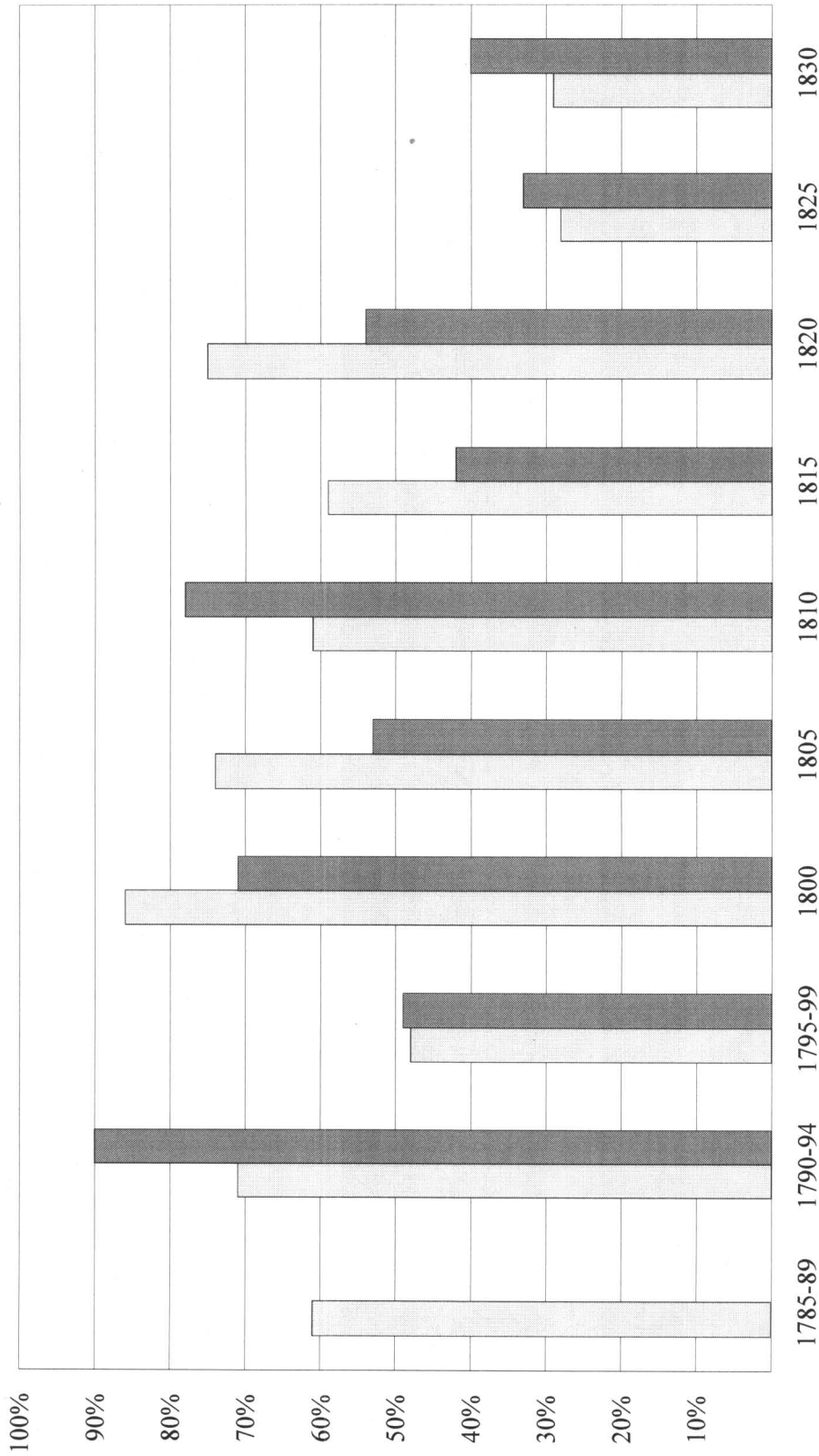
Taking the information in all four figures together, it is clear that apart from three brief periods, francophone justices played an important and sometimes dominant role. Indeed, in terms of the ethnic character of the magistracy, the period from 1764 to 1830 can in fact be divided into several sub-periods, during each of which the ethno-cultural character of the active magistracy was significantly different.

As most writers have noted, the exclusion of Catholics from the commission meant that non-francophone justices dominated all aspects of the criminal justice system in the 1760s: the only active francophone up to 1768 was Jean Dumas Saint-Martin, the pre-Conquest Huguenot merchant, although in 1769 he was joined by Pierre du Calvet, another pre-Conquest Huguenot merchant.³¹¹ It should be kept in mind, however, that despite the prevailing view, not all of these non-francophone justices were divorced from Canadien society and its language and religion: Daniel Robertson's marriage into a prominent pre-Conquest Canadien family has already been mentioned, and at least two other active justices, Ann Gordon and Francis Mackay, were also married to Canadiennes, with at least one of Gordon's children buried in a Catholic ceremony; John Schlosser consistently signed himself "Jean Schlosser juge de paix"; James Cuthbert had enough knowledge of French to write it; and one justice,

³¹⁰I counted each document produced, prisoner committed, or day of the Quarter Sessions attended by each justice as one instance, so that if two justices jointly committed a prisoner or signed a warrant, I counted it as an instance for both.

³¹¹In her thesis on the *gens de justice* in Quebec City between 1764 and 1867, Christine Veilleux claims that there were Catholic justices before 1774 ("Les gens de justice à Québec, 1760-1867" (Ph.D., Laval, 1990): 337), which would have substantially changed the whole character of the magistracy and put an entirely different spin on the appointment of justices. However, her only example is Pierre-Claude Panet, which is an error, since Panet was neither named in any of the commissions of the peace in NA RG68 (Commissions and Letters Patent) before 1776 (though he was a justice after that point), nor, as she identifies him, a judge of the Common Pleas before 1777, as a table elsewhere in her thesis clearly shows (79), and as described in his biography ("Jean-Claude Panet", in *DCB* IV: 601-603). It should also be noted that another of her examples of pre-1774 francophone justices, Jean Marteilhe, was actually John Marteilhe, an English merchant (Burt, *The Old Province of Quebec*: 91).

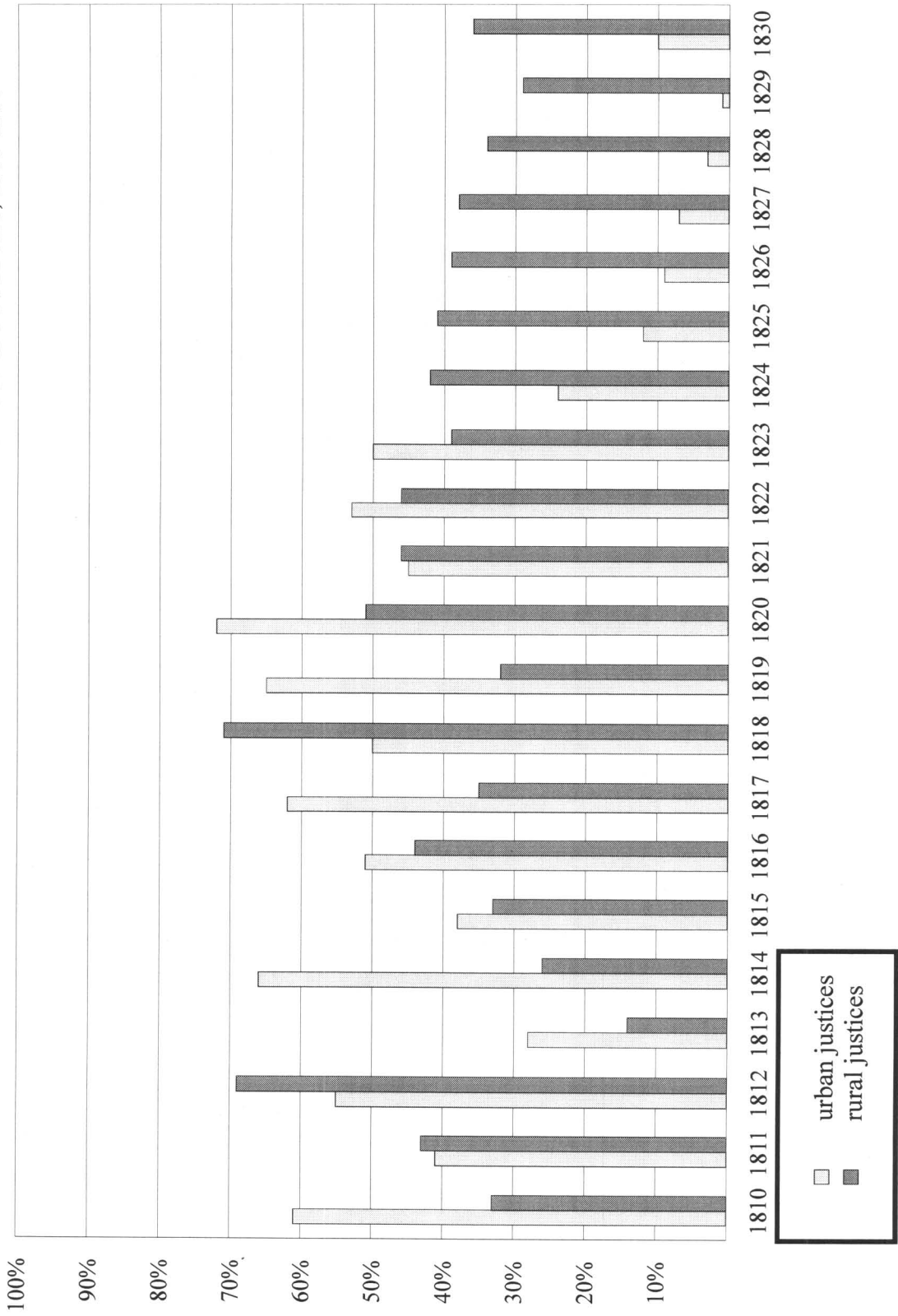
FIGURE 1.3: PERCENTAGE OF PRELIMINARY DOCUMENTS PRODUCED BY FRANCOPHONE JUSTICES, 1785-1830



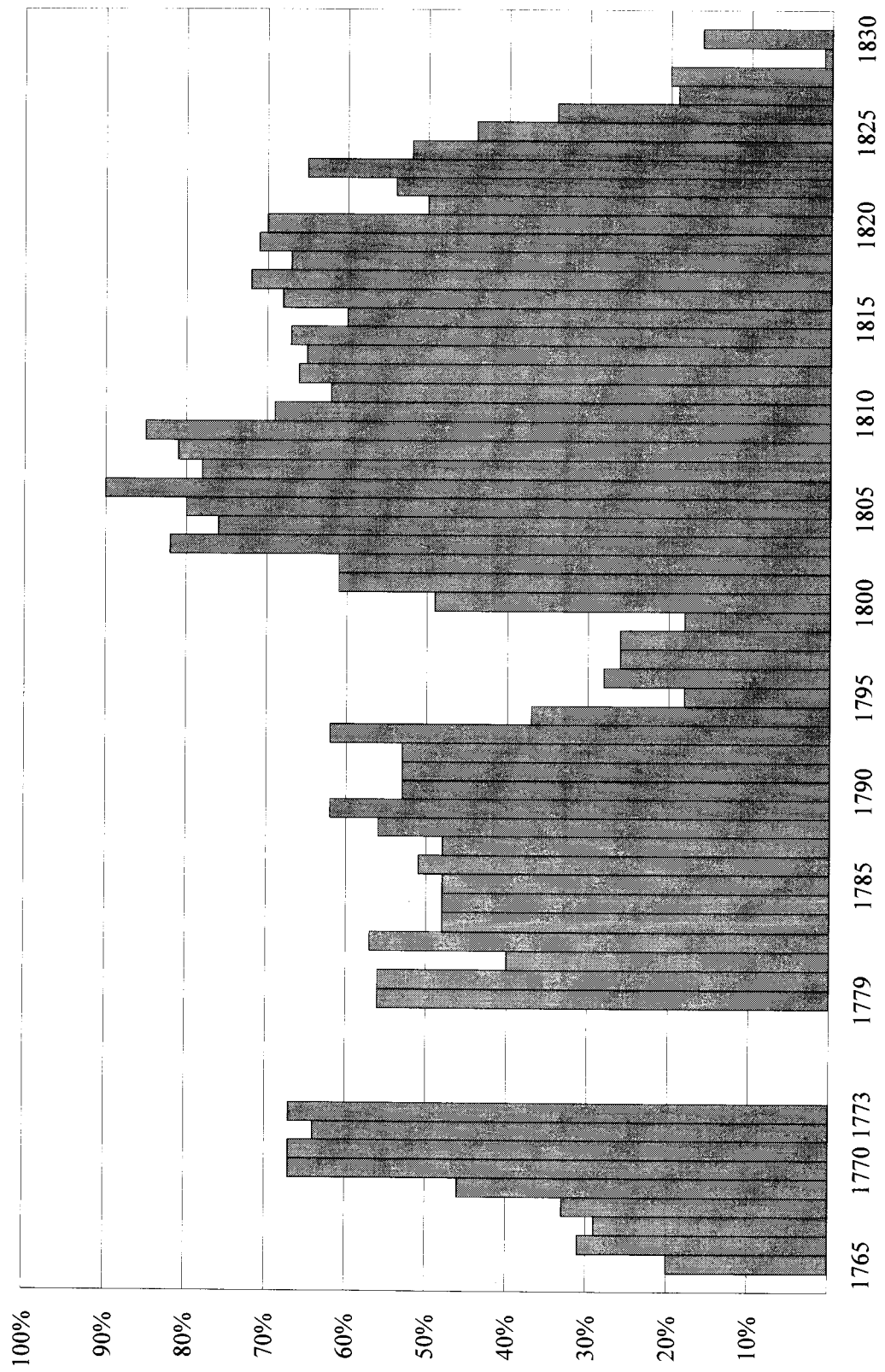
urban justices
 rural justices

Note that I found only one document from a rural justice in the 1780s.

FIGURE 1.4: PERCENTAGE OF GAOL COMMITTALS BY FRANCOPHONE JUSTICES, 1785-1830



**FIGURE 1.5: PERCENTAGE OF FRANCOPHONE JUSTICES
ON THE BENCH OF THE QUARTER SESSIONS, 1765-1830**



Thomas Lynch, appears to have been a closet Catholic, or at least cared little about Protestantism, since two of his children by Rosamonde Winter (probably not a Canadienne) were baptised as Catholics. Indeed, of the seven most active justices before 1770, namely Francis Mackay, Daniel Robertson, Jean Dumas Saint-Martin, Pierre du Calvet, Isaac Todd, Thomas Brayshay, and Thomas Lynch, only two, Todd and Brayshay, had no demonstrable personal connection to Canadien society; though of course none of the justices were full-fledged members of the colony's predominant ethno-cultural group

The composition of the magistracy changed in 1770, when after the loss of their civil jurisdiction, most anglophone justices ceased to act. Their place was taken by Dumas Saint-Martin and Du Calvet, who with John Marteilhe, a former English merchant whom Carleton had appointed a judge of the Common Pleas in 1770, performed virtually all the business of the justices until 1775. As a result, there was always a francophone majority on the bench of the Quarter Sessions, and though neither Dumas Saint-Martin nor Du Calvet were Canadien, Canadiens coming before the court could at least be sure that they would be understood.

With the removal of the disability of Catholics in 1775 under the Quebec Act and the inclusion of a number of prominent francophones in the commission of the peace in 1776, such as Pierre Guy and Pierre Foretier, the situation changed again, and up until 1793, francophone justices made up half or more of active justices, reaching a high between 1788 and 1791 when over 70% of active justices were francophones. Thus, among the preliminary documents produced by justices in the 1780s and early 1790s that I was able to find, about two-thirds of those produced in Montreal, and nine-tenths of those produced outside of Montreal, were by francophones. However, due to the presence in Montreal of highly active anglophone justices like James McGill, the bench of the Quarter Sessions was about evenly divided between francophones and anglophones.

In the mid-1790s, the tensions between Canadiens and English, described in detail by Murray Greenwood, led to a dramatic decrease in the number of active francophone justices, far below their proportion on the commission; as

Jonathan Sewell noted in 1796, after asserting that the previous *modus vivendi* among French and English elites in Montreal had been disrupted, "The total inactivity of the Canadian magistrates at the present crisis, may also be adduced as another evidence upon the same assertion."³¹² Indeed, by the late 1790s, only about a third of active justices were francophones. The dramatic effect that this had on the character of the criminal justice system at the level of the justices is evident. In the Quarter Sessions, for example, francophones made up fewer than a third of justices on the bench between 1795 and 1799. Perhaps even more to the point when considering the experience of people appearing before the court, whereas between 1779 and 1794 there was almost always at least one francophone justice on the bench, and francophones were in the majority or equally represented in 70% of cases, between 1795 and 1799, francophones were almost always in the minority, and, for more than a third of the sittings of the court, there were no francophones on the bench at all.³¹³

This did not last, however, and in the first decade of the nineteenth century francophone justices once again dominated, especially in Montreal, but also in the countryside. In Montreal, the small group of francophone justices including Jean-Marie Mondelet constituted in some years over 80% of the justices on the bench of the Quarter Sessions, and also produced perhaps three-quarters of the preliminary documents; it should be noted however that in 1799 and 1800, the most active Montreal justice in preliminary matters was Jacques Joran, a francophone but a Swiss Protestant, though he almost never attended the justices'

³¹²NA MG23 GII10 volume 10: 4850-58.

³¹³Between 1779 and 1794, of 330 sittings of the court where the names of the justices present are known, francophones were in the majority 131 times, and non-francophones 86 times; in addition, there were 101 sittings where both groups were equally represented, eight times where there were only non-francophones, and four times where there were only francophones. Between 1795 and 1799, of 141 sittings, francophones were in the minority 72 times, and not present at all 51 times; there were also ten times where francophones were in the majority, seven times where both groups were equally represented, and one time where there were only francophones.

courts.³¹⁴ Outside of Montreal, indications are sketchier, but certainly in 1800, 1805, and 1810, francophone justices produced about 70%, 50%, and 80% of preliminary documents respectively; this represented such highly active francophone justices as Pierre Bouthillier of Chateauguay, Louis-Mars Decoigne of Vaudreuil, Pierre Guerout of Saint-Denis, Barthélémy Rocher of L'Assomption, and Joseph Turgeon of Terrebonne. Though there is only sketchy evidence on the justices involved in imprisonment in the period, consisting of about a dozen calendars of the common gaol and the House of Correction, a similar pattern seems to have held: out of 71 committals by Montreal justices, 55, or about three-quarters, were by francophone justices, though outside of Montreal, of 31 similar committals, only eleven were by francophone justices.

In the 1810s and, especially, the early 1820s, this francophone preponderance began to wane, especially outside of Montreal. In Montreal, the appointment of McCord as joint chairman of the Quarter Sessions along with Mondelet helped to decrease the influence of the francophone justices, although since Mondelet was generally more assiduous than McCord, and most of the other highly active justices were francophones, francophone justices still produced two-thirds or more of all preliminary documents, composed about two-thirds of the bench of the Quarter Sessions, and, apart from 1813 and 1815, were responsible for half or more committals to the gaol, though they seem to have been less willing than non-francophones to commit prisoners to gaol. Outside of Montreal, the lessening of the domination of the francophone justices was more pronounced: in 1815 they accounted for only about 40% of preliminary Quarter Sessions documents, though this rose again to about 50% in 1820; and apart from 1812 and 1818, for half or less of gaol committals, and usually about 40%.

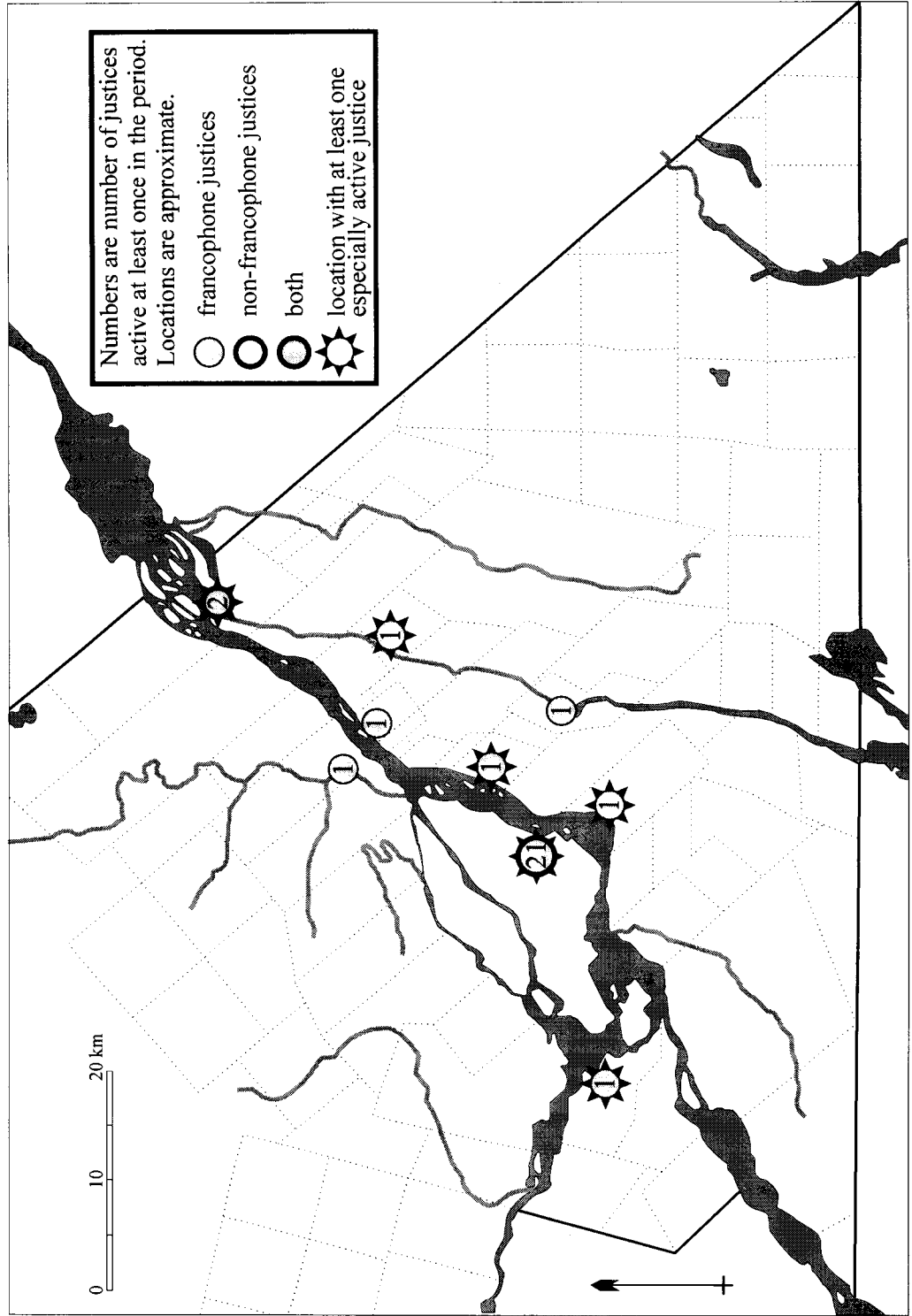
³¹⁴Joran attended the Quarter Sessions on only four days during his entire tenure as a justice, and apparently never sat on the Weekly Sessions; on the other hand, in 1799 and 1800 he was responsible for almost two-thirds of all preliminary documents produced in Montreal. By 1805, however, he was no longer very active, with Mondelet and others like him producing most of the preliminary documents, though he did act on occasions through to 1815.

Finally, from the mid-1820s, the change in the ethnic character of the magistracy became more pronounced. Overall, the proportion of active justices who were francophones, which had already been diminishing since about 1820, dropped to less than 40%; and with the replacement of Mondelet and McCord by Gale, combined with Dalhousie's continuing reduction of the number of francophones on the commission, non-francophone justices dominated from 1825 to 1830, especially in Montreal itself, but also elsewhere in the district. Thus, in Montreal, francophones accounted for only a tiny fraction of the business of the justices after 1824, and though the change was not so dramatic outside of the city, the proportion of the justices' business done by francophone magistrates continued to decrease. The situation was only reversed in 1830, with the removal of Gale and a large number of Dalhousie's other, largely anglophone appointees, and their replacement with a few more francophone justices; although whether this made any difference in the 1830s has yet to be determined.

D. Geographical distribution

Apart from the social status and ethnicity of the active justices, another very important factor as far as complainants and accused were concerned was the geographical distribution of active justices, and especially the presence of active justices outside of Montreal itself. Initially, the district's justices were concentrated almost exclusively in the city, and Murray's first commission included no justices living outside of the town, although by the end of the 1760s there were active justices in Saint-Ours, Saint-Sulpice, Laprairie, and as we saw, in 1767-1768, in Lac-des-Deux-Montagnes. As Figure 1.6 shows, the distribution of active justices outside of Montreal had increased little by the end of the 1780s, with two-thirds of the active magistracy concentrated in Montreal, although some of the larger towns and villages, notably William Henry, L'Assomption, Boucherville, and Chambly, had one or two active and even consistently active justices, almost all francophone. This was not due to any particular policy on the part of the administration, since the 1788 commission appointed as many justices

FIGURE 1.6: LOCATIONS OF JUSTICES ACTIVE 1788-1790



outside of Montreal as in the city itself. Nor, as we shall see, can it be entirely attributed to an unwillingness of people outside of Montreal to use the criminal justice system, since up to 1794, about half of complainants were from outside the city. Rather, it was a reflection of the continuing centralization of the criminal justice system in the city, echoing the situation in New France where most criminal cases in the district were dealt with in the *juridiction royale* in Montreal.

After 1800, however, the situation began to change. Most importantly, the administration began to make a concerted effort to ensure that there were justices appointed in most of the parishes of the district, so that most of the new justices appointed between 1800 and 1810 were outside of Montreal.³¹⁵ Though many of these new appointees were not immediately active as justices, this nonetheless had its reflection in the distribution of active justices: by 1810, as Figure 1.7 shows, there were twice as many active justices outside of Montreal as in the city, with consistently active justices spread through the central part of the district. On the other hand, many areas of the district were still without active justices, most notably the Eastern Townships, but also much of the Richelieu valley and the Varennes-Verchères area.

However, as the number of justices on the commission increased, and the number of justices appointed outside of the city continued to grow, there were more and more active justices spread through the countryside. Thus, as Figure 1.8 shows, though by 1830 the proportion of active justices outside the city was not much higher than it had been in 1810, there were nonetheless active and consistently active justices spread through most of the district. Further, the map itself possibly under-estimates the number of justices who were willing to act: thus, for example, while I found no record of any justices acting in the upper Ottawa River in 1829-1830, the area had at least two justices who had been active in the mid-1820s, Philemon Wright of Hull and Denis-Benjamin Papineau of

³¹⁵Of 77 justices appointed for the first time from 1800 to 1810, only fourteen were in Montreal itself.

FIGURE 1.7 : LOCATIONS OF JUSTICES ACTIVE 1809-1810

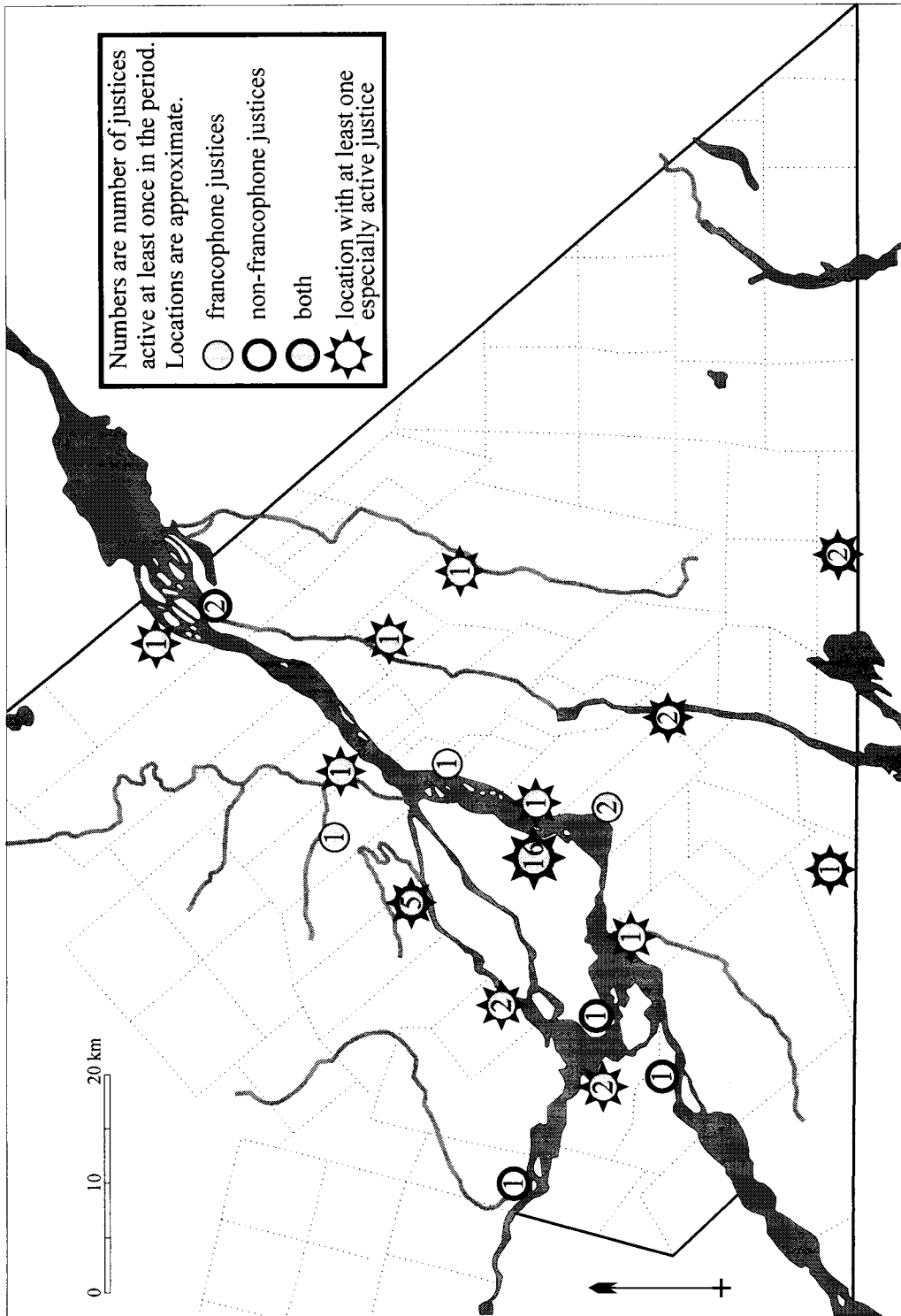
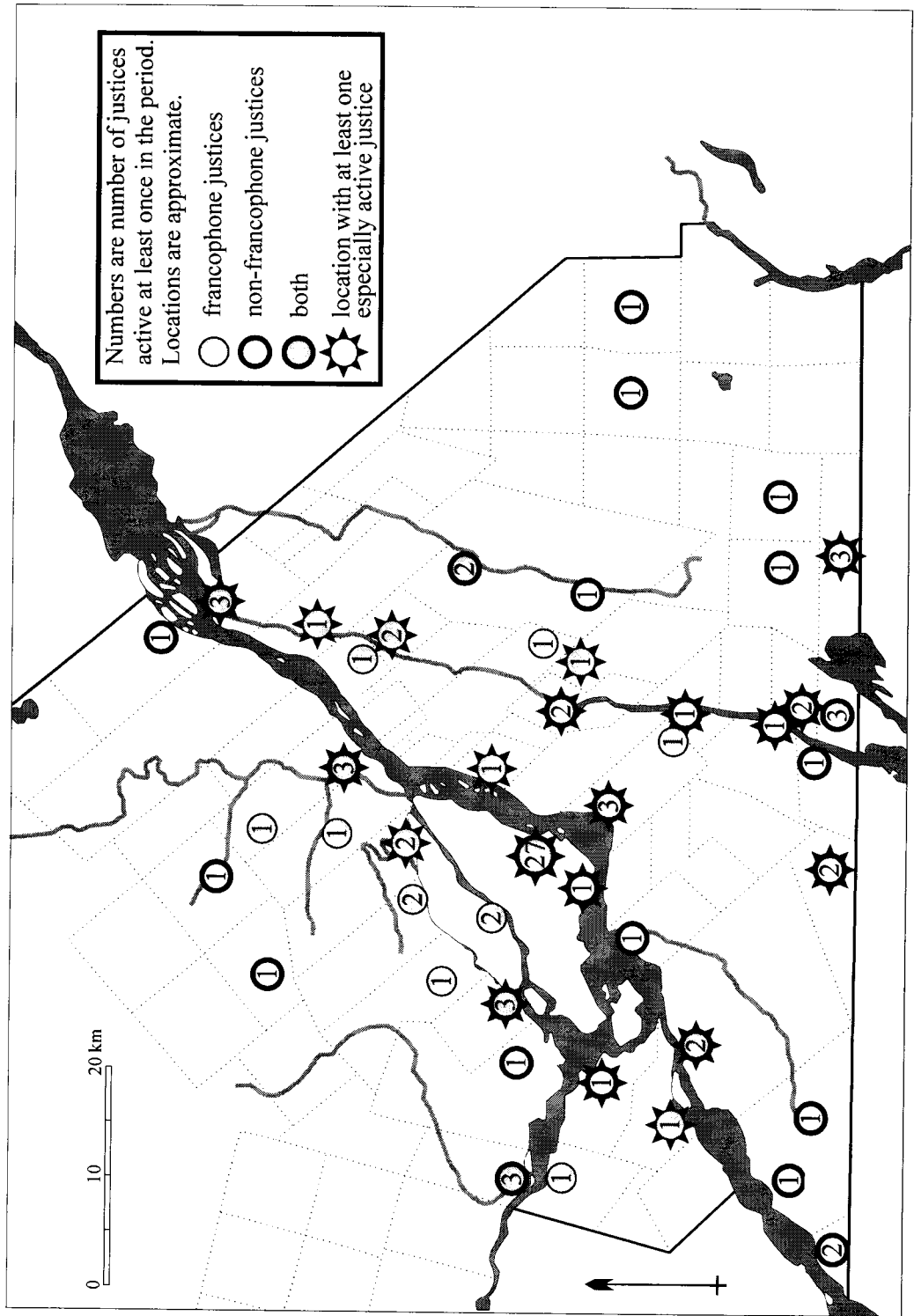


FIGURE 1.8: LOCATIONS OF JUSTICES ACTIVE 1829-1830



Petite-Nation. Still, there were some major towns and villages without active justices, most notably Varennes, Verchères, and Longueuil, although in the case of Longueuil at least it should be noted that it was within an easy ferry-ride of Montreal itself.

In sum, the distribution of active justices in the countryside changed quite dramatically between 1764 and 1830. In the eighteenth century, most active justices were concentrated in Montreal itself, with only a handful elsewhere in the district, where 90% of the population lived. Through the early nineteenth century, however, there were more and more active justices spread through more and more of the district, such that by 1830, most areas had at least one active justice. Thus, whereas in 1785 Noel Ainse, a Chambly habitant, had to travel to Montreal to make his complaint before James McGill against one Thevenot for smuggling near Saint John, by 1830 he would have had his pick of a half-dozen active justices along the upper Richelieu, including William Macrae, the local customs officer.

E. Legal education and knowledge

Another factor to consider when trying to understand the character of the men who were magistrates in the district of Montreal is the extent to which they had, or had access to, legal knowledge. The general consensus among historians has been that the justices were unskilled and uneducated: as Knafla and Chapman put it, "magistrates were generally untrained and often ignorant of the law and procedure."³¹⁶ This reflects the views of the Webbs and others of the liberal-reformist school in England; and it is also analogous to the school in American legal historiography that argued that justice in the American colonies was "rude, popular, and summary", in large part because of the lack of legal education in general, and of the justices of the peace in particular.³¹⁷

³¹⁶"Criminal Justice in Canada": 269.

³¹⁷Conley, "Doing it by the Book": 257-258.

That few justices had formal legal training in the criminal law is undeniable; indeed, that was the whole point of a system that sought to co-opt the elites in general into the administration of the criminal justices of the state. A few justices were or had been lawyers, and in particular Samuel Gale and David Ross, the chairmen of the Quarter Sessions between 1824 and 1830, both had extensive experience in criminal practice. Likewise, the thirty-odd active justices who were notaries, including Jean-Marie Mondelet, were trained to deal with legal forms and documents, the creation of which constituted a major part of the justices' work; indeed, notary-justices occasionally confused their two roles, appending "NP or Not. Pub." to their signature rather than the usual "JP". And before 1795, several of the judges of the Common Pleas, professional jurists, were active justices, especially John Marteilhe between 1770 and 1775, and Edward Southouse and René-Ovide Hertel de Rouville between 1776 and the early 1790s; Hertel de Rouville had even been the *lieutenant général civil et criminel* in Trois-Rivières in the 1750s, under the French régime. However, lawyers, judges, and notaries constituted at most 10% of active justices, with the others having no formal legal training whatsoever. And perhaps more importantly, legal training or a judgeship did not necessarily mean respect for the law: Southouse and Rouville were often condemned for their actions as civil judges, the first for his lack of legal knowledge and the second for his arbitrariness;³¹⁸ and one of the complaints levelled against Gale before the committee of the House in 1829 was that he used his legal education to browbeat other justices into following his lead when making legal decisions.³¹⁹

On the other side of the coin, a lack of formal legal training did not necessarily mean a lack of legal knowledge. To take perhaps the most striking example, Thomas McCord, the joint chairman of the Quarter Sessions between

³¹⁸Neatby, *The Administration of Justice under the Quebec Act*: 93.

³¹⁹*JHALC* 38: Appendix Dd, 9/1/1829, testimony of Jean-Philippe Leprohon. Leprohon may have been referring to Ross, but it is clear from other testimony that both claimed precedence over the other justices.

1810 and 1824, though having no formal legal training whatsoever, had an extensive knowledge of criminal law: in 1815, he prepared an index of the ordinances and acts of Lower Canada, which was so well received that James Reid, the chief justice of the Montreal King's Bench, asked him to prepare a general digest of the criminal law of England, although the project never got off the ground.³²⁰

There were two main ways by which lay justices might acquire or have access to legal knowledge. The first was through the various published works that set forth and explained the laws that the justices were supposed to apply, both those of England, and the modifications made by colonial legislation. Most important for English law were the manuals produced for the guidance of justices of the peace. Unlike in the United States, there were no manuals written specifically for Quebec and Lower Canada;³²¹ instead, justices had to rely on imported manuals, especially from England. The most widely used justices' manual in England in the latter half of the eighteenth century was Richard Burn's *The Justice of the Peace and Parish Officer*, which appeared in numerous editions from 1748 until well into the nineteenth century. Burn's manual was also the main source for justices in Quebec and Lower Canada: in 1764 a dozen copies were distributed to Murray's new justices; and indeed, it was the only justices' manual that I ever found reference to.³²² Burn's work was also partly translated into French in 1789 by Joseph-F. Perrault, although Perrault only translated those sections describing the general powers and duties of justices and other judicial officers and general procedures such as arrest warrants and recognizances, and left out the bulk of the work, which described and discussed specific offences.³²³

³²⁰Reid to McCord, 23/12/1815, in McCord Museum, McCord Family Papers, file 208.

³²¹On the justice of the peace manuals in the American colonies and the early republic, see Conley, "Doing it by the Book".

³²²On the first dozen copies of Burn, see Scott, "Chapters in the History of the Law of Quebec": 296.

³²³*Le juge à paix et officier de paroisse*.

For colonial law, the situation was much simpler. Up until 1794, there was no particular policy to ensure that justices had access to colonial ordinances; instead, they were left to their own devices, although since all ordinances were published in the *Quebec Gazette* in both English and French, and there were also several published collections, those justices who wanted to have access to them could easily have done so. From 1794, however, all justices in theory had copies of all colonial legislation, since justices were among those whom the legislature decreed copies of all its laws were automatically to be sent, first by the clerk of the Legislative Council, and then, from 1825, by the clerks of the peace of each district.³²⁴

There is no way of being certain of how many active justices had or had access to these different works. Though I identified 82 *inventaires après décès* of active justices, they were of little use in determining what proportion of them had these works, since few gave detailed and complete inventories of the books found.³²⁵ A more useful indication is given by the list of subscribers to Perrault's translation of Burn in 1789: of 130 subscribers in the district of Montreal, 49 were current or future justices; and of 41 francophone justices active between 1789 and 1800, twenty had been subscribers to Perrault's translation.³²⁶

The second way that justices had access to legal knowledge and legal experience applied mainly to the justices in Montreal itself: the clerk of the peace. In the clerk of the peace, the Montreal justices had at their disposal a salaried, professional administrative officer whose main responsibilities, as in England, were to create and manage the records of the justices' courts, and to organize the

³²⁴34 George III c.1 (1794); 5 George IV c.5 (1825). By 6 George IV c.22 (1826), the clerk of the peace in the district of Montreal was allowed £25 per year to do this. As well, by 6 George IV c.21 (1826), copies of all pre-1792 ordinances still in force were to be distributed to all justices of the quorum.

³²⁵In a sample of twenty *inventaires*, eleven listed libraries, but none listed the titles of more than a fraction of the volumes; of these eleven, two (Jean-Philippe Leprohon and James Finlay, both active Montreal Justices) had copies of Burn, and Finlay in addition had copies of Sir William Blackstone's *Commentaries on the Laws of England* and of the ordinances of the province.

³²⁶The most complete list of subscribers is in *Montreal Gazette* 23/4/1789.

courts themselves. The office was a career appointment: between 1764 and 1830, there were only five clerks of the peace for the district of Montreal, and the office was in fact dominated by only three clerks, John Burke from 1764 to 1788, John Reid from 1788 to 1811, and John Delisle from 1814 to 1830 and beyond.³²⁷

Over the period, the experience and competence of these clerks increased significantly. Burke, the first clerk, was described by one historian as "eminently honest, but very indifferently educated, and of no particular ability".³²⁸ He had been appointed in 1764 when he was only twenty, with apparently no formal legal training; he kept the court records very poorly, and the two volumes of the registers of the Quarter Sessions in his sprawling hand, the latter of which at least was the official record of the court, are in some places virtually indecipherable, and full of inconsistencies and omissions;³²⁹ and he was frequently in conflict with other judicial officers, first with the justices themselves before 1770 over fees, and then, after 1777, with Charles LePailleur, the joint clerk of the peace who had been nominated by the Sulpicians.³³⁰ Burke's competence is summed up by his responses to an inquiry of the Executive Council in 1790-1791 into the collection of fines: when asked to justify a substantial discrepancy between the amount of fines imposed by the justices' courts, which he was responsible for collecting and accounting for to the receiver general; and the amount the receiver general

³²⁷From August 1764 to March 1777, the office of the clerk of the peace was held and exercised by John Burke, who was also coroner and clerk of the Common Pleas. From March 1777 to January 1788, it was held jointly by Burke and Charles LePailleur, who were also joint clerks of the Common Pleas; however, LePailleur does not seem to have acted after 1780, Thomas Walker was the acting clerk in 1778, and John Reid was the assistant and acting clerk from July 1787 to January 1788. From January 1788 to April 1812 the office was held jointly by Reid, Burke, and LePailleur, although only Reid ever acted; from January 1812 to April 1812, Alexander Reid was the acting clerk. Alexander Reid became the clerk in April 1812 following the death of John Reid, and held the post until October 1814, when he in turn died. He was replaced by John Delisle, who was clerk from October 1814 to his death in 1838.

³²⁸Scott, "Chapters in the History of the Law of Quebec": 267.

³²⁹When John Reid came into office in 1787, he remarked that he "found so many papers ... wanting, as to make me despair of ever reducing them to any regular form or class" (cited in *ibid.*: 321).

³³⁰On Burke's conflict with the justices, see page 68 above; his conflict with LePailleur is suggested by a letter in 1778 where he characterized LePailleur as obstinate in a dispute over where to locate the clerk's office and keep the records of the courts (NA RG1 E15A volume 5 file "Judicial Establishment 1778").

claimed to have received, one of his main excuses was his own poor record-keeping:

not adverting to any further examination to be had thereupon, he had either thrown aside or destroyed as useless, the lists and memorandums [of fines paid], he had taken at the time... several of such persons fined were excused, and their fines were remitted, and some letters, from the Governor's secretary for that purpose were filed in the office and neglected to be marked on the books, some of which letters were expressive of two, and others of more, but cannot now ascertain the number in the whole that were excused and had their fines remitted which is also to be considered, and does not know the amount ... some time after the year 1783 in a general list or paper memorandum book where the names of the persons fined were entered and the names of those persons who had paid marked ... he had found upwards of fifty persons on said list that had not paid [but he had since lost it]³³¹

Burke's successor, John Reid, was somewhat more competent. Whether he had any formal legal training is unknown, though since he had been a schoolmaster in Quebec City in the early 1780s this seems unlikely; but judging from the handwriting of the registers and case-files of the Quarter Sessions, he had served as Burke's assistant for at least a year before becoming acting clerk of the peace in 1787, and had thus acquired a certain on-the-job experience. Indeed, the registers of the Quarter Sessions in his hand were far better kept than those of Burke, though not without the occasional error or omission; and it is from about the time that Reid came into the clerk's office, the mid-1780s, that a substantial portion of the case-files of the Quarter Sessions have been preserved, with the documents for each session neatly wrapped up in their own bundle and tied with the characteristic pink ribbon of eighteenth- and nineteenth-century legal documents. Moreover, his legal knowledge, whether acquired through education

³³¹NA RG1 E15A volume 13 file "Committee on Revenue 1793". It is difficult to know whether Burke was simply incompetent or actually dishonest. An extract from the official records of the justices' courts, prepared by Reid, Burke's successor, showed that between January 1779 and July 1787, when Reid took over as acting clerk of the peace, the justices had imposed fines £1699 17sh 9d in Quarter Sessions and Weekly Sessions; however, the receiver general's accounts showed that Burke had only submitted £576 7sh 4d. The accounts of the two receivers general in question, Henry Caldwell and Thomas Mills, cannot be trusted, since they themselves had apparently been defrauding the government (Burt, *The Old Province of Quebec*: 475-481; "Henry Caldwell", in *DCB V*: 130-133; "Sir Thomas Mills", in *DCB IV*: 537-538); and Burke in fact claimed that he had submitted £810 9sh to the receiver general. Burke was able to account specifically for amounts that brought the total to about £1150, but as for the remaining £550, his only response was that large numbers of people had had their fines remitted or had not paid, though he could not provide any proof.

or practical training, was well-enough respected for him to become, by the end of his career, clerk of most of the courts at Montreal,³³² as well as to have law students article with him, including at least one future prominent Lower Canadian jurist, James Stuart.³³³ Unlike Burke, Reid seems to have had at least a certain respect for the strict adherence to form that was supposed to underlie English criminal law: in 1791 it was he who pointed out to the Quarter Sessions, in a case involving an appeal from the Weekly Sessions, that the only justice of the quorum on the bench, Pierre Guy, could not hear the appeal since he had originally determined the case; and in 1800, perhaps to instruct his new assistant clerk, John Delisle, he jotted some notes on the back of depositions and recognizances that had been sent in by various justices:

The substance of [unreadable] recited in the warrant is vague uncertain and without the further oath of the party not sufficient [on a warrant issued by Jean-Jacques Joran of Montreal] ... This recog. is well drawn up in good form and stile [on a recognizance in the same case taken before Paul Roch de Saint-Ours of L'Assomption] ... Warrant irregular, also the recognizance [on documents in another case issued by Louis-Mars Decoigne of Soulanges]³³⁴

Reid died in 1812, and his immediate successor, Alexander Reid (probably a relative), though a professional lawyer, was in some ways a return to the days of Burke. He was very negligent in keeping the registers, in some cases even leaving out the names of the parties; and overall, he performed so poorly that the justices even went to the extent of making formal court orders to force him to keep proper records:

³³²In 1794, Reid became joint prothonotary of the King's Bench, or clerk of the civil courts; and by 1800 he was also clerk of the crown, or of the higher criminal courts.

³³³"Sir James Stuart", in *DCB* VIII: 842.

³³⁴QSD, *Lecomte v. Heneau dit Deschamps and Chaput*, 22/9/1800 (Joran and Roch de Saint-Ours); *Grenier v. Levesque dit Basome père*, 28/9/1800 (Decoigne).

Il est ordonné que sans delai le greffier de la paix fasse completer les registres des cours de sessions de quartier seances hebdomadaires et seances speciales et qu'a l'avenir il souscrive de son nom les procedés de chaque séance aussitot qu'elle sera terminé. Qu'il mette en liasse tous les papiers des differentes cours, qu'il les cote sessions par sessions, et les range et place en tel ordre que l'on puisse y avoir recours et les trouver sans perte de temps au besoins. Qu'il fasse preparer à cet effet un armoire et place convenables et que le tout soit fait et terminé dans l'espace de quinze jours pour l'inspection qu'en feront les magistrats alors, a peine de censure et des consequences qui pourront resulter d'avoir negligé de se conformer à cet ordre.³³⁵

However, Alexander Reid died in 1814, and his successor, John Delisle, was even more meticulous and competent than John Reid. Delisle came from one of Montreal's most prominent legal families: his father, Jean-Guillaume Delisle, was an important Montreal notary, as had been his grandfather, Jean Delisle; and at least two of his sons, Alexandre-Maurice and Adelphe, also entered the legal profession, the first following his father as clerk of the courts, and the second as Montreal's high constable in the 1820s. John Delisle had entered the office of the clerk of the peace in 1800 as an assistant clerk, at the age of twenty, and thus had fourteen years experience in the clerk's office prior to becoming clerk of the peace. As clerk of the peace, Delisle was the consummate bureaucrat, and the registers and papers produced while he was in office were the best-kept of all. His bureaucratic mindset is perhaps best summed up by the receipt that he wrote to himself in 1830 when transferring money that he had received for fines as clerk of the peace to the city funds that he administered as the road treasurer: "Received from the Clerk of the Peace for the District of Montreal [himself] the sum of eight pounds ten shillings currency being the fines by him received under the regulations of police and making part of the city funds. (signed) John Delisle Road Treasurer."³³⁶

³³⁵QSR 19/1/1814; see also QSR 22/4/1813. The case files from this period are indeed far less organized than those up to 1811 and those from 1815; however, given that these documents have been transferred between different archives several times, it is difficult to know whether this was Reid's fault or that of some later clerk or archivist.

³³⁶QSD, "Statement of fines received by John Delisle ..", 4/1830. Delisle was baptized in Montreal in 1780 as Jean-Baptiste (PRDH #620200). He described his career in his testimony to the committee of the House of Assembly on the grievances of the inhabitants of York and Montreal in 1828 (*JHALC* 38: Appendix

The importance of the clerks of the peace, even Burke, as sources of legal knowledge and general assistance for the Montreal justices cannot be overstated. As early as 1767, Burke, in asking that he be allowed to issue (and claim fees on) all summonses from the justices' courts, asserted that since being appointed clerk of the peace in August 1764, he

took pains to serve oblige and assist His Majesty's Justices of the Peace in said district in the fforms [sic] and proceedings of their office to the utmost of his power and ability. That for that purpose your memorialist furnished each with the fforms of all sorts of process, recognizances, and warrants and hath formed and fitted up a court room with bench, barrs, tables, and other necessaries, as also a Grand Jury room, with all things requisite thereto, and hath also furnished stoves, firewood and candlelight for the Quarter Sessions and Weekly Sittings at Montreal in the Court and Grand Jury rooms, as well as court books and all other necessaries from time to time hitherto"

Likewise, from the 1790s at least the clerks of the peace played an important role in disseminating information to the justices concerning new provincial laws. Thus, for example, in February 1791, Jenkin Williams, the clerk of the Executive Council, sent the clerk of the peace a copy of a bill that had been prepared in response to the complaints of the grand juries of the Montreal Quarter Sessions in January 1790 and January 1791 respecting the administration of the city "to be communicated to the magistrates";³³⁷ in 1796, Jonathan Sewell, the attorney general, wrote to Reid that "As it will be some time before the Road Act can be printed owing to its length, his Lordship had thought proper to direct me to forward to you a copy of it for the direction of the magistrates in your district";³³⁸ and as noted above, from 1825 the clerks of the peace were responsible for distributing copies of all acts to all justices in their respective districts.³³⁹

Ee, 22/12/1828).

³³⁷As noted by Williams on the back of copies of the presentments, in NA RG4 A1: 16175-78.

³³⁸Sewell to Reid, 23/5/1796, in NA MG23 GII10 volume 9: 4766. In the same vein, see Sewell to Reid, 28/8/1796, in NA MG23 GII10 volume 9: 4805.

³³⁹In 1827, Delisle, in response to a request from the inspector general of Public Account for a detailed breakdown of the £25 allowance given to him to distribute the acts, replied that his practice had been "to employ individuals of different parishes as might be found in town to carry them, for which in some instances from 10/- to 20/- have been paid as a quantum merit, by this course the expence of sending a messenger

The justices were thus not bereft of sources for legal knowledge, especially in Montreal itself, and especially after 1800. And many demonstrated a very concrete ability, when they wanted to, to follow closely the rules governing their conduct.

Take, for example, the question of justices acting without proper authority, such as after their commissions had been revoked. Of the 315 active justices, I found only two who definitely acted as justices after they were dropped from the commission, Edward Abbott of Sorel, who was censured by the board of inquiry into the complaints of the Loyalists for taking depositions in 1786 and 1787, after he had been dropped from the commission,³⁴⁰ and Ignace Bourassa, a Laprairie notary who, though apparently not on the commission after May 1799, nevertheless took depositions later that year and again in 1801; a third justice, François-Hyacinthe Séguin of Terrebonne, may also have committed a prisoner to jail in 1829 while not on the commission, although his case is less clear.³⁴¹ All other justices who were dropped from the commission, even those whose removal was involuntary, ceased acting as soon as they no longer had the proper authority.

Likewise, consider another very important indication of legal competence, adherence to proper form when creating legal documents such as depositions, warrants, and recognizances. Most active justices seem to have known how to fill out these various legal forms correctly, since most depositions, warrants, and recognizances that I examined more or less followed proper form, with all of the necessary information. There were a few exceptions; but these were rare, and among the justices in Montreal itself, virtually unknown. This was further aided by the increasing use of pre-printed forms, but even justices outside of Montreal

expressly has been avoided". (NA RG1 E15A volume 59 file "Clerk of the Peace 1827")

³⁴⁰NA RG4 A1: 10656-75.

³⁴¹Séguin, who acted jointly with Joseph Turgeon, another justice, may have been acting in his capacity as commissioner for the trial of small causes.

who continued to produce documents in long-hand generally managed to get them right.

Finally, consider the extent to which the magistrates who composed the bench of the justices' most formal court, the Quarter Sessions, fulfilled the varying legal obligations imposed upon them as to the time of their sitting, and the number of justices required. David-Thierry Ruddel has suggested that in Quebec City, the justices were extremely lax in this regard.³⁴² Likewise, Sandra Oxner's examination of the records of the justices' courts in Nova Scotia show that even though only two justices were required to hold General Sessions, these were frequently adjourned for want of justices, or worse yet, held illegally by only one justice.³⁴³

The records of the Montreal Quarter Sessions show that apart from brief periods, the justices conformed almost exactly to their legal obligations as to the sitting of the court, although they interpreted the various laws as loosely as possible.³⁴⁴ Thus, from January 1765 through January 1770, the justices in Montreal held Quarter Sessions consistently every January, April, July, and October apart from one, although sometimes for only a day.³⁴⁵ Following the alienation of the English justices after the revocation of their civil powers in February 1770, there were no Quarter Sessions until September 1771, though given the looseness of Murray's ordinance this was only debatably illegal. From September 1771 until the province's entire administrative structure was abolished by the Quebec Act in May 1775, the justices once again held Quarter Sessions four times a year, although sometimes at different months, with the last being in

³⁴²*Québec City 1765-1832*: 188-189.

³⁴³"The Evolution of the Lower Court of Nova Scotia": 64, 66.

³⁴⁴The dates of the sittings of the Quarter Sessions are drawn largely from the registers of the court, which are complete from January 1765 through September 1773 and from January 1779 through to the 1830s and beyond; for the intervening period, the dates are taken from the accounts of the sheriff, who regularly paid a bailiff for summoning the juries to the court, and of the clerk of the peace, in NA RG1 E15A.

³⁴⁵The one exception was January 1768.

April 1775. From May 1775 to August 1776, when there were no justices, there were of course no Quarter Sessions; but soon after Carleton issued the new peace commission in 1776, the justices were once again holding Quarter Sessions.³⁴⁶ From July 1777 through October 1794, the justices again complied scrupulously with the law, opening Quarter Sessions on the specified days in January, April, July, and October; however, since they could end the sessions whenever they pleased, the court sometimes sat for as few as two days, it almost never sat on Fridays, perhaps because this was Montreal's market day, and October sessions were almost invariably opened as required by law but then immediately adjourning to mid-November, possibly in an attempt to avoid having both the justices and grand jury members tied up in court during prime shipping season.³⁴⁷ Finally, the justices initially paid little heed to the fixed terms specified by the act of 1794, missing nineteen of the 67 days they were supposed to sit in 1795 and 1796; but from 1797 through 1830, they sat on almost every day, and even when there was no business before the court, they met to fulfil the statutory obligations, only to adjourn immediately.

Similarly, despite the legislative confusion surrounding the number of justices required to hold Quarter Sessions, the Montreal justices apparently followed the law, although again interpreting it loosely. Thus, the justices before 1775 followed their commissions and English precedent rather than Murray's ordinance, since there were only two justices present on ten of the 48 Quarter Sessions days where the names of the justices present are known. After 1776,

³⁴⁶The accounts of the clerk of the peace make it clear that both the Quarter and Weekly Sessions were in operation from October 1776 at least. Hilda Neatby asserts that Quarter Sessions were in operation in both Quebec and Montreal between May 1775 and August 1776, but this is based on an erroneous reading of the May 1775 proclamation appointing "Conservators of the Peace", whom she mistakenly equates with justices of the peace, and of the accounts of the clerk of the peace for the district of Quebec (*The Administration of Justice under the Quebec Act*: 23).

³⁴⁷It is also possible that this had something to do with the district's agricultural schedule. In 1828, a King's Bench grand jury complained that the terms of the Quarter Sessions were especially inconvenient to those engaged in agriculture, since the April term came during sowing, that in July during haying, and that in October during fall plowing. However, since the term they singled out as most inconvenient was April, which the justices in the 1770s and 1780s did not systematically adjourn, the link can only be tentative.

they continued this practice, as allowed by their commissions; however, while the 1785 commission was in effect, they conformed to its requirement of three justices, and on four of the five occasions where there were only two justices present the court immediately adjourned, and on the fifth, the two justices present dealt only with administrative business that was entirely within their competence. Finally, from 1794 the justices also conformed closely to the act requiring three of them to hold the Quarter Sessions, although on days where the court opened and adjourned immediately for lack of business, there were sometimes only two justices present.

None of this meant that the justices had an unalterable respect for the rule of law. The conduct of Mondelet, the head of the magistracy in the district of Montreal, at his own assault and battery trial, and of May in the Johnson affair, have already been described. And there were many other cases in which justices acted arbitrarily or with partiality.

Take, for example, the 1791 Quarter Sessions case where William Harkness was found guilty of assaulting Jean-Baptiste Hervieux. Harkness protested that the jury had "separated themselves from each other after being charged by the court and before bringing in their verdict; that they withdrew from the place where they were put under the charge of the constable, and some of them were seen talking to people in the streets, all of which he is ready to prove." In a direct contradiction to that trumpeted fundamental principle of the English criminal justice system, the impartial jury, the court replied that "the same even if proved is not sufficient to annul the verdict", and fined him 15sh. What is equally instructive, the justices on the bench were James McGill, Pierre Guy, Thomas McCord, Saint-Georges Dupré, and Robert McKindlay; in other words, the two most experienced justices, McGill and Guy, along with McCord, the justice who, twenty year later, would be praised for his intimate knowledge of English law. It is thus difficult to attribute this decision to ignorance; perhaps it

had more to do with the fact that Hervieux, McGill, and Guy were all important Montreal fur traders.³⁴⁸

Likewise, there were complaints that justices, especially outside of Montreal, were charging inflated fees for issuing warrants, and were not issuing warrants without charge in cases involving felonies, as they were bound to do. Thus, in 1824, Louis Decoigne, a Blairfindie justice who had been quite active in the early 1820s, was convicted of extortion and removed from the commission for demanding fees of 10sh for felony warrants.³⁴⁹ Similarly, in recommending that the governor appoint Anthony Von Iffland as a justice in William Henry, Jean-Marie Mondelet gave the following reasons:

L'on se plainte généralement de ne pouvoir pas avoir un warrant chez Mr. Crebassa sans argent, à moins de lui payer 7/6; je suis persuadé que Mr. Von Iffland ne voudra pas intéresser son ministère par une indemnité aussi sordide, et qui répugne tant à l'administration de la justice; l'on m'assure que Mr. Jones n'a jamais exigé un sol pour ce qu'il a fait comme magistrat, et que ses absences au Parlement ont fait naître le plan de prier son Excellence de vouloir bien nommer comme magistrat le Dr. Von Iffland.³⁵⁰

And in 1830, the grand jury of the Quarter Sessions also remarked on the same practice among country justices.³⁵¹

But none of this implied bumbling amateurs with little education and even less knowledge of the law; and instead the justices, and especially those in Montreal itself, had a relatively solid grasp of the laws that related to their conduct. Thus, on the occasions when they did ignore these laws, they did so not out of ignorance, but deliberately.

³⁴⁸QSR 7/1791.

³⁴⁹KBR 8/1824. Unfortunately, I have not found the original documents for this case, so that I know no more than the very summary description in the register, that as a magistrate he extorted 10sh from François Falcon. Decoigne was dropped from the commission in 1826.

³⁵⁰Mondelet to Cochrane, 18/2/1824, in NA RG4 A1 volume 224.

³⁵¹QSR 30/4/1830.

F. Relative activity

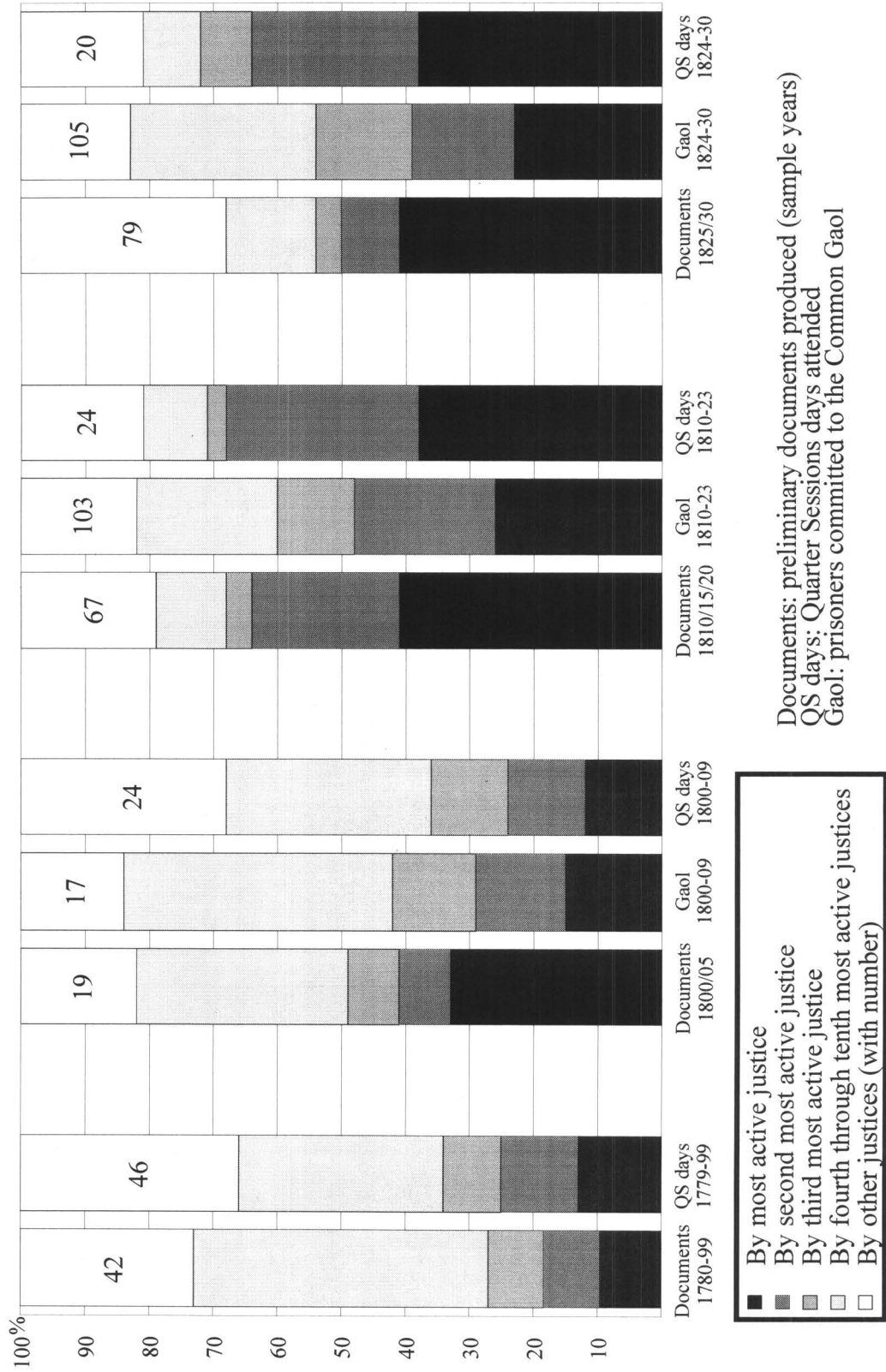
A final element to consider is the relative activity of the justices. I have already attempted to address this in part by constructing the sub-group of consistently active justices; but even within that group, there were very significant variations in activity. Thus, for example, both Calvin May and Jean-Marie Mondelet were consistently active from about the late eighteenth century to the end of the 1820s; but while in that period Mondelet produced thousands of documents, committed perhaps a thousand prisoners to gaol, and sat in judgement on several thousand cases in both Quarter Sessions and Weekly Sessions, May committed perhaps 25 prisoners to gaol, produced perhaps a hundred documents, and never attended the Quarter Sessions in Montreal.

As Figure 1.9 shows, throughout the period, two thirds or more of the work of the justices was performed by the ten most active justices, and from 1810, half or more by the three most active justices; an apportionment of the justices' work similar to that found by John Beattie in Surrey in the mid-eighteenth-century.³⁵² This concentration of much of the work of the magistracy in the hands of only a few justices reflected two different aspects of the system of justices in the district of Montreal: on the one hand, a significant differentiation between the justices in Montreal itself, and those in other parts of the district; and on the other, the professionalization of the magistracy in Montreal itself.

The difference in activity between the justices in Montreal and those outside of the city is striking. The three most active justices in any period and in any part of the justices' work were always from Montreal itself; and of the ten most active justices, half at least were always from the city. In part this reflected the fact that the majority of criminal cases that came before the justices originated in Montreal itself; but it was also another manifestation of the centralization of the system of the justices and their courts in the city, and the contrast between the

³⁵²*Crime and the Courts in England*: 61.

FIGURE 1.9: PROPORTION OF JUSTICES' WORK DONE BY MOST ACTIVE JUSTICES



Documents: preliminary documents produced (sample years)
 QS days: Quarter Sessions days attended
 Gaol: prisoners committed to the Common Gaol

small core of highly active justices in the city, for whom justicing was at least a weekly and sometimes a daily pursuit, and the mass of active justices in other parts of the district, for whom justicing was a very occasional pursuit.

It is important to note, however, that by the 1820s the spread of active justices throughout the district meant that through sheer numbers alone, justices outside of Montreal for the first time began to dominate the preliminary steps in criminal cases originating outside of the city. As one preliminary indication, consider the justices before whom complainants resident outside of the city of Montreal appeared to make depositions. In the eighteenth century, as we saw, there were few justices outside of Montreal, so that complainants most often came to Montreal to make their depositions; and before 1810, about 60% of such depositions were taken before justices in Montreal. The increase in the number of justices outside of Montreal in the 1800s and 1810s should have reversed this, but it did not, and in the 1810s, two-thirds of depositions made by complainants from outside of the city were taken before justices in Montreal, mostly Mondelet and McCord. In the 1820s, however, this changed dramatically: two-thirds of depositions from complainants outside of Montreal were taken before local justices; and outside of the area closest to Montreal (namely the Island of Montreal, Isle-Jésus, and the surrounding islands, and the south-shore seigneuries from Sault-Saint-Louis to Boucherville) the proportion was closer to 80%.

Within Montreal itself, the professionalization of the magistracy had the effect of concentrating the work of the justices in the hands of a small core of active justices. As we saw, this was one of the many complaints against the office of chairman of the Quarter Sessions in Montreal: as Jean-Philippe Leprohon noted in 1829,

Before the appointment of a Chairman of the Quarter Sessions holding the office as a *place*, the Magistrates organized themselves and executed the duties of their office by turns; but since there has been a Chairman receiving a salary the greater number of Justices of the Peace have ceased to act.³⁵³

³⁵³ JHALC 38: Appendix Dd, 9/1/1829.

And this is borne out by an examination of who did the business of the Montreal magistrates. Thus, while Mondelet and McCord were chairmen of the Quarter Sessions, between 1810 and 1824, about 85% of committals to the common gaol and 80% of preliminary documents produced by Montreal justices were by one or the other; and similarly, while Samuel Gale was chairman, he accounted for about 85% of gaol committals by Montreal justices, although only 65% of preliminary documents.

Nevertheless, it is important not to overstate the impact that the relative activity of the justices had on defendants and complainants. As far as the accessibility of the criminal justice system was concerned, what mattered as much as the relative activity of a justice was his willingness to act; and if there was a local justice who was willing to hear a complaint and make out a warrant, it was not an over-riding concern to individual complainants and defendants whether he did that one, ten, or a hundred times a year.

Conclusion

While the system of justices and courts in Quebec and Lower Canada drew heavily on the English model, it was not a direct copy of the English system, an alien structure imposed without modification on a conquered colony. Instead, as Knafla and Chapman suggest for the system in operation, it was inspired by several different sources, especially the system in England, which formed its foundation, but also that in other English colonies in North America, and in New France before the Conquest; and I would argue that this applied as much to the structure of the system as to its operation. Thus, the distribution of active justices in the 1780s, centered almost exclusively on Montreal although also in a few towns and villages, resembled the situation in New France, where the principal judicial officers resided in the major towns apart from those seigneuries that had active seigneurial courts, rather than that in eighteenth century England, where most counties were sprinkled with active justices, though not at all evenly; but by

the 1820s this was reversed, with the distribution of active justices throughout much of the district. On the other hand, the continuing centralization of the court system in Montreal, and its domination by urban justices, resembled far more the situation in New France than in England, where petty sessions and even Quarter Sessions were scattered throughout the counties and involved justices, although this too was beginning to change by the 1820s. And as for the criminal laws, while they were again based on a foundation of English law, this was substantially modified, first through the filtering of which laws were transferred to the colony, and then further by the passing of penal legislation in the colony itself, both by the various colonial legislatures and by the justices themselves, which allowed the colony's elites to re-shape at least part of the code of conduct prescribed under English law, and to attempt to regulate a substantial part of the daily activities of the population at large according to their own inclinations.

Second, the criminal justice system in Quebec and Lower Canada, at least at the level of the justices of the peace, was not at all static in the first seven decades of English rule. The two most striking changes were the modifications of the criminal law and the spread of active justices into the countryside, but there were other transformations as well. Thus, both the ministerial and judicial functions of the justices saw an increase in formalism and bureaucratic organization, and even, in Montreal, of professionalization.

Third, the justices themselves, and especially those who were active, were in some respects a far more heterogeneous group than has previously been suggested. They were not drawn from the population at large, and as Knafla and Chapman suggested probably did represent less than one percent of the colony's inhabitants; but this was a function not of their ethnicity, but rather of their social class. What set justices such as Jean-Marie Mondelet, Nicholas-Eustache Lambert Dumont, and even Joseph Douaire de Bondy apart from their neighbours was not their language or their culture, but their social place and prominence in the colony. This is not to say that ethnicity did not play a role, especially when the head of the magistrates in the city was an active francophobe; but when Louis

Saint-Amant, a Vaudreuil habitant, was arrested by the huissier Jean Simard Aymond in 1798 and brought before Michel-Eustache-Gaspard Alain Chartier de Lotbinière, what he saw was not a fellow Canadien, but rather his seigneur.

And finally and perhaps most importantly from the perspective of those who were caught up in the criminal justice system, there was not a void in the administration of the criminal justice system of the state after 1764, and which was only filled after the Rebellions. This was especially true in Montreal itself, which always had at least a small core of active magistrates, along with formal courts; but from the early nineteenth century, and in particular in the 1820s, there were also active justices spread throughout more and more of the district. Further, the justices before whom complainants and defendants appeared were not uniformly unskilled, inept, and incompetent. Many were certainly partial and arbitrary; and in some cases they were driven by interests of class and even party. But they did this with the full consciousness of what they were doing, rather than through ignorance; and this did nothing to diminish the impact that they could have on society in general, and on people like George, the black slave who was whipped in the 1760s, in particular.

PART 2. THE POLICE

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The bailiffs to distribute the city into wards ... and each one is to take his ward and to have the same in good order. Bailiffs to pay a fine of forty sols for misbehaviour in any part of their order ... Bailiffs ... are to see the streets properly clean'd and looked after and that no disorderly houses are kept in their wards if any be presented [sic] to his Majesty's Justices. 1st. De Cost père has for his ward, from Mr. Gray's Provost Martial to Quebec Gate and the little street called Notre Dame de Bonscour, la rue St. Charles, the little street of Charles Lafevre blacksmith, the little street St. Vincent, the street St. Gabriel, the street St. Dennis, and do. St. Theresea ... 8th Ward Farrel called the Swiss the suburbs of Quebec and the commons.

- order of the Montreal justices of the peace in Quarter Sessions, July 10, 1766³⁵⁴

We were rather unfortunate in making immediate search, as there is no constable or militia officer within the limits of the borough [of William Henry]. The jury of inquest have made every inquiry possible and all to no purpose, and the citizens have in general submitted to a search.

- Moses Holt, justice of the peace, to Jonathan Sewell, the province's attorney general, May 5, 1796³⁵⁵

May 30, 1820. Dominus Rex vs Amable Dechamps. For arresting the defendant by warrant from J.M. Mondelet Esquire and William Robertson Esquire bearing date the twenty sixth of February 1820 for having neglected and refused to comply with a judgment passed [sic] against him for having sold and retailed spirituous liquors, without licence; 16 leagues transport at 3/0 is 48/0, arresting 5/0, recors 5/0, paid for conveyance in carrying the defendant from the River LeGrasse (it being the place were [sic] he was arrested) to Montreal 50/0, ferriage 4/6. [in a different hand] Charles Irvine of Montreal constable being sworn saith that he was present at the time of arresting the above named Amable Dechamp, that from the resistance made by the said Dechamp it was not possible for any one man to carry him to Montreal without the risque of his life. Sworn before me at Montreal this 14th of February 1822 [signed] J.P. Leprohon J.P.

- account of Richard Hart, police constable, with the civil government of Lower Canada, May-June 1820³⁵⁶

The changes in the magistracy, the court structure, and the criminal law would have meant little if the justices in practice could not enforce their orders. But there was certainly some "enforcing" going on: between 1811 and 1830 for

³⁵⁴QSR 10/7/1766.

³⁵⁵NA RG4 A1: 20420-21.

³⁵⁶NA RG1 E15A volume 43 file "High Constable (Police Constable) 1822".

example, about 5600 people were committed to Montreal's gaol on criminal charges, and perhaps 1400 and probably more to the House of Correction, mostly on the orders of justices and mostly against their will,³⁵⁷ and of the much larger number of people who came before the justices for other reasons, entering bail, responding to charges, giving testimony, and so on, many were there only because they were compelled. The question then becomes, who was doing this compelling, and how? To answer this, we must turn from the justices and their courts to that other crucial element of the criminal justice system: the police.

Most historians have asserted that the state in Quebec and Lower Canada was singularly ill-equipped and ill-served when it came to policing.³⁵⁸ According to the standard account, New France had a relatively effective law enforcement system, with court *huissiers* and *sergents*, assisted by militia captains, *archers de la maréchaussée*, and soldiers, comprising a simplified version of the much-touted policing system of absolutist France. But this system was swept away by the Conquest, and after the brief interlude of the military régime was replaced by something far less effective: a modified version of the English policing system, with all of the inconsistencies and inefficiencies of its parent, compounded by its being grafted onto an alien and unwilling society. Between 1764 and 1775, the responsibility for arresting criminals in both urban and rural areas thus lay with

³⁵⁷See below, note 658.

³⁵⁸The only works to treat policing before the Rebellions in any detail are Scott, "Chapters in the History of the Law of Quebec 1764-1775"; Neatby, *The Administration of Justice under the Quebec Act*: especially 302-304 and 306-307; Jean-Claude Robert, "Montréal 1821-1871: aspects de l'urbanisation" (Thèse 3ème cycle, Université de Paris, 1977), I: 195-197; Ruddell, *Quebec City 1765-1832*: especially 177-180; Fecteau, *Un nouvel ordre des choses*, especially 98-101, 162-165, and 228-232; Veilleux, "Les gens de justice à Québec": 103-112; and Greer, "The Birth of the Police in Canada": 17-49. There are also purely descriptive works, such as Alexander Gordon Dewey, "The First Fifteen Years of British Administration in Montreal, 1761-1775" (M.A., McGill, 1913), E.-Z. Massicotte, "Le guet à Montréal au XIXe siècle", *Bulletin des recherches historiques* 36(2)(juin 1930): 68-71, and Jean Turmel, *Premières structures et évolution de la police de Montréal (1796-1909)* (Montréal: Service de la Police de Montréal, 1971). Likewise, the Quebec and Lower Canadian police are covered summarily in the general surveys of Canadian police history, such as William and Nora Kelly, *Policing in Canada* (Toronto: Macmillan, 1976): 1-8; C.K. Talbot, C.H.S. Jayewardene, and T.J. Juliani, *Canada's Constables: The Historical Development of Policing in Canada* (Ottawa: Crimcare, 1985): 14-31; and Greg Marquis, *Policing Canada's Century: A History of the Canadian Association of Chiefs of Police* (Toronto: UTP, 1993): 12-39.

bailiffs appointed in each parish by the central administration, paralleling England's parish constables. The bailiffs, unlike the militia captains they replaced, commanded no respect in their communities and quickly proved ineffectual. They were thus abolished in the administrative re-organization that followed the Quebec Act, and their policing role transferred once again to the militia captains, who remained virtually the only agents of the criminal law in the countryside, apart from the justices themselves, until after the Rebellions.³⁵⁹ In the cities there were no police at all between 1777 and 1787, when an unpaid constabulary was established under the aegis of the justices, with compulsory one-year service rotating among the citizens. This amateur police force was supplemented in 1818 by small paid night watches in Montreal and Quebec. Apart from the limited police powers granted to various minor officials, such as clerks of the markets or church-wardens, these were the only significant structural changes in the police between the Conquest and the Rebellions.

In sum, the standard account suggests that policing in both rural and urban areas of the colony relied for most of the period almost entirely on untrained, unpaid, and thus unprofessional individuals, the bailiffs, militia captains, and constables. Since policing was for them an onerous duty rather than an occupation of choice, they acted reluctantly if at all. Only the city watchmen even remotely resembled a modern police, and they were notoriously corrupt and inefficient. Policing in Quebec and Lower Canada was thus deficient both in terms of its formal structures and its practice, especially in the rural parishes; and it was not until the reforms of the Special Council after the 1837-38 Rebellions that the colony saw its first modern, professional police force.

This account is substantially accurate according to the sources most often used, namely colonial acts and ordinances on the one hand and elite discourse on

³⁵⁹The only writer who nuances this is Fecteau, who notes that from 1818 inspectors of police could be appointed in the larger towns and villages, although he downplays their importance (*Un nouvel ordre des choses*: 229-230); Greer on the other hand asserts that there were no police outside of the cities other than the militia captains ("The Birth of the Police in Canada": 19).

the other. However, other sources closer to the day-to-day operations of the criminal justice system suggest that there was a considerable gap between the formal structures detailed in colonial legislation, the rhetoric surrounding policing, and the police system that actually existed. Thus, if the only police between 1764 and 1775 were the bailiffs appointed by the governor, what do we call De Cost père, "Farrel called the Swiss", and the six other "bailiffs" to whom Montreal's justices assigned wards to police, since only one of them had been appointed by the central government? Likewise, if before the Rebellions constables were unwilling amateurs limited to Montreal, how do we explain Dechamps' arrest far from the city by Hart and Irvine, both professional police officers based in Montreal? If these were isolated instances, we could continue to take at face value statements like that of a committee of Council in 1787, "there is not, nor for years past has been a Bailiff or Constable in the whole Province."³⁶⁰ But as we shall see, "unofficial" bailiffs like De Cost and Farrell and "professional" constables like Hart and Irvine were a fundamental part of the policing system of the colony; and the committee's statement is belied by the active service of bailiffs such as Joseph Minot, Jean-Baptiste Flamand, and Jean-Philippe Brindamour dit Garnot throughout the 1780s.

A thorough re-examination of the police in Quebec and Lower Canada before the Rebellions is thus in order, concentrating more on the system that actually existed than on the rhetoric surrounding it. In this section, I focus on the police themselves. After some reflections on police historiography, I turn to the problem of defining the police. I then discuss the structures of policing in Quebec and Lower Canada: first, the English system which formed the basis for that in the colony; and then the system that actually existed between 1764 and 1830.

³⁶⁰NA RG1 E1 volume 11: 66-67. The report of this committee has been one of the principal sources for policing in Quebec before 1787, and is cited by both Neatby, *The Administration of Justice under the Quebec Act*: 307 n.40, and Fecteau, *Un nouvel ordre des choses*: 99.

I. Police history and police theory

A. The police before the police: historiographical interpretations

The literature on policing in Western societies in the eighteenth and early nineteenth centuries reflects both the liberal, or statist, and the marxist, or conflict, theories of the state: as Clive Emsley has written, "historians of police forces can be broadly separated into two kinds: those ... who generally view police development as a beneficial, far-sighted reform; and those who see police forces largely as instruments of state or class power."³⁶¹ But the history of policing is also one of the venues for the historiographical debate concerning the ancien-régime state and the question of nineteenth-century state formation. Thus, there are those who posit a "revolution" in policing in the first half of the nineteenth century and a correspondingly sharp dichotomy between the ancien-régime and the modern police; and there are those who see police development as a more gradual process, stressing the continuities between the old police and the new. Both the statist/conflict and continuity/change debates have fundamentally shaped the literature on policing in the three societies with the greatest influence on the European settlements in Quebec and Lower Canada: England; France; and the other English colonies in North America.

The notion of a revolution in policing in the early nineteenth century was most forcefully expressed in classic English police historiography.³⁶² The standard works on the police in England were those of liberal historians such as Charles Reith, Leon Radzinowicz, and Thomas Critchley, who followed nineteenth-century liberal statist in dividing English police history into two phases.³⁶³ The first, lasting until the early nineteenth century, was the era of unpaid, unwilling

³⁶¹*Policing and its Context, 1750-1870* (New York: Schocken, 1984): 161.

³⁶²The best recent review of English police historiography is in Palmer, *Police and Protest in England and Ireland, 1780-1850*: 6-11.

³⁶³Charles Reith, *The Police Idea: Its History and Evolution in the Eighteenth Century and After* (London: Oxford UP, 1938); Radzinowicz, *A History of English Criminal Law*, especially volumes II and III; T.A. Critchley, *A History of Police in England and Wales, 900-1966* (London: Constable, 1967).

constables and corrupt, inefficient watchmen. Mired in structures and practices dating to the middle ages, isolated from state control, and completely inadequate to the realities of industrializing and urbanizing England, this was a system that had been in decline since the late fifteenth century and had led to a vast upsurge in crime by the end of the eighteenth century. As a result, enlightened reformers such as Patrick Colquhoun began pushing for a thorough overhaul of the old police, and after considerable resistance, the second era of policing was inaugurated in London by the Peel reforms of 1829, and throughout the country in the decades that followed. With the birth of efficient, state-controlled police forces which stressed crime prevention over crime detection, this marked the origins of the police as we know it today; and it was a classic example of nineteenth-century rational progress through the extension of the state.

The whiggish view of the police after Peel was the subject of intense criticism from marxist historians, who saw the Peelers not as "progress" but rather as one of the new mechanisms of social control that emerged with the formation of the nineteenth-century bourgeois state. However, they did not challenge the liberal characterization of the police before Peel. For those who focussed on the new police in the nineteenth century the ineffectiveness of the old system neatly explained the bourgeoisie's pre-occupation with police reform.³⁶⁴ And since those who examined criminal justice in the eighteenth century argued that the English state did not and could not maintain social control through generalized repression, instead using more subtle means such as exemplary terror and ideological co-option, they paid very little attention to the police, either

³⁶⁴Early examples include Jennifer Hart, "Reform of the Borough Police, 1835-1856", *English Historical Review* 70(1955): 411-427, and Allan Silver, "The Demand for Order in a Civil Society: A Review of Some Themes in the History of Urban Crime, Police and Riot", in D. Bordua, ed., *The Police: Six Sociological Essays* (New York: John Wiley, 1967): 6-15. This interpretation was especially popular in the 1970s and early 1980s; see J.J. Tobias, *Crime and Police in England 1700-1900* (Dublin: Gill & MacMillan, 1979), or David Jones, *Crime, Protest, Community and Police in Nineteenth-Century Britain* (London: Routledge and Kegan Paul, 1982). One exception was David Philips, whose work is discussed below.

dismissing them as unimportant,³⁶⁵ or mentioning them only in passing.³⁶⁶ As Stanley Palmer remarked as late as 1988, "The state of policing before the advent of the new police ... remains largely uncharted territory."³⁶⁷

In the last few years writers on both the left and the right have been re-assessing the English police in the century before Peel. Some scholars suggest that the development of the "modern" police can be traced back much further than 1829, pointing out that the "old" police underwent considerable reform throughout the eighteenth century, and that there were significant continuities between the old police and the new in terms of both practice and personnel.³⁶⁸ And others note that the old system itself cannot be dismissed so easily: on the one hand, it could work quite well for "normal" crimes such as petty thefts and assaults;³⁶⁹ and on

³⁶⁵As in Douglas Hay's assertion that "In place of police ... propertied Englishmen had a fat and swelling sheaf of laws" ("Property, Authority and the Criminal Law": 18), or Cal Winslow's portrayal of revenue officials as "notoriously corrupt and inefficient" and thus no great threat to smugglers ("Sussex Smugglers", in Hay et al., *Albion's Fatal Tree*: 140-144).

³⁶⁶As in Peter Linebaugh's description of the "altogether imposing array of municipal strength" massed by the Sheriff of London at a 1749 hanging to prevent a rescue ("The Tyburn Riot Against the Surgeons", in Hay et al., *Albion's Fatal Tree*: 99). Curiously, though both E.P. Thompson and Douglas Hay dealt in great detail with the bloody battles between gamekeepers and poachers in eighteenth-century England, and the terrorist tactics employed by the former, neither made any explicit equation between gamekeepers and police, nor came to any broader conclusions about the potentially destructive power of the eighteenth century police (Thompson, *Whigs and Hunters*; Hay, "Poaching and the Game Laws on Cannock Chase", in Hay et al., *Albion's Fatal Tree*: 189-253). This connection was however made by Maureen Cain, a sociologist writing a few years later ("Trends in the Sociology of Police Work", *International Journal of the Sociology of Law* 17(1979): 160).

³⁶⁷*Police and Protest in England and Ireland*: 384.

³⁶⁸The clearest example of this is Elaine A. Reynolds, whose goal in examining the St. Marylebone police before Peel is to show that they were "recognizable as fitting the modern definition: a uniformed, professional force of men who patrolled the streets, night and day, in order to prevent crime and protect the lives and property of the inhabitants" ("St. Marylebone: Local Police Reform in London, 1755-1829", *The Historian* 51(3)(1989): 465). Other works in the same vein are Emsley, *Policing and its Context*: 20-31, "Detection and Prevention: the Old English Police and the New, 1750-1900", *Historical Social Research* 37(1986): 69-88, and *The English Police: A Political and Social History* (New York: St. Martin's, 1991): 15-22; Beattie, *Crime and the Courts in England*: 67-72; and Paley, "Policing London Before Peel": 95-130.

³⁶⁹This view was advanced by David Phillips as early as 1977, although he maintained that the "old" police were ineffectual in dealing with larger-scale "political" disturbances such as riots (*Crime and Authority in Victorian England: The Black Country, 1835-1860* (London: Croom Helm, 1977): 59-63). A similar perspective is adopted by George Rudé in *Criminal and Victim: Crime and Society in Early Nineteenth-Century England* (Oxford: Oxford UP, 1985): 89-101, and by Palmer in *Police and Protest in England and Ireland*: 383-384. Palmer indeed argues that the main impetus for police reform in England was not the

the other, its corruption and inconsistency did not preclude its being an oppressive burden on the disadvantaged.³⁷⁰ Questions are thus being raised both about the novelty of the new police and the irrelevance of the old system; and the emerging view seems to be that, though policing changed significantly between 1700 and 1900, the changes were both less extreme and more gradual than previously thought.³⁷¹

The historiography of policing in France has always been less dismissive of the ancien-régime police. In the first place, classic French police historiography was largely the work of historians for whom downplaying the effects of the Revolution was an ideological imperative; thus, they portrayed a long and continuous evolution in the French police, from the royal bodyguards and *milice bourgeoise* of the late middle ages, through the *maréchaussée* and *lieutenant-*

perceived inability of the old police to deal with ordinary crime, but rather its manifest inability to deal with rising political crime and popular disturbances. More unequivocal proponents of the capabilities of the old police include R.W. England Jr., "Investigating Homicides in Northern England, 1800-1824", *Criminal Justice History* 6(1985): 105-123; and Oberwittler, "Crime and Authority in Eighteenth Century England": 3-34. These last echo the findings of historians of rural England in the seventeenth century, such as Keith Wrightson ("Two Concepts of Order: Justices, Constables and Jurymen in Seventeenth-century England", in John Brewer and John Styles, eds., *An Ungovernable People: The English and Their Law in the Seventeenth and Eighteenth Centuries* (New Brunswick, NJ: Rutgers UP, 1980): 21-46), J.A. Sharpe ("Enforcing the Law in the Seventeenth-Century English Village", in V.A.C. Gatrell, Bruce Lenman and Geoffrey Parker eds., *Crime and the Law: The Social History of Crime in Western Europe since 1500* (London: Europa Publications Ltd., 1980): 97-119), or Joan R. Kent (*The English Village Constable, 1580-1642: A Social and Administrative Study* (New York: Oxford UP, 1987): 190-211), although it should be noted that Wrightson specifically warned against extending his conclusions into the eighteenth century ("Two Concepts of Order": 45).

³⁷⁰For example, the articles in Douglas Hay and Francis Snyder eds., *Policing and Prosecution in Britain 1750-1850* (Oxford: Clarendon Press, 1989), especially Hay and Snyder, "Using the Criminal Law, 1750-1850: Policing, Private Prosecution, and the State" (1-52), David Philips, "Good Men to Associate and Bad Men to Conspire: Associations for the Prosecution of Felons in England 1760-1860" (113-170) and Ruth Paley, "Thief-takers in London in the Age of the McDaniel Gang, c. 1745-1754" (301-341).

³⁷¹This "revisionism" has in turn provoked some reaction: Robert Storch for example has cautioned against overlooking "what was genuinely new in nineteenth-century criminal justice history ... [in] the temptation to collapse it entirely into that of the eighteenth century or earlier by overemphasizing earlier precedents and trends" ("Policing Rural Southern England before the Police: Opinion and Practice, 1830-1856", in Hay and Snyder, *Policing and Prosecution in Britain*: 213).

général de police of the later Bourbons, to the modern *gendarmerie* and *Sûreté*.³⁷² Likewise, since the centralized and bureaucratized police forces of the French absolutist state were so often held up as a model for other European governments either to follow or (in the case of England) to avoid, they achieved an almost mythic status among many English historians, which has its echoes even today.³⁷³

More recently, the ancien-régime police have come under the scrutiny of writers who see the Revolution as a watershed for all aspects of French society and especially the state. Thus, studies of crime and policing outside of Paris by Nicole Castan and Julius Ruff have argued that even centralized police institutions such as the *maréchaussée* had a very limited or at best sporadic impact on society at large.³⁷⁴ But this is offset by Iain Cameron's assertion that the *maréchaussée* in the Guyenne at least, while unable to "control" society, could exert a considerable oppressive force on occasion;³⁷⁵ and the recognition that there were considerable continuities in the structure and personnel of the force across the Revolutionary period.³⁷⁶ As for the police of Paris before 1789, scholars continue to portray them as relatively well-organized and useful tools of state power, especially

³⁷²For example, Henri Buisson, *La police, son histoire* (Paris: Nouvelles Editions Latines, 1958); Marcel Le Clère, *Histoire de la police* (Paris: Presses de l'Université de Paris, 1973); or Philip John Stead, *The Police of Paris* (London: Staples Press, 1957) and *The Police of France* (New York: MacMillan, 1983).

³⁷³This view is persistent, ranging from Radzinowicz in the 1950s (*A History of English Criminal Law III*: 539-542) through David H. Bayley in the 1970s ("The Police and Political Development in Europe", in Charles Tilly ed., *The Formation of the National States in Western Europe* (Princeton: Princeton UP, 1975): 343-345) to Palmer even more recently (*Police and Protest in England and Ireland*: 11-14).

³⁷⁴Nicole Castan, *Justice et répression en Languedoc à l'époque des lumières* (Paris: Flammarion, 1980); Julius R. Ruff, *Crime, Justice and Public Order in Old Régime France: The Sénéchaussées of Libourne and Bazas, 1696-1789* (London: Croom Helm, 1984): 48-52. See also Olwen H. Hufton, "Le paysan et la loi en France au XVIIIe siècle", *Annales* 38(3)(1983): 679-701; and Emsley, *Policing and its Context*: 13-20, and "La maréchaussée à la fin de l'ancien régime. Note sur la composition du corps", *Revue d'histoire moderne et contemporaine* 33(oct-déc 1986): 622-644.

³⁷⁵*Crime and Repression in the Auvergne and the Guyenne, 1720-1790* (New York: Cambridge UP, 1981).

³⁷⁶Daniel Martin, "La maréchaussée au XVIIIe siècle: les hommes et l'institution en Auvergne", *Annales historiques de la révolution française* 52(1)(1980): 91-117.

against the popular classes, although perhaps not as sinisterly efficient as contemporary critics would have had it.³⁷⁷

The historiography of policing in the English colonies in North America and the United States in the eighteenth and early nineteenth centuries is closer to that of England, although tempered by the long-standing notion that in the early colonial period, the New England colonies in particular were relatively "peaceable kingdoms" by virtue of social consensus or social control.³⁷⁸ Thus, Douglas Greenberg and Donna Spindel argue that in the eighteenth century, law enforcement in New York and North Carolina respectively was disorganized and inadequate;³⁷⁹ and most writers who discuss the police in the English colonies in Canada before the 1840s are similarly dismissive.³⁸⁰ On the other hand, both Roger Lane and David Flaherty have argued that up until the Revolution, policing systems in Massachusetts worked well in their relatively coherent and law-abiding communities, although Lane attributes this cohesion to social consensus while Flaherty stresses social control.³⁸¹ But the notion of a sharp break in the first half

³⁷⁷The most comprehensive study is Alan Williams, *The Police of Paris, 1718-1798* (Baton Rouge: Louisiana State UP, 1979).

³⁷⁸For a review of the American literature on policing to 1982, see Douglas Greenberg, "Crime, Law Enforcement, and Social Control in Colonial America", *American Journal of Legal History* 26(4)(1982): 293-325.

³⁷⁹Douglas Greenberg, *Crime and Law Enforcement in the Colony of New York, 1691-1776* (Ithaca, NY: Cornell UP, 1976); Donna Spindel, "The Administration of Criminal Justice in North Carolina, 1720-1740", *American Journal of Legal History* 25(2)(April 1981): 147-148, and *Crime and Society in North Carolina*: 34-37. In her later work, Spindel is less dismissive of the constables, noting that though seriously hampered by a lack of motivation and skill, some were still quite diligent; and an even less dismissive view has been advanced by Alan D. Watson in "The Constable in Colonial North Carolina", *North Carolina Historical Review* 68(1)(1991): 1-16.

³⁸⁰Specific studies include T.W. Acheson, *Saint John: The Making of a Colonial Urban Community* (Toronto: UTP, 1985): 214-216; John Weaver, "Crime, Public Order, and Repression: The Gore District in Upheaval, 1832-1851", *Ontario History* 78(3)(1986): 187-188; Paul Romney, *The Administration of Justice in Ontario 1784-1900* (Winnipeg: University of Manitoba, 1991): 20-24; and Peter McGahan, *Crime and Policing in Maritime Canada* (Fredericton: Goose Lane, 1988): 11-27 (on the police in St. Andrew's, New Brunswick). General surveys include Kelly and Kelly, *Policing in Canada*: 1-8; Talbot et al., *Canada's Constables*; and Marquis, *Policing Canada's Century*: 12-39.

³⁸¹Roger Lane, *Policing the City: Boston, 1822-1885* (Cambridge, MA: Harvard UP, 1967): 1-13; David H. Flaherty, "Crime and Social Control in Provincial Massachusetts", *Historical Journal* 24(2)(1981): 339-360.

of the nineteenth century has generally prevailed in American and Canadian police historiography, though it is acknowledged that it took longer to "reform" the old police forces than in England.³⁸²

Of these different historiographical traditions, the literature on policing in Quebec and Lower Canada between the Conquest and the Rebellions resembles most closely that of England before the current wave of revision. Both liberal statist and conflict theorists have examined the police, the latter more extensively; but as we saw above, the main postulate for both has been that before the reforms of the Special Council in the late 1830s, there were either no police at all, or the mechanisms of law enforcement and state intervention that did exist were very limited and largely ineffectual. Thus, in the three most significant works to treat policing before the Rebellions, David T. Ruddle describes police enforcement in Quebec City in the early nineteenth century as "plagued with problems of absenteeism, failure to enforce unpopular laws, an untrained force and the local population's refusal to obey constables";³⁸³ Jean-Marie Fecteau attributes the limited social impact of the criminal justice system in Lower Canada in part to "les défaillances de l'appareil de la prise en charge de première ligne (constables)";³⁸⁴ and Alan Greer states that in British North America as a whole, "up until the late 1830s ... city and colonial governments were largely destitute of the means of exercising direct and constant control over 'civil society'".³⁸⁵ Greer further echoes the classic English approach by explicitly contrasting the disorganized situation under the British régime with the police of New France, who had been established by "a power [France] then generally recognized as the

³⁸²On the United States, see Lane, *Policing the City*: 14-38, and James F. Richardson, *The New York Police: Colonial Times to 1901* (New York: Oxford UP, 1970): 3-50; on Canada, see the general surveys cited above.

³⁸³*Québec City 1765-1832*: 178.

³⁸⁴*Un nouvel ordre des choses*: 124.

³⁸⁵"The Birth of the Police in Canada": 18.

world leader in the field of policing."³⁸⁶ And in the case of Greer and Fecteau, the influence of state formation theory is explicit: for both, the intent is to provide a suitable backdrop for the profound changes that they see leading to the implantation of the modern, bourgeois state in the years following the Rebellions, exemplified by the new professional police.³⁸⁷

The influence of theories of state, filtered through the continuity/change and social control/social consensus debates, thus in part accounts for the particularities of the different schools of police historiography. However, it still does not entirely explain why an otherwise solid history of policing in nineteenth-century Canada can declare flatly that "police ... did not exist in British North America until the mid-1830s,"³⁸⁸ or more generally why the fundamental break between the "old" and the "new" police seemed an almost self-evident truth to English, American, and Canadian historians. For this, we must turn instead to how police historians have theorized their subject, the police and policing, and more particularly how they have conceptualized the "police".

B. Theories of the police

Maureen Cain's observation, "it is strange that, of all the studies of the police produced by sociologists and political scientists, only two ... have attempted a definition of the object of their analysis,"³⁸⁹ applies equally well to police history. Most police historians simply adopt the "common-sense" notion of police: "the bureaucratic and hierarchical bodies employed by the state to maintain order and to prevent and detect crime."³⁹⁰ But this is no more than a description

³⁸⁶*ibid.*: 44 n.5.

³⁸⁷Fecteau describes the new police as "une rupture fondamentale dans l'économie répressive bas-canadienne" (*Un nouvel ordre des choses*: 232), and this is the whole point of Greer's article.

³⁸⁸Marquis, *Policing Canada's Century*: 16.

³⁸⁹"Trends in the Sociology of Police Work": 143.

³⁹⁰Emsley, *The English Police*: 1.

of that specific institution that arose in Western Europe the late eighteenth and early nineteenth centuries and goes by the name "police" today; and as Douglas Hay and Francis Snyder have pointed out, "the search for the origins of a present institution using modern definitions of organization and function" is "a classic instance of the historical fallacy of presentism".³⁹¹ Thus, the writer who erases the police in British North America before the 1830s can do so only because he equates "police" with the police departments of municipal corporations, which first appeared in the mid-1830s, thereby "defining away" any police before that time.³⁹²

This approach is understandable, given that, as we saw above, most police historians are interested mainly in understanding the development of the modern institution we term "police." But it has important theoretical and methodological implications. First, since the common-sense notion of the police is ultimately derived from the discourse of early-nineteenth-century reformers, it cannot but emphasize the differences between the old police and the new. Thus, the common-sense approach emphasizes structural characteristics such as bureaucratic structure and control, privileging the form of the police over the practical reality of policing; hence the common notion that since the "new" police were permanently appointed and salaried, this in itself was sufficient to make them fundamentally different from the annually-appointed and fee-remunerated constables who preceded them. And the common-sense definition only considers policing institutions that, as Cain puts it, are "obvious" to common sense,³⁹³ which has led historians to focus on only the most evident ancien-régime policing institutions "on the mistaken assumption that they alone embodied all the functions later vested in the new police;"³⁹⁴ hence the conclusion that because there were no

³⁹¹"Using the Criminal Law": 6.

³⁹²Marquis, *Policing Canada's Century*: 27.

³⁹³"Trends in the Sociology of Police Work": 147.

³⁹⁴Hay and Snyder, "Using the Criminal Law": 9.

constables in Montreal between 1774 and 1787, the city had no police.³⁹⁵ As a result, the common-sense definition of the police is inherently weighted towards underestimating both the size and the impact of the ancien-régime police, and seeing it as fundamentally different from the "modern" police.

The common-sense approach also equates police with a function, formal law enforcement: the police are those who "care for various portions of the public safety, e.g., prevent crimes and protect the public, investigate crimes and allegations thereof, make arrests, patrol the streets and highways and maintain public order."³⁹⁶ But police sociologists have shown that this is problematic even for the modern police: police selectively waive the law as much as they enforce it; illegal activities such as "dirty tricks" are a standard part of police "law enforcement"; and modern police departments do many things other than enforce the law, ranging from social work through informal dispute mediation to politically motivated terrorism.³⁹⁷

More sophisticated function-based definitions thus recognize that police do many things other than formal law enforcement. But how to identify these "police" functions is unclear. A common approach is to equate policing with the functions or duties of self-evident "police" institutions, either modern or historical,³⁹⁸ but this leads back to a definition based on description, with all its

³⁹⁵Fecteau, *Un nouvel ordre des choses*: 99; Neatby, *The Administration of Justice under the Quebec Act*: 307.

³⁹⁶Erik Beckman, *The Criminal Justice Dictionary* (Ann Arbor, MI: Pierian Press, 1979): 148.

³⁹⁷For reviews of the sociological literature, see Cain, "Trends in the Sociology of Police Work", and Carl B. Klockars, "Police", in *Encyclopedia of Sociology* (New York: MacMillan, 1992) III: 1463-71. For a Canadian perspective, see John Sewell, *Police: Urban Policing in Canada* (Toronto: James Lorimer, 1985), especially 77-106, 138-164, and 194-197, or Jean-Paul Brodeur, *La délinquance de l'ordre: recherches sur les commissions d'enquête* (Montréal: Hurtubise, 1984).

³⁹⁸This is common among sociologists; see for example O.W. Wilson, *Police Administration* (New York: McGraw-Hill, 1963), or Peter K. Manning, *Police Work: the Social Organization of Policing* (Cambridge, MA: MIT Press, 1977). Historians either work back from current institutions, as in Hay and Snyder's use of the functions of the "new police" to define what constituted "police" under the old regime ("Using the Criminal Law": 9), or take a single official or institution historically identified with policing and explore all functions associated with that office, from routine administration to law enforcement, as in Williams *The Police of Paris*, or Kent, *The English Village Constable*.

attendant problems. Thus, prosecution is one of the fundamental roles of the modern English police, so that English historians often conflate "policing" and "prosecution", seeing little need to distinguish between the two;³⁹⁹ but this approach is less useful in countries like the United States, where prosecution has never been a major responsibility of the police, passing from private prosecutors to state-appointed court officials. As one critic has noted, "the functions ... which police have performed are so numerous and so contradictory that any attempt to define police in terms of [their] functions ... is doomed to failure."⁴⁰⁰

In seeking to circumvent the problems of function-based definitions of the police, sociologists have taken several different tacks. One is to propose that police are defined not by what they are supposed to do, but by the means they are given to do it; thus, one school of police sociology argues that the only unique characteristic of the police is their general right to use coercive force.⁴⁰¹ And another is to downplay the importance of police institutions, concentrating instead on policing itself: in the words of one proponent, "policing ... may be performed by a private citizen, an individual officer, or a department. It is not *who* does it, but what is done that makes it 'policing.'⁴⁰² Both these approaches in turn have their drawbacks: the first is too simplistic, since even from a narrow legalistic perspective police have neither a "general" right to use force, nor a monopoly on

³⁹⁹This is evident in works ranging from Radzinowicz's *A History of English Criminal Law*, where he considers informers and private prosecutors motivated by profit to be police (II: 145-147), to the collection edited by Hay and Snyder, *Policing and Prosecution in Britain*.

⁴⁰⁰Klockars, "Police": 1464.

⁴⁰¹This stems from the work of Egon Bittner in the late 1960s and early 1970s; for a review of the literature, see Richard E. Sykes and Edward E. Brent, *Policing: A Social Behaviorist Perspective* (New Brunswick, NJ: Rutgers UP, 1983): 11-19. A recent proponent is Carl Klockars (*The Idea of Police* (Beverly Hills, CA: Sage, 1985): 7-13, and "Police": 1463-64).

⁴⁰²Richard E. Sykes, "A Regulatory Theory of Policing: A Preliminary Statement", in David H. Bayley, ed., *Police and Society* (Beverly Hills: Sage, 1977): 254. This is further developed in Sykes and Brent, *Policing: A Social Behaviorist Perspective*.

the use of force;⁴⁰³ and the second allows for no distinction between state and society. But they raise valuable points nonetheless: the first, that police may be distinguished not only by duties, but also by powers, or more broadly, by means as much as by ends; and the second that, unless we simply reduce the term "police" to cover anyone who does "policing", we must be very careful not to confuse the police function and the police themselves.

This last in particular raises the question of how police are set off from society at large, if their functions or even their powers are not sufficient to do so. One approach is to focus on the relationship between police, the state, and society. The common-sense definition assumes that police are unequivocally agents of the state, under the direct control and supervision of some recognizable level of government. Thus, Allan Greer's assertion that the police were only "born" in Canada in the middle of the nineteenth century is based in large part on contrasting the old system, "deeply imbedded in the ambient civil society" and not "fully controlled by government", with "Victorian police forces [who] were very much the creatures of government ... and [whose] personnel were entirely servants of the state."⁴⁰⁴ But this presumes that "modern" police are devoid of personal interest and divorced from the communities they police, questionable even today,⁴⁰⁵ and even more so in the nineteenth century;⁴⁰⁶ and much like the police themselves, it also restricts the "state" to institutions which modern "common

⁴⁰³Thus, the "general" right of police to use force is limited to specific circumstances; in some historical societies all private individuals had almost as much right to use force as "police" officials; and some law-enforcement officials, such as parking police or customs officers, have no right to use force.

⁴⁰⁴"The Birth of the Police in Canada": 17-19.

⁴⁰⁵On police corruption, see Antony E. Simpson, *The Literature of Police Corruption* (New York: John Jay Press, 1977-1979); on the relationship between police and the communities they police, see for example William Kerr Muir, *Police: Streetcorner Politicians* (Chicago: University of Chicago Press, 1977).

⁴⁰⁶A case in point is the perennial involvement of police in prostitution; see Judith R. Walkowitz, *Prostitution and Victorian Society: Women, Class, and the State* (Cambridge: Cambridge UP, 1980); or Timothy J. Gilfoyle, *City of Eros: New York City, Prostitution, and the Commercialization of Sex, 1790-1920* (New York: Norton, 1992). The situation in nineteenth- and early twentieth-century Montreal was no different: see Brodeur, *La délinquance de l'ordre: 37-116 passim*. The link between police and prostitution in Montreal is also revealed by doctoral theses in progress by Mary-Anne Poutanen and Tamara Myers.

sense" recognizes as such, thus by definition excluding huge sections of the ancien-régime system of government, such as the justices of the peace. On the other hand, it does highlight that police occupy the point of contact between state and society, and that one way to avoid the reductionist trap of equating police and policing is to distinguish between policing that was sponsored by the state, at least nominally, and initiatives that were entirely private.

Apart from their relationship to the state, there is also the relationship between the police themselves and their policing actions. The common-sense approach usually assumes that police are "professional" in the everyday sense of being full-time, salaried employees with a fixed position in an organized bureaucratic institution; and historians have used these criteria to contrast the "new" police with the part-time, temporary, fee-remunerated amateurs of the "old" system. This distinction is certainly important in understanding the nature of police work, but it is problematic when it becomes an essential defining characteristic of the police. First, the distinction between "professional" and "amateur" cannot be reduced to payment methods and working hours, since as we shall see, some ostensibly "amateur" constables were as permanent and well-remunerated as the professional police who succeeded them. Secondly, it makes little sense to apply modern notions of bureaucratic organization to an ancien-régime state that even for many crucial functions delegated powers and responsibilities to "private" individuals acting as much in their own interests as that of "government" and only marginally answerable to the central administration. And thirdly, assuming that police do "policing" full-time makes no allowance for way that individuals under the ancien-régime often held a number of part-time offices but were nonetheless full-time state employees, or the fact that even modern police spend much of their time doing things other than "policing": thus, a bailiff who exercised both civil and criminal functions was not a full-time "police" officer, but may have spent just as much time on certain "policing" functions, such as arrests, as some modern police officers. It is thus crucial to avoid conflating the police with the individuals who were the police.

If anything is clear from the foregoing discussion, it is that constructing an absolute definition of the police that is still sensitive to all of these considerations is almost impossible. As such, rather than attempting such a task, I limit myself to proposing the following general principles to use in deciding who and what did and did not constitute "police", and which have guided me in my discussions of the police in Quebec and Lower Canada.

First, since my main concentration is on the criminal justice system, I have no difficulty accepting the common-sense view that police are those who have a special role as agents of the criminal justice system of the state in its contacts with civil society. This role may be defined by special duties, special powers, or both; it may include more than just "obvious" law enforcement actions such as arrests; and it may be either compulsory or voluntary. But it must relate to some conflict, whether actual, perceived, or apprehended, between the state and some part of civil society, whether an individual or a group. And since police are defined by being in some degree agents of the state, this conflict must be perceived as such from the state's perspective; in short, it must involve some violation of the state-sponsored code of social conduct set forth in the formal criminal law, though as discussed elsewhere this may be defined in its broadest sense. Thus, as routine administrators in matters not relating to the criminal law, or as agents of the civil justice system, even "obvious" police such as constables are not acting as police. Further, routine administrative matters of the criminal justice system itself that do not inherently imply a direct conflict between the state and some portion of society, such as the summoning of witnesses or the keeping of juries, are not "police" actions, although again "police" officials such as constables may be those who perform them.

As for the individuals who are police, whether they are unconditional agents of the state or intermediaries between the state and civil society, and whether they are divorced from or embedded in ambient civil society, are important considerations, but do not define them as police: rather, being police is a function of their position at the point of contact between the state, as embodied

in the criminal justice system, and civil society. Of course, this implies that police must in some way be conceivable as agents of the state, and not simply private individuals exercising general powers endorsed by the state (as in people who separate brawlers, or plantation owners who whip their slaves). On the other hand, to accommodate the more fluid nature of state authority under the ancien régime, police need not be part of any formal bureaucratic hierarchy, nor under any sort of direct administrative control. Finally, whether they are full-time or part-time, paid by salary or fee, is unimportant; individuals are police while acting as such, and conversely, when not acting as such, they are not police. This does not mean that there are not different types of police, ranging from occasional to full-time and from amateur to completely professional; but while the relationship of the individual police to their work can certainly affect the policing they do, it does not make them any more or less police while they are acting.

Finally, I find it important to draw a distinction between policing, prosecution, and judging, although in some cases all three roles might be filled by the same individual. The distinction between policing and official prosecution in particular is fuzzy, since as we shall see many offenders in Quebec and Lower Canada were prosecuted by officials who in other respects were very clearly police, such as constables and watchmen. Nevertheless, it is clear that a constable who simply made an arrest at the behest of the victim of an assault, and did no more than bring the offender before a justice, was not acting as a prosecutor; and it is equally clear that when Montreal's clerk of the peace prosecuted offenders against the militia ordinances from the country parishes in the late 1770s and early 1780s, he had not had anything to do with detecting the offenders and bringing them before the court. Creating a logically tenable boundary in the area between these two poles is very difficult, since policing and prosecution melded into each other; thus, the constable who spotted a vagrant, arrested her, and then filed a formal complaint against her for vagrancy before a justice of the peace, was filling first one then the other role. Rather than attempting this, I prefer to acknowledge the gray area between policing and official prosecution, but for the sake of clarity

to draw an arbitrary distinction between the two. Thus, in this section, I group under the rubric of "policing" all actions by agents of the criminal justice system where they were not acting in cases where they were the complainants; but I leave aside the activities of agents of the state once they formally became the complainants by laying a formal complaint, preferring to discuss these in the next part under the rubric of official prosecution.

C. The police in Quebec and Lower Canada: methodological considerations

With this more flexible definition of the police, I can now turn to policing in Quebec and Lower Canada. However, there are a number of methodological caveats. Since my main sources are the records of the justices of the peace in the district of Montreal, my treatment of the police in Quebec and Lower Canada is not exhaustive. Thus, I leave aside "police" who had little contact with the justices, such as the bailiffs of the higher criminal courts. Further, I do not deal with the administrative officers who policed laws and regulations relating to the import/export trade, such as customs officials or the various inspectors of goods for export, nor the various roads acts outside of the city of Montreal: in both cases the justices *qua* justices had little to do with either the appointment of these officials or their policing operations.

As well, the sources that have survived rarely permit any absolute certainty regarding policing. Apart from numerous scattered references to policing in official correspondence, depositions, prison calendars, court registers, and the like, my main sources for the actual structures of policing were arrest warrants and summonses preserved in the case files of the justices' courts; accounts submitted to the central administration for defraying the costs of police actions; the records of nomination of constables and other police in the documents and registers of the Quarter Sessions; and payments to constables recorded in the papers of Montreal's road treasurer. Each of these sources has significant limitations. The case files I was able to consult largely concerned cases tried in the Quarter Sessions or summarily by Montreal justices, with only a few from the

Weekly Sessions, and none from the petty sessions of rural justices; all but a few date from 1790 or later; and less than 10% of the sample of approximately 1800 case files that I consulted included arrest warrants or summonses, with almost none for Montreal after 1810.⁴⁰⁷ Accounts submitted to the central government only concerned the costs of "crown" cases, those that involved more "serious" offences such as murders and most property crimes which were usually tried in the higher criminal courts, with the costs in cases heard in the justices' courts usually being a private matter between the parties and the police involved; further, detailed accounts that include enough information to identify the specific action and the police involved exist only sporadically up to about 1790, and from 1816 to 1829.⁴⁰⁸ As for the records concerning the nomination and payment of constables, they concern Montreal almost exclusively.

But despite these limitations, it is still possible to trace the broad outlines of the actual structure of policing in Quebec and Lower Canada between 1764 and 1830, in other words from the beginnings of British civil administration to a little before the "birth" of the police in Canada. I begin with an examination of policing at the beginning of English rule, up to the formal establishment of the system of constables and peace officers in 1787. And then I examine policing under that system in the four decades that followed, up to 1830.

⁴⁰⁷Thus, of 320 Quarter Sessions case-files up to 1810 that concerned offences in Montreal, 89 included arrest warrants, of which 71 identified the officer to whom they were directed or by whom they were served; of 756 similar case-files after 1810, only eight included arrest warrants, of which only one identified the officer; and of 636 case-files in all that concerned offences outside of Montreal, 117 included arrest warrants, of which 73 identified the officer. Though the case-files of the King's Bench were not available to me, there were no arrest warrants among those from the one year that I did consult, 1820.

⁴⁰⁸These are found in the claims for disbursements submitted by the clerk of the peace and the sheriff (up to 1790) and the sheriff and the Police Office (from 1816), in NA RG1 E15A; the latter include the accounts submitted by the high constable. For other years, the only references to payments for police actions are in the account books kept by the sheriffs, NA MG19 A2 volumes 85, 183, and 189, but these are so summary (often listing only the name of the officer and the total amount paid in each 6-month accounting period) as to be almost useless.

II. Policing at the beginning of British rule

As we saw, the existing literature on policing in eighteenth-century Quebec assumes that the system in place in New France was swept away at the Conquest, and replaced with a system modelled directly after that of England. Thus, in examining policing at the beginning of British rule in Quebec, it is essential to look both at the English system that supposedly formed the basis for policing in the colony, and at the system that actually existed.

A. The English substratum

Policing in eighteenth-century England rested on the supposition that all members of civil society were responsible for maintaining the social order by enforcing the criminal law.⁴⁰⁹ Thus, private individuals had considerable law enforcement powers and duties: they were both empowered and in theory required to arrest anyone who committed a felony in their presence; they could restrain all people disturbing the peace, such as brawlers, while the action was still in progress; and they could also arrest all offenders against a host of other specific statutes, such as beggars, vagrants, and pedlars.⁴¹⁰ Since these general policing functions were shared by everyone, they did not make the entire population "police" in the sense I have adopted; further it is impossible to conceive of the people holding apart two antagonists as agents of the state. But the formal English system, as defined by statute and common law, did recognize several types of police in the more limited sense of individuals exercising specifically delegated state authority, and set apart from society at large by special powers and/or duties.

⁴⁰⁹The best works for understanding the formal structures of the English policing system in the eighteenth century are Burn's *The Justice of the Peace* and Sir William Blackstone's *Commentaries on the Laws of England*, especially volume IV, *Of Public Wrongs*. Both works appeared in numerous editions and reprints in the eighteenth and nineteenth centuries; I have used the 16th edition of Burn (London, 1788) and the 9th edition of Blackstone (London, 1784), which largely represent the English criminal law that was in force in Quebec and Lower Canada.

⁴¹⁰Blackstone, *Commentaries* IV: 292-293; Burn, *The Justice of the Peace* I: 18-19, 104, II: 476, IV: 99, 365.

Closest to the modern concept of a "police officer" were individuals who had been specifically appointed and sworn as "peace officers". Despite the name, this was not a specific office, but rather a function attached to various administrative offices, most notably to parish constables, high constables, and county sheriffs.⁴¹¹ Peace officers were responsible not only for preventing and suppressing breaches of the peace, but also for apprehending all known or suspected felons, all vagrants, pedlars, and deserters, and for serving all warrants, summonses, and other writs directed to them; in short, they were the main agents of a considerable portion of the criminal law. To help them perform these functions, peace officers had several powers, such as arresting offenders without a warrant in a wide range of circumstances, and, in many cases, using whatever means necessary to carry out their duties, up to and including deadly force. And they also had special legal status, since they were far less liable to prosecution for their actions than private individuals, although conversely they could be prosecuted for not carrying out their duties, or for extorting excessive fees.⁴¹²

But even in the formal English system, peace officers were not the only individuals who could act as police. Thus, a justice of the peace or other judicial authority could direct warrants or writs to any disinterested private individual, and although these were not bound to execute them, if they did so, these "un-official" process-servers received the same powers and legal protection for that specific action as if they were peace officers.⁴¹³ Similarly, sheriffs, constables, or even unofficial process-servers could appoint virtually anyone to assist them in their duties, who were then on the same legal footing as those who had appointed

⁴¹¹Justices of the peace were also *ex officio* peace officers, in the same fashion that higher court judges were *ex officio* justices of the peace; however, since they almost never acted as police themselves, I have not considered them here.

⁴¹²On the powers and duties of constables, see Blackstone, *Commentaries* I: 355, IV: 292; and Burn, *The Justice of the Peace* I: 403-405.

⁴¹³Blackstone, *Commentaries* IV: 291; Burn, *The Justice of the Peace* I: 105.

them.⁴¹⁴ In effect, office-holders such as justices, sheriffs, and constables could on their own initiative create ad hoc police by delegating all or part of their own authority to individuals who were not part of the formal bureaucratic hierarchy of the state; and since there was nothing to prevent the same individuals being used over and over again, the only practical difference between these ad hoc police and peace officers was that they had to be specifically empowered for each action.

The English system also included a variety of other sorts of police who, though without the same broad powers and duties as peace officers, were more recognizably part of the formal state apparatus than ad hoc police. Some had general law enforcement functions: thus, the under-sheriffs or bailiffs employed by sheriffs for administrative tasks such as summoning juries, since they had taken an oath of office, were also empowered and indeed obliged to serve warrants directed to the sheriff;⁴¹⁵ and likewise, the watchmen employed by many urban parishes could stop, search, and detain until morning all suspicious persons found in the streets at night.⁴¹⁶ And some were administrative officials with limited policing powers and responsibilities in their specific areas of competence, such as churchwardens, beadles, customs officers, and game wardens.⁴¹⁷

If anything characterized the ways in which policing powers could be delegated in the ancien-régime English state, it was thus complexity, decentralization, and fluidity. Thus, it is not surprising that in practice, the English policing system was comprised of a vast and ever-changing array of individuals acting as intermediaries between the criminal law and civil society.⁴¹⁸

⁴¹⁴Burn, *The Justice of the Peace* I: 104-105, 399, IV: 219, 396.

⁴¹⁵Burn, *The Justice of the Peace* I: 104-105.

⁴¹⁶Blackstone, *Commentaries* IV: 292; Burn, *The Justice of the Peace* IV: 104, 395-396.

⁴¹⁷Burn, *The Justice of the Peace* I: 345-347 (churchwardens), II: 3-36 (customs and excise officers), II: 295-408 *passim* (game wardens). On beadles, see Reynolds, "St. Marylebone: Local Police Reform in London": 452.

⁴¹⁸The complexity of this system in eighteenth-century London is evoked in Radzinowicz, *A History of English Criminal Law* II: 171-232; there is no comparable work for the police outside of the metropolis.

But it has had significant historiographical implications. As Stanley Palmer has pointed out, it is partly because of the complexity of the old police that historians were for so long deterred from considering them in and of themselves, rather than simply as a backdrop to the "new" police.⁴¹⁹ And likewise, the decentralization and informality of the system compounds the problem of only considering policing institutions that were "obvious" to common-sense, since the usual candidates, parish constables and watchmen, were only one part of this system.

Since this was the formal basis for policing in Quebec and Lower Canada through to the Rebellions, it is also not surprising that Quebec historians, applying modern definitions of the police, have had so much reluctance to identify any police in the period. And this was especially true in the first two decades of British rule in Quebec, when, according to most historians, there were almost no regular "police" in the colony at all.

B. The police in Quebec, 1764-1787

Though much of the public law of England was received into Quebec on the establishment of civil government in 1764, including many provisions that defined the powers and duties of government officials, this did not extend to statutes that concerned purely "local" situations in England, including most of the laws that set up the complex English system of parish and local administration, such as the poor laws, the game laws, and the watch acts.⁴²⁰ As a result, of the array of parish and local officials who constituted much of the "police" in England, only constables, whose office was established by the common law, were in theory automatically part of the administrative structure of the colony.

Even with constables there was a practical problem. In England they were either appointed by archaic medieval courts such as the Sheriff's Leet, or, more commonly, nominated by a parish's Anglican vestry and then appointed by the

⁴¹⁹*Police and Protest in England and Ireland*: 383.

⁴²⁰See above, page 40.

parish's justices of the peace. But in eighteenth-century Quebec, there were no medieval English courts, parishes were Catholic, and few rural parishes had even one justice. The 1764 ordinance that set up the courts thus explicitly provided for the selection of one bailiff and two sub-bailiffs for each parish in the colony, including the urban parishes of Montreal and Quebec City. Echoing the English practice, these "parish" bailiffs, as I will call them, were to be nominated periodically by parish assemblies (taking the place of vestries); but unlike their English counterparts, they were then to be appointed by the central administration (the governor and Council) rather than by the justices, although they still had to be sworn into office by the latter.⁴²¹ With a few minor modifications, this system remained in place until 1775.⁴²²

The parish bailiffs were meant to assume many of the functions performed by the militia captains under the French régime, and by parish officials in the English system, especially constables: indeed, James Murray noted that "we called them bailiffs, because the word is better understood by the new subjects than that of constable."⁴²³ Thus, they had judicial duties, including preliminary inquests, the resolution of certain minor civil disputes, and, from 1770, the service of process in minor civil cases; administrative duties, especially overseeing public works; and policing duties, in that they were "to arrest and apprehend all criminals, against whom they shall have writs or warrants and to guard and conduct them through their respective parishes, and convey them to such prisons or places as the writ or warrant shall direct," and to detect and prosecute offences

⁴²¹ George III "An Ordinance For regulating and establishing the Courts of Judicature ..." (1764).

⁴²² At first the bailiffs were elected annually, but from 1768 they were replaced only if the inhabitants of a parish specifically held new elections; the returns of these elections are in NA RG4 B22. Although the Quebec Act abolished all state offices as of May 1 1775, a proclamation on April 26 continued the bailiffs in office, and in theory the office was not abolished until the new ordinance on criminal justice in 1777 (17 George III c.5). However, after the declaration of martial law and the restoration of the militia, it seems that the administration sought to rely more on the militia captains than the former bailiffs as local agents (see for example the proclamation of 14 October 1775), so that in effect the position of bailiff became effete after 1775.

⁴²³ DRCHC I: 208 n.1. Similarly, in the table of fees decreed by Murray in 1765, the clerk of the peace was allowed 6d for "swearing a constable" (*Quebec Gazette* 4/7/1765).

against the highway laws they administered.⁴²⁴ If Murray's constable analogy was correct, the parish bailiffs were also automatically "peace officers" with all the powers and duties that implied; but the colonial ordinances made no reference to this, and gave them neither the duty nor any special power to keep the peace and arrest suspects without a warrant.

Whatever the exact nature of the parish bailiffs' police powers, when their functions were definitively transferred to the militia captains in 1777, the latter were specifically empowered "to arrest any person, guilty of any breach of the peace, or any criminal offence, within their respective parishes, and to convey, or cause to be conveyed such person before the nearest commissioner of the peace," though it was still arguable whether this made them full-fledged peace officers, since it did not compel them to do so.⁴²⁵ As well, militia captains were made responsible for arresting all deserters, and all strangers suspected of sedition or assisting the enemy, and, as *sous-voyers*, were implicitly responsible for enforcing the regulations concerning the public roads.⁴²⁶ Almost every parish in the district of Montreal had one or more militia captains, including the urban parish of Montreal, so that in theory there were amateur "police" spread throughout the district.⁴²⁷ In terms of both their formal police functions and their geographical distribution, there was thus an almost seamless transition from the system of parish bailiffs. There was even a certain continuity in personnel: of the 87 rural

⁴²⁴ Apart from 4 George III "An Ordinance For regulating and establishing the Courts of Judicature ..." (1764), see also 6 George III "An Ordinance for repairing and amending the High-Ways ..." (1766) and 10 George III "An Ordinance for the more Effectual Administration of Justice" (1770).

⁴²⁵ 17 George III c.5 (1777). The wording of the ordinance was still vague: though the relevant article was summarized in the margin as "Captains of militia appointed peace officers in their respective parishes", and began by stating that "great inconveniencies might arise from the want of peace officers in different parts of the province", it did not specifically make the militia captains peace officers, nor make it their duty to arrest offenders either with or without a justice's warrant, but simply allowed them to do so.

⁴²⁶ 17 George III c.8 (1777) (deserters etc.); 17 George III c.11 (1777) (public roads).

⁴²⁷ See for example the list of militia captains and other officers of militia in the district of Montreal in 1779, in NA RG4 A1: 7746.

militia captains in the district of Montreal in 1779, at least 31 had previously been parish bailiffs.⁴²⁸

The only other police functions explicitly established by colonial legislation before 1787 were those attached to various urban administrative officials. Thus, between 1764 and 1775, the clerks of the markets were to detect and confiscate unstamped weights and measures, underweight or unmarked bread, and unfit meat or fish, and for these purposes had limited powers of search and seizure.⁴²⁹ Likewise, from 1768, the overseers of chimneys were to inspect all houses in the city every three months to discover offences against fire-safety regulations, and also had limited searching powers.⁴³⁰ Although neither of these officials had the power to arrest offenders, both were in theory representatives of the state with the duty and special powers to enforce the law.

But parish bailiffs, militia captains, and urban administrative officials were not the only people in the district of Montreal who acted as agents of the criminal justice system. In the first place, there was the district's deputy provost-marshal or sheriff and his subordinate officers. The sheriff was similar to English and American county sheriffs; hence, in addition to extensive civil duties, he was to serve all criminal warrants directed to him, arrange for the summoning of

⁴²⁸This is based on a comparison of the 1779 list of militia officers with the lists of parish bailiffs published periodically in the *Quebec Gazette*. Given the idiosyncratic spellings used in the latter, there may have been even more continuity than I was able to identify.

⁴²⁹4 George III "An Ordinance Relating to the Assize of Bread ..." (1764); 5 George III "An Ordinance To prevent Forestalling the Market ..." (1764). Although the clerks could not enter the premises of bakers and other retailers without their permission, anyone refusing to give that permission was subject to a substantial fine, thus giving the clerks *de facto* search powers; further, they had the absolute right to stop bread-carts in the streets to inspect them. In the administrative re-organization of 1777, however, the specific policing function of the clerks were dropped, replaced by the English system of allowing informers half of the fines imposed; see 17 George III c.4 (1777) (markets) and 17 George III c.10 (1777) (bakers).

⁴³⁰9 George III "An Ordinance to amend and enforce a former Ordinance, for preventing Accidents by Fire" (1768); 13 George III "An Ordinance In Aid of and Addition to, Two former Ordinances for preventing Accidents by Fire" 22/5/1773; and 17 George III c.13 (1777). Between 1768 and 1775, the overseers could enter houses with a justices' warrant; this was not repeated in the 1777 ordinance, but replaced instead by *de facto* search powers similar to those accorded earlier to the clerks of the markets, whereby anyone refusing entrance to the overseers could be fined.

witnesses and juries for the criminal courts, and enforce the courts' judgements by collecting fines, organizing corporal punishment, and overseeing the prison.⁴³¹

To assist him in these duties, the sheriff had the right to name subordinate officers, and the accounts of Edward William Gray, the sheriff from 1765 on, show numerous payments to "bailiffs" who were not parish bailiffs.⁴³² Since civil matters occupied far more of the sheriff's time than criminal, his bailiffs probably spent most of their time serving civil summonses and seizing property.⁴³³

However, Gray's accounts show that up to 1787 he made a number of payments to his bailiffs for arresting offenders, summoning witnesses and juries, attending executions, and so on, and that he relied largely on his bailiffs to carry out these duties.⁴³⁴ These sheriff's bailiffs were based in Montreal, but also travelled into the countryside, and there are references to their activity in rural parishes ranging from Soulanges to Rivière-du-Loup.

⁴³¹Until 1775, the official title was "deputy provost-marshall", but "sheriff" was still used on occasion; see for example NA RG4 A1: 5476, or MG23 GIII series 1 volume 2, Murray to Gray, 17/10/1765). When the office was re-established in 1775, it was under the title "deputy provost-marshall or sheriff" (NA RG68 volume 1), but thereafter consistently referred to as "sheriff". For the powers and duties of English county sheriffs and provost marshals in the American colonies, see Irene Gladwin, *The Sheriff: The Man and his Office* (London: Gollancz, 1974): 348-368 and 383-387; on the deputy provost-marshals and sheriffs in Quebec, see Scott, "Chapters in the History of the Law of Quebec": 149, 267-274; Neatby, *The Administration of Justice under the Quebec Act: passim*; and L'Heureux, "L'organisation judiciaire au Québec": 318-320.

⁴³²On the sheriffs' subordinate officers in England, see Burn, *Justice of the Peace* IV: 215-220. There are also occasional references to the provost-marshall's bailiffs in other sources; for example, a 1769 letter from the clerk of Council to the Montreal justices mentioned "the provost marshal, whose bailiffs charge their travelling expences at a [high] rate" (Allsopp to Montreal justices 10/7/1769, in NA RG1 E14), and the 1769 proposals of Pierre du Calvet to reform the justices referred to "les bailiffs ambulans ... attachés au Prévost-Maréchale" (NA RG4 A1: 6556).

⁴³³On the preponderance of civil cases in general, see page 320. Unfortunately, since bailiffs' fees in civil cases were a private matter between the suitors and the sheriff, the official accounts that formed my main source for this period make it impossible to gauge the proportion of a bailiff's income that came from civil and criminal matters respectively. One slight indication is that of thirteen "bailiffs that act in that office at this present time [1769] and are not mentioned in the [official list in the Quebec] Gazette", prepared by John Jones, one of Montreal's parish bailiffs for 1768-1769 (NA RG4 A1: 6698), I have found payments to only six for actions for the criminal justice system.

⁴³⁴In the records of the fees Gray charged for each of his actions, which are complete from December 1764 through to May 1775, there are only three mentions of his actually performing routine police actions such as arresting or serving summons. After 1775, the situation is more difficult to gauge, since his per-item fees were replaced by a salary of £100; however, in his letterbooks, which are virtually complete from 1774 to 1810, he makes no mention of doing any policing himself (NA MG23 GIII volumes 2-3).

In the second place, the justices themselves also employed bailiffs directly. In England, justices could at their own discretion swear in as many constables as they wished, over and above those regularly nominated by the vestry, and as mentioned above could name whomsoever they chose to execute their warrants.⁴³⁵ In the first few years, Montreal's justices evidently took this to mean that they could appoint their own "bailiffs" in addition to the parish bailiffs, and the register of the Montreal Quarter Sessions records the appointment and swearing in of 27 such "justices' bailiffs" between 1766 and 1770, most for rural parishes.⁴³⁶ Given the justices' extensive civil jurisdiction at this time, these bailiffs were probably involved mainly in civil cases, especially in the rural parishes; indeed, there is no record of any of the nineteen rural justices' bailiffs ever acting as police, and as soon as the justices lost their civil jurisdiction in 1770, they ceased to appoint rural bailiffs. However, at least one rural justice in the mid-1780s, John Doty at Sorel, appointed his own constable to serve writs, make arrests, and so on.⁴³⁷ Likewise, there are indications that by the 1780s the justices were directing some criminal warrants to "huissiers" based in the rural parishes, most likely bailiffs of the civil courts: thus, in 1783, the clerk of the peace paid Jean-Baptiste Bellegarde of Chambly, who identified himself as a "huissier" and who had also been one of Chambly's parish bailiffs in the 1770s, for arresting Joseph Morin "par ordre des commissaires" for selling liquor without a license and bringing him to Montreal.⁴³⁸

⁴³⁵Burn, *The Justice of the Peace* I: 401-402.

⁴³⁶There were "justices' bailiffs" on the north shore and Isle-Jésus (Mascouche, L'Assomption, Terrebonne, Berthier, Saint-François-de-Sales, Sainte-Rose); the south shore (Saint-Ours, Varennes); and on the Island of Montreal (Côte-Sainte-Catherine, Saint-Laurent, Pointe-au-Trembles) (QSR, 1766-1770, *passim*). None of these bailiffs were also parish bailiffs.

⁴³⁷There are scattered references to Doty's constable in the minutes of the board of enquiry into the conflicts within the Loyalist community at Sorel (NA RG4 A1: 10521-10675); that this was in no way illegal is suggested by the fact that in a report on a particular incident involving Doty, James Monk, the province's attorney general, was extremely critical of most of Doty's actions, but mentioned his use of the constable twice without comment (Monk to Dorchester 10/5/1787, in NA MG23 GII19 volume 1).

⁴³⁸The other rural "huissiers" were Pierre Monfils, paid in 1784 for bringing a prisoner from Berthier to Montreal; Jean Foucault, paid in 1783 for an arrest at Rivière Duchesne, and who had also been a parish bailiff in Mille Isles in 1771; and one "Manasse", who in 1786 served a warrant at Varennes.

The situation of the bailiffs that the justices employed in Montreal itself was a little different. In the first place, there was no clear distinction between justices' bailiffs, parish bailiffs, and sheriff's bailiffs in the city, with the same individuals often filling all three functions. Thus, François Husson dit Lajeunesse was sworn in as a justices' bailiff for the district of Montreal in 1767, and was active through to 1769; in 1770 he was appointed a parish bailiff, and was continued in that office through to 1775; and in 1771 he acted on several occasions as a bailiff for the deputy provost-marshal.⁴³⁹ In part this was because up to 1775, Montreal's parish bailiffs were not nominated by parish assemblies, but by the city's justices themselves, who preferred individuals who were already experienced judicial officers: thus, more than half of the city's parish bailiffs had already been acting as bailiffs for the justices or the sheriff before their appointment.⁴⁴⁰ And the abolition of the parish bailiffs in 1777 did little to change this situation: the accounts of the sheriff and the clerk of the peace show that both the sheriff and the justices continued to employ many of the former parish bailiffs, with the justices continuing to exercise disciplinary control over them.⁴⁴¹

⁴³⁹QSR 23/4/1767, 6/7/1767, 9/1/1769; NA RG4 A1: 6696-98; *Quebec Gazette* 4/10/1770; NA MG19 A2 volume 85 *passim*.

⁴⁴⁰The justices did not even bother to submit nominees in 1766, 1767, and 1769; and in 1768, the high bailiff, John Sunderland, was "chosen in open court by a plurality of voices", hardly the sort of parish meeting envisioned by the ordinance (*Quebec Gazette* 3/11/1766, 17/9/1767; QSR 4/7/1768; NA RG4 A1: 6697). This was among the many complaints levelled against the justices in 1769; thus, Pierre Du Calvet's proposals for regulating the justices noted that "L'ordonnance pour l'élection des baillifs sera exactement suivi, sa négligence à donné lieu à un abus" (NA RG4 A1: 6656). In 1770, under the new régime of Huguenot justices, a parish assembly was called to nominate bailiffs, but the election was held at the courthouse, the vote was suspiciously unanimous, and all seven nominees had previously served the justices as bailiffs (NA RG4 B22 volume 1: 7/8/1770). Six of these seven bailiffs were consistently re-appointed through to 1775, likely because, as was the case in 1772, the justices once again neglected to submit any new nominees (NA RG4 B22 volume 2, list of the bailiffs nominated for the province in June 1772).

⁴⁴¹Thus, when in 1781 Etienne Plantade refused to attend the execution of the sentence against a prisoner, Gray, the sheriff, asked the justices in Quarter Sessions to discipline him, referring to him as "one of the huissiers or bailiffs of this Court" (QSR 23/7/1781).

If we return to Husson, he was also typical in other ways of the thirty city bailiffs who are identifiable as having acted as police between 1764 and 1787.⁴⁴² He was married as a Roman-Catholic in 1756, reminding us that bailiffs were neither covered by the Test Act nor required to take the oath of allegiance, supremacy, and abjuration,⁴⁴³ so that the office was not limited to Protestants; thus, three-fifths of the city bailiffs were francophone, most of whom were probably Catholic.⁴⁴⁴ At his marriage, Husson was identified as a soldier, which accords with Guy Carleton's view that many of the justices' bailiffs were former French soldiers, and also gives us some clues as to the bailiffs' social class.⁴⁴⁵ Finally, Husson's career also illustrates that many city bailiffs had a long-term and at least semi-professional career as officers of justice, of which policing was only a part: at least fourteen bailiffs (of whom twelve were francophone) were active across five years or more, and three (Etienne Plantade dit Chateauverd, Joseph Minot, and Jean-Baptiste Flamand) were active for almost the entire first two decades of British rule. There was even one bailiff, Jean-Baptiste Decoste père, who cannot be described as anything but a true justice professional: he had been an active *huissier* of the royal courts before the Conquest, and despite the change in régimes continued to act as a bailiff under English rule through to 1774.⁴⁴⁶

Though like their rural counterparts most of the city bailiffs probably spent most of their time on civil matters, the British and American justices who first

⁴⁴²There were also another fourteen Montreal-based bailiffs whom I have not identified as having anything to do with policing, although given the fragmentary nature of the sources it is entirely possible that some of these may also have acted as police.

⁴⁴³Burn, *The Justice of the Peace* III: 238-239.

⁴⁴⁴Along with Husson, at least three other francophone bailiffs are explicitly identifiable as Catholics from the demographic information in the *Régistre de population du Québec ancien* of the PRDH; the non-francophones were mainly anglophone, although one at least was probably a former European mercenary ("Farrel, called the Swiss").

⁴⁴⁵Carleton to Hillsborough, 27/3/1769, cited in Dewey, "The First Fifteen Years of British Administration in Montreal": 33.

⁴⁴⁶The information on Decoste's pre-Conquest career is from unpublished research by John Dickinson.

administered the city clearly intended them to act as well as parish constables. Thus, in 1766, the justices divided the city into wards and placed each under the care of a bailiff, who was to ensure that the streets in his ward were kept clean and no disorderly houses kept, and in general "to have the same in good order", paying a fine of forty *sols* for disobedience; and in 1767, they ordered "city bailiffs" to attend the market in rotation, being paid a half dollar per day by the clerk of the market and forfeiting a half dollar for each non-attendance.⁴⁴⁷ This system continued under the Huguenot justices who dominated the bench from 1770 to 1775: in 1771, the justices ordered all inhabitants of the city to beat down the snow in front of their houses, with offenders to be detected by the bailiffs; and in 1773, John Gerbrand Beek, the deputy clerk of the market, asserted that he had paid the bailiffs every year since 1766.⁴⁴⁸ And despite the administrative re-organization of 1775-1777, the new justices continued to regard the city bailiffs as constables; thus, in 1783, Joseph Minot petitioned the Quarter Sessions for special privileges since he had been useful in keeping good order in the market;⁴⁴⁹ and twice in 1786, the justices ordered bailiffs to patrol the city's streets in the aftermath of fires.⁴⁵⁰ Even the bailiffs' accoutrements resembled those of constables: in 1781 the sheriff paid for making eight rods for the bailiffs, and in 1784 for twelve staves, echoing the English practice of equipping parish constables with staves of office, often their only identifying mark.

As well as bailiffs who were not appointed by the central administration, there were also various administrative officers not mentioned in colonial legislation who acted on occasion as police. Thus, by October 1766, two years before the ordinance establishing the office of overseer of chimneys, the justices

⁴⁴⁷QSR 10/7/1766, 6/7/1767. The bailiffs' responsibilities for seeing that the streets were kept clean had already been established (QSR 10/4/1766).

⁴⁴⁸QSR 23/12/1771; NA RG4 A1: 7021.

⁴⁴⁹QSR 13/11/1783.

⁴⁵⁰Clerk of the peace's accounts, in NA RG1 E15A volume 9 file "Judicial Establishment 1786".

had already appointed their own "Deputy Inspector of Chimnies" with the duty of enforcing their orders regarding fire safety.⁴⁵¹ From 1779, they also appointed both a town crier and a crier of their courts, who, apart from their administrative duties, also sometimes acted as police: thus, the crier of the justices' courts, George Young, charged fees for arresting several people, and in one instance for banishing a woman from town.⁴⁵²

More specifically, there was also the inspector of police for Montreal appointed by the central administration in 1784. In late 1783, two of Montreal's most active justices, James McGill and Benjamin Frobisher, suggested the appointment of an inspector of police to enforce the rules and regulations they made for imposing order on the town, since the inhabitants would not inform on each other.⁴⁵³ In 1784, the administration appointed Georges-Hypolite Le Comte Dupré, usually known as Saint-Georges Dupré, who was already colonel of Montreal's militia and an active justice of the peace since 1776, at an annual salary of £100 Sterling.⁴⁵⁴

Jean-Marie Fecteau suggests that the post of inspector of police was a mere sinecure, citing the opinion of Governor James Craig in 1810 that it was a sort of pension to reward the holder for long service for the administration.⁴⁵⁵ That it was a patronage appointment is evident; but it was not initially regarded as a sinecure, as Edward William Gray, the Sheriff of Montreal, explained in 1784:

⁴⁵¹QSR 9/10/1766.

⁴⁵²Under the sheriff, Young was also the crier of the civil courts and the gaoler.

⁴⁵³Neatby, *The Administration of Justice under the Quebec Act*: 302.

⁴⁵⁴Dupré, for example, was heavily involved both as a militia officer and as a justice in the punishment of habitants who disobeyed the militia and *corvée* regulations in the early 1780s.

⁴⁵⁵*Un nouvel ordre des choses*: 100-101.

The office of Grand Voyer [was] taken from Mr. Saint-George and given to Mr. Boucherville, and he Saint-George appointed Inspector of the Police, a much more troublesome and disagreeable employment and I believe less lucrative and permanent than the one he was obliged to resign, which shews the influence of the fair sex, for it is said that it was Madame Fremont, Mr. Boucherville's sister, who procured the Grand Voyership for him. I have not seen Mr. Saint-George since, but I imagine he will not much relish his treatment.⁴⁵⁶

Dupré's actual function was also broader than simply detecting and prosecuting offenders against the rules and regulations, since he also had some responsibility for road repairs. Thus, in 1788, a grand jury complained of "the glaring neglect of the inspector of police in not keeping the roads in this city and suburbs in proper repair;" and in 1795, the Quarter Sessions ordered that repairs on a bridge in the Saint-Antoine suburbs be carried out under his supervision.⁴⁵⁷

However, as the grand jury presentment suggests, Dupré only sporadically filled his duties. Through the late 1780s and early 1790s there were several other similar complaints; and his presence does not seem to have had any effect on the number of prosecutions brought for infractions of the police regulations.⁴⁵⁸ On the other hand, Dupré was not entirely inactive: another grand jury in 1791 asked him to continue the attention he had paid the previous winter to ensuring that people maintained the roads in front of their houses;⁴⁵⁹ and he regularly employed the town crier each year to order the city's inhabitants to mend the roads.⁴⁶⁰

⁴⁵⁶Gray to Jonathon Abraham Gray, 7/1/1785, in NA MG23 GII3 volume 3.

⁴⁵⁷QSR 24/1/1788, 23/5/1795.

⁴⁵⁸For similar complaints made by Quarter Sessions grand juries, see QSR 30/1/1790, 15/1/1791, and 28/10/1795. The Montreal merchants' report to the Executive Council's committee on commerce and police in 1788, after noting the bad state of the city's police, remarked that "tho' the Government in its wisdom, have attended thereto by the appointment of an Inspector of Police, yet we are sorry to observe that the appointment has in no wise proven adequate to the intent" (*DRCHC* I: 918). Between 1779 and 1784, 46 people were fined infractions of the police regulations (apart from those involving the market, which were usually enforced by the clerk of the markets), or an average of about eight per year; between 1785 and 1795, the total number was 47, or about four per year.

⁴⁵⁹QSR 10/11/1791.

⁴⁶⁰Town crier's accounts, in NA RG1 E15A volume 9 file "Judicial Establishment 1786", volume 10 file "Judicial Establishment 1787", and volume 11 file "Judicial Establishment 1788". I have not been able to locate the accounts of the town crier between 1790 and 1796.

However, when Dupré died in 1797, the post passed to his nephew, Hypolite Saint-Georges Dupré, who rarely performed any of his theoretical duties; and from this point the post truly became a sinecure. This was formally recognized in 1821, when the salary for the post was transformed a pension for the younger Dupré.⁴⁶¹

Finally, as in the English system, there were various other "ad hoc" police. At least four times in the 1780s, the sheriff or the clerk of the peace paid for arrests made by unofficial process servers, private individuals acting under the orders of the justices; thus for example Joseph Robert La Mure, apparently neither a regular bailiff nor a militia officer, was paid in 1784 "pour avoir été cherché Joseph Gallipeau père et ses deux fils les Souigny et Archambault, qui on été dans la Bataille a la Longue Pointe avec les soldats, par ordre des commissaires [justices]."⁴⁶² Similarly, there are occasional references to the involvement of soldiers in policing: in 1773, for example, the sheriff paid a sergeant and four soldiers of the 26th regiment for conducting a prisoner from Crown Point to Montreal, and in 1783, George Young described how he has paid a German soldier to conduct him and Etienne Plantade "to different places" in search of another German soldier who had committed a robbery.⁴⁶³ And there was even a voluntary watch set up in Montreal for a month, in November 1783: the clerk of the peace charged fees for "drawing 11 articles of regulations by consent of the citizens of Montreal, made by His Majesty's Commissioners at a Special Sessions for establishing a patrol for the safety of the town on account of many robberies committed" and "making out 32 different lists of the citizens to attend the patrol

⁴⁶¹JHALC 27: Appendix K, and 28: Appendix L.

⁴⁶²RG1 E15A volume 8 file "Judicial Establishment 1784".

⁴⁶³RG1 E15A volume 4 file "Judicial Establishment 1773".

32 nights, by order of the commissioners; attending and receiving the reports from 1st Nov. to 2nd Dec. inclusive."⁴⁶⁴

The system of policing in the district of Montreal was thus far more complex than that outlined in the colonial legislation; and this divergence from the intent of the law-makers is confirmed when we consider which parts of this system were actually doing the work of policing. Any exact picture is impossible, given the fragmentary records; but it is possible to make a few limited observations.

In Montreal itself, almost all references to policing actions concern city bailiffs and administrative officers. Thus, among many others examples, we find John Divine and Jean-Baptiste Flamand, both long-serving city bailiffs, acting as peace officers in breaking up a fight in the streets in 1769;⁴⁶⁵ Thomas Walker, the inspector to prevent accidents by fire, prosecuting various inhabitants of the city in 1779 for "breaches of the fire ordinance";⁴⁶⁶ and in 1785, Etienne Plantade asking to be paid for "les voleurs de moutons -- pris un homme promenné par ordre de la cour et été cherché son complice en bas du faubourg de Québec."⁴⁶⁷ There is one instance where a militia sergeant, at the command of Saint-Georges Dupré, the inspector of police, ordered an inhabitant to cease throwing rubbish into the streets; however, this was an exceptional case, and there is no other indication that the militia captains in Montreal ever exercised their theoretical policing powers.

In the rural parishes, there are also indications that in practice neither the parish bailiffs nor the militia captains were the main agents of the state's criminal justice system. Thus, in a very limited sample of 26 police actions in the countryside between 1764 and 1787 where the person performing them is known, only six involved parish bailiffs or militia officers, while sixteen involved bailiffs,

⁴⁶⁴RG1 E15A volume 8 file "Judicial Establishment 1784". In the accounts of the sheriff and the town crier, there are also charges for a bailiff for summoning the patrols and for wood and candles for their use.

⁴⁶⁵QSR 22/7/1769.

⁴⁶⁶QSR 16/3/1779.

⁴⁶⁷NA RG1 E15A volume 8 file "Judicial Establishment 1785".

including eleven where city bailiffs went into the countryside.⁴⁶⁸ The lack of involvement of parish bailiffs in criminal matters is also underscored by a letter from Council to the Montreal justices in 1769, which after noting that the justices had been in the habit of directing all process to the provost marshal's bailiffs, recommended that summonses for lesser civil offences should be directed to the parish bailiffs, but that "process of a criminal nature ... ought without doubt to be executed by the Provost Marshall, or by persons employed by him."⁴⁶⁹ And the activity of city bailiffs in the countryside is also suggested by the table of the fees the justices established for their bailiffs in 1767, which covered arrests, summonses, and so on both in the city and in the country.⁴⁷⁰

The militia captains were not quite as divorced from the criminal justice system as the parish bailiffs, especially in matters concerning the sheriff: thus, when three prisoners broke gaol in 1786, the sheriff sent the gaoler, George Young, south to Chambly with circular letters from one of Montreal's justices to the various militia captains on the south shore.⁴⁷¹ However, even in matters relating directly to the militia the justices apparently used bailiffs as much as militia officers. Hence, in 1779 the justices informed a military commander that for apprehending militia deserters "in future the only regular method will be to lodge to complaint before a magistrate whose warrant will be granted directed to the officer of militia of the parish where the delinquent may live to be by him

⁴⁶⁸There were also another dozen actions by city bailiffs where the place of the action is not known, at least some of which were probably in the countryside.

⁴⁶⁹Allsopp to Montreal justices 10/7/1769, in NA RG1 E14.

⁴⁷⁰QSR 8/1/1767.

⁴⁷¹NA RG1 E15A volume 9 file "Judicial Establishment 1786".

served and delivered;"⁴⁷² but in 1782 the clerk of the peace declared that he usually employed bailiffs or huissiers for serving process in such cases.⁴⁷³

There was thus a very considerable gap between the system laid out in the colonial ordinances and in official discourse, and the system that existed in practice. The ordinances attempted to emulate the English system and make policing the responsibility of unwilling amateurs, the parish bailiffs up until 1775 and the militia captains thereafter, along with a few urban administrative officials. But in practice, what policing there was was very largely the work of professional bailiffs, especially the small group based in Montreal and employed by the justices and the sheriff. None of this was in any way illegal, but rather firmly based on English precedent; but it created a de facto policing system that was quite different from the decentralized system of parish constables found not only in England but also in most English colonies.

At least in terms of its structure, the de facto policing system in Quebec resembled far more the system in place before the Conquest. Thus, in his criminal justice functions, the deputy provost marshal or sheriff filled a position similar to that of the *prévôt de la maréchaussée* in New France, whose duties were to seek after criminals and oversee some executions; the city bailiffs played a policing role very similar to both the *archers* and urban civil bailiffs, going from the cities where they were based into the countryside to arrest offenders, and (at least in terms of the *archers*) attending punishments and executions; and as in New France, civil bailiffs in the countryside often acted in criminal matters.⁴⁷⁴ There were of course differences between the two systems. Thus, while the *archers* were salaried, uniformed, and apparently only dealt with criminal matters, the city

⁴⁷²QSR 20/7/1779.

⁴⁷³Petition of Burke to the justices of the peace in Special Sessions, March or April 1782, in NA RG1 E15A volume 13 file "Committee on Revenue 1793".

⁴⁷⁴On the *prévôt de la maréchaussée* and the *archers*, see Lachance, *La justice criminelle du roi au Canada au XVIIIe siècle*: 29-30, 70. In the *Rapport des archives nationales du Québec 1971* (Québec: Archives nationales du Québec, 1971), there are several references to the activity of civil court *huissiers* in criminal matters.

bailiffs were paid by fees and also operated extensively in civil matters; but in practice, both were quasi-professional urban police capable of reaching on occasion into the rural areas of the district.

We must not assume, however, that just because the structures of policing were not as deficient as later reformers and historians would claim, that policing in the district of Montreal following the Conquest was exempt from the same shortcomings, at least from the perspective of the state, that were found in other ancien-régime police systems. Consider that even despite the paucity of sources, there are several examples of problems with the professional bailiffs. There were problems of discipline: thus, in 1765, the high bailiff of Montreal, James Crofton, was convicted in Quarter Sessions for refusing to serve an arrest warrant;⁴⁷⁵ at the opening of the Quarter Sessions in October 1766, Jean-Baptiste Decoste père (the professional bailiff from the French régime), Simon Mazurier, and one La Cerf were fined for not producing their staves, and Etienne Plantade for not showing up at all;⁴⁷⁶ almost two decades later, Plantade, though he was one of the most active bailiffs, was disciplined twice, in 1781 and 1784, for refusing to attend the execution of sentences against prisoners;⁴⁷⁷ and later in 1784, the sheriff complained that the bailiffs in general were refusing to put prisoners in the stocks or the pillory.⁴⁷⁸ In two cases in 1769, bailiffs were also prosecuted for extortion, in other words charging higher fees than allowed by the justices.⁴⁷⁹ And there are indications that the bailiffs themselves also had problems with the ad hoc police they constituted to help them; thus, also in 1769, John Divine prosecuted Antoine Beaudry for "suffering an escape after assistance", in other words for allowing a

⁴⁷⁵QSR 6/5/1765. Crofton's fine was remitted, but he was replaced as high bailiff three months later.

⁴⁷⁶QSR 9/10/1765.

⁴⁷⁷QSR 23/7/1781, 15/4/1784.

⁴⁷⁸Edward William Gray to Alexander Gray, 15/11/1784, in NA RG4 A1: 8896-98.

⁴⁷⁹QSR 9/1/1769.

prisoner to escape after Divine had required him to assist.⁴⁸⁰ It was in part because of incidents like these that the existing system came under criticism in the late 1780s, as part of the general re-examination of the state of the colony following the turmoil of the American Revolution and the Loyalist influx.

⁴⁸⁰QSR 10/4/1769.

III. The police before the police, 1787-1830

In the series of inquiries into the administration of Quebec undertaken by committees of the Executive Council in late 1786 and early 1787, policing was addressed briefly by the committees examining the justice system, and the state of commerce and police (in its older sense of local administration). After hearing evidence from a number of sources, the committees concluded that the structures of policing were woefully inadequate: there were no bailiffs or constables in the province, nor had there been for several years; the militia captains were not required to arrest offenders, but simply had the power to do so; and in the cities, the justices lacked any ability to enforce their orders regarding local administration.⁴⁸¹ The committees blamed these structural inadequacies for what they saw as the gross defects in the practice of policing, and of the criminal justice system as a whole: though the committee on commerce and police was referring only to Quebec City when it stated that "the regulations that are made ... are but little attended to, and ill executed, the Magistracy is unconnected without a head, and without inferior officers to put the laws in force, their mandates want efficacy and do not enforce subordination in the people", it was this view that generally informed the reports of both committees.⁴⁸²

The committees' conclusions regarding the structures of policing at least were highly over-stated. As we saw above, there were certainly bailiffs and even constables in the district of Montreal between 1777 and 1787. Likewise, though the committee on commerce and police expressed its intention to obtain information "in the most unbiassed [sic] manner",⁴⁸³ its conclusions regarding local administration in Montreal were drawn almost entirely from a report submitted by a group of pro-reform merchants, including many of the city's

⁴⁸¹The committees' reports and attachments are reproduced in the journals of the Legislative Council, NA RG1 E1 volume E: 125-254. Extracts are reprinted in *DRCHC* I: 874-937.

⁴⁸²*DRCHC* I: 907.

⁴⁸³*DRCHC* I: 900.

justices, who had every interest in casting the old system in as poor a light as possible, and who revealed their biases when they stated that the only solution to Montreal's administrative problems was "the incorporating by charter a select number of the citizens of Montreal" (read themselves).⁴⁸⁴ And though the fact that the militia captains had little to do with policing might seem to prove the point about the deficiency of their powers, as we shall see below, this actually had more to do with whom the justices chose to execute their warrants.

Nevertheless, the committees' views on the structural inadequacies of policing were accepted with little question, and an ordinance prepared to address them. There was some disagreement between the members of the English and French parties of the Legislative Council on exactly how policing should be re-organized: the former supported an initial version of the ordinance that allowed the Quarter Sessions of each district to appoint high and petty constables throughout their district, while the latter, probably fearing the power that this would give the urban merchant-justices who usually controlled the Quarter Sessions, used their majority to limit the justices' powers to the cities and maintain the militia's responsibility for policing in the rural parishes.⁴⁸⁵ Thus, the ordinance as passed in April 1787 required all militia officers, including sergeants, in the country parishes "to do and exercise all and singular the duties and services of public and peace officers within their respective parishes according to law."⁴⁸⁶ And it also directed the justices of the peace in Quarter Sessions to appoint each year as many people as they felt necessary within the cities of Quebec and Montreal "for carrying into execution the orders and decrees of the several courts, and to preserve the public peace therein;" every appointee was to serve for a year

⁴⁸⁴*DRCHC* I: 918. The incorporation of Montreal was opposed in a countering petition from supporters of the conservative French party (*ibid.*: 922).

⁴⁸⁵NA RG1 E1 volume E: 29/3/1787.

⁴⁸⁶Once again, the wording of the ordinance was confusing: the text itself did not exempt militia officers in the urban parishes from being peace officers, but the marginal notation for the relevant clause was "Peace Officers appointed in the Country Parishes".

under a hefty penalty for non-compliance, but a variety of elite professions (including all civil and military officials) were exempted.⁴⁸⁷

By this system, which in theory formed the basis of policing in the colony until the Special Council's reforms in the late 1830s, the Legislative Council once again attempted to give Quebec the sort of decentralized, avocational, involuntary police that historians have posited for England and other English colonies, although modified so as to remove control over policing in the rural parishes from the justices. And the colony's administrators also attempted to ensure the demise of the old system through financial constraints: in 1788, for example, the committee on public accounts refused to re-imburse the sheriff for police services performed by bailiffs, on the grounds that these were now the responsibility of the constables and peace officers, although it allowed that it would still be necessary in some cases to pay "parish officers [constables or peace officers] who have exerted themselves in bringing atrocious offenders to justice."⁴⁸⁸ But as was the case in 1764 and 1777, the de facto policing system that followed was not that envisioned by the law-makers, either in Montreal itself or in the countryside. Since the characteristics of policing in the city and in the rural parishes differed significantly, I will treat each in turn.

A. Policing in Montreal

1. Constables and substitutes

In Montreal, the city's justices were quick to take advantage of their new powers. The ordinance did not specify how they were to choose constables, but the justices apparently decided to follow the English model, where the office of constable, like that of juryman, rotated among heads of households owning or

⁴⁸⁷Others exempted were priests, doctors, millers, ferrymen, schoolmasters, and students of colleges or seminaries. As well, all persons appointed had to be of the age of majority, 21.

⁴⁸⁸Minutes of the Committee on Public Accounts 2/2/1788, in NA RG1 E15A volume 11 file "Reports on Public Accounts 1788".

renting property above a certain value.⁴⁸⁹ Thus, in July 1787 they had their crier make up lists of householders who were liable to serve as constables, much as he was accustomed to doing for jurymen.⁴⁹⁰ They delayed making any appointments until they could determine whether militia officers in the city were exempt, but in November they appointed twelve householders as constables, six in the city itself, and two each in the Quebec, Saint-Laurent, and Recollet suburbs.⁴⁹¹

The justices, however, were soon confronted with the difficulty of enforcing this involuntary service, even for such occasional duties as attending the Quarter Sessions, let alone for actual police actions such as arrests. Thus, in April and July 1788, seven and eight of the twelve constables respectively did not show up at the opening of the Quarter Sessions; and as late as October 1788, the justices were still using a professional bailiff, Joseph Minot, to keep the juries, a job supposedly part of the constables' unpaid duties.⁴⁹² Likewise, I have found a record of only one of the twelve original constables, Peter Lundy, ever performing a police action such as an arrest or a summons.

It is probably for this reason that when four of the twelve householders nominated as constables in 1788 asked to provide substitutes to serve in their place, the justices readily agreed and swore the four substitutes into office, along with a fifth who replaced another nominee.⁴⁹³ The ordinance made no provision for this sort of substitution; however, it was not a novelty, with a long tradition in

⁴⁸⁹Burn, *The Justice of the Peace* I: 397-399.

⁴⁹⁰QSR 1/8/1787.

⁴⁹¹QSR 1/8/1787, 10/11/1787. Since there were thus no constables appointed by the time the King's Bench sat in September, the sheriff was forced to hire nine "extraordinary constables" (most of whom had previously been bailiffs) at £1 1sh each to perform duties such as summoning witnesses and keeping juries which would otherwise have been the duty of the city constables (NA MG19 A2 Series III volume 85).

⁴⁹²QSR 8/4/1788, 8/7/1788, 10/1788 *passim*.

⁴⁹³QSR 15/11/1788. The fifth substitute, Jacob Marston, was not explicitly identified as such; but since alone among the nominees who did not provide substitutes, Thomas Little was not appointed, and alone among those appointed, Marston had not been nominated in some fashion, it seems likely that Marston was a substitute for Little.

both England and the American colonies, though its legality was doubtful.⁴⁹⁴ Classic histories of the ancien-régime police in England suggested that the widespread use of substitute constables, almost universal in London, showed how little regard community members had for supposedly "community" services such as policing, especially since the substitutes were almost invariably poorer and less "trustworthy" members of the community.⁴⁹⁵ More recent work in both England and North America has suggested that the situation was more nuanced, with significant use of substitutes in some jurisdictions and much less in others, and with the substitutes sometimes comprising a police force that was at least semi-professional.⁴⁹⁶

In Montreal, the practice of using substitute constables quickly became entrenched, and remained in place through to 1820. Thus, in 1789, eight of the twelve constables nominated by the justices appointed substitutes, including four of the five substitutes named in 1788; and by 1790, only one of the constables nominated by the justices served the office in person. Overall, of 548 constables nominated by the justices between 1788 and 1820, the period in which substitution was allowed, who did not avoid the office in some other manner, only 119, or 22%, served in person, with the remainder appointing substitutes.⁴⁹⁷

⁴⁹⁴Burn, *The Justice of the Peace* I: 399-400.

⁴⁹⁵See for example Radzinowicz, *A History of English Criminal Law* II: 184-185, 277-278.

⁴⁹⁶In pre-Revolutionary North Carolina, few constables appointed deputies, though the practice was not unknown (Spindel, *Crime and Society in North Carolina*: 36; Watson, "The Constable in North Carolina: 6); likewise, in London's St. Marylebone parish in the late eighteenth and early nineteenth centuries, most constables served in person, probably because their duties were considerably lessened by the existence of a paid watch (Reynolds, "St. Marylebone: Local Police Reform in London": 455-457). On the other hand, by the early nineteenth century, most constables in the Black Country, Somerset, and the West Riding in England appointed deputies to serve in their stead, who as Robert Storch rather grudgingly admits, "might serve for long periods of time in an almost semi-professional capacity" and who as David Philips notes "seem to have regarded themselves as full-time policemen" (Storch, "Policing Rural Southern England before the Police": 223; Philips, *Crime and Authority*: 60).

⁴⁹⁷The data is drawn from the lists of constables nominated and constables appointed and sworn in the registers of the Quarter Sessions; these are complete for every year but 1794, when only the nominations were recorded, and which has thus been excluded from these figures. For the other years, of 736 constables nominated in all, 188, or 26%, were either explicitly noted as having been exempted (29 cases), or, more commonly, included in the list of nominees but not in the list of appointees (159 cases). It is difficult to

The popularity of this system of substitutes becomes comprehensible if we consider the very real burdens of serving as a constable. All serving constables were expected, without pay, to show up at the opening and closing of each Quarter Sessions and the higher criminal courts; to act in turn as bailiffs in those courts during their sessions by keeping juries and prisoners; to attend, in rotation, the Weekly Sessions, at least until 1820; and to attend all corporal punishments and executions.⁴⁹⁸ The impact that these duties could have is illustrated by an 1831 petition from William Square to the justices, after the system of substitutes had disappeared, which stated that serving as a constable "materially interfered with his duty to his employers, and caused him to apprehend the loss of his situation as cooper and cellarman with Messrs. Hart Logan."⁴⁹⁹ And in the Quarter Sessions at least, the justices were fairly vigilant in enforcing these attendances: between 1790 and 1820 they imposed at least 116 fines ranging from 2sh 6d to 20sh on constables who did not show up in court, although 43 of these were later remitted on the constable asking for pardon or providing a sufficient excuse; and of the 73 who were not excused, 23, or 32% were constables serving in person, suggesting that the justices showed no leniency in this respect.⁵⁰⁰

prove that the latter represented exemptions rather than people who simply ignored the justices' orders. However, one original list of constables nominated has survived, from 1815; and of eight people who in the register appeared on the list of nominees but not on the list of appointees, six were marked in the original document as having been exempted, one as serving in person, and one as serving by a substitute who was not mentioned in the register. Likewise, Jacob Marston, the high constable, claimed expenses for summoning additional constables in 1806 "as a number of the others have served the said office heretofore" and in 1809 "part being too old some absent" and "as a great number of the others notified and warned have served the office before, some lame, some too old, etc". The most common reasons for exemption were exercising an exempted office or profession; illness or other disability; absence from the city; and previous service as a constable.

⁴⁹⁸The accounts of the high Constables and sheriffs in NA RG1 E15A contain regular charges for summoning the constables for these duties. Constables were also required to attend in rotation certain of the justices' administrative meetings, such as the special sessions for granting licenses to tavern-keepers. With the appointment of a salaried crier of the Weekly Sessions in 1820, the constables were no longer required to attend this court (QSR 10/1/1820).

⁴⁹⁹QSD, petition of Square to the justices, 10/1/1831.

⁵⁰⁰Records of these fines are scattered through QSR; most are from the 1810s, but given the shortcomings of the clerk of the peace's record-keeping before that date, there may have been more fines imposed than show up in the registers. Likewise, further fines may have been imposed in the Weekly Sessions, whose

Further, constables were expected to assist the justices, again without pay, in such socially unpopular tasks as suppressing riots and charivaris.⁵⁰¹ And for nominees serving in person, these duties were not offset by the fees they could collect for paid services, such as making arrests or serving summonses: among all the references I have found to constables performing paid services between 1788 and 1820, only two involve constables serving in person. As in England, the office of constable was to be avoided if at all possible.

But the system of substitutes was not equally accessible to all nominees; rather, use of a substitute depended to a certain degree on the nominee's social class. As Table 2.1 shows, of the nominees between 1801 and 1820 for whom I have occupational information,⁵⁰² almost a quarter were merchants, including such key figures in Montreal's *haute bourgeoisie d'affaires* as John Molson (nominated in 1802) and Nahum Mower (nominated in 1811). Since this far outweighed the proportion of merchants among householders in general, this suggests that the justices showed little systematic class favoritism beyond that built into the ordinance itself, with its exemption of virtually all professionals and government officers. However, the system was not at all class-neutral: while virtually all merchants and elite retailers appointed substitutes, a significant minority of artisans, labourers, and farmers either could or would not appoint substitutes, serving instead in person.

registers before 1829 have not survived. In 1819, the high constable also claimed fees for collecting the fines imposed on constables (NA RG1 E15A volume 40 file "Quarter Sessions of the Peace 1821").

⁵⁰¹Between 1800 and 1820, the high constable charged fees on at least a dozen occasions for summoning all constables to suppress riots.

⁵⁰²This information is derived from the 1811, 1813, and c.1817-1818 jury lists (NA RG4 B19); Thomas Doige, *An Alphabetical List of the Merchants and Housekeepers Residing in Montreal* (Montreal, 1819) and *An Alphabetical List ... The Second Edition*; and the professions that from 1818 were indicated on the lists of constables nominated, in QSR. I used no occupational information that pre-dated by more than twelve years the date when nominees were appointed constables. The categories I have used are obviously crude, and are further based on sources that are less than sure, but they do give a rough idea of the socio-economic profile of the nominees. I have described the c.1817-1818 jury list as such because, though it was identified by the National Archives as 1816 based on a watermark, comparison of a select number of *inventaires après décès* with the list suggests that it was made sometime around late 1817 or early 1818. Allan Stewart, in a verbal communication, has suggested a date of 1817.

TABLE 2.1: PROFESSIONS OF NOMINATED CONSTABLES, 1800-1820

Profession	Nominated	Serving			
		in person		by substitute	
		#	%	#	%
TOTAL KNOWN	282	57	20	225	80
Merchants (including auctioneers)	69	2	3	67	97
Grocers, shop-keepers, jewellers, and other high-end retailers	32	2	6	30	94
Tavernkeepers, butchers, bakers	70	14	20	56	80
Artisans	101	33	33	68	67
Farmers	6	3	50	3	50
Labourers	4	3	75	1	25

Sources: QSR; jury lists 1811, 1813, and c.1817-1818; Doige 1819 and 1820.

I have found no information on the arrangements between nominees and substitutes, but the situation was probably similar to that in England, where most substitutes were paid by the nominees though some accepted voluntarily in order to profit from the fees that constables received for their services.⁵⁰³ As well, though the justices declared that nominees were accountable for their substitutes, there is no record of this ever being enforced, and English precedent stated that once a substitute was sworn into office the nominee was no longer responsible for him.⁵⁰⁴ Further, though the justices made several attempts to force nominees to appoint substitutes who lived in the same neighbourhood as the nominees, in order

⁵⁰³Radzinowicz, *A History of English Criminal Law* II: 184-185, 277-278. The eagerness of some Montreal substitute constables to fill the office is shown by the fact that on five occasions, substitutes were named at their own request. Allan Stewart informs me, in a verbal communication, that in his exhaustive *dépouillement* of notarial archives between 1805 and 1815, he has never come across any reference to an arrangement between nominees and substitutes.

⁵⁰⁴QSR 28/10/1795; Burn, *The Justice of the Peace* I: 399. There was one case where a nominee who initially appointed a substitute was later appointed in person when his substitute left town, although it should be noted that this was on the nominee's own initiative (QSR 4/4/1790).

to ensure a more even distribution of substitutes across the city,⁵⁰⁵ this proved completely unsuccessful: while 52% of nominees who provided substitutes lived in the city itself, and only 16% in the Saint-Laurent suburbs, 51% of substitutes lived in the Saint-Laurent suburbs, and only 18% in the city.

As a result, for those who could afford to pay, what would otherwise have been an onerous duty was transformed into at worst a form of indirect taxation, and elites who were not already exempted in some other way, especially merchants, could buy their way out of this supposedly "civic" duty. Conversely, the system allowed the justices to place some of the burden of policing on members of their own social class without incurring the inevitable resistance that would have ensued had prominent merchants been forced to serve summonses or watch over prisoners in court; indeed, among the numerous complaints that members of the elites made about the administration of justice, I have yet to come across any mention at all of the system of substitutes.

And the class interests underlying this system become even clearer when we consider the situation of the constables in the 1820s. For reasons that I have still been unable to determine, the justices in 1821 abruptly ceased allowing nominees to appoint substitutes to serve in their stead.⁵⁰⁶ This roughly coincided with the professionalization of the Police Office constables and the establishment of the watch, discussed below; but whether the two were connected is uncertain.⁵⁰⁷ Whatever the reason, once elites could no longer avoid personal service as constables, the justices ceased appointing elites as constables. Thus, of the 82 constables appointed between 1821 and 1823 for whom an occupation is given in

⁵⁰⁵See for example QSR 24/10/1810, 25/10/1815, 28/10/1817.

⁵⁰⁶The court order summoning nominees dropped the clause that gave them the choice of taking the oath in person or supplying substitutes (QSR 27/10/1821).

⁵⁰⁷There is no mention in any of the documents I consulted of the reasons for this, nor do the newspapers provide any clues: the *Herald*, for example, noted that none of the constables sworn in were substitutes, but made no further comment (24/11/1821). An attempt by the attorneys for two nominees in 1823 to name substitutes was apparently unsuccessful, as one of the two later appeared to swear in person (QSR 25/10/1823 and 30/10/1823).

the appointment lists, none were merchants and only two were "gentlemen", although the remainder followed roughly the same occupational distribution as before 1821, with twelve high-end retailers, thirty other food retailers, 37 artisans, one farmer, and one labourer; and a similar pattern persisted among constables appointed through to the end of the 1820s.

The system of substitute constables was thus an important means of co-opting elite resources into the policing of the city while at the same time allowing elites to avoid doing the work in person. But what transformed Montreal's policing system even more was the substitutes themselves, for they gave Montreal exactly what the Legislative Council apparently had not intended, a police that was composed in part not of amateurs, but of justice professionals or semi-professionals, and with a small core of active, professional police. Of the original five substitutes appointed in 1788, at least three had previous policing experience: Peter Lundy, the only active constable from the twelve originally appointed in 1787; George Hydes, who had been employed by the sheriff as a bailiff; and Jacob Marston, who had been a bailiff since 1783 and, with his wife, keeper of the courthouse since 1786.⁵⁰⁸ And of the 429 substitute appointments made between 1788 and 1820, 356 were of individuals who acted as substitutes two times or more, of which 264 were of 28 individuals who acted as substitutes five times or more. In other words, of the 548 constable appointments made in all by the justices, including those where the nominee served in person, almost half were of a small group of long-term, habitual substitute constables.⁵⁰⁹

⁵⁰⁸The biographical information on Marston is derived from a petition he made in 1824 (NA RG1 E15A volume 50 file "Quarter Sessions of the Peace 1824"). Hydes was one of the nine "extraordinary constables" employed by the sheriff for the September 1787 King's Bench.

⁵⁰⁹The 28 were Jacob Marston (1788-1820); Frederick Charles (1795-1820); Claude Thibault (1806-1819); Philippe Garnot (1790-1802); J-B Castagnet (1788, 1795-1797, 1799-1801, 1803-1806, 1808-1809); Louis Sabourin (1797-1808); John Spatz (1807-1817); Gaspard Degan (1806-1816); Pierre Villeneuve (1798-1799, 1806-1807, 1812-1816); Louis Marteau (1812-1820); Andrew Kollmyer (1795-1802); J-B Morin (1787, 1800-1802, 1808-1810, 1812); Augustin Schoustre (1796-1803); Alexis Lamothe (1797-1802); Basile Dubois (1800-1807); J-B Bertrand (1789, 1791-1796); Frederick Smith (1795-1801); Mathew Wort (1804-1810); John Schiller (1790-1795); George Siry (1795-1800); Joseph Dumeny (1796-1800, 1807); Mikel Souther (1804, 1809-1811, 1812, 1814); André Boileau (1804-1805, 1815-1818); Guillaume Desprès (1796-1801); Jacques Boileau (1803-1807); Charles Klein (1804-1808); Victor Baudin (1804, 1807-1810); and

To put this into concrete terms, consider the constables appointed by the justices in Montreal in two sample years, 1800 and 1815.⁵¹⁰ In 1800, the justices appointed seventeen constables, of whom only three were serving in person. Of the fourteen substitutes, only two had never been constables before, while seven had been substitutes continuously since 1795 or earlier, of whom two, Jacob Marston and Philippe Garnot, had been bailiffs even before the establishment of the constables in 1787.⁵¹¹ Further, twelve of the fourteen substitutes were named as substitutes again in the following year. There was less continuity in 1815: more constables served in person (six of 22 appointed), though this still left sixteen substitutes; and of the substitutes, half had never been constables before. However, there were still six constables who had been substitutes since before 1810, including Frederick Charles, first appointed in 1795, and Gaspard Degan and Claude Thibault, both substitutes since 1806; and twelve of the substitutes were appointed again in 1816, re-establishing the strong pattern of continuity.

The ethnic and class profile of the substitutes themselves resembled very closely that of the city bailiffs who preceded them. A little over two-thirds were francophones, including seven of the ten longest serving constables, with the remainder being mainly anglophones.⁵¹² As well, as one might expect, they were generally drawn from the popular classes. Thus, of 33 substitutes between 1800 and 1820 for whom I have found occupational information within five years of their being substitutes, twelve were described as labourers, seventeen as various types of artisans (four shoemakers, three carpenters, three carters, two tailors, two saddlers, one furrier, one mason, and one cooper), one as a voyageur (Jean-

François Allard (1791-1795).

⁵¹⁰It should be noted that since constables were appointed in late October of each year, they mostly served in the calendar year following the year of their appointment.

⁵¹¹The accounts of Edward William Gray, the sheriff, show Garnot acting as a bailiff from at least 1776; he was first appointed as a substitute in 1790.

⁵¹²Of 148 individuals named as substitutes, 100, or 68%, were probably francophones, 35 were probably anglophones, and the remainder largely with Germanic names such as Schiller and Spatz.

Baptiste Taillefer, who in April 1804 asked to be excused as Henry Dow's substitute, since he had become an engagé), one as a soldier (Louis Roy, who was appointed as Pierre Duperé's substitute in 1798, but who by January 1799 had left to enlist), one as a gardener, and one as a trader.⁵¹³

Many of the substitutes were neither professional nor even semi-professional police, but simply place-fillers for the nominees. Of the 148 individuals in all who acted as substitutes between 1788 and 1820, I have found evidence of only 44 ever acting as police, and only 33 who acted as such more than once, although these 33 accounted for half of all substitute terms, since they included nineteen of the 28 individuals who were substitutes for five terms or more.⁵¹⁴ This figure is probably low given the fragmentary nature of the sources; but it does suggest that the justices relied largely on a smaller core group of long-term professional substitutes to carry out their orders; and this is reinforced by the declaration of Jacob Marston, Montreal's high constable, in 1817 that "it hath hitherto been customary to summon to constables only to attend on the Court of Quarter Sessions of the Peace."⁵¹⁵ Many of the other substitutes were probably artisans or labourers for whom acting as a constable was a very part-time pursuit undertaken in addition to a primary occupation. Thus, for example, Jacques David was a substitute between 1815 and 1818, and was identified in 1818 as a shoemaker; similarly, Matthew Brass, a substitute in 1818, was identified in 1810, 1819, and 1820 as a saddler. These "amateur" substitutes likely had the same relationship to policing as nominees who served in person, almost never doing any paid policing, and simply filling the basic requirements of showing up at the various courts and on occasions such as riots and executions where all constables

⁵¹³This information was taken from the 1810, 1813, and c.1817-1818 jury lists for Montreal; Doige, *An Alphabetical List* and *An Alphabetical List ... The Second Edition*; and from information kindly supplied me by Allan Stewart, from his database on the population of the Saint-Laurent suburbs. The information on Roy and Taillefer is from QSR 11/1/1799 and 30/4/1804.

⁵¹⁴These 33 accounted for 217 of the 436 substitute appointments in all.

⁵¹⁵QSD, petition of Marston to the justices, 10/7/1817.

were expected to attend; thus, there is no record of either Brass or David ever acting as police, although David was fined on one occasion for not attending the Quarter Sessions.⁵¹⁶

The active substitutes were of a different sort. Their ethnic and socio-economic profile was similar to that of the substitutes as a whole, although with some interesting variations in ethnicity. Thus, a slightly lower proportion were francophones; and more than half of the non-francophones had Germanic names, including two of the most active substitutes, Marston and Andrew Kollmyer.⁵¹⁷ And in further contrast to the amateur substitutes, many had a very different relationship to the justice system and the state, and were in fact, if not in name, justice professionals. For some, the office of substitute constable was only one of several concurrent state positions, usually connected with the justice system. Thus, up to 1810, several active substitutes were also professional bailiffs who acted for various other parts of the criminal and civil justice systems, like the bailiffs before 1787: George Serey, a substitute between 1795 and 1800, identified himself in 1797 as a bailiff of the King's Bench;⁵¹⁸ Antoine Poitras, a substitute constable from 1802 to 1806, was employed as a sheriff's bailiff in 1803 and 1805 to summon witnesses to the King's Bench;⁵¹⁹ and Louis Sabourin, a substitute between 1797 and 1808, was identified between 1806 and 1810 as being a

⁵¹⁶QSR 10/1819.

⁵¹⁷Thus, of 33 substitutes active as police more than once, seventeen, or 52%, were francophones, and eight had Germanic names. Though professional substitutes were almost always identified simply as either "constable" or "bailiff", a few were also identified at some point as labourers or artisans, although the latter never while they were acting as substitutes.

⁵¹⁸QSD, Serey v. Joutras, 17/11/1797. At least four active substitutes between 1790 and 1810 are explicitly identifiable as civil bailiffs, and another five were identified on documents as "bailiff" or "huissier". However, the present inaccessibility of the records of the civil courts, especially the inferior terms of the King's Bench, precludes a further analysis of the relationship between civil bailiffs and substitute constables.

⁵¹⁹Up to 1810, at least thirteen active substitutes acted for the sheriff during their tenure as substitutes, summoning witnesses and arresting prisoners on the orders of the higher criminal courts, conveying banishees to the province line, and the like.

huissier.⁵²⁰ Some even moved from being substitute constables to more permanent, salaried state positions: thus, Andrew Kollmyer was an active substitute constable from 1795 to 1802, was a civil bailiff at the same time, was the main sheriff's bailiff in 1803-1806, and was appointed Montreal's town crier in 1807, a post he held until 1817.⁵²¹

After 1810, fewer professional bailiffs acted as substitute constables. Thus, the main sheriff's bailiff, Louis H. Gauvin, was never a substitute constable, although one of his regular assistants, Joseph Burt, served one term,⁵²² and of eighteen Montreal residents identified in the 1810s as "bailiffs" or "huissiers", other than Gauvin and Burt, none were ever appointed substitute constables.⁵²³ In part, this was probably a reflection of the increasing opportunities for specialization on the part of urban justice officials due to the increasing volume of judicial business. Thus, while in the early 1800s the sheriff only paid out about £20 per year for summoning witnesses for the higher criminal courts, by the late 1820s these payments were averaging almost £200.⁵²⁴

But professional bailiffs aside, the justices also encouraged the existence of a small corps of semi-professional, full-time police by creating a number of semi-permanent, paid police positions and awarding them to long-serving, active substitutes. Funds explicitly available to the justices for policing purposes in

⁵²⁰Archives du Seminaire de Saint-Sulpice, "Liste alphabetique des familles du faubourg St-Laurent, 1806-1810", as provided to me by Allan Stewart.

⁵²¹Kollmyer's personal papers show that during his time as a constable in Montreal, in the late 1790s and early 1800s, he did at least as much business for the civil courts, as a bailiff of the King's Bench, as for the criminal courts, and continued as a civil bailiff thereafter (McCord Museum, Kollmyer Papers). On his appointment and resignation as town crier, see his 1807 petition to the justices (QSD 17/1/1807), and SSR 1/12/1817.

⁵²²Burt was appointed a substitute in 1814.

⁵²³These were identified from the 1810, 1813, and c.1817-1818 jury lists for Montreal; Doige, *An Alphabetical List and An Alphabetical List ... The Second Edition*; and references to bailiffs in QSD from 1810 to 1820. By contrast, of fourteen individuals identified as "bailiffs" or "huissiers" in QSD between 1795 and 1810, nine had acted as substitute constables.

⁵²⁴NA MG19 A2 volume 85; NA RG1 E15A volume 68 file "Attorney General 1829".

Montreal were non-existent before 1796, and very limited thereafter: the 1796 act imposing local rates only allowed the justices to use £30 of the money raised for "general purposes of police" other than public works, which covered everything from the burying of dead animals through the arrest of beggars and vagrants to the services of the town crier;⁵²⁵ and though this was raised to £100 in 1802,⁵²⁶ it was still clearly insufficient to support any kind of professional police establishment. However, this did not deter the justices, especially under Thomas McCord and Jean-Marie Mondelet in the 1810s: up until 1818 at least, they paid little heed to the limits imposed by the legislation, so that when a committee of justices examined the city's finances for 1817-1818, they found that the items chargeable to the police fund had exceeded £250.⁵²⁷ As well, there were other funds on which the justices could draw, including the £100 per year that from 1812 was granted by the central administration to cover the expenses of the Police Office,⁵²⁸ and salaries paid directly by the central administration. In all, the justices had enough resources at their disposal to ensure that a small core of active substitute constables received what was in effect a base salary, to which they added whatever fees they could collect either from private individuals or from the central administration for specific police actions.

The most important of these paid positions created by the justices was that of the high constable. In eighteenth-century England, high constables were similar to other constables: appointed annually from among the middling members of the

⁵²⁵36 George III c.6 (1796). In fact, the accounts presented by the road treasurer show that up to 1801, the justices only appropriated £20 per year to police matters.

⁵²⁶42 George III c.8 (1802).

⁵²⁷SSR 20/3/1819. Of this amount, the road treasurer's accounts show that at least half was paid to police of one sort or another.

⁵²⁸In a letter from McCord and Mondelet to the civil secretary, 18/7/1821, they stated that though a promise to pay the expenses of the Police Office had been made as early as May 1810, the first £100 was not paid until September 1812 (NA RG1 E15A volume 40 file "Quarter Sessions of the Peace 1821").

community, their chief responsibility was overseeing the petty constables.⁵²⁹ In Montreal, however, the justices chose one of the most active substitute constables, Jacob Marston, for the position in 1795, and kept him in office until 1820; indeed, from 1810 he was no longer even re-appointed as a substitute constable each year, but simply held the position of high constable permanently.⁵³⁰ From 1796, Marston, though appointed by and responsible to the justices, was paid an annual salary of £20 by the central administration,⁵³¹ from 1799, the justices themselves added an annual stipend of £4 16s 8d for attending them in their role as municipal administrators, in Special Sessions; and in addition, he received substantial fees for making arrests, serving summonses and subpoenas, summoning the other constables, and performing a wide variety of administrative services for the justices.⁵³²

Apart from the high constable, the justices from 1799 at least revived the practice of having constables attend the market regularly on market-days to keep order and ensure that the regulations were followed, and from 1800 made this a paid service. But rather than rotating these duties among all constables, as was the practice for unpaid services such as attending the criminal courts, they appointed Louis Sabourin, one of the long-serving active substitutes, semi-permanently, paying him £4 per year as his "salary to attend the market during the season [May to October]." After increasing the number of market constables to

⁵²⁹Radzinowicz, *A History of English Criminal Law* II: 182-183. The ordinance on constables that had originally been proposed to the Legislative Council in 1787 provided for the establishment of a similar position, but this was dropped in the amendments made by the French party.

⁵³⁰QSR 28/10/1795.

⁵³¹Jonathan Sewell (the province's attorney general) to the Montreal justices, 31/10/1796, reproduced in NA RG1 E15A volume 40 file "Quarter Sessions of the Peace 1821".

⁵³²Thus, between 1800 and 1810, Marston received an average of about £12 per year from the justices for various administrative services, in addition to his annual allowance; in the same period, he also received an average of about £50 per year from the sheriff for arresting offenders, serving summonses, and other "services for government" which probably also have included his £20 salary. As well as these payments from the public purse, Marston would have received fees on any warrants he served in cases where costs were paid by the parties, such as assault and battery cases or most offences triable in the Weekly Sessions.

four in late 1808, following the opening of the New Market, and then briefly abolishing the position in 1809, the justices finally settled in late 1810 on two market constables, one on each market. Following their usual practice, they appointed Claude Thibault and Jean-Baptiste Morin, both long-serving substitutes, paying them 4sh each for each day they attended, usually Tuesdays and Fridays from May to October, or about £10 per year each. Over the next seven years, the positions continued to be filled by long-serving active substitutes, and the period of attendance increased; thus, by 1817, the market constables, Louis Marteau, Claude Thibault (who only served until August) and André Boileau (who replaced Thibault) attended two or three days each week through the year, giving them more than £20 per year each.⁵³³

As well as the market constables, from at least 1814, the police magistrates, Mondelet and McCord, also employed a "runner" for the Police Office at a salary of £18 per year, rising to £20 by 1817. Though the duties of this post were never clearly defined, "runners" in English Police Offices acted both as messengers for the police magistrates and as constables; and in Montreal, the post was consistently filled by active substitutes, Owen Sullivan in 1813-1814, Claude Thibault in 1814 and possibly later, and Louis Marteau from 1816 to 1830.⁵³⁴

Finally, as well as these regular salaries, the justices also made occasional lump-sum payments to professional substitutes that were clearly intended as supplements to their incomes. Thus, in 1811, Claude Thibault was paid £5, ostensibly for delivering notices to 120 tavern-keepers in the city regarding strangers; but on the payment order, Thomas McCord noted that the amount was "approved for payment being fully due for many services to the police office not

⁵³³The payments to the market constables are scattered through the road treasurer's accounts; on the abolition and re-establishment of the position, see SSR 29/4/1809 and 22/12/1810.

⁵³⁴The accounts of the Police Office are in NA RG1 E15A.

provided for." And similarly, Thibault was paid £4 in 1816 for a single day's attendance on the market "on special purpose", or twenty times the normal rate.⁵³⁵

The effect of all of these payments was that, between 1800 and 1818, the justices kept between two and four substitute constables on the public pay-roll in one way or another: in the early 1800s, Jacob Marston and Louis Sabourin; around 1810, Marston, Claude Thibault, Jean-Baptiste Morin and perhaps Mikel Souther; and in the later 1810s, Marston, Thibault, Louis Marteau, and perhaps André Boileau. Along with one or two other long-serving substitutes to whom the justices regularly directed warrants and other orders, but who were never given salaried posts, such as Andrew Kollmyer and Frederick Schmidt in the late 1790s and early 1800s, Jean Bauert in the late 1810s, and Frederick Charles throughout, these formed a core of professional police in Montreal.

In another echo of the system before 1787, the justices occasionally employed judicial officers who were not constables to perform policing duties in Montreal. Thus, a petition presented to the justices in July 1809 Quarter Sessions from "all of the constables belonging to the said court" (although signed only by Marston, Thibault, Charles, and Morin) complained that "it is, and hath been customary in this city for the Bailiffs of His Majesty's Courts of King's Bench to execute nigh all the warrants & summons that herto [sic] hath been issued from the Clerks [of the peace] office, to the great damage of us, constables" and asked that in future all warrants and summonses be directed to them alone.⁵³⁶ The constables' assertions, besides demonstrating their conception of themselves as a professional corps, were not entirely true: in a sample of 73 arrest warrants served in Montreal between 1795 and 1810, all but one were directed to serving substitute constables, and 57 to the small group of professional substitutes identified above; and of 23 surviving summonses to Montreal residents to the Weekly Sessions in the same period that indicate the name of the officer who

⁵³⁵Road treasurer's accounts.

⁵³⁶SSD dossier 4-1809-2, 18/7/1809.

served them, only three were served by bailiffs rather than by substitute constables. On the other hand, in the 1810s the justices apparently increased their use of bailiffs: of nine surviving Weekly Sessions summonses between 1815 and 1820, six were served by "huissiers" who were not constables, including Jean-Baptiste Vallerand, a bailiff of the King's Bench; likewise, the two "constables" employed by the roads surveyor, Jacques Viger, in 1816 "aux fins d'ordonner aux propriétaires et occupans de maisons d'abattre leurs cahots, ouvrir les rigoles" were Vallerand and Pierre Guillaume, who was also not actually a constable; and among the payments made by the sheriff for arrests in Montreal ordered by the justices, several were to bailiffs, including Louis H. Gauvin and Joseph Burt, the sheriff's bailiffs. None of these displaced the primacy of active constables such as Marston, Marteau, or Thibault, but they do serve to suggest the variety of judicial officers at the justices' disposal.

From the 1790s to the 1810s, Montreal thus had a voluntary, vocational police force, with considerable continuity in personnel, dominated by a small number of paid justice professionals, and which resembled the system in place before 1787. But it also resembled the pre-1787 system in another way, namely in the strong indications that it did not function as it was ideally meant to, largely due to the police themselves. The frequent fines on constables for not attending the Quarter Sessions suggest discipline problems, although active substitutes were far less likely to be fined than inactive substitutes or constables serving in person.⁵³⁷ Further, consider the following account submitted by Jacob Marston, the high constable, for his efforts in suppressing a charivari in November 1816:

⁵³⁷Though as we saw, active substitutes made up half or more of all constable appointments, they accounted for only fifteen of the 73 fines imposed on constables for non-attendance which were not later taken off by the court.

summoning all the constables to be and appear at the Court House this evening at 6 o'clock with their staves in order to stop the sheverree people from a riot in the streets and disturbing Milote house and preventing the mobb doing damage by order of Mr. Mondelet ... attending and patrolling same night with 3 constables others runaway ... [next night] patrolling all night with 2 constables only all the others runaway first of the evening myself knocked down by the mobb and nigh murdered.⁵³⁸

More tellingly yet, some of the most active professional police were themselves accused of engaging in criminal activity. Thus, Mikel Souther was indicted in the Quarter Sessions in July 1815 for keeping a brothel, and was not re-appointed as a substitute that October;⁵³⁹ and Jean-Baptiste Lebrun, one of the bailiffs used by the justices in the early 1800s for serving warrants, was accused in 1803 of embezzling funds from a seizure that he had made, though the indictment was thrown out by the grand jury.⁵⁴⁰

And in another echo of the system before 1787, in the late 1810s policing in Montreal began to come under increasing criticism from the city's elites. As Jean-Marie Fecteau has shown, the period from about 1815 on saw considerable changes in elite attitudes towards the criminal justice system, with increasing calls for a complete overhaul of the system. Thus, in 1816 the *Montreal Herald*, in describing a robbery, noted that "we cannot help pointing out to the Magistrates the necessity of establishing a more rigid system of police for the better protection of the lives and property of the citizens".⁵⁴¹ Again as in the late 1780s, the result was significant structural changes, with the establishment of a professional watch and of professional constables attached to the Police Office, along with the disappearance of the system of substitute constables; but at the same time the system in the 1820s maintained many of the same basic characteristics as that which preceded it, both in its organization, and its personnel.

⁵³⁸NA RG1 E15A volume 41 file "Road Treasurer 1822".

⁵³⁹QSR 7/1815. Souther's case never reached a formal verdict.

⁵⁴⁰KBR 3/1803.

⁵⁴¹Reprinted in *Montreal Gazette* 9/9/1816.

2. Watchmen and police constables

In January 1818, the grand jury of the Quarter Sessions made the following presentment:

... they cannot but express their sincere regret that depreddations to an alarming extent have untill [sic] very recently been committed within the precincts of this city, that in order to assist the magistracy in the prevention of crimes as well as in the detection of offenders they are of opinion that a certain number of active, intelligent, and vigilant persons should be appointed by them as Police Officers whose duty should be exclusively to search after and execute the orders of the Magistrates in the detection of culprits in a similar manner as those employed by the Police Officers [sic] in London and that they should receive an annual salary in compensation of their service. The jurors are also of opinion that the lighting of the streets and the establishment of a general nightly watch would tend most materially to secure the repose and preserve the property of the citizens during those hours where these hordes of depreddations let themselves loose to prey on the public.⁵⁴²

And the grand jury went on to recommend that the justices send their presentment to the House of Assembly for action.

Neither of these ideas, professional police officers attached to the Police Office and a nightly watch, were entirely novel. During Thomas McCord's abortive attempt in 1794-1795 to set up a Police Office, he regularly employed three constables (John Schiller, François Allard, and Alexander Fraser) for serving summonses and arresting suspects, though they were not salaried;⁵⁴³ and as already mentioned, the Police Office from 1814 had a salaried runner who was also an active substitute constable. As for a watch, as early as 1779 inhabitants of Montreal had presented a petition to the justices stating that "a town watch for the better security of the place against accidents by fire or otherwise would be essentially necessary this season;"⁵⁴⁴ and temporary citizens' watches were briefly in operation in 1783 and 1801, both in response to perceived upsurges in robberies, and the latter at least paid for by a subscription which included many of Montreal's merchant bourgeoisie, no doubt fearful of depreddations on their

⁵⁴²QSR 19/1/1818.

⁵⁴³NA RG1 E15A volume 14 file "Judicial Establishment 1795".

⁵⁴⁴QSR 30/7/1779.

goods.⁵⁴⁵ But despite Jean-Marie Fecteau's postulate of a "blocage" that foiled all reforms, both of the grand jury's suggestions were concretely implemented.

The reforms effectuated in the Police Office were, like the earlier semi-permanent salaried posts, local initiatives of Montreal's justices of the peace with no official sanction from either the legislature or the central administration. As described above, Montreal's justices had since 1800 at least attempted to maintain a small core of full-time, professional constables through the judicious distribution of salaried posts. However, by the end of the 1810s, the system began to crumble. On the one hand, Jacob Marston, the incumbent high constable, was in his 60s and no longer as active as he had been earlier, although an attempt by Jean-Marie Mondelet to have him replaced by a Mr. Baby of Quebec was rebuffed by the other justices.⁵⁴⁶ Further, in 1818, financial constraints compelled the justices to suspend payments to the market constables; and in 1819, when they were confronted with the over-runs in the £100 allowed for police purposes, they abolished the posts permanently, and resolved to observe the strictest economy in disbursing the fund. This effectively put an end to any further direct payments for police services other than to Marston, although they almost immediately began paying Louis Marteau the fairly substantial sum of 10sh for summoning them to their administrative Special Sessions.⁵⁴⁷

At the same time that the old system was being dismantled, however, the justices, and especially McCord and Mondelet, the police magistrates, were putting in place a new system of professional police based around the Police Office. In 1817, even before the grand jury presentment, the police magistrates

⁵⁴⁵On the 1783 watch, see page 202 above; the accounts of the 1801 watch, which was in operation in November 1801, are in the Rare Book Room of McGill University, MS338.

⁵⁴⁶Richard Hart to Jonathan Sewell, 23/4/1819, in RG1 E15A volume 34 file "Quarter Sessions of the Peace 1819"; SSR 4/7/1818.

⁵⁴⁷SSR 30/5/1818, 20/3/1819. The first payment to Marteau was in June 1818, less than three weeks after his salary for keeping the market was discontinued; by 1822, it had been replaced by a salary of £12 10sh per year. The advantage of paying Marteau in this way was that the it was not chargeable to the police fund, but to the general roads fund. In 1818, the justices also made several payments to Jean Bauert, another active substitute, for similar services.

had begun employing Richard Hart regularly as a special constable to execute their warrants and other orders, in addition to Jacob Marston and two other regular substitutes attached to the Police Office, Louis Marteau and Jean Bauert. Unlike the other constables, however, Hart had nothing to do with the established system of substitute constables, but was named directly by McCord and Mondelet, and thus responsible only to them, although by 1819 his position was formalized through a special appointment in the Quarter Sessions.⁵⁴⁸ Hart rapidly became the main officer of the Police Office, at first working in concert with Marston, but eventually displacing him and the other francophone substitutes: in the 1819 Doige directory he was referred to as "assistant High Constable, police officer, and bailiff"; in April 1821 he was formally named assistant high constable; and in October of the same year, Marston having tendered his resignation, the justices named Hart high constable.⁵⁴⁹ By 1819, the justices were also adding other special constables to the Police Office establishment, all anglophones: thus, they named Adam Wiley to a one-year term in October 1819, replaced him with Charles Irvine in July 1820, and in October 1821 replaced him in turn with John Prenoveau and Archibald Henry Ogilvie.⁵⁵⁰

The importance of this new system of police constables, as I will call them, professional police attached directly to the Police Office, becomes clear if we consider a very partial indication of the activity of these police constables, the accounts submitted by them for services chargeable to government, which were those involving the more serious cases usually tried in the higher criminal courts. In 1817, Hart, Marston, and the other police constables were involved in executing at least 79 arrest or search warrants in such cases; in 1818, this number

⁵⁴⁸Hart was named a "constable" in July 1819, and again in October 1819, although in both cases his appointment was entirely separate from the regular nomination process for constables (QSR 19/7/1819, 30/10/1819).

⁵⁴⁹QSR 30/4/1821, 24/10/1821.

⁵⁵⁰Despite his last name, Prenoveau signed his name "John" and always wrote in English.

rose to 89; in 1819, it jumped to 204; and in 1820, where the accounts cover only the first nine months, it had risen again to 275.⁵⁵¹

For all of this police activity, however, Marston and Hart expected to be handsomely rewarded, and submitted exorbitant bills for their services: between November 1818 and September 1820, for example, their accounts totalled over £800 in expenses and fees for themselves and their "recors" or assistants (usually the other police constables), a huge increase from the average of perhaps £50 per year charged by Marston in earlier years. The charges for arresting a single offender were sometimes outrageous: for example, the practice of adding substantial fees for each league of travel meant that for a single search and arrest at Sainte-Anne, amounting to one day's work, Hart charged over £7.

As well, these accounts became part of a complicated power battle between the judicial establishment at Montreal -- especially McCord and Mondelet but also with the approval of James Reid, the chief justice of Montreal's King's Bench -- and the central administration, with the former pressuring the latter to appoint a constable for the Police Office at a fixed salary, as in London, and the latter resisting any attempt to increase government expenses at a time when it was itself becoming embroiled in battles with the Assembly over the budget and the civil list. Thus, in commenting on Hart and Marston's accounts in 1819, which he himself had approved, McCord remarked:

If the Government thought proper to establish the Police Office and provide a fund for the contingent expenses thereof, with a salary to one Special constable and empowering the Justices to employ another when necessary, the Criminal Justice of the Country would be much better administered and a considerable saving made in the expense and many criminals brought to justice who now escape for want of such established means.⁵⁵²

The net effect on policing in Montreal was that Hart and Marston received only a partial payment for their services, and Hart in particular spent several months in

⁵⁵¹These accounts are in NA RG1 E15A, from 1819 to 1822.

⁵⁵²NA RG1 E15A volume 34 file "Quarter Sessions of the Peace 1819". In this and subsequent volumes up to 1822, there are numerous accounts, letters, petitions, comments, and so on regarding Hart and Marston's accounts, and Hart's attempts to have them paid.

1821 and 1822 not doing policing, but travelling to and from Quebec City trying to get his accounts paid. In July 1822, the situation deteriorated even further when the Executive Council issued an order suspending all payments for the arrests of felons in the district of Montreal, and for about a year, as at least one Montreal newspaper pointed out almost every time it reported on a robbery, the city's professional police officers had to rely on whatever they could get from private individuals for their services.⁵⁵³

On the other hand, McCord and Mondelet's attempts to provide a firm financial basis for the professionalization of the police office were eventually successful at least in part. Even in 1821 the Executive Council was asking for information on how much it would cost annually to hire officers to perform the duties charged by Hart and Marston; and by the end of 1823, the budget of the Police Office had been increased to £200 Sterling per year, including payments for apprehending criminals. As well, perhaps to compensate Hart for his troubles, the justices in 1821 granted him an annual salary of £50 to enforce the rules of regulations of police in the city, which when added to the £20 salary from the central government gave him a not unreasonable fixed annual income of £70 in addition to whatever fees he was able to collect.⁵⁵⁴ And further, the justices readily accorded his petition in 1822 that only he and the "under constables" be allowed to serve warrants issuing from the Police Office and the clerk of the peace's office, giving him effective control over the lucrative business of serving warrants for most offences tried in the Quarter Sessions as well as the higher criminal courts.⁵⁵⁵ This measure, combined with the disappearance of the substitute constables in 1821, served to cement the hold of the high constable and police constables over policing in the city: thus, though no arrest warrants have

⁵⁵³On the order of the Executive Council, see *Canadian Courant* 14/12/1822; other commentaries on the situation are in *Canadian Courant* 12/11/1822, 16/1/1823, 22/2/1823, and 15/3/1823.

⁵⁵⁴SSR 29/12/1821.

⁵⁵⁵QSR 19/7/1822.

survived from the 1820s, the only references to police activity in Montreal throughout the 1820s, other than by the watch and urban administrative officials, concern the high constables and the police constables.

The situation of the high constable and police constables, however, did not stabilize until early 1824. Hart died prematurely in 1823, and his successor, Archibald Henry Ogilvie, was removed from office less than six months after being appointed, for his involvement in the forcible deportation of a Montreal resident to the United States.⁵⁵⁶ As we saw in our discussion of the politics of the peace commission, the justices' next appointment, of Adelphe Delisle, the son of the clerk of the peace, led them into direct conflict with Governor Dalhousie, who in the process revoked Delisle's salary and, shortly thereafter, removed McCord and Mondelet from their positions as police magistrates.⁵⁵⁷ But after this dubious start, policing in Montreal once again regained the structure that had characterized it in the 1810s, a small group of long-serving, largely francophone, professional constables centered on the high constable. Delisle remained in office through to 1830, regularly receiving his £50 salary from the justices for enforcing the rules and regulations of police, as well as submitting accounts averaging about £50 per year through the Police Office for arrests and searches, some of which he probably channelled to the other police constables; and by the end of by 1826 he was once again receiving his salary from the central administration, which had been increased to £36 Sterling per year.⁵⁵⁸ As well, the justices continued to appoint police constables regularly, with between two and four in office at any one time; among others, these included Louis Marteau, who was still receiving his

⁵⁵⁶QSR 30/4/1823, 10/7/1823; SSR 21/6/1823, 5/7/1823, 3/11/1823, 4/11/1823, 6/11/1823, 10/11/1823.

⁵⁵⁷SSR 10/11/1823, 20/12/1823, 22/12/1823, 31/12/1823, 27/3/1824, 3/4/1824, 17/4/1824, 22/4/1824, 8/5/1824, 1/6/1824.

⁵⁵⁸NA RG1 E15A volume 64 file "Quarter Sessions of the Peace 1828".

salary as runner of the Police Office, and Antoine and Maxime Lafrenière, who were in office from 1827 to 1830.⁵⁵⁹

Despite their professionalism, the police constables, like the professional substitutes who preceded them, did not necessarily live up to their ideal. Elite discourse in the newspapers concerning the high constable and the police constables was on the whole very positive, considering the criticisms that were being levelled against other aspects of the criminal justice system; thus, accounts of arrests that began "through the vigilance of our Police officers" or "after minute and assiduous searches, on the part of the agents of our Police" were in no way atypical;⁵⁶⁰ and phrases describing Hart, Ogilvie, and Delisle, the successive high constables, included "has rendered himself obnoxious to offenders by his activity", "our active High Constable", "uncommonly vigilant", and so on.⁵⁶¹ And indeed, there do not appear to have been any major disciplinary problems with the police constables. Instead, their malfeasances centered around the arbitrary use of power and the circumvention of legal procedures. Thus, the whole reason that Ogilvie was removed from office in 1825 was because he, along with Benjamin Schiller, the deputy foreman of the watch, and John Prenoveau, another police constable, had seized one John Johnson and forcibly ejected him into the United States.⁵⁶² And Adelphe Delisle was accused of aiding or taking part in the compounding of offences, the practice, highly illegal, whereby a prosecutor

⁵⁵⁹Some of the appointments of these special constables are recorded in the registers of the Quarter Sessions; however, since it seems that the justices also appointed special constables during the Weekly Sessions, as was the case for Antoine and Maxime Lafrenière in 1829, and all but one of the registers of this court have been destroyed, there may have been more special constables than I have identified. Thus, for example, Louis Malo was referred to as a constable several times in 1829, but I have found no record of his appointment.

⁵⁶⁰*Canadian Courant* 9/11/1822, *Montreal Herald* 4/7/1825.

⁵⁶¹*Canadian Courant* 3/2/1821, 4/10/1823, 9/10/1824, 20/10/1824, 1/7/1826.

⁵⁶²*Canadian Courant* 4/10/1823.

offered to drop a complaint in return for the payment of a sum by the defendant.⁵⁶³

In contrast to the establishment of the police constables, the existence of Montreal's watch was never in question, since it was set up under an act of the legislature proclaimed only three months after the grand jury's presentment.⁵⁶⁴ Under the watch act, the justices of the peace of Quebec City and Montreal could appoint a foreman and up to 24 watchmen, establish regulations for the watch, and provide the foreman with money for the purchase of lamps and equipment, to be paid for by additional duties on licensed tavernkeepers and auctioneers. Montreal's justices were quick to take advantage of their new powers. Ten days after the act was proclaimed, they struck a committee to report on how best to put the act into execution, consisting of Thomas McCord, Jean-Philippe Leprohon, and three other francophone justices. A week later, they declared that the watch was to consist of a quarter-master at £75 per year, a deputy-quarter-master as £50 per year, and eighteen watchmen at 3sh per day; struck a committee of five justices (all francophones, including Jean-Marie Mondelet) to oversee the watch; and appointed Emmanuel D'Aubreville, a career soldier from a minor noble family, as quarter-master, with instructions to find eighteen watchmen. And the following week, they approved a set of eighteen regulations for the watch drawn up by Jean-Marie Mondelet, appointed Antoine Lafrenière (the future police constable) as deputy-quarter-master, ordered that the watchmen enter into contracts for six months, and resolved that the watch begin its activities on May 1.

The justices clearly intended the watch to be an effective force, modelled after the parish watches in England which, by the early nineteenth century, were far more organized, disciplined, and effective in repressing social deviance than

⁵⁶³QSD, *Murphy v. Delisle*, 30/8/1825, and *François Aumier v. Delisle*, 30/8/1825.

⁵⁶⁴58 George III c.2 (1818).

historians have often assumed.⁵⁶⁵ Thus, in the preamble to his regulations, Jean-Marie Mondelet described the watch as follows:

L'on appelle Guêt un certain nombre d'hommes forts, robustes, et actifs réunis en corps, dont le devoir est de faire la veille dans les rues toute la nuit pour empêcher les déprédations, les vols et la commission de tous crimes ou délits qui affectent la société, ne fut ce qu'en troublant son repos.⁵⁶⁶

As well as keeping the peace, the watch was also responsible for maintaining the lamps placed around the city, so that at least at first, the watchmen filled the dual duty of police and lamp-lighters.

The first set of regulations for the watch were explicit on the discipline expected of officers and watchmen. The quarter-master and the deputy quarter-master were to keep detailed records of all that transpired and to make frequent reports to the justices, and were held responsible for all aspects of the watch's operation and the actions of the watchmen; and the watchmen themselves were subject to fines for disobedience or for leaving their posts, and immediate dismissal for drunkenness. Further, though at first the justices left it up to the quarter-master to choose the watchmen, by the mid-1820s they were requiring potential watchmen to submit letters of recommendation as to their character, while at the same time asking for the quarter-master's written comments; and the popularity of the post was such that they seem to have had ample candidates from which to choose.⁵⁶⁷

Initially, the justices were less specific about exactly how the watch was to be arranged, leaving that up to the quarter-master and the committee of justices to whom he reported every week. This lack of an explicit formal structure for the watch was the subject of several complaints: thus, already in 1819 a grand jury presentment suggested "allotting a station to each watchman instead of allowing

⁵⁶⁵See, for example, Reynolds, "St. Marylebone: Local Police Reform in London".

⁵⁶⁶QSR 24/4/1818.

⁵⁶⁷This is clear from a series of documents concerning candidates for three vacant posts in May 1824: 47 candidates filed letters of recommendation, and beside the names of each the quarter-master appended brief remarks such as "chétif", "assez bel homme", or "maçon - parle anglais" (SSD dossier 34-1824-1).

them to parade in bodies as they now do ... the inhabitants could at any time see when a neglect of duty on the part of any watchman occurred;"⁵⁶⁸ and a further presentment in 1823 recommended "that a specific walk be assigned to every watchman with the means of giving the alarm to his colleagues in case of need and that they may not be permitted to patrol the town, in parties as is at present the practice."⁵⁶⁹ The committee of justices responsible for the watch in 1823 had already tried a partial remedy to this problem by adopting a set of regulations that divided the city into sub-divisions and the night into two-hour periods, with patrols of three watchmen to patrol each in turn; however, these were rescinded some six months later by a larger meeting of justices, against the protests of the committee members, and matters returned to their previous state.⁵⁷⁰ By 1825, though, it appears that the grand jury's recommendations had been adopted: thus, Pierre Quenneville, a watchman, in describing an assault on him, noted that he had been "de service et en sentinelle" on Notre-Dame Street, and Jean-Baptiste Cusson described how he was "sentinellé à l'Hospital dans la rue St. Paul".⁵⁷¹ And in 1829, the foreman of the watch described the routine as follows: "The sentries have this summer been sent from the Watch House to their respective posts at 9 o'clock, there to remain till relieved at half-past 12 o'clock; the second Watch remain at their place till sun rise."⁵⁷²

Another problem for the watch was the chronic shortfall in the revenues collected under the watch act. As Table 2.2 shows, the amount at the justices' disposal for the watch declined steadily from 1818 to 1822.⁵⁷³ In the face of this

⁵⁶⁸QSR 30/4/1819.

⁵⁶⁹QSR 19/7/1823.

⁵⁷⁰SSR 14/6/1823, 6/12/1823.

⁵⁷¹QSD, Quenneville v. Try and Murray, 18/11/1825; Cusson et al. v. Sweeney et al., 16/8/1825. Similar references through to 1830 suggest that this system remained in place until then.

⁵⁷²*Canadian Courant* 9/9/1829.

⁵⁷³SSD dossier 21-1818-2, 4/4/1840.

problem, the legislature in 1823 passed a new act, increasing the duties imposed to fund the watch, and also allowing the justices to appoint up to 48 watchmen;⁵⁷⁴ but as the table shows, the revenues under this act only slightly exceeded those available in 1818.

TABLE 2.2: STATE OF THE WATCH FUND, 1818-1830

Year	Funds
1818	£1628 5sh
1819	£1521sh
1820	£1472 5sh
1821	£1326
1822	£1296 5sh

Year	Fund
1823	£1726 14sh 6d
1824	£1747 8sh 10d
1825	£1725 15sh
1826	£1577 11sh
1827	£1721 17sh
1828	£1811 11sh
1829	£1799 2sh 5
1830	£1806 13sh 6d

These financial considerations had a direct effect on the composition of the watch. As Table 2.3 shows, the watch remained at two officers and eighteen men through to May 1820, when the justices discovered that of the revenues available for the following year, over half had already been spent; accordingly, they reduced the number of watchmen by a third and discontinued the lighting of the city, although on the representation of the quarter-master a month later they added three more watchmen. By February 1823, the watch had grown once again to eighteen men, and by May 1823, with the new revenues, had increased to four officers and 27 men, although the following year, with the creation of a specialized corps of lamplighters, the number of actual watchmen was settled at twenty. I have found no information on the composition of the watch beyond May 1824, but judging

⁵⁷⁴3 George IV c.6 (1823).

from the state of the revenues in the later 1820s, it probably remained at about the same size as in 1824; certainly, the grand jury presentments to the King's Bench in September 1824 and March 1825 both complained that the financial resources allowed by the legislature for the watch were insufficient to the needs of the city.⁵⁷⁵

TABLE 2.3: COMPOSITION OF THE WATCH, 1818-1824

Date	Composition
5/1818	1 quarter-master, 1 deputy-quarter-master 18 watchmen
5/1820	1 quarter-master, 1 deputy-quarter-master 1 assistant to the quarter-master, 12 watchmen
6/1820	1 quarter-master, 1 deputy-quarter-master 1 assistant to the quarter-master, 15 watchmen
2/1823	1 quarter-master, 1 deputy-quarter-master 1 assistant to the quarter-master ("confidential man") 18 watchmen
5/1823	1 quarter-master, 1 deputy-quarter-master 2 confidential men, 27 watchmen
5/1824	1 quarter-master, 1 deputy-quarter-master 2 confidential men, 20 watchmen 1 assistant to the quarter-master for lamp-lighting 6 lamp-lighters

As for the watchmen themselves, I have only been able to make a relatively complete identification up to 1824, after which the only source is scattered references in depositions, prison and court registers, and the like; thus, though I have identified 91 watchmen, only 31 of these were active after 1824.⁵⁷⁶

⁵⁷⁵*Herald* 11/9/1824, 12/3/1825.

⁵⁷⁶The notary before whom the initial engagement contracts were signed in 1818 was Thomas Bédouin; however, his repertory shows no such contracts after 1818, and I have not been able to identify the notary who presumably took over this business. In the minutes of the Special Sessions of the Peace (SSR), there are sporadic lists of watchmen up until May 1824; however, at that point, the justices ordered that a new register

Keeping this in mind, it seems nonetheless that the watchmen were very much like the substitute constables. Thus, a little over two-thirds of the watchmen were francophones, including all three quarter-masters and four of the five officers,⁵⁷⁷ and of the fourteen watchmen on whom I have occupational information that pre- or post-dates their tenure as watchmen, five were labourers, two either labourers or butchers, three carpenters or joiners, one a cooper, one a mason, one a tavernkeeper, and one a trader.⁵⁷⁸ Indeed, half of the 27 watchmen appointed in the first year of the watch also served as substitute constables at the same time, although only three had acted as substitutes before becoming watchmen, and only two were among the active substitute constables.

This latter raises another issue concerning the watch: it did not necessarily work as the justices' plan intended, a failing which expressed itself most visibly in the conduct of the watchmen themselves. Thus, up until 1822, some watchmen apparently appointed substitutes to serve in their stead, a practice that ran contrary to the whole notion of a professional watch, but which the justices tolerated until a case of gross misconduct on the part of several watchmen and substitutes led to the latter being banned except in cases of illness.⁵⁷⁹ And this was but one of the many crises that the watch went through, all of which were documented with great vigour by the city's newspapers. The most dramatic was the presentment of the Quarter Sessions grand jury in January 1823: it accused the officers of being drunk on duty and absent from their posts, of joining the men in gambling, of receiving prostitutes into the watch-house, of appropriating the watch's firewood for their personal use, and the men of frequenting brothels while on duty, and

be opened in which all business regarding the watch was to be recorded, and which I have been unable to locate.

⁵⁷⁷64, or 70%, were unmistakably francophone; as well, there were a number of watchmen, such as Isaac Christophe, who may well have been francophone as well.

⁵⁷⁸This excludes the two quartermasters on whom I have occupational information, D'Aubreville and Carmel, who were respectively a career soldier and a commission merchant before their appointment. All four watchmen on whom I have occupational information during their tenure were described as labourers.

⁵⁷⁹SSR 14/3/1821, 27/7/1822.

concluded that "a watch so conducted is no protection to the peaceable citizens of Montreal".⁵⁸⁰ And there were numerous other accusations levelled against the watch and watchmen, usually centering around their inability to stop thefts in the city.⁵⁸¹

Some of these complaints against the watch, however, must be seen within the context of an active conflict between the largely francophone watch and at least one segment of the Montreal anglophone elite community, a conflict which apparently dated back almost to the establishment of the watch. In 1819, the *Montreal Herald* ran the following letter, from "A Widower", which after decrying the practice of *charivarying* and castigating the justices of the peace for not putting a stop to it, turned to the watch:

A short time ago a Gentleman was passing to his lodgings, and in the moment of hilarity happened to utter something in imitation of an Indian yell. Immediately one or two of these Night Guardians came up and desired that he would go peaceably, stating, it was their orders to permit no noise to be made in the streets. The gentleman expostulated, a whistle was given, and he was immediately surrounded and conveyed to the Guard House. Shortly afterwards he was summonsed to give bail for his appearance before the magistrates. Here was prompt duty executed. But to interrupt a Charivarie! there's danger in it!⁵⁸²

Likewise, in 1825 three watchmen, Louis Lauzon, Joseph Constantineau, and Jean-Baptiste Cusson, launched a complaint against Campbell Sweeney, Alexander McMillan, and William Ermatinger, all lawyers, for assaulting them. The three lawyers had been leaving Rasco's Hotel, a favourite elite drinking establishment, when Lauzon accosted them, presumably to tell them to be quiet. They wrenched Lauzon's staff away and threatened to beat him, and later gathered a crowd of their friends to assault Lauzon and the other watchmen who had come to his aid; Ermatinger declared "By God I will beat the watch-men every night after this"; and the crowd eventually moved off singing "We will fight and conquer again and

⁵⁸⁰QSR 18/1/1823.

⁵⁸¹Among many others, see *Canadian Courant* 15/11/1823, 16/3/1825, and 29/8/1829.

⁵⁸²*Montreal Herald* 6/2/1819.

again".⁵⁸³ And Sweeny was once again involved in an affray with the watch in 1830, after which he declared "I will in future carry pistols in my pockets and shoot every watchman who will attack me in the same manner as I was tonight".⁵⁸⁴

Not only was the watch in conflict with part of Montreal's anglophone elites, in the late 1820s it was also in conflict with some of the justices of the peace who were supposedly in charge of it. The justices, as we saw, were organized into a watch committee to oversee the operations of the watch. In 1828-29, while Samuel Gale was in England and the chairmanship of the Quarter Sessions was held by David Ross, Ross himself was part of the watch committee, along with Pierre Bouthillier, one of the francophone justices who had resisted the autocratic measures taken by Gale and Ross. Without informing Bouthillier or the other members of the watch committee, Ross hired one William Moon, formerly of the Dublin Police and by then attached on a semi-informal basis to the Police Office, to act as a spy to discover malfeasance on the part of the watch. In testimony he later gave before the House of Assembly, Bouthillier indignantly declared that "The Officers of the Watch are intelligent and active, and appear to me to oversee with the most scrupulous attention the persons under their charge", the officers being Pierre Rottot and Joseph Carmel, both Canadiens.⁵⁸⁵ And in some ways this gives a clue to understanding the difference in the discourse of the English press regarding, on the one hand, the police constables and high constable, and on the other, the watch: the former, though not really anglophone, were attached to an office that certainly was, and the high constable in particular, Adelphe Delisle, came from a family of highly anglicized francophones; while the watch was very largely a Canadien institution.

⁵⁸³QSD, Lauzon et al. v. Sweeney et al., 16/8/1825.

⁵⁸⁴QSD, Dalcour et al. v. Sweeney, 14/9/1830.

⁵⁸⁵JHALC 38: Appendix Ee, 30/12/1828.

3. Other police

Though constables, bailiffs, and watchmen were the only "obvious" police in Montreal before 1830, as before 1787, there were also other individuals who fit the definition of police that I have chosen, in that they had either specific duties or specific powers to enforce the criminal law. Most importantly were the administrative officials, established by statute or otherwise, whose duties included the detection and prosecution of specific offences defined by legislation. Some of these were established by colonial ordinances or acts: thus, the post of overseer of chimneys established under the ordinance of 1777 continued virtually unchanged through to 1829; and similarly, the inspector of weights and measures established under an act in 1799 was to detect and prosecute all retailers using false or unregulated measures.⁵⁸⁶ In Montreal, the inspector of weights and Measures in the late 1810s and early 1820s, William Mechtler, regularly employed what can only be described as undercover agents to buy small quantities of goods from grocers or shop-keepers suspected of using un-regulated measures and then to testify against them; but since these agents were useless once they were known, he never employed them for more than one series of visits.⁵⁸⁷

And other administrative police were appointed by the justices themselves. Thus, in 1807, the justices concluded that as the only way to enforce the rules and regulations respecting the beach was to "appoint some person specially to attend to the same", and named Théophile Drouin constable of the beach at an annual salary of £10, rising to £15 in 1809 and £20 in 1811.⁵⁸⁸ Though they abolished the

⁵⁸⁶39 George III c.7 (1799).

⁵⁸⁷Thus, Régis Laplante was a witness in twelve such cases in Quarter Sessions in July 1816, and William B. Thompson in nine in July 1818 (QSR).

⁵⁸⁸SSR 11/7/1807, 29/4/1809, 31/8/1811. On his death in 1813, Drouin was replaced by Etienne Dubois, who resigned in favour of Jean-Baptiste Lafleur in 1815 (SSR 20/10/1813, 27/4/1815).

salary of the post during the financial restrictions of 1818, a beach constable remained in office through to the end of the 1820s.⁵⁸⁹

B. Policing outside the city

The structures of policing outside of Montreal were similar to those in the city Montreal itself in their divergence from the intentions of the law-makers, but somewhat different in their actual form. Thus, as in Montreal, policing in the rest of the district remained largely the work of justice "professionals" rather than the amateurs specified by the colonial ordinances; but these were of a different sort than those in the city.

1. Militia officers and bailiffs

Under the system established by the 1787 ordinance, militia officers were required to be the main agents of the criminal justice system in the countryside. This intent to force the rural militia to assume the burden of policing was consistently repeated in legislation through to the 1830s: thus, the militia act of 1794 and its successors made it the responsibility of militia officers to arrest all disorderly persons and vagabonds and take them before the nearest justice of the peace;⁵⁹⁰ acts in 1794 and 1825 required that copies of all laws passed in each session of the legislature be sent to all militia officers and captains, and that militia captains pass these on to their successors in office;⁵⁹¹ the 1807 act establishing constables in towns and villages specifically stated that parish militia officers were still expected to perform the duties they were liable to;⁵⁹² and the various acts for maintaining good order in churches, though establishing specific

⁵⁸⁹The beach constable in the 1820s, Richard Dillon, made frequent representations to the justices in their Special Sessions (SSR, *passim*).

⁵⁹⁰34 George III c.4 (1794).

⁵⁹¹34 George III c.1 (1794), 5 George IV c.5 (1825).

⁵⁹²47 George III c.14 (1807).

officers to enforce their provisions, made militia officers equally responsible for these duties.⁵⁹³ Indeed, the only legislative provisions touching on policing outside the cities, apart from those concerning the roads, that did not specifically involve militia officers were the successive acts which from 1824 sought to eliminate "abuses prejudicial to agriculture", in which a clause allowed anyone to arrest vagabonds and take them before a local justice.⁵⁹⁴ And the central administration's views on the importance of the militia captains is suggested by Robert Shore Milnes' observation to his superiors in London, in 1800, that "the principal person in every parish is in general the priest and the next the captain of militia, and is it through the latter that any business is transacted for government."⁵⁹⁵

But as before 1787, militia officers were in practice not the main agents of the criminal justice system in the countryside, at least at the level of the justices of the peace. Thus, in a sample of 82 arrest warrants issued by justices against rural inhabitants between 1795 and 1830, only two were directed to or served by militia officers. Likewise, in a sample of 96 instances between 1795 and 1826 where the sheriff paid the expenses of arrests made in the countryside, only three involved militia officers.⁵⁹⁶ And the relative unimportance of militia officers in arrests is also illustrated by the wording of an 1820 arrest warrant from Vincent Dufort of Chateaugay: it was directed to Charles Verner, bailiff, or to any other bailiff of

⁵⁹³ 48 George III c.26 (1808); 57 George III c.3 (1817); 1 George IV c.1 (1821); 7 George IV c.3 (1827).

⁵⁹⁴ 4 George IV c.33 (1824); 9 George IV c.37 (1829); 10&11 George IV c.1 (1830). This provision was actually unnecessary, since it simply repeated the powers given in the English statute on vagrants, 17 George II c.5, which formed part of the criminal law of Quebec and which as we shall see was quite frequently used by the justices.

⁵⁹⁵ Milnes to Portland, 1/11/1800, in *DRCHC* II: 251.

⁵⁹⁶ It might be argued that since militia officers were supposed to perform these services without pay, they would naturally not turn up in these accounts; however, this distinction does not seem to have been made, since in the three instances where militia officers claimed expenses, they were paid without comment.

the King's Bench, or to any other bailiff, or constable, or other officer.⁵⁹⁷

Clearly, despite the legislative provisions, justices preferred to avoid using militia officers as police.

This did not mean that militia officers were never involved in policing. In matters directly concerning the militia or the army, such as desertion or disobedience, militia officers were regularly involved, although even in such cases, justices sometimes relied on other officers: thus, when in 1814 Etienne Hénault, a militia captain from Beauharnois, complained to the local justice of the peace, François Tremblay, that Albert Mercier had been threatening him and "faisant tout effort pour détourner les miliciens d'exécuter ses ordres", Tremblay directed his arrest warrant not to any of the other local officers or sergeants of militia, but to Charles Gabrion, a bailiff, who arrested Mercier and then took him to Montreal.⁵⁹⁸ On the other hand, as before 1787, the sheriff in the 1790s continued to send circular letters to militia officers when prisoners escaped.⁵⁹⁹

As well, apart from the occasional cases where justices addressed warrants directly to militia officers, justices also sometimes called on the local militia for assistance when the targets of their warrants made a concerted effort to resist arrest. Thus, Pierre Guerout, a Saint-Denis justice, issued a warrant in 1795 against Jean-Baptiste Barbier dit Pretaboir fils for assaulting Jean-Baptiste Massé; but when Charles Lamothe, the bailiff who originally tried to serve the warrant, reported that Pretaboir had resisted arrest, Guerout issued a further warrant ordering all militia and peace officers "de donner main forte" to Lamothe.⁶⁰⁰ And similarly, when in 1830 Gilbert Dunlop, a constable in Dundee, encountered mass

⁵⁹⁷Similar language was used in many other warrants issued by rural justices. The printed-form warrants used by urban justices were less specific, being directed to the high constable, petty constables, peace officers, and other ministers of justice.

⁵⁹⁸QSD 24/8/1814.

⁵⁹⁹See for example NA MG23 GII3 volume 4, 19/5/1791, volume 5, 13/5/1793, and volume 6, 7/11/1795.

⁶⁰⁰QSD 12/1/1795. Pretaboir was captured two days later, although whether any militia officers were involved is unknown.

popular resistance when trying to arrest John Mcrae and one Murdock, the local justice, John McGibbon, sent him back with a lieutenant and sergeant of the militia, although they were no more successful.⁶⁰¹

Militia officers were also sometimes involved in handling prisoners after they had been arrested and taken before the local justice for initial examination. In theory, offenders who could not make bail or were denied it were to be sent to the jail in Montreal by being passed from militia officer to militia officer in the parishes between the justices' residence and Montreal. Thus, for example, Charles Charland claimed expenses for arresting Louis Latoure père, Charles Latoure, and Jean-Marie Latoure at Berthier on September 27 1824, for stealing from a carding mill, taking them before Joseph Douaire Bondy, a local justice of the peace, keeping them overnight, and the next day, the 28th, conducting the prisoners and the stolen goods to the nearest militia captain, to be conducted from captain to captain to Montreal; and the calendars of the Montreal jail show that the Latoures were committed to the jail one day later, on the 29th. But in this respect as well, militia officers were not reliable agents of the state, since they often exercised their own form of discretionary justice by allowing prisoners to escape. Thus, Charles Kilborn and Selah Pomeroy, justices of the peace in Stanstead, complained in 1822 that "heretofore we did at all times put all fellons brought before us for examination into the charge of malitia [sic] officers to be by them conveyed to the goal of the said district in the City of Montreal, and that through the neglect of the officers residing between this place and Montreal the prisoners have always escaped or wantonly suffered to return;"⁶⁰² and militia officers were prosecuted on several occasions for negligence in conveying prisoners.⁶⁰³

⁶⁰¹QSD 4/6/1830.

⁶⁰²NA RG1 E15A volume 43 file "Miscellaneous Judicial 1822".

⁶⁰³Thus, Robert Stevenson, a bailiff, submitted an account to the sheriff in 1825 for arresting and taking to Montreal William Foster Mead, a militia sergeant from Napierville, for "unlawfully, negligently, and wilfully allowing John McEwen, a felon, to escape from his custody;" likewise, David Nutt was committed to the Montreal gaol in September 1824 "as a sergeant of militia for negligently permitting a man arrested by him to escape", found guilty in the King's Bench, and sentenced to three months in gaol; and Jacques Leduc,

Since militia officers were unreliable even for conveying prisoners, let alone for arrests and other more direct police actions, it is not surprising that urban and rural justices relied instead on a variety of other individuals for policing in the countryside. Montreal's justices often used urban constables, who like the city bailiffs before 1787 sometimes made trips into the rural parishes around Montreal at the behest of Montreal justices. Thus, of a sample of 27 arrest warrants issued by urban justices of the peace against rural inhabitants between 1795 and 1810, nineteen were directed to urban constables. However, as Figure 2.1 shows, most of these were for actions on or in the immediate vicinity of the Island of Montreal, with the furthest afield being Claude Thibault's arrest of Theodore Davis at Saint-André-d'Argenteuil in 1810. This is not surprising, given that the rural justices, to whom complainants in the more distant parts of the district usually turned, did not use urban constables; and although few Montreal arrest warrants have survived from after 1810, the fact that by the 1820s most preliminary steps in criminal matters even in rural areas near Montreal were handled by rural justices suggests that urban constables were probably even less present in the countryside by then.⁶⁰⁴

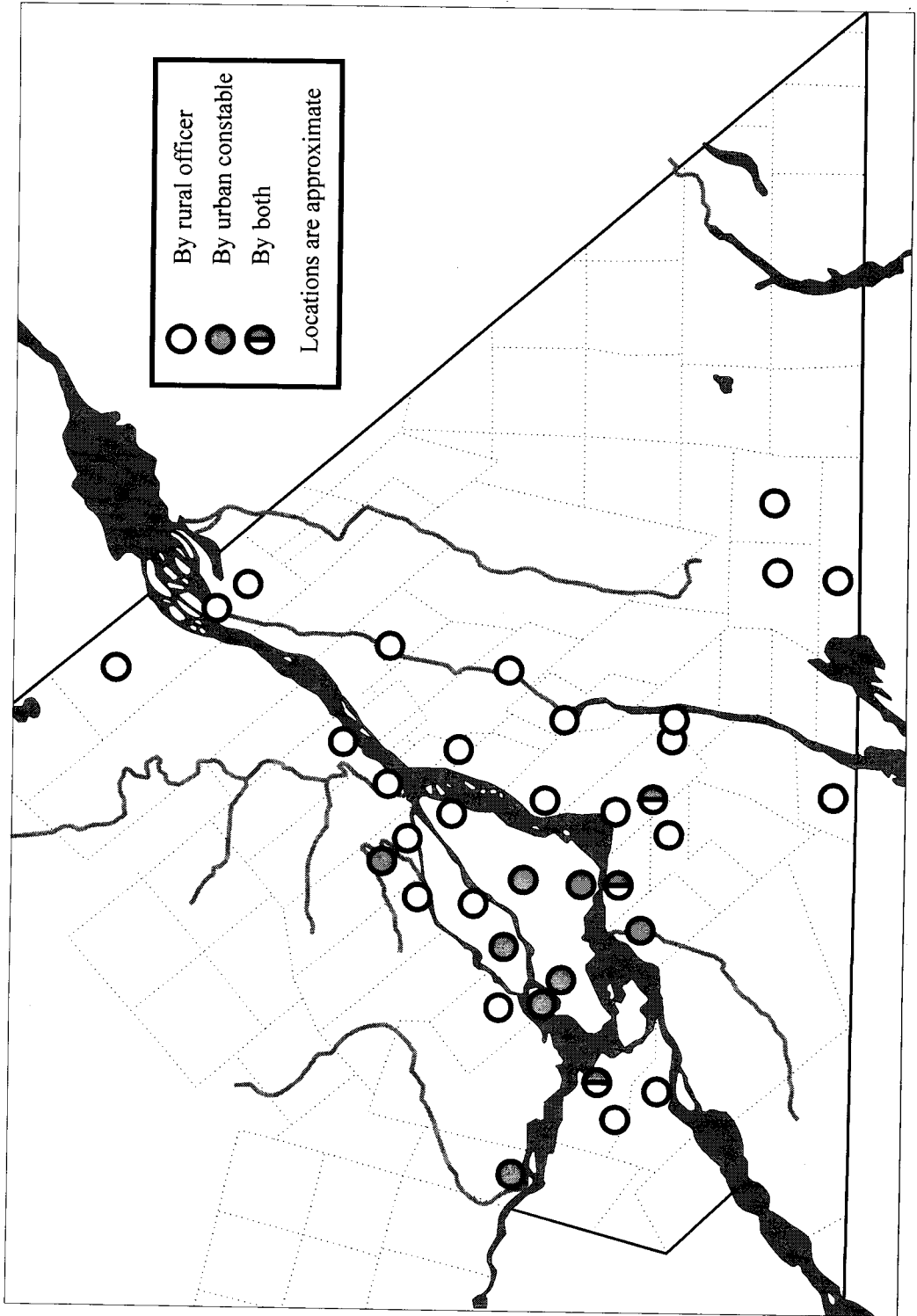
The only important exceptions to this were the high constable and police constables in the late 1810s. The accounts of Hart and Marston between 1817 and 1820 show that they made almost a hundred forays into the countryside, often accompanied by other police constables as recors (assistants), although this was still dwarfed by the almost 600 police actions they performed in Montreal during the same period.⁶⁰⁵ As Figure 2.2 shows, these trips took urban police as far

Louis Douiger, and Antoine and Joseph Moussette were fined 5sh each in the Weekly Sessions in 1823 for "having refused to convey prisoners to the gaol although commanded by [their] captain of militia". Between 1820 and 1830, there are at least a dozen other similar cases in the records of the higher criminal courts and the Montreal prison.

⁶⁰⁴See Part I.

⁶⁰⁵Thus, of 192 actions for which Marston and Hart charged in two years from 1817 to 1819, twenty involved travelling into the countryside; and of 510 actions for which they charged from 1819 to 1820, 82 involved travel to the countryside.

FIGURE 2.1: RURAL POLICE ACTIONS ORDERED BY JUSTICES, 1790-1810



afield as Berthier, Stanbridge, and up the Ottawa River, although again most of their activity was in the parishes on and surrounding the Island of Montreal. The financial constraints imposed on the Police Office establishment in the 1820s, however, coupled with the increasing activity of rural justices, led to a considerable lessening of this penetration of the countryside by urban police, and the accounts of the high constables between 1823 and 1829 show only 31 trips into the countryside, compared to over 800 actions in the city itself.⁶⁰⁶

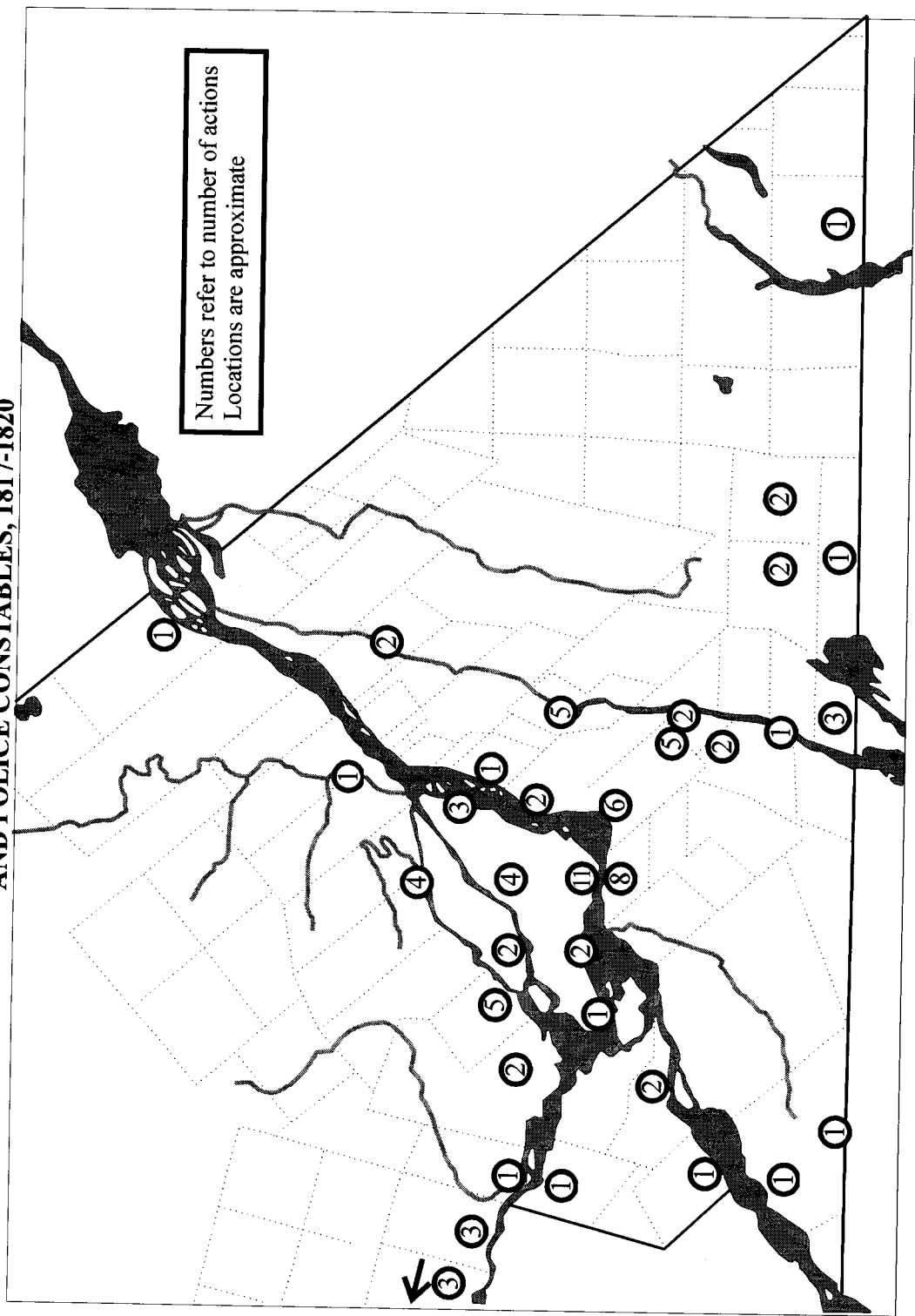
Still, there are indications that even in the late 1820s urban constables continued to be involved in one sort of policing in the countryside, namely the lucrative business of detecting offenders against licensing regulations, where a conviction resulted in half of the usually substantial fine going to the prosecutor. Thus, among eighteen prosecutions in 1818-1819 against rural inhabitants for selling liquor without a license or on Sundays, eight were instituted by city constables; and among 34 similar prosecutions in 1829, fourteen were instituted by Adelphe Delisle, the high constable, and Antoine Lafrenière, a police constable. Given the lacunae in the extant records, it is difficult to know whether these represented cases in which Delisle and Lafrenière actually went into the countryside, or where they simply acted as prosecutors for cases brought to them by others,⁶⁰⁷ however, in at least two of the cases in 1829, the witnesses who testified that they were served alcohol were other police constables, Louis Malo (who testified against Louis Aimé dit Bienaimé of Saint-Jean-Baptiste) and Maxime Lafrenière (who testified against Robert Pitts of Buckingham).⁶⁰⁸

⁶⁰⁶In NA RG1 E15A.

⁶⁰⁷The records from 1818-1819 are mainly summonses, which give only the names of the prosecutors rather than the witnesses. In 1829, the data is drawn from the register of the court (WSR), which includes the names of witnesses and a summary of the evidence presented in cases where the defendant pleaded not guilty; however, most of those charged with selling liquor without a license in the countryside by Delisle and Lafrenière pleaded guilty, so that the evidence in their cases was not recorded.

⁶⁰⁸WSR 13/1/1829, 31/3/1829.

FIGURE 2.2: RURAL POLICE ACTIONS BY THE HIGH CONSTABLE AND POLICE CONSTABLES, 1817-1820



Even more suggestive is a case in the Weekly Sessions in April 1829 where William Moon, the former watch spy who had by then become a Montreal police constable, prosecuted Michael Gibson for peddling without a license at Longueuil.⁶⁰⁹ The main witness was one James Tooner of Montreal, apparently Moon's assistant on a speculative foray into the countryside to catch offenders. Tooner testified that Moon paid him a dollar a day to travel with him; that he had been with Moon for three days, and had received 10sh; that Moon had asked Gibson the price of a handkerchief, and on being told 9d, had declared himself a constable and seized Gibson's goods; and that Moon "went to an officer of militia, which officer said that he could do nothing in the case, that Moon finding that he could not find a magistrate, that the goods were conveyed by Moon and deponent, brought said goods to the Police Office at Montreal." After a lengthy cross-examination and countering testimony, where Tooner was effectively accused of offering to compound with another peddler, the justices found Gibson guilty and imposed a fine of £5 Sterling plus costs. The case illustrates at least three important features of policing in the Lower Canadian countryside in the 1820s: the continuing penetration of the countryside by urban police for certain specific and lucrative actions; the irrelevance of the militia in policing, especially at this level; and the way that constables could of their own accord create paid, ad hoc police.

But though urban police were sometimes active in the rural areas of the district of Montreal, it was mainly rural inhabitants who acted as police for the justices, especially in the 1820s when policing and other preliminary aspects of the criminal justice system in the countryside was increasingly done by rural justices. In all, I have identified some 110 rural inhabitants who were not "peace officers" under the 1787 ordinance, but who nonetheless acted as police between 1787 and 1830. They form a disparate group, ranging from Henry Boright, a Saint-Armand blacksmith employed in 1827 by Jonas Abbot, the local justice of the peace, to arrest and take to Montreal several people for kidnapping; to Charles Charland, a

⁶⁰⁹WSR 7/4/1829.

civil bailiff of the King's Bench at Berthier who made several arrests between 1810 and 1824. But it is nonetheless possible to make a few generalizations about them.

In the first place, as was mainly the case in Montreal before 1787 and still to a certain extent thereafter, many of these rural "police" were probably professional bailiffs for whom policing was but one of several functions in the justice system. Almost half were identified as "huissier" or "bailiff", of whom ten were explicitly identified as bailiffs of the King's Bench, or civil bailiffs; and since many justices from 1819 also presided over civil courts, first as justices and then as commissioners for the trial of small causes, the local small-claims courts, some may also have been the bailiffs that they used in civil cases. As well, it was these professional bailiffs to whom rural justices directed most of their warrants: in a sample of 46 arrest warrants issued by rural justices between 1795 and 1830 for offences tried in Quarter Sessions, 38 were directed to or served by individuals identified as "huissier" or "bailiff"; and in a sample of 55 instances where the sheriff paid for arrests and other police actions done at the orders of rural justices between 1816 and 1826, thirty were performed by individuals who identified themselves similarly. And urban justices also occasionally directed warrants to rural bailiffs; thus, in 1810 Jean-Marie Mondelet, one of Montreal's police magistrates, directed Samuel Andres, a Laprairie bailiff, to arrest Louis Lavaline dit Poissan; and of the eight rural warrants that urban justices did not direct to urban constables, seven were to rural bailiffs.⁶¹⁰

As well as rural bailiffs, rural justices sometimes also directed their warrants to what were usually referred to as "special constables", private individuals to whom the justices delegated authority to carry out special actions. Thus, in 1821 the sheriff paid Philo Culver, a "special constable", for arresting Joseph Leclair at Soulanges for grand larceny on a warrant of Joseph Gaucher Gamelin, a local justice, and delivering him to Richard Hart at the Police Office

⁶¹⁰The other was to John Martin, a bailiff based in Montreal.

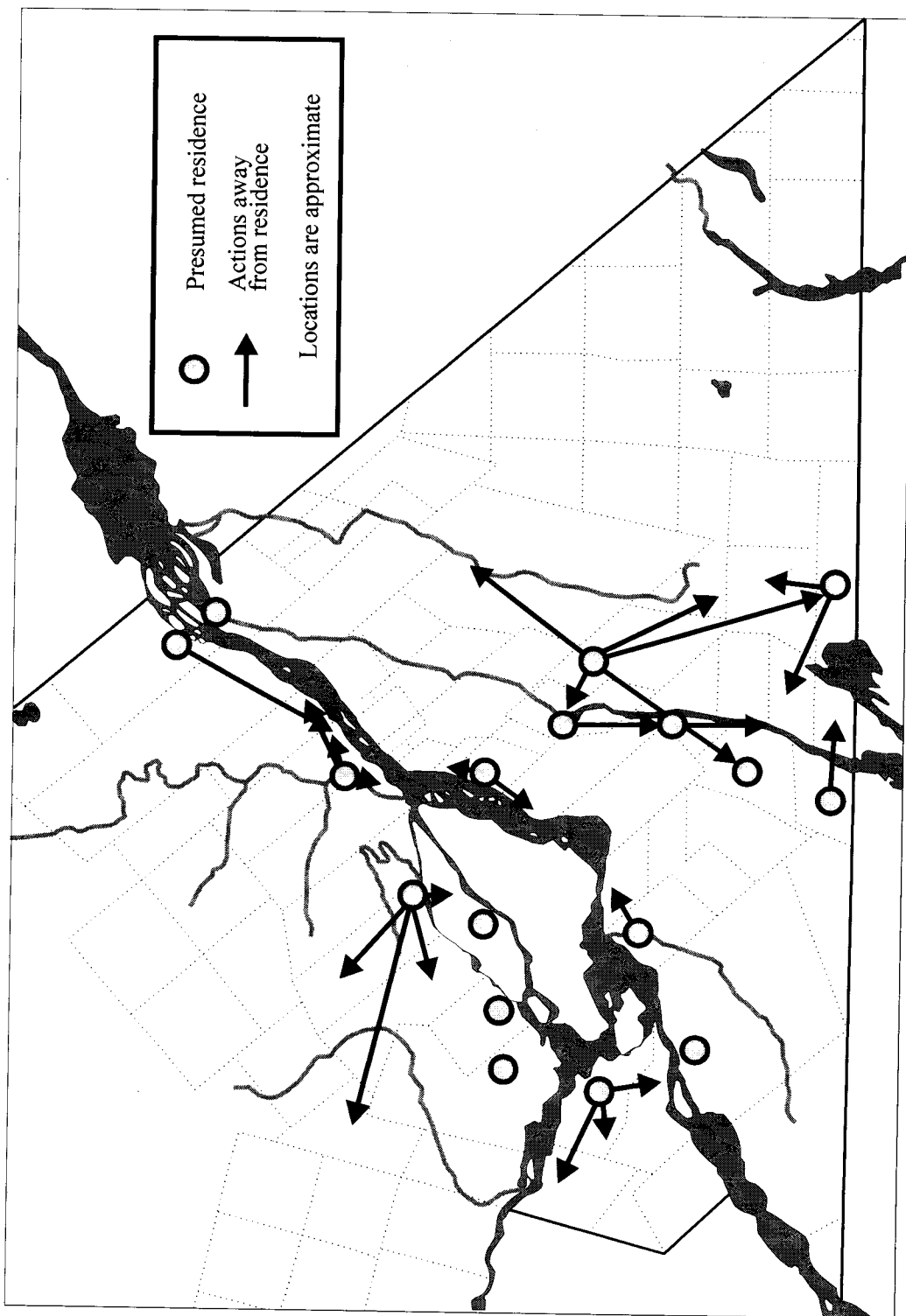
in Montreal; and ten of the individuals who acted as police in the countryside were similarly identified. Some of these may also have been professional bailiffs simply referred to by a different name; on the other hand, some of those identified neither as bailiffs nor as special constables were very likely these sorts of private individuals, as is suggested by the case of Boright, the Saint-Armand blacksmith, as well as that of James Isaac Newton, a Napierville trader who made two arrests in the early 1820s.

Whether they were bailiffs or special constables, however, some of these individuals were clearly employed on a semi-regular basis by local justices. Of the 110 individuals I have identified acting as police in the countryside, 29 acted more than once (of whom 22 were identified as huissiers or bailiffs), and seven acted five times or more, often across a number of years: for example, Gilles Guerbois, a Vaudreuil huissier active between 1799 and 1825, and Francis Hogel, a Saint-Armand bailiff active between 1820 and 1830. As Figure 2.3 shows, the 25 individuals who acted twice or more in the 1810s and 1820s were distributed across the district of Montreal, although with conspicuous gaps along the lower Richelieu and Yamaska and in the further townships; the arrows give some sense of the range of these individuals. That some rural justices had semi-regular police is also suggested by other passing references. Thus, in early 1795 Andrew Kollmyer was identified in an arrest warrant by James Sawers, a William Henry justice, as the "constable in William Henry",⁶¹¹ and three months later Moses Holt, another William Henry justice, noted with regards to a suspected French spy that he had been "detained in the care of the constable";⁶¹² although by the end of the year Kollmyer had left to become a substitute constable in Montreal, and as the quotation at the head of this chapter demonstrates, the justices were complaining by 1796 that there was no constable or peace officer in the town. And the existence of rural justice officers acting for the justices was tacitly

⁶¹¹QSD, Rivarre v. Prevost, 2/2/1795.

⁶¹²NA RG4 B45: 419-420.

FIGURE 2.3: POLICE ACTIONS BY RURAL POLICE ACTIVE MORE THAN ONCE, 1810-1830



acknowledged by an act of the legislature in 1833, which, declaring that "whereas the want of a tariff for the persons performing the duty of clerks and for the bailiffs and constables employed by the justices of the peace in the country parishes gives rise to many abuses and acts of extortion", set out a tariff of fees for these officers to follow.⁶¹³

It is also important to note that in many cases the individuals appointed to serve warrants in the countryside for more serious offences, whether urban constables or rural bailiffs, charged fees for recors (assistants). It is impossible to say very much about these assistants, since in most case the principal officer simply noted them as "recors" rather than giving their name. In some cases, they were local inhabitants: thus, for example, in 1820 John Bates, a Chatham carpenter, accused George Bradford, a Chatham farmer, of hitting him on the head with a club while Bates was assisting Adam Wiley, a Montreal police constable, in arresting Bradford.⁶¹⁴ In other cases, they were professional justice officers: thus, Alexander Darville, a Chambly bailiff who performed several arrests in the 1820s, also acted on one occasion as assistant to Ulrich Clure, another Chambly bailiff; and as noted above, the recors of the Montreal high constables were most often police constables. However, as with Tooner, Moone's travelling assistant, these recors suggest an even greater number of rural inhabitants involved in policing.

2. Other police

In the countryside, rural bailiffs, urban constables, and special constables were the main agents of that part of the criminal justice system that involved arresting offenders, serving summonses, and so on. But they were not the only police in the rural parishes of Lower Canada before the 1830s. In particular, the larger towns and villages of the countryside were not entirely devoid of the sort of

⁶¹³ William IV c.10 (1833).

⁶¹⁴ QSD 9/6/1820.

local administrative police found in Montreal, although their distribution was by no means universal, and their existence at best transitory.

In the first place, there were the various officials named to oversee the police regulations that were sporadically extended to rural towns and villages. Thus, the 1802 act that allowed the householders of towns and villages over a certain size to request police regulations from the justices in Quarter Sessions also made it the responsibility of the local road surveyors and road overseers to obey the orders of the local justices regarding these regulations, and to prosecute all offences against them.⁶¹⁵ This apparently not having produced the results desired by the law-makers, a further act in 1807 allowed the Quarter Sessions to appoint police inspectors and constables for towns and villages on the petition of the majority of householders.⁶¹⁶ Up to 1810, inspectors and constables were appointed in this way in five villages (Berthier, L'Assomption, Saint-Denis, Terrebonne, and Caldwell Manor), with a total of sixteen individuals named to these posts, all but two francophones.⁶¹⁷

The 1807 act was not renewed when it expired in 1811, and for the next seven years the towns and villages had no local regulations beyond the general provisions enacted in various ordinances, and no administrative police. In 1818, however, a new act laid out a general set of regulations for such towns and villages whose householders desired them, and gave them the power to elect trustees and appoint village police inspectors;⁶¹⁸ however, since the inspectors were to be drawn from the trustees, who were generally local elites, they were more like Montreal's inspector of police than the village inspectors and constables whose role they echoed. Thus, in William Henry, the trustees elected Henry

⁶¹⁵42 George III c.8 (1802).

⁶¹⁶47 George III c.14 (1807).

⁶¹⁷See QSR 15/7/1807 (Berthier), 18/7/1807 (L'Assomption), 22/4/1808 (Saint-Denis), 21/10/1809 and 30/10/1810 (Terrebonne) and 22/10/1808 (Caldwell's Manor). Many of the original petitions are preserved in QSD.

⁶¹⁸58 George III c.16 (1818).

Crebassa, a local notary and justice of the peace, as the town's police inspector in 1818.⁶¹⁹

In addition to village constables, there were also the various officials named to keep good order in churches. In 1808, an act gave current and past church wardens both the power and the responsibility to keep good order in and around churches on Sundays, with the church wardens and militia officers to arrest and prosecute all offenders.⁶²⁰ While the act was continued three times up to 1821,⁶²¹ I have found no evidence of its being put into effect before 1819. This was not surprising: there was no incentive for church-wardens and militia officers to perform their duties, since in cases where they were the prosecutors, the entirety of the fine levied belonged to the king.

But whatever the actual situation, in 1821 a new act, stating that the existing system was unsatisfactory, allowed local justices of the peace, at the request of the priest or church-wardens, to appoint one or two constables to assist the church-wardens in their duties, although it still required the militia officers to assist as before.⁶²² In at least one parish, Sainte-Marie-de-Monnoir, this was less a legislative innovation than the regularization of an already existing situation: in 1819, François Séguin, "connétable appointé pour maintenir le bon ordre dans l'Eglise de la paroisse de Ste-Marie et dans les environs d'icelle," prosecuted Louis Choinière dit Sabourin, a Beloeil habitant, for "étant dans un état d'ivresse causé dans la dite église de Ste-Marie beaucoup de trouble et ce pendant l'office divin du matin au grand schandal des personnes qui y étaient alors, et pour avoir aussi à la sortie des personnes de la dite église causé à la porte de la susdite église beaucoup de trouble en proférant des blasphèmes et des injures au grand schandal

⁶¹⁹NA MG8 F89 volume 9: 5108-15.

⁶²⁰48 George III c. 26 (1808).

⁶²¹By 52 George III c.6 (1812), 57 George III c.3 (1817) (a re-enactment of basically the same provisions), and 59 George III c.18 (1819).

⁶²²1 George IV c.1 (1821); this was continued by 4 George IV c.35 (1824) and (with minor amendments) by 7 George IV c.3 (1827).

des personnes qui en sortaient alors."⁶²³ In the next decade, church constables were appointed in at least three places, Sainte-Geneviève, William Henry, and Sainte-Marie-de-Monnoir: thus, Pierre-Louis Deligalle was named the church constable of Sorel in September 1821, and in April and May of the following year prosecuted François-Paul Plante, Jacques St. Martin, and Louis Lelendre for being drunk on Sunday, and Jean-Baptiste Lemery for indecent behaviour in church.⁶²⁴ And the acts on keeping good order in churches were put into force in at least four other parishes, although whether they too had church constables is unknown.⁶²⁵

Since most of the offences that village and church constables were supposed to regulate were dealt with summarily before rural justices, for whom almost no records have survived, it is very difficult to get any idea of how this system worked. There is, however, one suggestive scrap of information: at least three of the constables (two church constables and a village constable) were the sort of semi-professional rural justice officers described above. Thus, Charles Charland, appointed a village constable of Berthier in 1809, was actually a King's Bench bailiff who also made arrests for the local justices between 1810 and 1824; and both Séguin and Deligalle, the church constables of Sainte-Marie and William Henry, were similarly active, with Deligalle at least also being a King's Bench bailiff. Given that it was justices of the peace who appointed both village and church constables, it is not surprising that they would sometimes choose

⁶²³WSD, Séguin v. Choinière dit Sabourin, 2/7/1819.

⁶²⁴NA MG8 F89 volume 6: 3683-84 and volume 8: 4221-22. The appointment of two church constables in Sainte-Geneviève is recorded in QSR 25/4/1821. The church constable of Sainte-Marie-de-Monnoir, Alexis Rivard, is mentioned in the return of fines submitted by Rémi-Séraphim Bourdages of Monnoir in 1831, where Rivard prosecuted Joseph Lambert, of Saint-Jean-Baptiste, for "avoir refusé étant sur le perron de l'Eglise de Ste-Marie, pendant le service divin, d'entrer dans la dite Eglise ou de se retirer du terrain d'icelle" (QSD 7/1831).

⁶²⁵Thus, Louis Sarrault was fined 20sh in the Weekly Sessions in 1821 for "having disturbed the peace at the Parish church door of St. Clement"; in 1824, six habitants of Saint-Vincent-de-Paul were fined by Jean-Baptiste Constantineau, the local justice of the peace, for "causing scandale in the church"; Cezaire Archambault and Louis Chaput were both committed to the Montreal gaol in 1825 for "indecent behaviour in the church of St-Roch"; and Alexandre Loisel was fined by William Macrae of SaintJohn in 1830 for an unspecified offence under the act. For the sources of these, see pages 275-276.

individuals with whom they had regular dealings; although whether the situation was similar to that of the market constables in Montreal is unknowable, since I have found no evidence on the salaries or other perquisites attached to these posts.

There were, as well, other administrative police active in the countryside before the 1830s, most notably customs officials and the various officials concerned with the highways and public roads, such as the *sous-voyers* under the various roads acts. As explained above, the sources that I consulted do not allow me to present any detailed picture even of the structure of these police, let alone their operation; and apart from Léon Robichaud's study of the operation of the road acts in the eighteenth century, there have been no studies of government administration in the Lower-Canadian countryside at this level.⁶²⁶ However, in examining the broader question of the penetration of the state into the countryside, it is important not to forget their existence, for rural customs officers at least, such as searchers and land waiters, were not only very definitely agents of the state, but also quite active; although whether the system suffered from the same deficiencies as that in eighteenth-century England awaits a detailed local study.⁶²⁷

Conclusion

There are several points to be retained from this rather involved discussion of the structures of policing in the district of Montreal between 1764 and 1830. In the first place, even in the limited sense of "police" adopted by most historians, the *de facto* police were very different from what was set out in colonial legislation, what police reformers set up as their target, and what later historians, following both of these, have assumed. In Montreal itself, policing throughout the

⁶²⁶Léon Robichaud, "Le pouvoir, les paysans et la voirie au Bas-Canada à la fin du XVIIIe siècle" (M.A., McGill, 1989). For the administration of the roads acts, the voluminous records of the *grand-voyers* in the ANQM are indispensable; material relative to customs is scattered through NA RG16 and RG1 E15A.

⁶²⁷The activity of customs officials is clear from the records of seizures made at the various ports of entry, scattered through NA RG1 E15A. On the problems of enforcing customs and excise regulations in England, see for example Winslow, "Sussex Smugglers".

period was largely the preserve not of unwilling amateurs, but of paid justice professionals. Many were not full-time police, combining policing with other state or private employments, such as the urban bailiffs in the 1760s and 1770s; but this did not make them any less police. Further, from about 1800 on the city had an increasing number of what cannot be described as anything but full-time, professional police, culminating with the watch and the police constables in the late 1820s. The rural areas of the district were less well-endowed with police, but were still the venues of actions by professional or semi-professional police, both locally based, as in the civil bailiffs, and penetrating the countryside from the city, as in the urban bailiffs, urban constables, and, especially, the police constables in the late 1810s and early 1820s. On the other hand, the militia officers on whom the main burden of policing in the countryside was theoretically placed had in fact very little to do with the criminal justice system, except in certain very limited circumstances.

As well, if we adopt a more flexible definition of police, we can see that in both the city and the countryside, although largely limited in the latter to the larger towns and villages, the structures of policing were even more varied than concentrating on constables, bailiffs, and watchmen would suggest. Thus, the various administrative officials in the cities, the church and village constables in the rural parishes, the ad hoc police created by process-servers throughout the district, all point to the existence of a larger network of individuals through whom the population in general might come into contact with the criminal justice system.

In all, the existence of such variegated structures of policing in Quebec and Lower Canada in the late eighteenth and early nineteenth centuries suggests that the state in general was not nearly so devoid of the means of touching the population as some have suggested, certainly in the cities, and perhaps also in the countryside. I would not claim, on the basis of such fragmentary evidence, that the Lower Canadian state was well-endowed with police, either compared to the police structures of other contemporary states such as England, or to the system put in place by the Special Council in the late 1830s and described by Allan

Greer. Nor would I disagree with the assertions of police reformers in the early nineteenth century, or historians following their lead, that the system as it stood was neither rationally constructed, nor in any way suited to centralized control and bureaucratic organization, nor anything but venal, nor free from corruption and malversation. However, this does not change the fact that a system of policing existed, rather than the virtual vacuum posited by some. From the perspective of "Elaine Fortier, Dabby Lorimier, Angélique Clement, Lizette Brazeau, Scolastique Sans Chagrin, one Bouchard, two of the name of Brunelle, and two of the name of Charpentier", brothel-keepers and prostitutes arrested in Montreal in December 1817, it did not matter that Jean Bauert and his three assistants were acting not within the confines of a rigid police structure, but for a justice of the peace to whom they were informally attached, and not disinterestedly, but for the substantial £5 7sh 6d in fees; nor that Bauert himself, six years later, was arrested and imprisoned for breaking into and robbing the Police Office itself.⁶²⁸ They were arrested and sent to prison nonetheless. And it is to the people who came in contact with this system of justices, courts, and police towards whom we must now turn.

⁶²⁸*Canadian Courant* 17/11/1824.

PART 3. THE PEOPLE AND THE SYSTEM

PART 3. THE PEOPLE AND THE SYSTEM

What was the relationship between civil society and the criminal justice system of the state in Quebec and Lower Canada; what was the impact of the latter on the former, and how did the former integrate the latter into its daily life? This is the fundamental question of any social history of the criminal justice system; and it is the one that I seek to address in part in this section. But before the theoretical underpinnings and the quantitative analyses, three stories.

The first story begins in November 1790, when Magdeleine Surprenant, wife of Joseph Boucher, of the parish of Laprairie, heard sticks and stones being thrown at the shutters of her house. According to the deposition she made three days later before Paul Lacroix, a Laprairie justice of the peace,

Etant sortie pour voir qui faisoit ce vacarme, elle a vuë Louis Dubé fils qui, mu de la plus violente colere, l'a accablée d'injures, la menaçant de la maltraiter de cette façon toutefois que son mari serait absent, et que s'il y avait des chaises à sa maison, il les casserait, que la dite Magdelaine Surprenant, craignante les villences du dit Louis Dubé fils, retournant en sa maison, elle se sentit frapper d'un baton dans les elleins, qui lui a jetté le dit Louis Dubé fils, ce qui la reduit à garder le lit, en danger sinon pour elle, au moins pour son fruit, étant enceinte de trois mois environ, c'est pourquoi elle requiert que justice lui soit rendu suivant les loix.

Lacroix issued a warrant against Dubé, who was arrested two days later by Louis Geophroy dit Belhumeur, the local bailiff, and entered into a recognizance to appear at the next Quarter Sessions in Montreal, in January 1791. At the court, both Surprenant and Dubé appeared; the former by then would have been five months pregnant. Though the grand jury felt there was enough evidence to indict Dubé, the trial jury found him not guilty.⁶²⁹

The second story goes back twelve years, to 1778, at the height of the American War of Independence and only two years after the Americans had withdrawn from Montreal. It is contained in a document in the records of the governor's secretary: a statement of summary proceedings against refractory militiamen held by the Montreal justices of the peace in March 1778. The

⁶²⁹QSD 21/11/1790; QSR 1/1791.

document lists 31 militians, all Canadien, and all from the rural parishes. 27 of the militians are marked as found guilty and condemned to pay fines of £5; of these, at least nine paid, and a further two were exempted from paying, including François Lalonde of Sainte-Geneviève, whose case was recommended to the governor "in consideration of his father."⁶³⁰

The third story goes forwards four decades, to July 13, 1819, a Tuesday. Antoine Charbonneau, one of the watchmen of the city of Montreal, was making his rounds. Around midnight, according to the deposition he made the next day before Alexander Henry at the Police Office, he "aurait trouvé sous la halle du nouveau marché de cette ville, une femme de couleur, dont il ne connaît pas le nom, qui s'est nommé Ann Taylor (au bureau de Police), couchée sur un banc après forniquer avec un soldat, que le déposant l'aurait arrêtée, fait prisonniere, et conduite au Guet [the watch-house] comme étant une prostituée et une femme de mauvaise vie." Henry ordered Taylor committed to gaol until the last day of the Quarter Sessions, which was then sitting. But this summary confinement without trial was only the first taste of Taylor's treatment at the hands of the justices: on the last day of the sessions, July 19, the justices on the bench, Henry, Thomas McCord and François Rolland, committed her and several other women to the city's House of Correction for three months hard labour for being "incorrigible vagabonds"; and on the expiry of the three months she was once again brought up before the justices and recommitted for another three months, this time as a prostitute.⁶³¹

Each of these stories exemplifies one of the three main conceptual models that social historians have used to describe the place of the criminal justice system of the state in civil society under the ancien-régime. Magdelaine Surprenant's case emphasizes criminal justice as an instrument for community dispute-settlement, and the importance of consensus; the fate of the militians highlights

⁶³⁰NA RG4 A1: 7574.

⁶³¹QSD 14/7/1819; QSR 19/7/1819, 30/10/1819.

conflict and state oppression; and Taylor's experience points out the heavy weight of the system on people at the margins of society. The elaboration of these models has primarily been the work of scholars of European justice systems, especially those of England and France; North American legal historians, long pre-occupied with such questions as the reception and transformation of European law, and the influence of the "frontier" on legal practice, have only recently begun to explore their applicability to the legal systems of the trans-Atlantic European colonies.⁶³²

The instrumentalist/consensual view of the ancien-régime criminal justice system sees it primarily as a mechanism for settling disputes, operated by the state but well accepted by, integrated into, and used by the community at large. This was the traditional view of the English criminal justice system, and was implicit in the works of such historians as William Holdsworth.⁶³³ In a more refined form, it has been revived by scholars such as John Langbein and P.J.R. King, who argue that the high level of popular participation in the decision-making aspects of the criminal law in eighteenth-century England suggest that its essential characteristic was social consensus; indeed, Langbein even went so far as to suggest that the English criminal justice system was nothing more than a service organization like any other.⁶³⁴ And though placing less emphasis on consensus, writers such as John Beattie and Robert Shoemaker, emphasizing the flexibility of the criminal

⁶³²For general reviews of the literature on the social history of the criminal justice system, see Louis A. Knafla, "Recent Historiography in the History of Crime and Criminal Justice in England and Canada" and "Aspects of the Criminal Law, Crime, Criminal Process and Punishment in Europe and Canada, 1500-1935", both in Knafla ed., *Crime and Criminal Justice in Europe and Canada: 1500-1935*, vii-xxix and 1-15; David H. Flaherty, "An Introduction to Early American Legal History", in Flaherty ed., *Essays in the History of Early American Law* (Chapel Hill: University of North Carolina Press, 1969): 3-38, and "Writing Canadian Legal History", in Flaherty ed., *Essays in the History of Canadian Law* vol. I (Toronto: UTP, 1981): 3-42; and Vincent Masciotra, "Quebec Legal Historiography, 1760-1900", *McGill Law Journal* 32(3)(1987): 712-732. An excellent recent bibliography is provided by Rousseaux, "Criminality and Criminal Justice History in Europe".

⁶³³*A History of English Law.*

⁶³⁴John H. Langbein, "Albion's Fatal Flaws", *Past and Present* 98(1983): 96-120; P.J.R. King, "Decision-Makers and Decision-making in the English Criminal Law, 1750-1800", *Historical Journal* 27(1984): 25-58.

justice system and the range of options open to prosecutors, suggest that the system "worked" in a fashion for a broad segment of society: it could be and most certainly was used by elite groups to further their own ends, and it did discriminate against certain groups in society, most notably the poor and women, but as Beattie put it, "if the criminal law had served only the interests of the propertied classes it would hardly have attracted the widespread approval that was clearly bestowed upon it ... to be seen to be serving the interests of the broader community in a fair manner it had indeed to be doing so."⁶³⁵

Langbein and the other recent proponents of the instrumentalist/consensual view of the criminal justice system were writing in part in response to another model of the criminal law elaborated in England in the 1960s and 1970s by marxist scholars such as E.P. Thompson and Douglas Hay, who saw the criminal law as a locus of class conflict and dominance. In this conflictual view, the English criminal justice system in the eighteenth and early nineteenth centuries was the most prevalent manifestation of the state, and the main means by which elites exercised their control over the popular classes. Thompson and Hay, however, were not proposing that the English criminal justice system was a blunt instrument that exercised social control through brute force, since very obviously the state and the propertied elites had great difficulty controlling the mass of the English people. Rather, they saw the power of the English criminal justice system stemming more from ideological than physical persuasion: the system mixed majesty, terror, and mercy to produce a kind of warped and artificial consensus about and acceptance of the criminal law by a large part of English society, though it was fundamentally still an instrument of class dominance.⁶³⁶

⁶³⁵Beattie, *Crime and the Courts in England*: 622; Shoemaker, *Prosecution and Punishment*. This approach is also adopted by Landau in *The Justices of the Peace*, especially 173-265, and by Oberwittler in "Crime and Authority in Eighteenth Century England": 3-34.

⁶³⁶For an overview of Thompson's work, see Terry L. Chapman, "Crime in Eighteenth Century England: E.P. Thompson and the Conflict Theory of Crime", *Criminal Justice History* 1(1980): 139-155. See also Hay et al. *Albion's Fatal Tree*, especially Hay, "Property, Authority, and the Criminal Law".

The third important model of criminal justice under the ancien-régime was based more on the continental European experience, and elaborated by European scholars such as Nicole Castan and Alfred Soman. Drawing inspiration from Michel Foucault's more general studies of power and the ancien-régime state, they argued that criminal justice under the ancien régime was neither a privileged arena for community dispute settlement, nor a mechanism of social control, but rather an institution of last resort when community-based arbitration had failed. As such, its impact on society at large was minimal: it operated on the margins of the community, aimed at members who committed especially horrific and unusual crimes, or those individuals who were not integrated into community structures, such as slaves and vagabonds.⁶³⁷

Despite the relative paucity of historiography concerning criminal justice in Quebec and Lower Canada between the Conquest and the Rebellions, each of these views of the criminal law's place in society has found its proponents, although following the general tradition of Canadian historiography, the questions have often been recast to emphasize ethnicity. Thus, Hilda Neatby's work on the eighteenth-century judicial system emphasized consensus, asserting that the largely Canadien populace found the criminal justice system implanted by the British administration both fair and useful.⁶³⁸ More recently, the conflictual view of criminal law has come to the fore: both André Morel and Douglas Hay have underscored the hostility of Canadiens to the introduction of English criminal law;⁶³⁹ Louis Knafla and Terry Chapman have emphasized the similarity of criminal justice in eighteenth-century Quebec to Thompson and Hay's view of the

⁶³⁷For Castan's work, see especially *Justice et répression en Languedoc à l'époque des lumières*, and (with Yves Castan) "Une économie de justice à l'âge moderne: composition et dissension", *Histoire économique et sociale* 3(1982): 361-367. For Soman, see "Deviance and Criminal Justice in Western Europe, 1300-1800: An Essay in Structure", *Criminal Justice History* 1(1980): 1-28.

⁶³⁸*The Administration of Justice under the Quebec Act* : 298-319.

⁶³⁹Morel, "La réception du droit criminel anglais au Québec: 449-541; Hay, "The Meanings of the Criminal Law in Quebec": 77-110.

system in England at the same time;⁶⁴⁰ David-Thierry Ruddell, and Gérard Bernier and Daniel Salée, have suggested that the criminal law was primarily a tool of class oppression;⁶⁴¹ and F. Murray Greenwood has shown how the law was used for political repression in the decades of the French Revolution and the Napoleonic wars.⁶⁴² And the view of a marginalized criminal justice system has recently found its expression in Jean-Marie Fecteau's work on the administration of criminal justice in Quebec before the Act of Union, where he argues that "la justice du roi ne fait qu'effleurer le tissu social"; this in turn has been echoed by Allan Greer's postulation of the irrelevance of the criminal justice system of the state in rural Lower Canadian society.⁶⁴³

It is within the context of this debate over the nature of criminal justice under the ancien régime that I situate this third part of my study. Jean-Marie Fecteau has demonstrated that at the level of the King's Bench, which dealt with crimes considered more "serious" such as murders, rapes, and most thefts, the criminal justice system in the district of Quebec showed very clear signs of "marginality". Most notably, defendants were largely from the city and non-Canadien, and disproportionately came from "marginal" social groups such as soldiers and servants.⁶⁴⁴ Though I have made no systematic study of the King's Bench records in the district of Montreal, there are indications that Fecteau's conclusions applied there as well. Thus, just as Fecteau found for the district of Quebec, less than half of prisoners committed to the Montreal gaol between 1810

⁶⁴⁰"Criminal Justice in Canada": 245-274.

⁶⁴¹Ruddell, *Québec City 1765-1832*: 176-189; Bernier and Salée, "Social Relations and Exercise of State Power in Lower Canada: 101-143.

⁶⁴²*Legacies of Fear*.

⁶⁴³Fecteau, *Un nouvel ordre des choses*: 125; Greer, *The Patriots and the People*: 91-100. Fecteau has recently presented a summary of this thesis in "Between the Old Order and Modern Times: Poverty, Criminality, and Power in Quebec, 1791-1840", in Jim Phillips, Tina Loo, and Susan Lewthwaite eds., *Essays in the History of Canadian Law. Volume 5: Crime and Criminal Justice* (Toronto: UTP, 1994).

⁶⁴⁴*Un nouvel ordre des choses*: 125-129, 233-239.

and 1825 for felonies were francophones, in a district where they comprised 80% to 90% of the population; and similarly, francophones represented about 41%, 49%, 65%, and 55% of counts on indictment in the Montreal King's Bench between 1826 and 1829 respectively, with the high figure in 1828 explained almost entirely by a large number of politically-motivated prosecutions directed against supporters of the Patriotes.⁶⁴⁵

But as historians are increasingly pointing out, contacts between society and the criminal justice system of the state reached far beyond those involving the higher criminal courts.⁶⁴⁶ This section focusses on those other contacts, and in particular those that related to the "less serious" offences that never went beyond the level of the justices themselves: assaults and batteries, threats, smaller-scale thefts, prostitution and vagrancy, and the whole range of statutory offences arising from English statutes, colonial ordinances and acts, and the rules and regulations made by the justices themselves.

My study has a number of limitations. First, it does not cover all contacts between society, the justices, and the police. Almost all criminal matters originally came before the justices, and most involved police at one stage or another, but since I did not systematically exploit the records of the higher criminal courts, I have not attempted to discuss cases that were destined for trial in the higher criminal courts, such as those involving murder and larger thefts. For similar reasons, I have not dealt to any great extent with the whole question of the justices, the police, and direct, mass popular resistance to the authority of the state: though the justices in Quarter Sessions could deal with cases of riot, in general they only dealt with those directed against specific individuals rather than

⁶⁴⁵The figures for the gaol are from the gaol calendars in NA RG4 B21, though as explained in note 658 these only represent about half of all prisoners committed. The figures for the King's Bench are drawn from the lists of indictments drawn up by the clerk of the crown, in *JHALC* 38: Appendix Ee, appendices B through D, and from the registers of the King's Bench and Oyer and Terminer in 1829; the figures for 1829 were kindly provided to me by Kathryn Harvey.

⁶⁴⁶Among others, this point is made by Shoemaker, *Prosecution and Punishment*, and by Sharpe, "Enforcing the Law in the Seventeenth-Century English Village": 97-119, and "Quantification and the History of Crime in Early Modern England: Problems and Results", *Historical Social Research* 15(4)(1990): 20-22.

the state in general, and almost all court cases involving *charivaris* and election riots were dealt with by the higher criminal courts, though of course both justices and police were involved in the initial stages of all these cases.⁶⁴⁷ Nor does my study address the experiences of all people who came in contact with the justice system even at the level of the justices: I have concentrated only on the two main participants in criminal cases, the prosecutors and the defendants,⁶⁴⁸ largely leaving aside others such as witnesses, jury-members, and spectators. Finally, this is not an exhaustive study of the operation of the justice system at the level of the justices, which must await full access to the judicial archives and detailed sectoral studies, but rather concentrates on a few themes that may serve as a preliminary illustration of the impact, both potential and real, of this criminal justice system.

I begin with a discussion of methods and sources. I then give an overview of the ways that people could come before the justices, the reasons for which they made these contacts, the scope of these contacts, and the results. Next I consider the biases and barriers that affected these contacts, concentrating especially on the geography of justice, and the effects of ethnicity, class, and gender. And I conclude with a brief consideration of the place of the criminal justice system within Quebec and Lower Canadian society.

⁶⁴⁷In all of the sessions papers that I examined, I found only three cases that explicitly involved *charivaris*, all from 1830.

⁶⁴⁸For the sake of clarity, throughout this section I use the term prosecutors for accusers, plaintiffs and prosecutors, and defendants for accused and defendants.

I. Sources and methods

Criminal justice historians are heavy users of quantitative analysis, since most criminal court records are excellent serial sources: they often change only little over long periods of time; they lend themselves readily to categorization, codification, and tabulation; and they often provide much of the information dear to the social historian, such as the name, sex, occupation, place of residence, and so on of the parties involved. Indeed, one recent historian of the justices of the peace in eighteenth-century England has even identified what he calls the "quantitative method" as the next great step in criminal justice history, replacing what he sees as the failure of the "history from below" approach (referring to the Thompson/Hay school).⁶⁴⁹

The problem with quantitative analyses is that they give an aura of certainty to data that is, first, derived from sources that are themselves almost always incomplete or uncertain, and then, second, further distorted by the decisions the researcher makes in classifying the information from these sources. John Beattie, for instance, has pointed out that indictments, the primary source used by historians of criminal justice in England, are fraught with problems, although he goes on to suggest that they are nonetheless useful if approached with caution.⁶⁵⁰ Further, historians very rarely have access to the full range of documents produced in the multitude of jurisdictions that made up the criminal justice systems of ancien régime states, and there are pitfalls in placing too much faith in the judicial records of one level of the justice system. Thus, for example, George Rudé, in his study on criminals and victims in early nineteenth-century England, suggests that the society was not very violent, because the vast majority of prosecutions in the courts he looked at, the Quarter Sessions and higher

⁶⁴⁹Oberwittler, "Crime and Authority in Eighteenth Century England": 3-8.

⁶⁵⁰"Judicial Records and the Measurement of Crime in Eighteenth-Century England", in Knafla ed., *Crime and Criminal Justice in Europe and Canada*: 127-129. See also Sharpe, "Quantification and the History of Crime in Early Modern England": 19-20.

criminal courts, were for crimes against property;⁶⁵¹ however, this is highly debatable since other works have shown that most justices actively tried to dissuade the parties in assault cases from going to trial before a formal court, and further that most crimes of interpersonal violence very likely never came before the criminal justice system at all.⁶⁵² Similarly, as Ruth Paley has pointed out, Robert Shoemaker's work on the settlement of disputes by recognizance in Middlesex, based on the recognizances he found in the records of the Quarter Sessions, suffers from his only partly justified assumption that justices sent in to the court most or all of the recognizances taken before them.⁶⁵³ And for Canada, Jim Phillips' conclusion that in Halifax "women played a relatively minor role in the city's experience of crime and punishment, as measured by the rate at which they were prosecuted in the superior criminal courts" though undoubtedly true in itself, needs to be qualified by looking at the presence of women in the lower echelons of the justice system, where they more frequently appeared, and also their place as prosecutors.⁶⁵⁴ This is not to say that aggregate analyses of cases are not very important, and indeed much of my work adopts exactly this sort of approach. But any historian who attempts such analyses must be very sure of what exactly the sources represent, and more importantly, what they leave out.

For the proceedings of the justices outside of the formal courts, both in their ministerial function and in their summary jurisdiction, my main serial source was what in England are often referred to as the "sessions papers", essentially the case-files preserved by the clerk of the peace.⁶⁵⁵ As far as criminal matters are

⁶⁵¹*Criminal and Victim*: 10.

⁶⁵²Beattie, *Crime and the Courts in England*: 75-76, 268-269; Shoemaker, *Prosecution and Punishment*: 81-94.

⁶⁵³Paley's comments are in her review of Shoemaker's work, in *Criminal Justice History* 14(1993): 183-185; Shoemaker addresses this in part in his work, *Prosecution and Punishment*: 104-105.

⁶⁵⁴"Women, Crime, and Criminal Justice in Early Halifax, 1750-1800" in Phillips et al. *Essays in the History of Canadian Law. Volume V: Crime and Criminal Justice*: 177.

⁶⁵⁵QSD.

concerned, these contained two main sorts of documents. First, there were those produced by justices throughout the district concerning complaints that were destined for trial in the Quarter Sessions, especially depositions and recognizances for the appearance of the parties. And second, there were at least part of the documents produced by Montreal justices in cases brought before them for summary resolution, especially those where the prosecutor asked for the defendant to be bound to keep the peace but also including some depositions from cases involving prostitution, vagrancy, and breach of service. Because of the state of preservation and accessibility of the sources, I used all documents that I found up to and including 1800, and systematically sampled all documents that I found for every fifth year after 1800. This gave me information on some 1829 separate complaints: 1376 destined for trial in the Quarter Sessions (which I refer to consistently as "Quarter Sessions complaints"); and 453 for summary resolution, all but 8 of which involved Montreal justices (which I refer to consistently as "summary complaints"). Together, these complaints involved 1941 prosecutors (1447 in Quarter Sessions complaints) and 2311 defendants (1734 in Quarter Sessions complaints).⁶⁵⁶

The sessions papers are an especially rich source, since most of the case-files included the original deposition describing the complaint, often in great detail, the social status of the parties, and much other precious information. However, they suffer from a number of lacunae. In the first place, when I did the research for this study I found no documents from before 1785, and less than a hundred from before the mid-1790s, so that I was able to get little information on

⁶⁵⁶Distinguishing between the two sorts of documents was not always easy, since as we shall see only a portion of cases destined for the Quarter Sessions actually appeared in the registers of the court. Of the others, some were clearly either Quarter Sessions or summary cases from the nature of the offence (as with master/servant cases, always tried summarily, or brothel cases, always tried in sessions), or from accompanying documents, where indictments or recognizances to appear at the next sessions indicated Quarter Sessions cases, and recognizances to keep the peace indicated summary cases. This left a small group mainly composed of cases involving the various shades of assault. Among these, I assumed that any cases in which the prosecutor simply asked for security to keep the peace were summary cases; all other assault and battery cases were destined in theory for the Quarter Sessions; and all lesser assault and threats for summary resolution, since this was the general practice followed throughout the period.

the operation of the justice system outside of the formal courts for anything but the last decade of the eighteenth century. As well, I was not able to find all documents for all of my sample years, largely because of the disorganized state of the judicial archives.⁶⁵⁷ Thus, for some years it is impossible to know the total number of complaints brought before the justices, though for Quarter Sessions complaints it is possible to make a rough estimate by extrapolating backwards from the number of cases in the registers; and some analyses, such as the seasonality of complaints, will have to wait for a more thorough investigation of the judicial archives.

As well, the sessions papers contain no documents from summary complaints directed to justices outside of Montreal, apart from a very few that were appealed to the Quarter Sessions or for some special reason sent in to Montreal. And even for Montreal justices, records of summary complaints are scant before about 1810, and after that period provide adequate coverage only for cases where justices required the defendant to enter into a recognizance to keep the peace or be of good behaviour; other summary complaints brought to the justices, especially those that led to imprisonment and fining, are largely under-represented, perhaps because the records were kept in the Police Office. Nor did the sessions papers contain any of the preliminary documents for cases that were destined to be tried in the Weekly Sessions, apart from a few scattered complaints and summonses included either by error or because they were appealed to the

⁶⁵⁷Originally, the documents preserved by the clerk of the peace were organized in bundles covering business done in the three months prior to each Quarter Sessions. However, many of these bundles have since been broken apart and the documents scattered, and some bundles appear to have been opened and then repacked with documents from more than just that sessions, which made identifying which sessions a particular document belonged to very difficult. As a result, I chose to sample by year rather than by sessions. To get all documents for a particular year, I had to sample the bundles for all sessions in that year plus the January sessions of the following year (which contained documents produced since the preceding October sessions). When I did the research for this study, I could not find the bundles for some sessions; and this was complicated further by the fact that after 1810, there were sometimes two or more bundles for one sessions, meaning that even if I found a bundle for a sessions it might be the only one for that sessions. In all, I was able to find bundles for 28 of the 35 sessions which I ideally would have consulted; missing bundles were those for April 1800, October 1805, January and April 1810 and January 1811 (meaning that I only found about half of all documents for 1810), January 1816, and January 1821. In processing the documents at the ANQM I have found many of the missing bundles, as well as substantially more documents from before 1795.

Quarter Sessions. Finally, there was little information in the sessions paper on preliminary imprisonment by the justices. For these aspects of the justices' work, I have had to use other, less reliable sources: the calendars of the Montreal gaol, which exist from about 1795, only with any consistency from 1810, and record only part of the prisoners committed by the justices (though there is a complete gaol register from 1826), which gave me a sample of 3660 prisoners after 1810; the few surviving calendars of the House of Correction; a brief run of newspaper accounts covering most of the work done in the Montreal Police Office in the first eight months of its existence; the few records of fines imposed by justices outside of Montreal; and two notebooks from non-Montreal justices, that of Henri Crebassa and Robert Jones of Sorel, and that of Joseph Porlier of Saint-Hyacinthe, both covering very short periods, and the latter almost exclusively concerned with his civil jurisdiction.⁶⁵⁸

For the proceedings of the justices in the Weekly Sessions, the records are almost as scanty, since most of the registers and records of the court were burnt in a courthouse fire in 1844. The only records of cases that remain are a few entries for the Weekly Sessions in the Quarter Sessions register from 1779 to 1783; one

⁶⁵⁸The gaol calendars between 1795 and 1809 are in QSD, and from 1810 in NA RG4 B21 volumes 1-4; the gaol register is in ANQM E17. The calendars only represent prisoners in gaol at the beginning of each month, and thus miss out those confined and discharged during a single month. The under-representation thus varied by the length of time that prisoners were committed to gaol, which was longest for felony cases and shortest for preliminary imprisonment for assault and battery, where a defendant only had to find sufficient bail to be discharged. The extent for each crime can be judged by comparing the number of prisoners in the gaol calendars for 1821 to an account of all committals in the same year (*Montreal Herald* 27/2/1822). Overall, where the account shows 349 criminal prisoners, the gaol calendars show 203, or 58%. But for felony cases, the rate was 74%; for assault cases, 33%; for prostitution, vagrancy, and disturbing the peace, 27%; for breach of service, 50%; and for keeping a disorderly house, 47%. The few remaining calendars of the House of Correction are mainly in QSD, with one in NA RG1 E15A volume 54 file "House of Correction Montreal 1826"; my thanks to Mary-Anne Poutanen for providing me with the data from many of these. The series is so disjointed that any fine calculations are impossible. At best, one can establish a lower margin for the number of committals in the period between two calendars by extrapolating from the numbers of committals in the first; and this can be supplemented with two summary accounts of committals, covering September 1802 to March 1805 (*JHALC* 13: 458) and April 1811 to December 1815 (NA RG1 E15A volume 29 file "House of Correction Montreal 1816). The newspaper accounts of Police Office business are in the *Montreal Gazette*; though they continue into 1811, the series after 1810 is very occasional. The records of fines imposed by non-Montreal justices are scattered through various sources, notably the sessions papers, and NA RG1 E15A. Crebassa and Jones' notebook, covering April 1822 to December 1823, is in NA MG8 F89 volume 6: 3657-87; that of Porlier, covering only July to December 1819, is in the Archives du séminaire de Saint-Hyacinthe, BSE17 2.

register of the court from 1829, at the very end of the period; and a few other scattered references and documents, notably a single slim packet of summonses and other documents from 1818-1820. The other information on the operation of the Weekly Sessions concerns convictions only: a detailed list of all defendants fined in the court between 1779 and 1787; the estreats of fines sent in to the colony's receiver general by the clerk of the peace between 1787 and 1830, which cover only convictions where the fine was actually paid, from 1796 do not cover fines imposed for infractions of the rules and regulations of police in Montreal (which went directly to the city's road treasurer), and are largely missing for the period between 1796 and 1814; scattered accounts of fines received in the papers of the road treasurer; and scattered accounts of convictions in the newspapers from 1810 to 1826.⁶⁵⁹ Taken together, these disparate sources provide two overlapping samples: first, 2223 defendants who were convicted in the Weekly Sessions between 1779 and 1830, usually with only the defendant's name, the offence, the judgement, and, less frequently, place of residence and/or place of the offence (which I refer to consistently as "Weekly Sessions convictions"); and second, 390 defendants in cases tried in the court, usually with more information on the defendant and the course of the case (which I refer to consistently as "Weekly Sessions cases"). The quality of the sample is uneven; in particular, between 1796 and 1809 it largely does not include offences where part or all of the fine was payable to the central administration, due to the lack of the estreats of fines and the absence of any complementary sources.

Finally, for cases that actually made it to the Quarter Sessions, the records are far better, since an almost complete set of registers survives, covering from

⁶⁵⁹The records of the Weekly Sessions are in QSR, WSR, and WSD; the destruction of these records in 1844 is described in a brief notation by the clerk of the peace inside the cover of the 1829 register of the court. In processing the documents at the ANQM I have found substantially more Weekly Sessions documents from the 1810s. The 1779-1787 list of defendants is in NA RG4 A1: 10352-10387; the estreats of fines are scattered through NA RG1 E15A. The accounts of fines received by the road treasurer are mainly in ANQM P20 and Rare Book Room McGill University MS719, though there are a few scattered references in the other sources described in note 26 and in SSR and SSD. The newspapers consulted are described on page 17; my thanks to Mary-Anne Poutanen, who provided me with the references from the *Montreal Herald* and *La Minerve*.

1764 to 1773 and from 1779 to 1830, and providing information on 3762 cases involving 4780 defendants (which I refer to consistently as "Quarter Sessions cases").⁶⁶⁰ For the eighteenth century, I recorded the full details of every case, but because of the volume of cases in the nineteenth, I followed a similar proceeding to that for the case-files: for every case, I consistently recorded the charge, the names of the parties, and the outcome; but I only recorded the full details of every case, including the presence of attorneys, the appearances of the defendant, and so on, for every fifth year plus the January Quarter Sessions following, matching my sample of Quarter Sessions complaints.

Though the Quarter Sessions registers was the only "complete" source that I was able to find, even it had its problems. Most importantly, unlike the registers of the higher criminal courts, which almost exclusively contained cases where an indictment had been laid before the grand jury, the Quarter Sessions registers contained references to cases that had reached a variety of stages in the formal process, from those where the only mention was the defendant being called on his or her recognizance, through cases determined summarily in sessions, to cases where an indictment was laid and a formal trial had. Some historians who have used Quarter Sessions records have considered only the second two categories, where there was a formal "case" before the court, in other words either an indictment laid or a summary trial had, and excluded other cases as simply procedural matters.⁶⁶¹ However, there are a number of objections to applying this approach to the Quarter Sessions in Montreal. In the first place, not all cases in which indictments were laid made it into the registers of the court, and though the preservation of indictments among the sessions papers was sometimes spotty, I found a couple of dozen involving cases not recorded in the registers.

⁶⁶⁰QSR.

⁶⁶¹For example, Craig B. Little, "The Criminal Courts in 'Young America': Bucks County, Pennsylvania, 1820-1860, with Some Comparisons to Massachusetts and South Carolina", *Social Science History* 15(4)(1991): 457-478, or Michael Stephen Hindus, "The Contours of Crime and Justice in Massachusetts and South Carolina, 1767-1878", *American Journal of Legal History* 21(3)(1977): 212-237.

Even when cases were entered in the registers, for many up to about 1790 that were resolved before going to formal trial, the clerk of the peace did not record the grand jury's verdict, perhaps at the behest of parties who wanted to save fees. Further, from the perspective of the defendant and the prosecutor, simply appearing in court gave the experience of coming in contact with the criminal justice system an entirely different meaning from appearing before a justice out of sessions, whether or not the formal proceedings went any further, though again the registers do not always indicate with certainty whether the parties actually appeared.⁶⁶² Finally, since as we will see only about a third of cases that were in theory supposed to come before the court were ever recorded in the registers, the sheer fact of their being recorded meant that there was something particular about them, and that either a private party had paid the clerk of the peace the fees he was allowed for entering each case, or the justices themselves had ordered that the entry be made. As a result, I have included all cases that officially came before the notice of the court, in the sense that they appeared in the registers. The only cases that I excluded consistently were those where the court imposed fines on jury-members or constables for non-attendance and then remitted them later; however, where there was no indication that the fine had been remitted, I considered these to be cases (with the prosecutor being the court itself) since the court had exercised its summary jurisdiction to impose a punishment.

A further problem with the Quarter Sessions registers was that they provided only partial information on the parties involved. Entries in the registers of course almost always gave the names of the defendants, except in the very rare instances where these were left out by an error of the clerk or otherwise, and up to 1793 they also usually gave the names of the prosecutors.⁶⁶³ However, they

⁶⁶²For instance, when a prosecutor or a defendant was called on his or her recognizance and simply marked as not appearing, there was often no indication whether the other party had appeared.

⁶⁶³The only exception was petty larceny cases, which about half of the time did not give the name of the prosecutor; however, these constituted only a very small part of the business of the court, and accounted for no more than thirty unknown prosecutors altogether.

almost never gave any information about the parties beyond their names, allowing me to determine only their ethnicity and gender, and then only in those cases with names that were unambiguous;⁶⁶⁴ as a further complication, they prevented me from excluding cases from areas outside the post-1790 district of Montreal, though these probably represented only a very small number. Further, from 1794 the clerk of the peace increasingly began to leave out the names of the prosecutors in cases where the crown was technically a party, which included most cases brought before the court, and after 1800 almost never included them; this meant that I could not rely on the representativity of prosecutors listed in the registers after the mid-1790s.⁶⁶⁵ I was able to address both of these lacunae in part by cross-referencing all cases in the Quarter Sessions registers (based on the names of the defendants) with complaints in the case-files, which gave far greater information on the parties; but this was only possible where the case files existed, in other words mainly from the 1790s on, and from 1800 only applied to years where I sampled the case-files, in other words every fifth year.⁶⁶⁶ This gave me was a

⁶⁶⁴I excluded from my analyses parties whose ethnicity or sex was not clear, and could not be determined from other information or descriptions in the case. However, in the occasional cases where the clerk only entered the last name of the party, I assumed that the party was male, since I never came across a case where, this having been the case at one point in the register, the party afterwards proved to be a woman. Another complication was the anglicization of French first names, with for example John replacing Jean or Mary replacing Marie; in these cases I based myself on the apparent ethnicity of the last name. Since women were usually listed by their maiden names, as in most legal documents of the time, I classed them by their ethnicity of birth rather than attempting, in cases where their husbands' names were also given, to amalgamate them into their husbands' ethnicity; the only exception was in the few cases where a woman was listed by her husband's last name and where the woman's first name was ambiguous (such as Mary), in which case I used husband's ethnicity. All of these factors involved individual decisions, some of which were probably wrong; but overall I feel confident that my decisions did not affect the general trends that I observed.

⁶⁶⁵Up to and including 1793, the prosecutors of 104 of the 831 defendants in the registers, or 13%, were not listed; the only significant bias was in petty larceny cases, where the prosecutors of 28 of the 55 defendants, or about half, were not given. Between 1794 and 1799, the proportion of unknown prosecutors increased to 142 of 254 defendants, or 56%. The change in clerking practices occurred when the clerk changed registers at the end of 1793 (prosecutors were not given for eleven of 83 defendants in 1793, or 13%, and 35 of 62 in 1794, or 56%); but since this occurred in the middle of John Reid's clerkship, the reason for it is unknown.

⁶⁶⁶Because my sample was based on the year of the document rather than the Quarter Sessions it was based on, in all proportional calculations I have included prosecutors from the January Quarter Sessions of the year following the sample year.

sample of 4780 defendants and 1149 prosecutors (642 directly from the registers up to 1793, and 507 from cross-linking the case files and the registers from 1794 to 1830) from the entire period where I knew only their names, and thus, in most cases, their ethnicity and gender; and an additional overlapping sample of 675 defendants and 507 prosecutors from 1794 to 1830 which I was able to cross-link with the case files, giving me additional information on the parties.

Given all of the problems with these sources, any aggregate figures that I present must be treated with caution. This does not mean that the figures I present are meaningless, but rather that what they indicate are trends and ranges rather than exact numbers; and since the source of error stems mainly from the documents themselves rather than from any sampling techniques on my part, except perhaps in the case of the sessions documents after 1800, there is no easy way of correcting for them statistically. It is for this reason that I have chosen to present many figures graphically rather than in tabular form, and that I have avoided, wherever possible, making any sort of statistical manipulations on the data. The one such calculation that I have permitted myself is, for the nineteenth century, occasionally to establish the lower limit of the number of complaints of a given sort in the period by multiplying the number of complaints in my sample by five; since I was not able to sample all documents for every fifth year, I feel confident that the figures produced in such cases are bare minimums of the actual numbers among complaints, though again I have used this technique sparingly. Of course, none of this applies to my discussion of individual cases, which is one of the greatest advantages of a non-quantitative approach: when the gaol calendars show that Joseph Rivais was committed on June 2, 1826 for not paying the fine imposed on him for selling liquor without a license, and released on September 2 after serving his entire sentence, we can assume that barring any major fraud on the part of the gaoler, Rivais was indeed in the crowded, dirty gaol for those three months for not fulfilling an obligation to the state.

In the same vein of caution, I have largely not presented my aggregate data by year, since only the registers of the Quarter Sessions are complete enough to

permit this without overly complicated numerical manipulation, and then only for defendants. Rather, I have broken the span from 1764 to 1830 into six sub-periods, based on several considerations, mainly the structure of the courts and the personnel of the magistracy, the prevailing politico-social climate, and the state of the sources. These periods run from 1764 to 1773, the first decade of British rule and the hegemony of the Protestant magistracy; from 1779 to 1793, when the magistracy was centered almost exclusively in Montreal and had a strong Canadien element, and before the ethnic tensions of the 1790s; from 1794 to 1799, at the height of the tensions described by Murray Greenwood and while the magistracy was dominated by non-francophone Tories; from 1800 to 1809, when most active magistrates were once again Canadiens; from 1810 to 1823, the time of McCord, Mondelet, and the Police Office in Montreal, and of the expansion of the number of active justices outside of the city; and finally from 1824 to 1830, during the Dalhousie crisis and the renewed Tory domination of the magistracy under Gale.⁶⁶⁷ When discussing information derived from the sessions papers after 1799, however, to use these year-ranges would be misleading, since I only sampled every fifth year; hence, the fourth period is 1800/1805, the fifth 1810/1815/1820, and the sixth 1825/1830. Finally, in many cases I have simply divided the entire period into two, the late eighteenth century (up to 1799), and the early nineteenth.

⁶⁶⁷As we shall see, the validity of the periodization is also confirmed by changes in the volume of business in the Quarter Sessions.

II. Coming before the justices

As we saw in the first section, the justices of the peace filled two principal roles in the criminal justice system of Quebec and Lower Canada, as in England: first, they dealt with the preliminary proceedings in virtually all criminal cases (their ministerial function); and second, they judged a large number of these cases themselves (their judicial function). There were two main aspects to their ministerial function. First, they ensured that defendants appeared in the appropriate venue for trial, which might be a summary hearing before themselves and/or other justices, the Weekly Sessions, the Quarter Sessions, or the higher criminal courts, by issuing the appropriate warrants and summonses and binding over or imprisoning the parties, especially the defendants. And second, they used their powers to bind over to impose on defendants what was in fact if not in law a summary judgement, by requiring them to enter into a recognizance to keep the peace or be of good behaviour, and imprisoning those who would not comply. In their capacity as judges, they operated in three main venues: summary hearings before one or two justices, which were mainly held outside of Montreal, and were not of very great importance until the nineteenth century; the more formal Weekly Sessions, and their subsidiary Special Sessions, in Montreal; and also in Montreal, the formal Quarter Sessions. The jurisdiction of the summary hearings and of the Weekly Sessions was limited to the statutory offences established by English or colonial laws or the rules and regulations made by the justices themselves; the Quarter Sessions had jurisdiction over all of these offences, all common-law misdemeanours (such as assaults, nuisances, and riots), and non-capital felonies (of which the only important one that ever came before the justices was petty larceny).

Together, these various formal elements made up the lower level of the criminal justice system. But to understand the impact of this system on the people of the district of Montreal, we must turn this legalistic perspective on its head and examine this system from the perspective of the society within which it operated. There are many possible aspects to such an examination; but four basic ones are

the reasons that led people to come in contact with the various elements of this system; the ways that they got there; the numbers of people who made these direct contacts; and the results of these contacts.

A. The reasons

Given the enormous variety of offences under English criminal law, provincial ordinances and acts, and the rules and regulations of the justices, it is important for the purposes of comparison to group these into categories. One possibility is to adopt the categories of the criminal law at the time: indictable offences versus summary offences, felonies versus misdemeanours, crimes of violence versus crimes against property. Another is to use the categories of modern criminology and sociology: thus, one of Robert Shoemaker's main categories is "victimless crime", which includes everything from prostitution through offences against the poor laws to non-payment of licensing fees.⁶⁶⁸ And another again is to construct idiosyncratic categories shaped to particular interests: thus, in his work on England in the early nineteenth century, George Rudé divided crime into acquisitive crime, social or survival crime, and protest crime, reflecting his concentration on class struggle and class conflict.⁶⁶⁹

Using legal categories respects the sources, but in so doing it also accepts at least in part the ideological perspective of the legal system that created the legal documents; further, the fundamental "official" categories are based on the crime itself and do not take into account the effects of the charge on the defendant, as for example the distinction between more "serious" indictable offences and less "serious" summary offences. Adopting modern categories allows for comparison between widely differing legal systems and across time-periods; but it can also lead to presentist absurdities, as in the American scholar who, in discussing Pennsylvania in the first half of the nineteenth century, refers to "white-collar

⁶⁶⁸*Prosecution and Punishment*: 6-7.

⁶⁶⁹*Criminal and Victim*: 78.

crime" when discussing fraud,⁶⁷⁰ which would, for example, identify François alias Antoine Tourville and Bazil Fiset, voyageurs committed to the gaol in 1804 for engaging themselves under false names, as "white collar". Finally, idiosyncratic categories must not become self-fulfilling: thus, as he himself acknowledges in passing, Rudé's categories leave almost no room for crimes of violence between individuals, giving the impression that fights and wife-battering either fit into one of his three categories, or simply were not very important.⁶⁷¹

Since my main interest in this study is the interaction between society and the criminal justice system of the state, and my main sources are official state records, I have largely followed the traditional categories of offences. At the same time, I find Shoemaker's distinction between crimes with victims and "victimless" crimes to be quite persuasive, although I would recast this slightly to distinguish between offences where the victim was a private individual, and those where the purported "victim" was either the public at large, or the state; the main difference is that the latter then includes complaints where the victim was a state official acting in his official capacity, as in a constable prosecuting for assault. I have thus divided offences into six categories. First, offences involving interpersonal violence, consisting largely of the various shades of threats and assaults, forcible entry, false imprisonment, and riot (since as noted, the justices almost never dealt with riots that were more than those directed against specific individuals). Second, offences against property, primarily theft, fraud involving money or property, trespass that did not involve violence, and vandalism. Third, other interpersonal wrongs, especially the many torts in the grey area between criminal and civil law, such as bastardy and disputes between masters and servants. Fourth, offences against public morality, such as the various manifestations of prostitution, vagrancy and vagabondage, drunkenness and disturbing the peace, and breaking the sabbath. Fifth, offences against the state,

⁶⁷⁰Little, "The Criminal Courts in 'Young America'": 464-65.

⁶⁷¹*Criminal and Victim*: 78.

where the interests of the state were important, especially assault on state officials such as bailiffs or constables, disobedience of the militia and revenue laws (especially selling liquor without a license), activities that affected the military such as buying regimental effects, and misconduct by subordinate state officials. And finally, other offences against the "public order", covering the whole range of actions or inactions that in theory affected society at large, such as disobedience of the various road-maintenance laws or infractions of the rules and regulations of police concerning fire, health, weights and measures, and markets.

One of the key arguments of the proponents of the conflict theory of criminal justice rests on the supposed preponderance of offences against property, the argument being that men of property used the criminal justice system to further their interests. On the other hand, one of the planks of those who argue for the consensual model of the criminal justice system is that the majority of cases represented disputes between individuals, or individuals and the local community at large, with the state appearing only as an arbitrator.

In Quebec and Lower Canada, little attention has been paid to the overall reasons for which people came in contact with the criminal justice system, since most studies have concentrated on specific sorts of cases, such as politically-motivated prosecutions.⁶⁷² The only significant contribution is that of Jean-Marie Fecteau, who has analyzed the types of offences for which people were indicted in the King's Bench for the district of Quebec. He finds that offences against the person dominated up to 1815, but that in the 1820s and 1830s there was a dramatic upsurge in defendants charged for offences against property; he links this to the change in elite discourse that he finds occurring at this time. However, he qualifies his conclusion by noting in passing that this change did not appear to operate in the justices' courts.⁶⁷³

⁶⁷²As in Greenwood, *Legacies of Fear*.

⁶⁷³*Un nouvel ordre des choses*: 238.

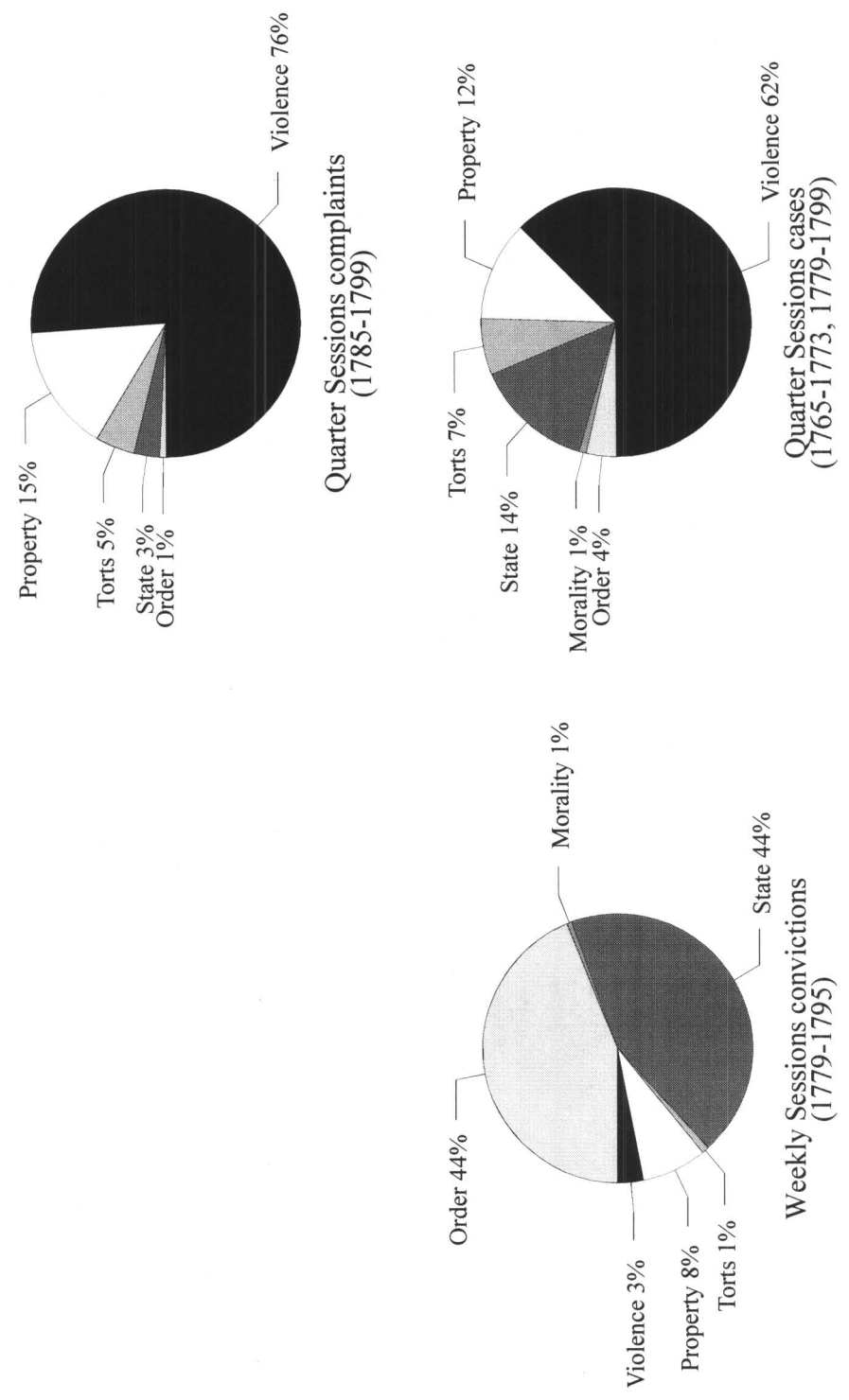
Figures 3.1 and 3.2 present the sorts of offences for which people came before the justices in the district of Montreal in the eighteenth and nineteenth centuries respectively. Clearly, property offences made up a very small proportion of the cases that the justices dealt with themselves; further, this did not change significantly between the eighteenth and the nineteenth centuries, with if anything a decrease in the number of property-related offences dealt with by the justices. This was in sharp contrast to England at the same time: in the Quarter Sessions in Sussex between 1775 and 1790, for example, property offences made up about a quarter of all convictions, while in the early nineteenth century, George Rudé found that between 70% and 80% of cases in the various Quarter Sessions he examined involved larceny.⁶⁷⁴

Beyond this basic observation, people came before the justices in their various capacities for very different matters. The Quarter Sessions was a court which fit closely the consensual model, in that it largely dealt with offences involving interpersonal violence, mostly assault or assault and battery, whether one examines it at the level of complaints destined for the court or cases that actually made it into the registers. Again, this was in contrast to England at the same time: in the eighteenth-century Sussex Quarter Sessions, crimes of violence accounted for only about a quarter of convictions;⁶⁷⁵ and though Rudé's categories are harder to use in this respect, since 70% of convictions in his period were for property crimes, the same low levels of crimes of interpersonal violence held there as well. Indeed, the pattern of offences in Montreal Quarter Sessions cases, both in the eighteenth and the nineteenth centuries, was much closer to that found by André Lachance for the French régime: in the royal courts of the district of Montreal between 1712 and 1759, offences against the person constituted 59% of cases, offences against property 20%, offences against the state 16%, and offences

⁶⁷⁴Stephen R. Wilson, "The Court of Quarter Sessions and Larceny in Sussex, 1775-1820", *Criminal Justice History* 7(1986): 75; Rudé, *Criminal and Victim*: 10, 17, 26.

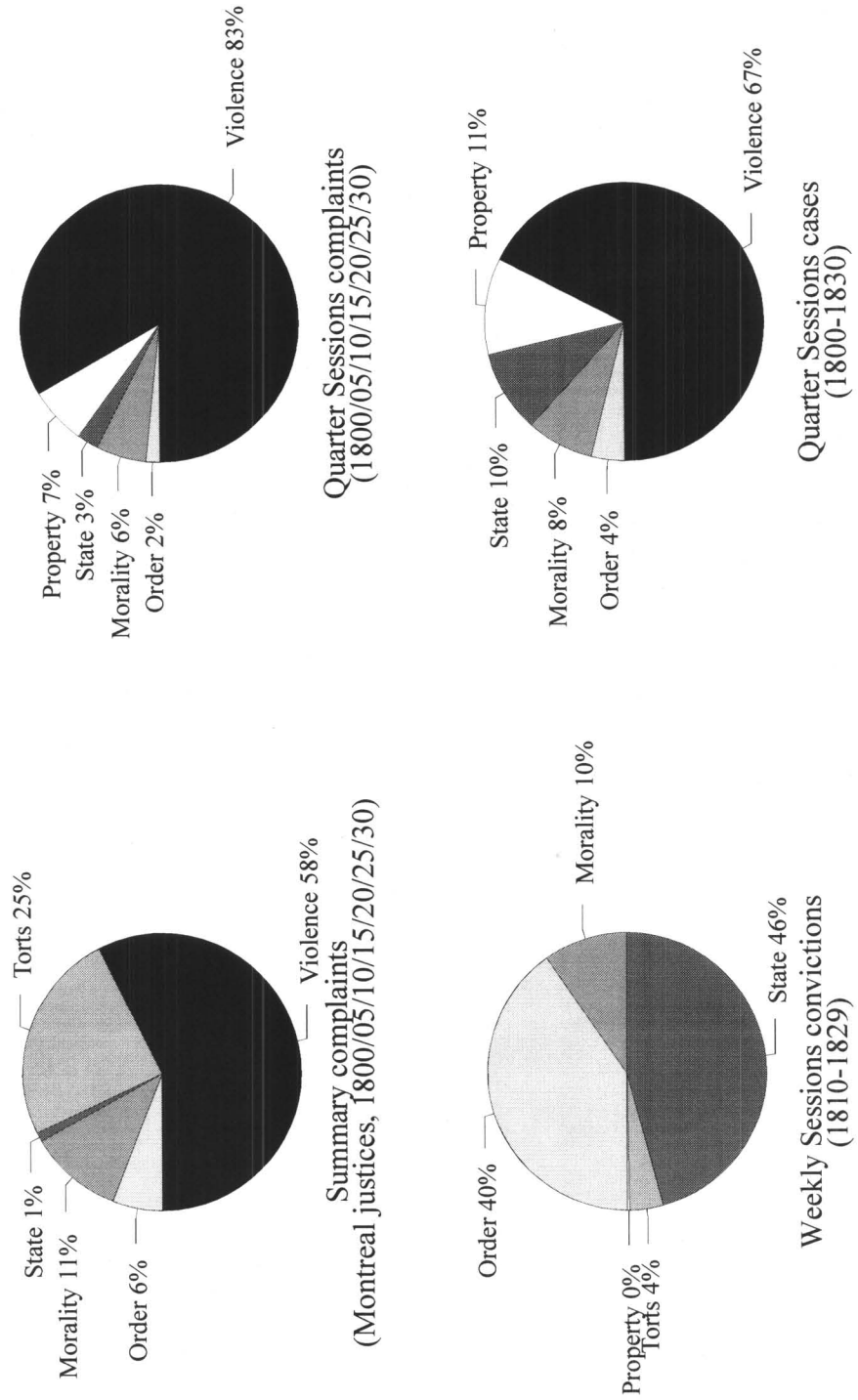
⁶⁷⁵Wilson, "The Court of Quarter Sessions and Larceny in Sussex": 75.

FIGURE 3.1: OFFENCES BEFORE THE JUSTICES IN THE EIGHTEENTH CENTURY



Note: All figures based on numbers of defendants

FIGURE 3.2: OFFENCES BEFORE THE JUSTICES IN THE NINETEENTH CENTURY



Note: All figures based on numbers of defendants

against morals 6%; and it also resembled that found by Robert Shoemaker in Middlesex in the late seventeenth and early eighteenth centuries, and that by Michael Stephen Hindus in South Carolina in the early nineteenth century.⁶⁷⁶ If anything, the Montreal Quarter Sessions was more overwhelmingly concerned with interpersonal violence than any of these.

This preponderance of crimes of interpersonal violence in the Quarter Sessions is key to understanding the place of these courts in the social order. John Beattie points out for England that "magistrates and the courts commonly treated a complaint of assault as though it were a civil action between two disputing parties rather than as a breach of the peace that engaged the public interest;" and both André Lachance and John Dickinson have noted the same attitude in the royal courts of New France.⁶⁷⁷ Unlike its counterparts in England, the Quarter Sessions in the district of Montreal was thus primarily a venue where individuals settled their personal disputes.

In the Weekly Sessions, on the other hand, almost all defendants were convicted of offences where there was no specific victim. A detailed breakdown of these offences is revealing, as presented in Table 3.1. To test the validity of data drawn largely from convictions where fines were imposed, the table also presents the breakdown of all cases tried in the court in 1829.

The schema of offences suggests that the Weekly Sessions, in contrast to the Quarter Sessions, was a prime venue for the exercise of the power of the state at a local level. Offences against statutory labour on the roads, fire regulations, and the like may have had a flavour of community sanction, but they were still articulated through and prosecuted under official regulations, and, as we shall see, in a significant part by official prosecutors. And it is hard to argue that cases

⁶⁷⁶ André Lachance, *Crimes et criminels en Nouvelle France* (Montréal: Boréal Express, 1984): 77; Shoemaker, *Prosecution and Punishment*: 58; Hindus, "The Contours of Crime and Justice in Massachusetts and South Carolina": 218.

⁶⁷⁷ Beattie, *Crime and the Courts in England*: 76; Lachance, *Crimes et criminels en Nouvelle France*: 40; John Dickinson, *Justice et justiciables: la procédure civile à la Prévôté de Québec, 1667-1759* (Sainte-Foy: PUL, 1982): 117-118.

TABLE 3.1: OFFENCES IN THE WEEKLY SESSIONS

Type of offence	Convictions by fine 1779-1795	Convictions by fine 1810-1829	All cases 1829
OFFENCES AGAINST THE STATE	323 (44%)	600 (48%)	72 (43%)
Militia and <i>corvée</i> for government	30%	5%	-
Selling alcohol without a license	13%	38%	41%
Not paying taxes	-	4%	-
Other offences against the state	2%	2%	2%
OFFENCES AGAINST THE PUBLIC ORDER	318 (44%)	510 (41%)	73 (44%)
Statutory labour	20%	13%	9%
Markets and forestalling	8%	3%	4%
Vehicles (speeding, not properly equipped)	3%	6%	17%
Fire-prevention	4%	5%	-
Encumbering streets and street retailing	< 1%	5%	6%
Bakers	3	1%	-
Ferries	2%	2%	4%
Health	1%	2%	1%
Carters	1%	1%	1%
Other offences against the public order	1%	7%	3%
OTHER OFFENCES	86 (12%)	134 (11%)	21 (13%)
Assaults	3%	-	-
Trespass by animals	7%	< 1%	-
Selling liquor on Sunday	< 1%	7%	2%
Service	1%	2%	9%
Other offences	1%	2%	2%

involving militia service represented anything but the wishes of the central administration.

Selling liquor without a license presents a special problem, since it could be considered either an offence against the state, involving revenue, or an offence against public morality. Though the whole question of alcohol and tavernkeepers in Montreal before the mid-nineteenth century remains to be studied, the main source of morality prosecutions was temperance movements, and the first of these

in Lower Canada was the Chiniquy crusade of the early 1840s.⁶⁷⁸ That the regulation of taverns was not mainly a morality issue is suggested by the fact that unlicensed tavernkeepers were prosecuted under the Quebec Revenue Act; by the refusal, noted above, of the central administration to pay for public prosecutions for drunkenness; and by the few prosecutions against tavernkeepers for an issue more obviously linked to morality, selling liquor on Sundays. Likewise, in the eighteenth century, the justices made no attempt to regulate the number of tavernkeepers; and although they made occasional attempts in the nineteenth, when in 1819 and 1820 they unleashed a mini reign of terror against unlicensed tavernkeepers who did not pay their fines, it was in consequence of a directive from the central administration "for better securing His Majesty's revenue."⁶⁷⁹ Finally, consider that in the matter of unlicensed billiard tables, another offence that similarly involved both the state and morality, the agent of the crown at Montreal, David Ross (the future Chairman of the Quarter Sessions) made it very clear that when he instituted prosecutions, it was mainly to force unlicensed billiard-table keepers to take out licenses.⁶⁸⁰

At any rate, whether or not morality was involved, selling liquor without a license very definitely involved the interests of the state, just like the militia laws; and since, as we shall see, both Canadiens and people from outside of Montreal were significantly touched by these prosecutions, it puts into question the idea of a colonial state that could not enforce its will on the population at large.

Almost all charges in the Weekly Sessions stemmed from laws that were purely local, both colonial ordinances and acts and regulations made by the justices themselves, and not part of the English criminal law that was received into

⁶⁷⁸Jan Noel, "Dry Patriotism: The Chiniquy Crusade," in Cheryl Krasnick Warsh, ed., *Drink in Canada: Historical Essays* (Montreal: McGill-Queen's UP, 1993): 27-42.

⁶⁷⁹On the eighteenth century, see for example Arthur Davidson to Sir George Pownall, 5/4/1787, in NA RG4 B28 volume 120; on the justices and tavernkeepers in the nineteenth century, see Donald Fyson, "Eating in the City: Diet and Provisioning in Early Nineteenth-Century Montreal" (M.A., McGill University, 1989).

⁶⁸⁰Ross to Pownall, 30/11/1809, in NA RG1 E15A volume 107 file "Provincial Secretary 1809".

Quebec. Some concerned common-sense administrative measures that were similarly regulated in England, though by different laws; however, as we saw in our discussion of the criminal law, these measures were also similarly regulated in New France and in other North-American colonies, so that determining their genesis is virtually impossible. As well, several of these offences had no counterpart in England, including disobedience of militia orders, the most common offence in the eighteenth century; instead, they were closely related to similar offences in New France. The law that the Weekly Sessions in Montreal was applying was thus in large part specific to the colony, and in some cases specific to the district of Montreal; thus, while between 1789 and 1802 the justices in Quebec City ceased to judge cases arising from the rules and regulations that they made, following the apparent withdrawal of this jurisdiction from them, the Montreal justices continued nevertheless to impose fines for breaking their rules and regulations.⁶⁸¹ And if anything, rather than being based on English precedent, the Weekly Sessions were applying *de facto* the same law that had been applied by similar courts in New France, as outlined by John Dickinson.⁶⁸²

It is harder to judge the types of offences for which people came in contact with the justices in their capacity as summary judges. In Montreal itself, the case-files of complaints which were not destined for trial at the Quarter or Weekly Sessions give some hints of this activity. Though I found too few documents for the eighteenth century to allow for any sort of quantitative measure, of 47 defendants altogether, 22 were accused of offences against the public morality, all relating to prostitution, fourteen were accused of various combinations of threats and assaults, nine with the tort of deserting service, two with offences against the state (one for assisting a deserter, and one for sedition), one for insanity, and one for deserting her husband. Figure 3.2 seems to show a considerable change in this distribution, with a large increase in the proportion of cases involving

⁶⁸¹See above, page 54.

⁶⁸²"Réflexions sur la police en Nouvelle-France": 496-522.

personal violence and torts at the expense of offences against public morality. However, it does not reflect the true proportion of people who were tried summarily for offences against the public morality, since two of the major contributors to this category, summary imprisonment for prostitution or vagrancy, are seriously under-represented in the case-files. Thus, while between 1810 and 1819 Mary-Anne Poutanen found references to only fourteen defendants in the case-files for prostitution and vagrancy, an account of the House of Correction covering all prisoners committed between April 1811, when it re-opened, and December 1815, in other words less than half of Poutanen's period, shows a total of 74 women committed for these same offences.⁶⁸³ Overall, though the evidence is sketchy, it seems that justices in Montreal in their summary hearings outside of formal court dealt with two very different sorts of people: on the one hand, those complained of for assaults and threats where the justice summarily imposed recognizances; and on the other, specific groups on the margins of society who offended against the social order as conceived of by the justices, mainly prostitutes, vagrants, and disobedient servants. Despite the 1789 law that allowed justices to judge and punish those accused of petty larceny summarily, in force through to 1817, there is little evidence that they did so with any regularity, and I have come across indications of only two such cases, both in 1789.⁶⁸⁴ And though Montreal justices could in theory exercise the power of summary fining granted to all justices by the various statutes, ordinances, and acts, as we saw they very rarely did so.⁶⁸⁵

Outside of Montreal, where summary hearings before justices were the only venues in which criminal cases might be resolved, the evidence is even scantier. There are a few surviving records of fines sent in by non-Montreal

⁶⁸³"Reflections of Montreal Prostitution in the Records of the Lower Courts": 121; NA RG1 E15A volume 29 file "House of Correction 1816".

⁶⁸⁴The law was 29 George III c.3 (1789); the cases were in the accounts of the clerk of the peace for 1789, in NA RG1 E15A.

⁶⁸⁵See above, page 87.

justices, covering forty defendants in the late 1780s and the 1790s, and 54 defendants from the 1820s on, whose offence can be determined. Those from the eighteenth century suggest a pattern similar to that of the Weekly Sessions, with offences against the public order (primarily those against the roads laws) and offences against the state (primarily those against the militia ordinances) accounting for 23 and twelve defendants respectively; thus for example in March 1790 François Malhiot, of Verchères, fined François Parizeau and two others for not repairing the king's highway; and in March 1789 Joseph Boucher de La Bruère de Montarville, a Boucherville justice, fined Baptiste Cicotte twelve livres "pour avoir refusé de mener du bois pour le Roy".⁶⁸⁶ The picture from the 1820s is slightly different: of 54 defendants, nineteen were fined for offences against the public order and eleven for offences against the state (again, with roads and militia offences predominating); but thirteen were fined for offences against public morality, most for causing disorder in church on Sunday, and another eleven for trespass contrary to the provincial act for preventing "abuses to agriculture". At least in the nineteenth century, some non-Montreal justices also summarily committed vagabonds and disobedient servants to the gaol and the House of Correction in Montreal, such as Baptiste Rochefort dit Gervais, a voyageur committed to the House of Correction in 1806 by Pierre Bouthillier and Francis Winter, Chateaugay justices, for deserting the service of Alexander Simpson.⁶⁸⁷ Knowing the scale of these committals is almost impossible, given the almost complete absence of calendars or other documents for the House of Correction; however, between May 1827 and April 1829, when there was no House of Correction and all such commitments had to be made to the common gaol, for which there is a complete register, non-Montreal justices committed only eight

⁶⁸⁶NA RG1 E15A volume 13 file "Committee on Revenue 1793".

⁶⁸⁷QSD, House of Correction calendar, 4/1806.

prisoners summarily, so that this was likely a very small part of their activity.⁶⁸⁸ Instead, the notebook kept by Henri Crebassa and Robert Jones, justices at William Henry, between 1822 and 1823, is probably more or less representative of business done in the summary hearings of non-Montreal justices: in cases they decided summarily, they required eight defendants in assault cases to enter into recognizances to keep the peace, fined fifteen habitants for not repairing the roads or making fences, fined another four defendants for being drunk in church and one for selling liquor on Sunday, and disciplined one *sous-voyer* for not doing his duty.⁶⁸⁹

Whatever the venue, however, people came before the justices not for property crimes, but largely for crimes of interpersonal violence (in the Quarter Sessions and to a certain extent in summary hearings before the justices), and crimes against the state and public (in the Weekly Sessions and, again to a certain extent, the summary hearings of justices, especially outside of Montreal). It was not at this level of the justice system that men of property punished directly those who had threatened their possessions. But we must not think that as a result the justice system at the level of the justices was a class-neutral, community-oriented service organization. As Fecteau showed, property offences did dominate in the higher criminal courts, especially after 1815. And the Weekly Sessions, with its multitude of fines against militians and unlicensed tavernkeepers, was certainly not a community oriented court. Further, class played a major part in the summary committals of servants and prostitutes by Montreal justices. And as we shall see, even in the Quarter Sessions, considerations of class were important in some aspects of the operations of the court.

⁶⁸⁸The act under which the Montreal House of Correction operated in the 1820s, 57 George III c.10 (1817), expired on May 1 1827; the next act, 9 George IV c.4 (1829), was not passed until late April 1829. The gaol register is in ANQM, E17.

⁶⁸⁹NA MG8 F89 volume 6: 3657-87.

B. The ways

To understand the experience of people who came before the justices, it is also crucial to examine the ways they got there. There has been a tendency among historians who use criminal records to concentrate on what happened to people once they actually got to a formal court, and largely to ignore the proceedings that preceded this as subsidiary or unimportant; thus for example the status of indictments, which were records of charges formally laid in the courts, as the main source for much of the history of the English criminal justice system. In part this is because it is these sorts of formal court records, usually preserved by a professional clerk, that have largely survived. However, recent works have begun elucidating the whole range of activities of the criminal justice system that preceded, and in many cases supplanted, the formal criminal trial itself, and which mainly took place at the level of the justices.

Under the English system, the various routes to and through the justice system prior to an appearance by the parties in a formal court were as varied as the patchwork of offences, officials, and jurisdictions that made it up. Even in felony cases, where preliminary procedures were in theory strictly defined by the Marian bail statutes, the complainant and the accused might come before the justice system in a number of different ways, with for example the arrest of the accused happening either before or after a formal complaint had been made to a justice, and performed by the complainant, by bystanders, or by a peace officer; although once the case reached the justice, there was less variation, with the accused either released, bound over for appearance at trial, or committed until trial.⁶⁹⁰ And in terms of misdemeanours and other "petty" offences, Robert Shoemaker has demonstrated that what characterized the criminal justice system above all was its heterogeneity, with a wide range of different options open to prosecutors, and a considerable degree of discretion exercised by justices: for any given action, complaints could be instigated by prosecutors under a variety of

⁶⁹⁰Beattie, *Crime and the Courts in England*: 36-38, 268-271.

different charges, and resolved by the justice by everything from informal arbitration through binding over for trial by a formal court to imprisonment.⁶⁹¹

This heterogeneity of procedures before justices outside of their formal courts was also evident in the cases that came before the justices in the district of Montreal. Consider the following examples, all from 1800, and all involving cases brought to the attention of justices in Montreal itself. The complaint of Pierre Goguet, a Saint-Hilaire habitant, against Baptiste Bazinet, his tenant farmer, and Charlotte Brouillé, Bazinet's wife, for assaulting him when he asked for two days *corvée*, followed what can be termed the "normal" route for assault cases: the assault occurred at seven o'clock in the morning on September 6; by some time later in the same day Goguet was in Montreal complaining to Jean-Jacques Joran, who issued an arrest warrant directed to one "Juzon huissier", presumably the local bailiff, who may or may not have accompanied Goguet to Montreal; three days later, Bazinet and Brouillé were before Joran to enter recognizances to appear at the Quarter Sessions in October; but the case proceeded no further, since it did not appear in the registers of the court.⁶⁹² A very different route is described in the deposition that George Sery, Jean-Baptiste Castonguay, Louis Sabourin, and Jean-Baptiste Morin, all long-serving professional Montreal constables, made before Joran on January 2, 1800 against Joseph Joutras. Joutras being at home in the faubourg Saint-Laurent "pris de boisson", Madame Dorleans, with whom he lodged, sent for Sery "pour mettre la paix chez lui". After arriving, the constables "ont vû et ôté entre ses mains Marie Dorée sa femme laquelle il estoit disposé à lui oter la vie, et l'auroit exécuté s'ils ne furent été presens, ayant pris une chaise à la main pour l'assommer, que ce même Joutras est dangereux, professant sans cesse 'il faut que je te tue' ces paroles adressés à sa femme et qu'il est à presumer, que pour eviter un malheur le dit Joutras, doit être

⁶⁹¹*Prosecution and Punishment*: 19-41.

⁶⁹²QSD 6/9/1800.

mis en sureté."⁶⁹³ And another procedure altogether applied in the complaint of William Martin, Montreal's inspector of chimneys, against Louis Charles Foucher, the future justice of the King's Bench, for erecting an enclosed wooden staircase beside his house on the Place d'Armes: on Thursday May 1, Martin visited the house with Gilbert Miller, a carpenter, as a witness; on Saturday May 3, Martin swore out a *qui tam* complaint against Foucher before Charles Blake, who issued a summons to Foucher to appear in the Weekly Sessions at 10:00 the following Tuesday morning; sometime in the intervening three days the summons was served on Foucher, most likely by one of the city constables; and on Tuesday Foucher himself appeared before Blake, John Richardson, Robert Cruickshank, William Maitland, and James Hughes to plead not guilty, only to find himself condemned two weeks later to pay a £20 fine and demolish the staircase.⁶⁹⁴

The first case, that of Goguet, illustrates very clearly one of the fundamental aspects of criminal justice systems structured on the English model: the reliance placed on private prosecutors, and the consequent importance of prosecutorial discretion and prosecutorial initiative. Had Goguet not made the journey to Montreal, which was one of the nearest places to Saint-Hilaire with an active justice in 1800 (though there were inactive justices at Chambly and Varennes, and an active justice downriver at Saint-Denis), the dispute between him and his tenants would never have come to the attention of the justice system; and this discretion is underlined by the fact that there were no official repercussions for any of the parties when Goguet did not bother to show up in court to pursue his complaint, once having made his point by forcing Bazinet and Brouillet to make the journey to Montreal and in all probability pay Juzon the bailiff's fees.⁶⁹⁵ Historians have insisted upon the importance of this sort of

⁶⁹³QSD 2/1/1800.

⁶⁹⁴WSD 3/5/1800.

⁶⁹⁵There is no indication anywhere that the recognizances entered into by the two were ever declared forfeited.

private prosecution in defining the English criminal justice system in the eighteenth century, though their interpretations of what it meant have been very different: for Thompson, Hay, and other conflict theorists, this prosecutorial discretion was crucial in making the criminal law the main tool by which men of property exercised control over the popular classes, since an accuser gained immense power over the accused through the ability to launch a formal prosecution or not; while for Langbein, King, and other supporters of the instrumentalist view, it showed the flexibility and adaptability of the criminal law. The case of Goguet, Bazinet, and Brouillet, however, is ambiguous: on the one hand, Goguet by his own statement had been attempting to exact a feudal obligation from his tenants, and was probably using the criminal complaint as one means of doing so; but on the other, though Goguet, a habitant, was in one sense a man of property, it was not in the way meant by the conflict theorists.

But private prosecutorial initiative was not the only way in which a complaint might formally reach the criminal justice system, as the other two cases suggest. That against Joutras involved police intervening directly in the inner workings of a marriage in response to spouse abuse, although only after being asked to do so by a neighbour, and then in effect becoming official prosecutors, though asking for no more than security to keep the peace (the "sureté"); and that against Foucher involved an official prosecution by Martin, an appointed agent of the state who was specifically responsible for prosecuting fire offences. Indeed, the presumed reliance of the English criminal justice system on the prosecution of offenders by private prosecutors, which is itself being questioned by English historians,⁶⁹⁶ was never fully realized in Quebec and Lower Canada, with agents of the state playing a very important role in a number of specific areas. Jean-Marie Fecteau, for example, has shown that in the King's Bench, virtually all cases were conducted by the attorney general.⁶⁹⁷ And though there was far more

⁶⁹⁶For example, in many of the articles in Hay and Snyder eds., *Policing and Prosecution in Britain*.

⁶⁹⁷*Un nouvel ordre des choses*: 110.

reliance on private prosecution at the level of the justices, "official" prosecutions, or at least prosecutions by state officials, were also a common feature.

Prosecutions for assaults and batteries (as with Goguet), personal torts such as breach of service or bastardy, and other interpersonal offences that did not involve theft were usually left to the discretion of the victims of these offences, apart from the occasional instances, like that of Joutras, where police intervened directly as prosecutors. Thus, even in assault cases where the defendant entered into a recognizance to appear at the next Quarter Sessions to take his trial, justices almost never required the person who made the complaint to enter into a recognizance to prosecute the case, as was standard practice in felony cases. More importantly, unless prosecutors demanded it, in these sorts of cases the justices in Quarter Sessions very rarely tried to enforce the conditions of recognizances entered into by defendants, by "estreating" them or declaring them forfeited, whereby they became a civil debt to the crown. On a few occasions, the Quarter Sessions justices did try to enforce the appearance of parties who were bound to do so, estreating the recognizances in all cases that were supposed to come to the court whether or not the prosecutor demanded it, as they did in 1810 and 1811, almost immediately after the appointment of McCord and Mondelet as chairmen of the Quarter Sessions; but in general they did not bother. The attitude of justices towards assault cases in particular is best summed up in the charge of Thomas McCord to the grand jury of the Quarter Sessions in 1811:

The Officer of the Crown will have nothing to lay before you of a higher nature than Assaults and Batteries; and of those there may be many with which you may not think it necessary to trouble the petty jury, particularly when you take into consideration the preceding and antecedent circumstances of the greater part of the complaints of that nature. The trifling and inconsiderate manner in which many accusations are preferred, is indeed much to be deplored, and particularly when the principal motives seem to be most contrary to the principles of religion, those of hatred and revenge.⁶⁹⁸

One result of the importance of private prosecutorial initiative in interpersonal offences was the strong presence in the Quarter Sessions of

⁶⁹⁸ *Montreal Gazette* 22/7/1811.

professional attorneys. As opposed to the King's Bench, the attorney general and the other law officers of the crown took no part in these cases.⁶⁹⁹ But this did not mean that people necessarily conducted their own prosecutions. While the registers of the Quarter Sessions did not consistently record whether prosecutors were acting for themselves or not, the registers from 1779 on did note the names of any attorneys when they made procedural motions; and in about 20% of cases of interpersonal violence (based, for the nineteenth century, on every fifth year) there was an explicit mention of an attorney for the prosecution. Even more importantly, people also did not necessarily conduct their own defence, since the rule that defendants were denied counsel in the English criminal justice system, often cited as an example of the barbarity of that system, applied only to capital felonies. Thus, while the evidence is even scantier (since the defence in general made fewer procedural motions) perhaps 10% of these cases explicitly mentioned an attorney for the defence. Sometimes these representatives were relatives or friends; however, most often, they were professional lawyers, both English and French. Thus, for example, in Myer Michael's prosecution of Samuel Judah for assault and battery in 1781, Michaels was represented by his father, being too sick to appear in court;⁷⁰⁰ on the other hand, in the same year, Pierre Panet, a well-known Montreal lawyer, appeared for Alexis Rencontre in Rencontre's prosecution of François Rastoule fils on the same charges.⁷⁰¹

As John Beattie found for England,⁷⁰² the presence of professional lawyers in the justices' courts profoundly affected the character of proceedings in those courts, which were often the site of detailed legalistic arguments. Thus, for

⁶⁹⁹This is clear both from the registers themselves, and from the accounts for fees submitted by the various attorneys general; the latter for 1764 to 1778 and 1818 to 1830 are scattered through NA RG1 E15A, and for 1776 to 1788 are found in the report of the committee of council charged with looking into the accounts of James Monk (NA RG4 A1: 11976-12076).

⁷⁰⁰QSR 4/1781.

⁷⁰¹QSR 4/1781.

⁷⁰²*Crime and the Courts in England*: 352-62.

example, in 1780 a prosecution was brought against François Duaine for engrossing wheat, contrary to a proclamation of the governor. James Walker, appearing for Duaine, argued:

that [the proclamation] whereon the prosecution is grounded is not a law, but as notice and warning to the public; that the act of parliament of the 5th and 6th of Edward the 6th whereon [the proclamation] is founded is repealed by an act of parliament of the 12th George the Third and produces said last mentioned act of parliament therefore prays the defendant may be dismissed and discharged.

The court agreed with this fine distinction, and dismissed the case. Likewise, in 1787, John Graize was found guilty of an assault and battery on Josette Girard. Graize's counsel moved that judgement be arrested, since Girard was not present when the jury delivered its verdict, as required by law, and since "there is manifest error in the indictment in this, the assault and battery is therein laid to have been done on the parish of Montreal, in this district, whereas there is no such place, known in this district". The court in this instance reverted to the legal formality of public prosecution, stating that

the prosecution being at the suit of the crown, there was no necessity for the prosecutrix being present. The parish of Montreal is well and publicly known, and besides it is under the direction of a Rector by that name, which fully and clearly designs the place and leaves no uncertainty of it, and in that respect fulfils the intention of the law

and fined Graize 20sh.

The only exception to the rule of private initiative among interpersonal offences was the one felony consistently prosecuted in the Quarter Sessions, petty larceny. Though larceny victims still had to take the initiative to make a complaint to a justice, once the case reached this stage it became a crown case, with for example the fees of the clerk of the peace charged to the central administration; and once the case reached the Quarter Sessions itself, it was prosecuted by whichever law officer of the crown happened to be in Montreal, usually the solicitor general or, after 1810, the king's counsel, David Ross. Thus, there is explicit mention of a law officer of the crown in about a third of petty larceny cases, and none whatsoever of private prosecution attorneys.

But defendants in cases where there was not a specific private victim were often prosecuted by official prosecutors rather than by private citizens. Thus, for example, Mary-Anne Poutanen has found that women in Montreal who were accused of being vagrants, vagabonds, or prostitutes were most likely to be first arrested and then prosecuted by city constables or watchmen, apart from the more occasional cases where neighbours made the initial complaint.⁷⁰³ Further, most prosecutions in the Weekly Sessions against militians or habitants regarding the *corvée* and militia laws were carried out by state officials, most notably the clerk of the peace, who claimed expenses for undertaking several hundred such prosecutions in the late 1770s and early 1780s.⁷⁰⁴ And after 1810, most prosecutions for brothel-keeping in the Quarter Sessions were treated, like petty larceny, as crown cases, and prosecuted in court by the king's counsel.⁷⁰⁵

Official prosecution was also recognized and encouraged by legislators and justices. Thus, though almost all colonial acts and ordinances that defined new offences followed the English practice of providing that half of the fine be paid to the prosecutor, in order to encourage private prosecution, many also included clauses assigning the responsibility for detecting and prosecuting such offences to specific officials, especially administrative police such as the inspector of chimneys, the church constables, or the roads surveyors.⁷⁰⁶ Likewise, when the justices in Montreal promulgated their rules and regulations of police in 1784, they included a specific clause making the clerk of the peace responsible for

⁷⁰³This is from as-yet unpublished research.

⁷⁰⁴See for example John Burke's presentation to the committee on revenue, in NA RG1 E15A volume 13 file "Committee on Revenue 1793"; other similar claims are included in the clerk of the peace's claims for fees, in NA RG1 E15A *passim*.

⁷⁰⁵The situation of brothel-keeping cases before 1810 is less clear, and I have found no cases where a law officer of the crown was specifically involved in an incontrovertible brothel case. In 1781, John Burke, the clerk of the peace, prosecuted Abraham Holmes, a Montreal tavernkeeper, for keeping a disorderly house (QSR 11/1781), but this may have had to do with his tavern itself, as when James Seebrook was charged with the same offence for selling liquor to Nathan Hunter Crossley after hours on Christmas Eve, 1787 (QSR 4/1788).

⁷⁰⁶See above, Part 2.

prosecuting all infractions. And as we saw, in the 1820s the justices paid the high constable a £50 annual salary for the same purposes. There was, however, a certain ambivalence in the central administration about the state paying for official prosecutions. As the committee on public accounts remarked in 1827 on the claims of the Quebec City clerks of the peace for prosecutions in cases of nuisances, "in England these and other expenses are borne exclusively by the parties and not by the public, nor will they recommend in time coming such charges to be paid for out of the public revenue."⁷⁰⁷

But even in cases where no officials were specifically assigned to police a statutory offence, and there were no state funds available for that purpose, those who prosecuted were often "official" prosecutors, especially constables. Thus, of 31 complaints for selling liquor without a license between 1818 and 1819 whose documents were preserved in the sessions papers, nineteen of the prosecutors were Montreal professional constables; and of 68 cases for the same offence recorded in the registers of the Weekly Sessions for 1829, 41 of the prosecutors were Montreal constables, mainly Adelphe Delisle, the high constable, and Antoine Lafrenière, one of the police constables.

The reasons for this sort of official prosecution are clear: it was difficult to get private prosecutors to pursue cases in which they were not personally interested, especially where the fine (and thus the prosecutor's share) was low; and in the case of offences against such highly unpopular provisions as the militia and *corvée* ordinances, finding a private individual willing to undertake such an unpopular role was almost impossible, and not even considered in some cases. Thus, consider the course followed in 1815 and 1816 with regards to disobedience of *corvée* orders, as explained by Isaac Winslow Clarke and Hyppolite Saint-Georges Dupré, both justices of the peace and military officials:

⁷⁰⁷NA RG1 E15A volume 58 file "Reports on Public Accounts 1827".

In the years 1815 and 1816, the inhabitants in the District of Montreal very generally refused to obey the orders given to them under the Corvey ordinance insomuch that the transport of the King's stores and provisions was very much impeded. And in consequence orders from Sir George Prevost and Sir Gordon Drummond were received by us to have the delinquents prosecuted by the Crown Officer. In consequence, lists were made out and put into the hands of Mr. Ross, King's Counsel, and John Delisle the Clerk of the Peace and many person in different parts of the said district were prosecuted, which had the desired effect of making the inhabitants more obedient to the corvey law.⁷⁰⁸

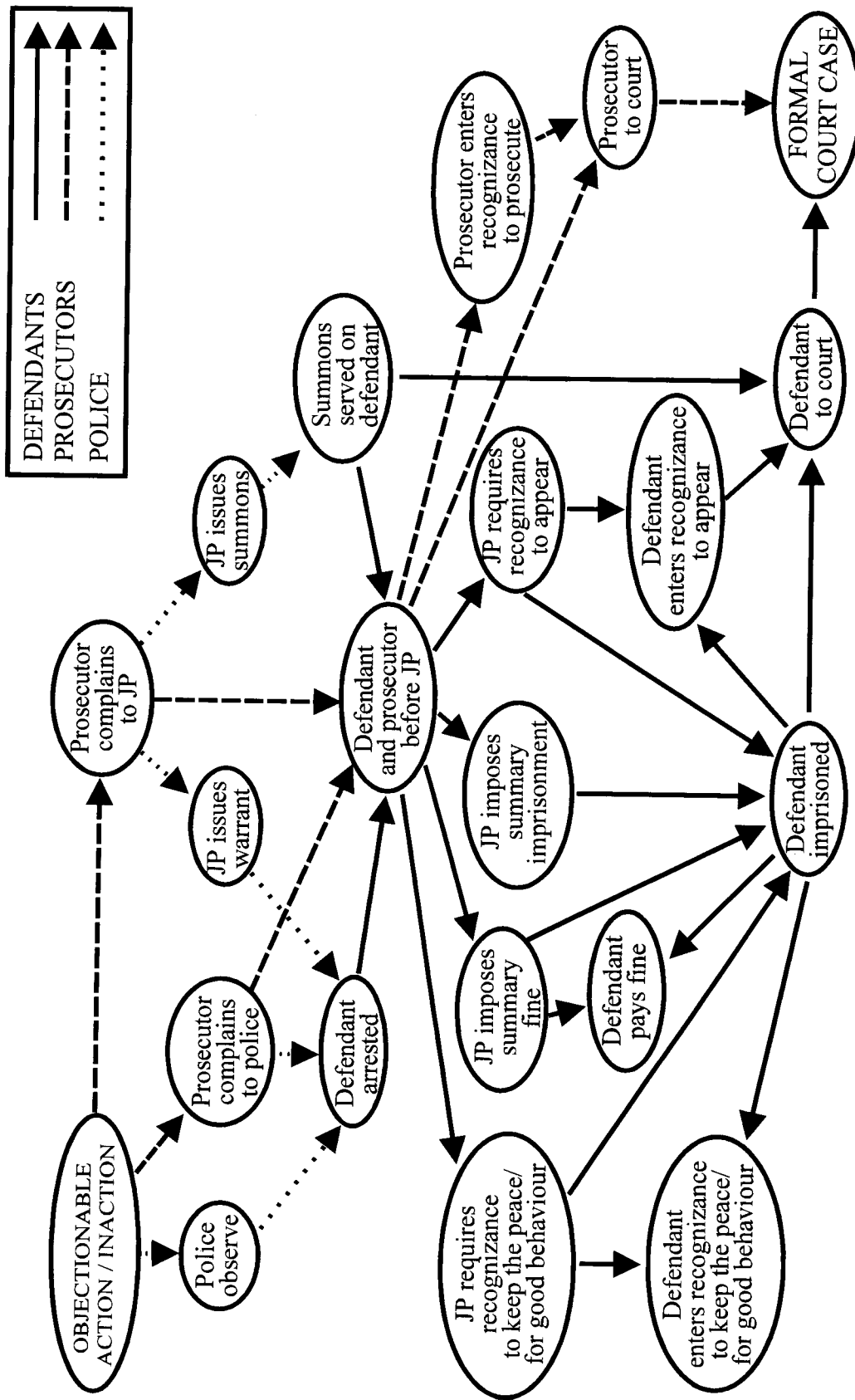
But the reasons aside, the existence of official prosecution had profound implications for the meanings and impact of the criminal justice system, since it provided a means, albeit imperfect, for the state to enforce its will on the population.

If we return to the cases of Joutras, charged with assaulting his wife, and Foucher, charged with disobeying the fire ordinance, they also show the vastly different courses that a complaint might take from the defendant's perspective. Joutras was arrested in the very act of beating his wife, and though in this case there are no documents that indicate the further course of the complaint (though it never reached the Quarter Sessions), similar cases of wife-beating, as we will see, often led to the husband being committed to gaol until he could find security to keep the peace. Foucher, on the other hand, was never more than the recipient of a piece of paper, and though he did have to appear before the justices a few days later, the court-house was only three blocks away down Notre-Dame street from his house on the Place d'Armes.

At the level of the justices, indeed, the ways of coming in contact with and proceeding through the justice system, prior to a formal court appearance, were as varied as those described by Shoemaker for Middlesex in the late seventeenth and early eighteenth centuries, even if we only consider the formal routes. Figure 3.3 shows the main routes that cases determined by the justices took, prior to reaching a formal court of the justices; the only route that is not shown is that where the prosecutor went directly before a formal court to complain. The diagram moves

⁷⁰⁸NA RG1 E15A volume 39 file "Clerk of the Peace 1821".

FIGURE 3.3: POSSIBLE ROUTES OF CRIMINAL COMPLAINTS BEFORE THE JUSTICES



from the initial action (or inaction) that led to the complaint, in the top left corner, to the appearance in a formal court of the justices, the Quarter Sessions or the Weekly Sessions, in the bottom right; the possible courses are indicated by dashed lines for the prosecutor and solid lines for the defendant, with actions by police indicated by dotted lines.

The figure lends itself to several observations. The first is that police of one sort or another were involved in virtually all of these courses, the only exception being if a defendant went voluntarily before a justice without being officially summoned. The involvement of police in criminal complaints could take several forms. They could be and were often themselves prosecutors, in which case they combined both the prosecutorial and the policing function, arresting the defendant and also swearing out the complaint. And they could also intervene in their traditional manner, serving warrants or summonses directed to them after a prosecutor had complained to a justice. But in other cases, they were the first officials that complainants went to. Thus, in 1825, Lazare Beauvais, of Caughnawaga, was at Pierre Reider's in Chateauguay when he was hit by Jacques Duquet, a Chateauguay labourer; he then went to the house of Charles Dewitt, the bailiff of Chateauguay, and in leaving the house Duquet ran up to him and, saying "Puisque tu veux m'en faire coûter, je veux te battre à ma fantaisie", hit him repeatedly until bystanders took him off.⁷⁰⁹

The relationship between the police and the people is key to understanding the whole nature of the criminal justice system at the level of the justices; and the relationship was a very ambiguous one, from the perspective of both the people and the police. On the one hand, there is no doubt that, as in most ancien-régime societies, and for that matter many parts of society today, there was a generalized distrust and even hatred of the police, whatever their form. We have already seen that in the 1820s, the Montreal watch was involved in a protracted conflict with part of Montreal's elite anglophone society; and throughout the period between the

⁷⁰⁹QSD 20/5/1825.

Conquest and the late 1820s, bailiffs, constables, and watchmen filed a steady stream of criminal complaints against people who had insulted, threatened, or assaulted them, from John Divine and Jean-Baptiste Flemin, city bailiffs who in 1769 charged Augustin Loiseau and Alexis Rencontre with attacking them on Saturday night when they came to investigate a noise in the street and a woman crying,⁷¹⁰ to Adelphe Delisle, who in 1830 charged a Dr. Leslie, whom he did not know but could point out, with assault and battery.⁷¹¹ It is difficult to get an idea of the total number of such charges, since assault on an officer was one of the few offences that was regularly tried in both the Quarter Sessions and the higher criminal courts; in addition, it is often difficult to know from the description of the crime alone in the registers whether an assault on a bailiff concerned his activity as police, or as an agent of the civil justice system. However, between 1765 and 1830, there were 74 defendants in such cases in the registers of the Quarter Sessions; and between 1800 and 1830 there were 34 defendants charged in the sample I took of complaints before the justices, suggesting a minimum of 150 such defendants overall.

A few cases illustrate the extent to which popular resistance to the police and the law could go. In 1806, John Marstene, a Montreal bailiff, was charged by the Quarter Sessions with arresting Thomas Garoniontée, a Caughnawaga native, for assaulting Thomas Arakouanté, and took along with him Frederick Charles, one of the long-serving Montreal constables, as an assistant; but when Marstene attempted to arrest Garoniontée, he was "surrounded by a large crowd of savages, not less than fifty in number, who was armed with clubs and sticks, saying to me, they had not any business with the Montreal law" and was forced to retire.⁷¹² Likewise, in 1820, Catherine Meloche, the wife of a Sainte-Geneviève tavernkeeper, complained to William Smith, a Saint-Eustache justice, that she had

⁷¹⁰QSR 7/1769.

⁷¹¹QSD 15/9/1830.

⁷¹²QSD 29/4/1806.

been assaulted in her house by Thomas Cousineau, a Sainte-Geneviève joiner. Smith accordingly issued an arrest warrant to Narcisse Béllair, the local bailiff, who with his recors, Baptiste Cousineau, went to Thomas Cousineau's house.

According to the declaration that Béllair made later,

à l'instant que j'ai été entré dans la maison dudit Cousineau pour lui fair un devoir par corpt de la part du roi le dit rébelle sest mit en défence dun gros batont et les manches de chemise retrousé jusquau [gros] du corpt en me tretant avec toutes les injures les plus atroces et même en jurent et blassefaiment contre les ordres du roi et en jurent contre sa majesté et acompagné de sont frer qui lacompagne et qui le conseile à désobeyre au dit warrant ce que je certifie veritable et c'est pourquoi que j'ai dressé le présent proces verbal de rebellion pour servir au besoin se qui par la loi et mont record à fait sa marque d'une croix à St. Laurent le quatorzième jour de Janvier mil huit cent vint.⁷¹³

And there is no record that the case proceeded any further than that. This sort of popular attitude towards the police and the law was summed up in 1799 by John Sparrow, a carter: when Jean-Baptiste Castonguay, the market constable, asked him to move his cart, Sparrow "ayant refusé de faire et montrant son derrier à ce deposant, pour mepriser sa charge quoi qu'il lui eut fait voir son autorité par son baton de connétable" then hit Castonguay in the face; although in this case Castonguay collared Sparrow and took him before Pierre Foretier to enter into a recognizance to appear at the next Quarter Sessions, where he was found guilty, fined 40sh (which he paid), and forced to enter into a recognizance to keep the peace for six months.⁷¹⁴

But there was a flip side to this conflictual relationship between the police and the people. From the perspective of the prosecutors, the police presented a whole different image. The fact that Lazare Beauvais headed directly for the house of Charles Dewitt, the Chateauguay bailiff, is an indication that he thought that Dewitt could actually do something; and the intervention of the constables to stop Joutras beating Marie Dorée was undoubtedly a relief to Dorée. And

⁷¹³QSD 11/1/1820.

⁷¹⁴QSD 20/12/1799; QSR 1/1800 and 4/1800.

consider the case of Thomas Tully, a Montreal carpenter, who was assaulted and beaten by his landlord, Stephen Story, in 1793:

last night one Stephen Story, in whose house deponant rents a room, assisted with several other persons to him unknown, came into his room last night and told deponant that he would have him turned out of doors; and threatened to beat and ill-use deponant, but the interfering of a constable put a stop to their proceeding any further. That this morning the said Stephen Story, came into deponant's room, while he the deponant and his wife and children were in bed, and assisted by the aforesaid persons, began to throw his property out of doors, the said Story laid hold of deponant in bed, and in making a blow at him struck his child, dragged the deponant out of bed and threw him naked out of doors, and otherwise ill-used this deponant to his great loss and damage.⁷¹⁵

Here, the un-named constable had been instrumental in stopping violence against Tully on the first occasion; though the fact that this did not stop Story from assaulting Tully further the next day shows the limits of police intervention.

Even the relationship between the police and the people whom they arrested was more complex than the strictly conflictual one that appears in some of the complaints of the police. We have already seen that members of the Montreal watch, for example, were accused of consorting with prostitutes; and as Mary-Anne Poutanen points out, in swearing out complaints against female vagrants and street prostitutes, Montreal police on occasion claimed that unless the women were imprisoned, they would die of cold and hunger.⁷¹⁶ More generally, up until 1810 it was a very common practice for a constable or bailiff to arrest a defendant for assault and battery, take him or her before a justice of the peace, and then immediately turn around and become one of the defendant's securities when he or she entered into a recognizance to keep the peace or to appear at the next Quarter Sessions. Thus, for example, when Louis Dubé was arrested by Louis Geophroy dit Belhumeur, the Laprairie bailiff, in 1790 for assaulting Magdelaine Surprenant, Geophroy became one of Dubé's securities to appear at

⁷¹⁵QSD 10/12/1793.

⁷¹⁶"Reflections of Montreal Prostitution in the Records of the Lower Courts": 108.

the Quarter Sessions.⁷¹⁷ These sorts of proceedings also put an entirely different spin on our understanding of the relationship between, for example, Joseph Joutras, the wife-batterer, and George Sery and Jean-Baptiste Morin, two of the constables who had first arrested him: a week after the incident, Marie-Louise Glater (the "Madame Dorleans" who was his landlady and who had first summoned the police) swore out a complaint against Joutras for assaulting her during the first incident; the arrest warrant was served by Sery; but Sery and Morin then became Joutras' securities for his appearance at the next Quarter Sessions.⁷¹⁸ Indeed, there were even more complexities to the relationship between Joutras and Sery: three years earlier, Sery himself had filed a complaint against Joutras for calling him "un sacré baillif" and assaulting him while they were both in a tavern, and had had Joutras arrested by Andrew Kollmyer; but when the case reached the Quarter Sessions in January 1798, Sery did not bother to pursue it, even though, as a constable, he was in court at the time keeping a jury in another case.⁷¹⁹

In Montreal, this practice was stopped in 1810:

The Justices having observed that it has of late happened that some of the persons who are appointed to serve the office of constable or peace officer for the city of Montreal have entered into recognizance for the appearance of persons charged with offences which practice the Court consider as very improper and incompatible [sic] with the said office, it is therefore ordered that no constable or peace officer do in future presume to offer himself or become surety for any person upon process issuing out of the Court of Quarter Sessions or the Court of Weekly Sessions or from any simple magistrate on pain of being guilty of a contempt and punished accordingly and that the Clerk of the Peace do take course to notify the Constables of this order.⁷²⁰

The influence of McCord, newly appointed and with his knowledge of and at least outward respect for the English criminal law, is evident, since the other justices

⁷¹⁷QSD 21/11/1790.

⁷¹⁸QSD 10/1/1800.

⁷¹⁹QSD 17/11/1797; QSR 1/1798.

⁷²⁰QSR 30/10/1810.

who made the order, Mondelet, François Rolland, James Caldwell, and Louis Chaboillez, had all been active during the previous decade when the practice was common, and had done nothing to prevent it. The order was followed, and there are no further examples of urban constables acting as securities for defendants, apart from the occasional case where the defendant was himself part of the police. But the practice continued outside of Montreal: thus, in 1815, Joseph Vaillant, a L'Assomption bailiff, arrested François Collin dit Laliberté, a Lavaltrie farmer, for assaulting Paul Lafleur, another Lavaltrie farmer, and brought Collin before Joseph-Edouard Faribault at L'Assomption, but then became one of Collin's securities to appear in the Quarter Sessions;⁷²¹ and in the same year, Louis Chrispin, a Saint-Eustache bailiff, became one of the securities for Joseph Adam, a shoemaker, after arresting him for assaulting Antoine Frene, a farmer.⁷²²

If we return to the course that prosecutors and defendants took through these preliminary proceedings, a second observation is that there was a large difference in the impact of the system and the course of the preliminary proceedings according to whether the defendant was arrested, or only served with a summons. Which of these two courses was taken depended very much on the offence with which the prosecutor charged the defendant before the justice. For common-law offences such as threats, assault, theft, keeping disorderly houses, and so on, if the defendant had not already been arrested by police (as in the case of Joutras, or most cases of prostitution and vagrancy), justices almost always issued an arrest warrant to bring the defendant before them for a preliminary hearing. For most statutory offences, on the other hand, and especially those involving breaches of colonial acts and ordinances and the regulations made by the justices, defendants were simply served with a summons to appear at the appropriate venue to be tried, either before the justice himself sitting in summary judgement, or before the formal courts of Weekly and Quarter Sessions. This is

⁷²¹QSD 10/5/1815.

⁷²²QSD 21/7/1815.

what distinguished Foucher's experience, for example, from that of Bazinet and Brouillet, the one served with a summons for breaking the colonial fire ordinance, and the others arrested and brought to Montreal for assault. Indeed, in cases like Foucher's, the preliminary proceedings resembled very much the proceedings used in summary civil cases for small debts, in the Common Pleas or (after 1794) the inferior terms of the King's Bench, or in the Courts of Request and the Commissioners' Courts.⁷²³ But the distinction was only a general rule of thumb, and there were many exceptions. In particular, in the case of offences where the defendants were generally from what the justices and other elites would consider the "lower orders", the justices were much more ready to use arrest warrants rather than summonses, and indeed were in some cases required to do so. Thus, the colonial acts which made it a criminal offence for voyageurs who had entered an engagement for a western voyage to refuse to go, and for indentured seamen to desert, specified that on the oath of the engageur or master respectively, the justice was to issue a warrant,⁷²⁴ and the justices adopted similar proceedings in the case of disobedient servants, who as we saw, from 1802, were regulated by laws passed by the justices themselves.

In theory, in cases where the procedure was not formally laid out, a justice also had a third formal option: not issuing any process whatsoever until someone, usually the prosecutor, had assembled enough evidence to prove his assertions to the justice's satisfaction, and otherwise dismissing the complaint. In England, this practice was common when a defendant was accused of a felony, and in some cases the justices themselves were active participants in assembling the evidence; this conduct has led to considerable debate among legal historians as to whether

⁷²³On the procedures in the inferior terms of the King's Bench, see Grace Laing Hogg and Gwen Shulman, "Wage Disputes and the Courts in Montreal, 1816-1835", in Fyson et al., *Class, Gender and the Law in Eighteenth- and Nineteenth-Century Quebec*: 132-133. From the documents of the other lower civil courts that I have seen, procedures there were similar.

⁷²⁴36 George III c.10 (1796); 47 George III c.9 (1807).

justices were acting as *de facto* public prosecutors.⁷²⁵ Though I have not explored the records of felony cases in the district of Montreal, which were almost all tried in the courts of King's Bench and of Oyer and Terminer, it seems that justices in the colony also took on this sort of preliminary investigative role. Thus, for example, in 1796 the attorney general, Jonathan Sewell, wrote to the three main justices in William Henry, James Sawers, Moses Holt, and Christopher Carter, advising them on the steps to take in investigating the murder of one Palley.⁷²⁶ And in his notebook in July 1819, Joseph Porlier recorded a case where James Moses, a Lauzon farmer, prosecuted Michel Chauvin for stealing his hay; on Moses' oath, Porlier had Chauvin arrested, but after hearing the parties and the witnesses, he dismissed the cause and ordered Moses to pay all costs.⁷²⁷

However, this did not apply in cases involving the less serious crimes determined by the justices themselves. As the grand jury of the Quarter Sessions remarked in 1830, with regards to

the practice at present prevailing in this District, of administering the laws respecting assaults and minor offences ... they consider the practice of issuing warrants for the apprehension of persons complained against without instituting further enquiry than that contained in the examinations on oath of the complainant as injudicious and tending to involve vexatious and expensive litigations which in many instances might be avoided by introducing into practise the formality of calling both parties before the Magistrates or Bench of Magistrates by summons, hearing on oath the statements of both parties from their respective witnesses and determining accordingly. The Grand Jury are of opinion that as this practise has been found to be very useful in the United Kingdom of Great Britain and Ireland it would be equally beneficial in this Province ...⁷²⁸

And I have found no evidence of a justice ever requiring more to issue a warrant in these cases than the oath of the prosecutor that an offence had occurred.

⁷²⁵Langbein, "The Origins of Public Prosecution at Common Law": 313-335; Cockburn, "Fact and Theory in the Criminal Process": 60-79.

⁷²⁶NA MG23 GII10: 4755-57.

⁷²⁷Archives du séminaire de Saint-Hyacinthe, BSE17 2, 27/7/1819.

⁷²⁸QSR 30/4/1830.

For those defendants who were brought before them outside of the regular courts, justices could formally direct the case in four main directions, also depending to a greater or lesser extent on the nature of the offence, the actions and decisions of the parties, and of course the inclinations and prejudices of the justice. Three of these directions involved the formal "resolution" of the case at this preliminary level without any further proceedings. In a wide variety of cases, from disturbing the peace through prostitution to spouse abuse, they could require the defendant to enter into a recognizance to keep the peace towards the complainant and/or be of good behaviour, most often for six months or a year plus a day; this was accomplished by the accused and, usually, two securities signing a bit of paper where they declared themselves indebted to the king in a certain sum fixed by the justice, ranging anywhere from £10 to £100 and above but most often £20, unless the accused abided by the recognizance.⁷²⁹ Under their summary jurisdiction, which as we saw applied to a wide variety of offences that were mainly against the interests of the state or the public, justices could also formally impose a fine on the spot. And also under their summary jurisdiction, in cases such as vagrancy or disobedience by apprentices, engagés, and servants, justices could summarily sentence the defendant to a term in the gaol or (after its establishment in 1802) the House of Correction. This would have been the procedure followed in the case of Javotte Contara, who was committed to the House of Correction for two months in 1804 by James Sawers and Christopher Carter of William Henry, for packing up her clothes with the intent to desert the service of Samuel Cates.⁷³⁰

It was only in cases where he felt that the offence was too serious to warrant the imposition of a peace recognizance, or where he did not have the jurisdiction to impose a formal settlement, that the justice was supposed to send

⁷²⁹The distinction between recognizances to keep the peace and recognizances for good behaviour was a fine one, with the first were usually used when the case involved a specific complainant, while the second, much less common, was used for public order offences such as disturbing the peace.

⁷³⁰QSD, House of Correction calendar, 1/1804.

the case on to a formal court, by requiring the defendant and, much more rarely, the prosecutor to enter into a recognizance to appear at the next appropriate formal justices' court. Again, the choice of court depended on the offence, since as we saw the Weekly and Quarter Sessions had substantially different jurisdictions; thus, most cases involving most statutory offences were sent on to the Weekly Sessions, while those involving common-law offences were reserved for the Quarter Sessions.

Another very important feature of these proceedings before a case got to a formal court, from the defendant's perspective, is that in many cases, even without being formally convicted of anything, he or she could end up in the gaol. A justice could commit a defendant simply for not entering into a recognizance to appear or keep the peace, and since it was entirely up to the justice to set the amounts and conditions of these recognizances, the potential for abuse was great. Thus, consider the complaint by John Kluck, a William Henry potter and Loyalist, in 1787:

there was an asolt and battery commitid against me by an abusive drungken woman and by hir husband, and I maid my compant to Esqr Dotty and he said he would hear no trifling complaints and he did not see that I was undar any aprehtian and that I ought to be ashaimed to mind a drungken wooman and upon finding such a slighty reseption I whent of to my barrack and dropt it. And the next day the woman was partly drungk againe and whent to the reverant John Dotty Esqr with hir complaint and he permitted hir to sware the peace against me and he bound me ovar and I insisted upon having them both to be bound to thear good behavior and esqr Dotty excepted the invaleds for their baile and acquettid tham but for me he refusid sofsiant bal such as Captn Captn Alexander White, Doctor Isaac Mosely, Lieutenant Simson Jenney and Silas Hamlen, and put me into the gard hous and capt me there about 36 ouars of which I think very hard and after he had the meleshy rady to taik me of to Mountreal jayl than he excaptid the inferiars for baile Andro Forrister and Frederick Williams and mad me pay a dollar cost.⁷³¹

In other words, a defendant could be legally imprisoned without actually being convicted of anything, if unable to meet the bail conditions imposed by the justice. This was the experience of Ann Taylor, the black woman arrested on the market by Charbonneau the watchman, taken to the watch-house, taken the next morning

⁷³¹NA RG4 A1: 10504-05.

before Alexander Henry, and imprisoned by him until she was summarily convicted in the Quarter Sessions and imprisoned still further. And as Taylor's experience suggests, and what is not indicated on the diagram, the power to imprison summarily extended to at least one group of police, the Montreal watch after 1818, who could hold overnight in cells in the watch-house anyone that they arrested. Justices and some police thus enjoyed broad discretionary powers to imprison suspects. This may seem an obvious point, corresponding as it does to modern practice. But as we shall see, it was crucial to the decisions that some prosecutors took; and just as today its impact on defendants was sometimes far greater than the sentence formally imposed in court.⁷³²

C. The numbers

The third important way of understanding the impact of the criminal justice system at the level of the justices is to consider the number of direct contacts that people had with the justices in their various capacities, and to compare these to the number of contacts they had with the higher criminal courts and, as another measure, with the civil justice system. Douglas Hay has argued that such quantitative analyses are problematic, given that a single manifestly unjust treason trial might make more of an impression on the population at large than a whole year's worth of equitably decided civil cases.⁷³³ Nevertheless, I contend that the greater the number of people who came in contact with a part of the state justice system, the more that part touched their daily lives.

1. The justices in the criminal justice system

In terms of the criminal justice system, the only regular courts apart from those of the justices were the higher criminal courts, the courts of King's Bench

⁷³²For a modern perspective on the abuse of provisional detention in Quebec, see Marie-Luce Garceau, *La détention provisoire: une mesure discriminatoire* (Montréal: Centre international de criminologie comparée, 1988).

⁷³³"The Meanings of the Criminal Law in Quebec": 79.

and of Oyer and Terminer, which were essentially different manifestations of the same court.⁷³⁴ The only remaining serial records for the higher criminal courts are the documents of the King's Bench from 1764 to 1773, from which Hay has calculated the total number of accused for the entire colony;⁷³⁵ a docket book covering the period from 1777 to 1784;⁷³⁶ and the registers and documents of the court from 1812.⁷³⁷ Table 3.2 combines these numbers with the information I have on defendants in cases that came before the justices, and represents my best guess of the number of defendants in criminal cases who came in contact with the various elements of the criminal justice system. Clearly, the majority of defendants went no further than the justices, with their various summary jurisdictions being especially important. And this is especially true when one considers that these numbers exclude most of the summary criminal jurisdiction that the justices could exercise outside of their regular courts, and in particular their powers to impose fines summarily. The implications for understanding the impact of the criminal justice system are obvious: for most people who came in direct contact with the system, its concrete manifestations were not the august justices of the Kings' Bench, but rather the justices of the peace themselves, local notables such as Jean-Marie Mondelet and Calvin May.

⁷³⁴See Fyson, *The Court Structure of Quebec and Lower Canada*: 36-40.

⁷³⁵"The Meanings of the Criminal Law in Quebec": 104 n.28.

⁷³⁶Université de Montréal, collection Baby, registre 74.

⁷³⁷At the time of doing the research for this study I was only able to get complete access to the registers of the higher criminal courts up to 1821, since the registers of the Oyer and Terminer after that date could not be found. They have since been found and transferred to the Archives Nationales.

TABLE 3.2: COMPLAINTS BROUGHT ANNUALLY BEFORE THE CRIMINAL JUSTICE SYSTEM (BY DEFENDANT)

	Justices of the peace				King's Bench, Oyer and Terminer	
	Ministerial function		Judicial function			
	Summary complaints (Montreal justices only)	Quarter Sessions complaints	Summary commitments	Weekly Sessions cases		Quarter Sessions cases
1765-1773	?	?	?	?	15	c.7 ^d
1779-1784	?	?	?	c.70 ^e	33	14
1810	c.40	c.250	c.50 ^b	c.150 ^e	111	c.50 ^e
1815-1821	c.50	c.400	c.80 ^b	c.130 ^e	171	133
1829	c.70 ^a	c.350	99	248	92	222

^abased on the number for 1830

^bbased on 30% representation in the gaol calendars (see above, note 659), and, for 1815-1821, all references to House of Correction commitments

^cbased on maximum 70% conviction rate (see below, page 336); 1815-1821 based on very incomplete sources

^dbased on half of defendants for the entire colony for 1764-1773

^ebased on the number for 1812

2. The justices and the civil courts

If most people involved in criminal matters never went beyond the level of the justices, how did the level of contact with the justices compare with that concerning the civil courts? For eighteenth-century England, Douglas Hay states that

If most of the law and the lawyers were concerned with the civil dealings which propertied men had with one another, most men, the unpropertied labouring poor, met the law as criminal sanction: the threat or the reality of whipping, transportation and hanging.⁷³⁸

However, this was not the case in the district of Montreal.

Before 1770, most civil cases were heard by the justices of the peace in their capacity as civil judges; and though there is no easy way of measuring their operations, it is clear that their civil jurisdiction far out-weighed their criminal role. Thus, for example, Pierre Du Calvet in 1770 asserted that he had issued some 3738 orders in the nine months that he had been acting as a justice; and unless the business in the criminal courts at this period was far greater than that in later periods, which is in no way indicated by the remaining records, most of these orders would have had to have been for civil cases.⁷³⁹

After 1770, the principal civil court was the Common Pleas, especially its inferior terms for matters under £10 Sterling, known after 1777 as the "Cour du Vendredi". For 1787 and 1788, the clerk of the Common Pleas reported that there were 2141 cases in the court, mostly for the "Cour du Vendredi"; and this accords with the numbers found by Evelyn Kolish in sampling the surviving registers of the court.⁷⁴⁰ During the same period, there were probably no more

⁷³⁸"Property, Authority and the Criminal Law": 22.

⁷³⁹NA RG4 A1: 6682-83.

⁷⁴⁰These figures are drawn from a series of reports sent in May, 1789 to the clerk of Council by the clerks of the lower courts of the districts of Quebec and Montreal, detailing the number of cases that were instituted in their courts in 1787 and 1788, in NA RG4 A1: 13853-70. Unfortunately, the clerks only reported the number of cases brought on indictment in the Quarter Sessions, and the clerk of the peace of the district of Montreal did not report any information on the Weekly Sessions. Kolish's figures are presented in "Changements dans le droit privé au Québec Bas-Canada entre 1760 et 1849: attitudes et réactions des contemporains" (Ph.D., Université de Montréal, 1980): 713.

than 350 cases in the various criminal courts, although any precision is impossible.⁷⁴¹

The situation was little different in the nineteenth century. According to testimony presented to the House of Assembly, there were about 4600 new civil cases in the inferior and superior terms of the King's Bench in 1823;⁷⁴² and this does not include the numerous civil cases tried by the commissioners for the trial of small causes scattered through the Lower-Canadian countryside.⁷⁴³ In comparison, there were at most 600 cases brought before the various formal criminal courts;⁷⁴⁴ and though this does not include summary resolutions by fine,

⁷⁴¹For 1787-1788, there were 97 defendants in the Quarter Sessions, and perhaps 140 in the Weekly Sessions. The total number in the King's Bench is unknowable, and Jean-Marie Fecteau's research on the district of Quebec shows a peak in the number of King's Bench cases in 1788-1789, at about double the number for the late 1770s and early 1780s (*Un nouvel ordre des choses*: 133); but even doubling the average for the Montreal King's Bench for 1779-1784 gives no more than sixty King's Bench cases for 1787-88. For cases determined summarily by the justices out of their regular courts, information is even sketchier. As noted above, the 1789 inquiry into fines and forfeitures found that few justices imposed fines out of the regular courts; in all, the reports of the justices suggest that probably fewer than ten defendants were fined in this way. As for summary resolution through recognizances or imprisonment, there is no evidence whatsoever, but the rate per population probably did not exceed that in 1810, which would place it at no more than 45 (based on a population of about 75 000 in 1790, about ninety summary resolutions in 1810, and a very rough population estimate of 150000 for 1810).

⁷⁴²*JHALC* 33: Appendix QQ.

⁷⁴³Only a few of the records of these summary civil courts have survived, but some at least had an impressive volume of cases. The register of the summary civil court of Joseph Portier, a Saint-Hyacinthe justice of the peace, under the 1819 provisions that allowed justices to hear small civil cases (the precursor to the commissioners' courts), records some 372 cases between July and December 1819, many of them involving merchants and professionals suing their clients for non-payment (Archives du séminaire de Saint-Hyacinthe, BSE17 2); and the Archives Nationales has some 180 summonses from the commissioners' court of Saint-Hyacinthe for 1830, which from the case-numbers recorded on their backs appear to represent at most half of all cases brought before the court (ANQM, TP10 S21 SS2 SSS1). Saint-Hyacinthe may have been unusual in this respect: the register of the summary court held by Joel H. Ives and Ezra Ball at Bolton records only 25 cases in roughly the same period in 1819 (Brome County Historical Society, "Bolton: Day Book - Ezra Ball 1818"), and the summary court held at William Henry by Henri Crebassa and Robert Jones determined only nineteen cases between July 1822 and October 1823 (NA MG8 F89 volume 6: 3657-3687), although the same court in William Henry between October 1829 and May 1830 heard about sixty cases (NA MG8 F89 volume 6: 3600-3715), and all of these appear to be records only of cases where judgements were actually rendered. Whatever the exact number of cases heard by each court, the sheer number of commissioners' courts in the 1820s, which were constituted in 41 different localities in the district of Montreal between 1821 and 1824 (NA RG68 Commissions and Letters Patent), means that their overall volume of business was probably very significant.

⁷⁴⁴This figure is composed of a maximum of 250 defendants in the higher criminal courts (based on the accounts of the attorney general in NA RG1 E15A, where he charged fees for every indictment), 156 defendants from the Quarter Sessions, and at least a hundred defendants in the Weekly Sessions (though this

recognizance, or imprisonment, there is every reason to suppose that the summary trial of civil cases far outweighed these. The predominance of the civil law is clear in the register kept by Joseph Porlier, a Saint-Hyacinthe justice, between July and December 1819, at a period when justices of the peace briefly regained their power to judge small civil matters summarily: of 377 cases in all recorded in Porlier's register, all but five concerned civil matters.

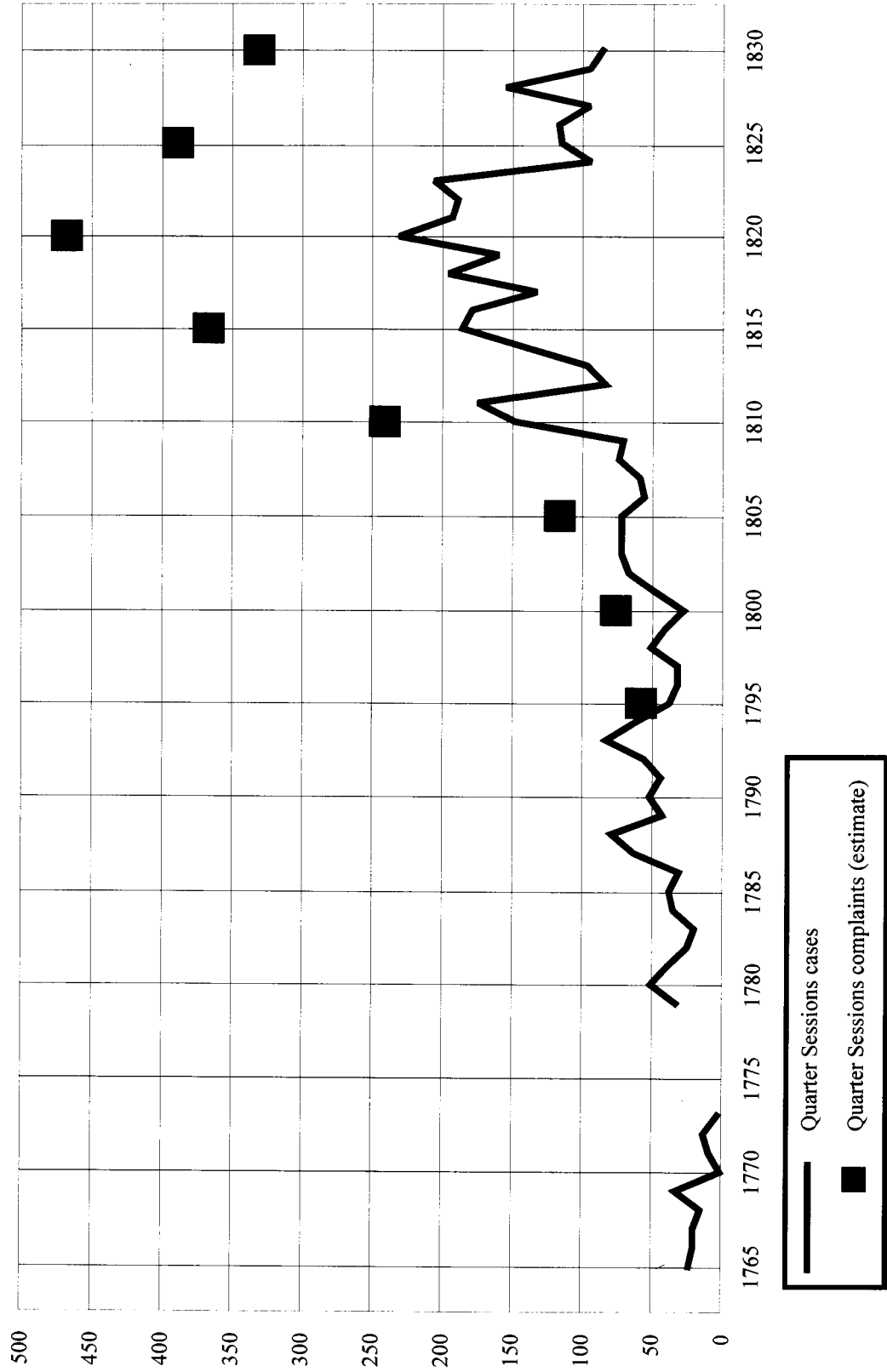
3. The evolution of the numbers

A final question when considering the numbers of people who came in contact with the justices is the evolution of these numbers over time. Unfortunately, this is only possible to trace for Quarter Sessions cases and, by extrapolation, Quarter Sessions complaints.⁷⁴⁵ As Figure 3.4 shows, the number of cases in the Quarter Sessions showed a progression that followed very closely the periodization that I have adopted: few cases in the period up to 1773; a relative increase through the 1780s and early 1790s; a sharp decline in the late 1790s, when the Quarter Sessions were dominated by Tory anglophones; a recovery after 1800, under Canadien justices like Mondelet and François Rolland; a very sharp rise from 1810, with the opening of the Police Office and the appointment of McCord and Mondelet as police magistrates (although the peak in cases in the Quarter Sessions registers in 1810 and 1811 was in part due to the large number of estreated recognizances); and a sharp decline in the later 1820s, during the Dalhousie crisis and when Tory anglophones, under Gale, once again dominated the magistracy and the bench of the court, with the number of cases reaching by 1830 a level not much higher than it had been before 1810. The same overall pattern is also visible in the numbers of complaints for Quarter

figure may have been as high as 200, since it is based on very incomplete sources).

⁷⁴⁵The estimated number of Quarter Sessions complaints was derived by calculating the proportion of complaints in each year that actually turned up in the registers of the Quarter Sessions, and multiplying this by the number of cases in the Quarter Sessions registers for the year, apart from those where there would have been no formal written complaint (as in the fines imposed summarily on constables and jury-men).

FIGURE 3.4: DEFENDANTS IN QUARTER SESSIONS COMPLAINTS AND CASES, 1765-1830



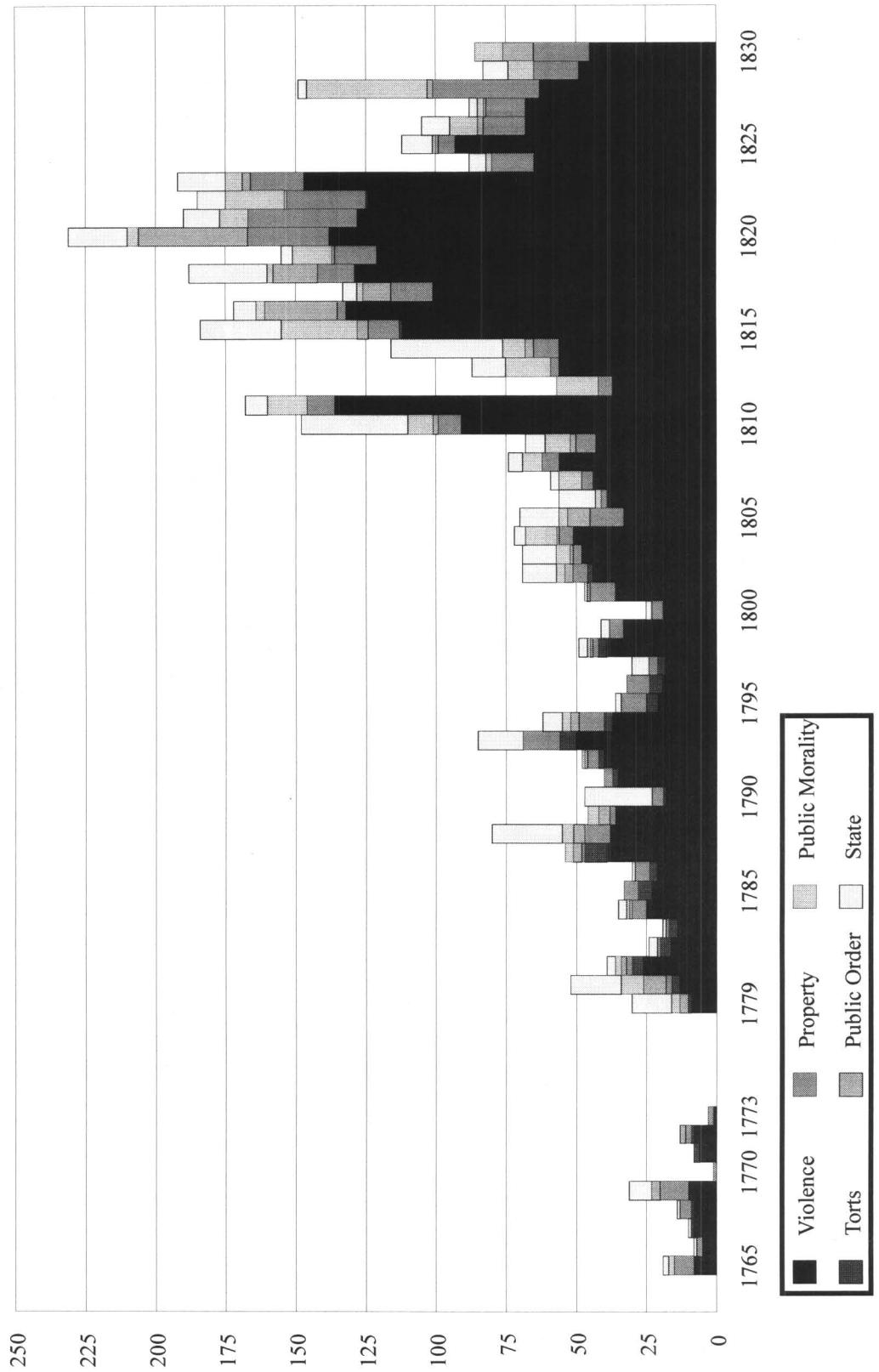
Sessions cases, with one important proviso: the decline in the number of complaints in 1825 and 1830 was not nearly as sharp as the decline in the number of cases that reached the Quarter Sessions, with substantially more complaints in 1830 than in 1810, but far fewer of these reaching the Quarter Sessions itself.

What these changes reflect, once again, is that the Quarter Sessions were very largely a court to which complainants at least turned of their own volition to settle their personal differences. When there was general suspicion of the court and the magistracy by Canadiens, as was inevitable in times of social crisis when the court was dominated by francophobes like John Richardson (in the 1790s) and Samuel Gale, this was reflected in a sharp decline in the numbers of people coming to the court. This did not mean that there was a generalized boycott of the justice system, especially in the late 1820s, when the number of complaints before justices declined far less than the number of case in the Quarter Sessions; but what it meant is that people were less willing to pursue a complaint for, for example, assault and battery, as far as the formal court. And this comes through even more strongly in Figure 3.5, which presents the numbers of defendants in Quarter Sessions cases grouped by the type of offence; the drop in defendants charged with offences of violence, primarily assault and battery, in the late 1820s is especially striking.

On the other hand, there was no correlation between the number of cases in the Quarter Sessions, or the number of complaints, and broader patterns in the economy of the colony. In England, both Douglas Hay and John Beattie have shown that in times of higher food prices or war, the number of prosecutions for thefts went up; however, as Robert Shoemaker has pointed out, this correlation did not hold for the sorts of offences tried by the justices.⁷⁴⁶ If there was a correlation, with for example more assault prosecutions in times of economic

⁷⁴⁶Douglas Hay, "War, Dearth and Theft in the Eighteenth Century: The Record of the English Courts", *Past and Present* 95(1982): 117-160; Beattie, *Crime and the Courts in England*: 199-237; Shoemaker, *Prosecution and Punishment*: 64-65.

FIGURE 3.5: DEFENDANTS IN QUARTER SESSIONS CASES, BY CHARGE, 1765-1830



hardship, we would expect to find a larger number of assault prosecutions in the late 1820s, when the price of food rose significantly;⁷⁴⁷ instead, there was a decline. The only sorts of offences dealt with by the justices which may have reacted more closely to broader economic conditions were vagrancy and prostitution; but since neither of these appeared to any great extent in the Quarter Sessions itself, my sources do not allow me any sure conclusions.⁷⁴⁸

4. Evaluating the numbers

Overall, what do these numbers really mean for understanding the impact of the criminal justice system? On a yearly basis, they do seem rather puny. In the three periods for which there is relatively complete information for the most important aspects of the justices' work, namely 1779-1784, 1810, and 1829, there were only about 100, 300, and 450 defendants in the justices' courts, plus perhaps that number again who were named in complaints that never made it to court. But with estimated populations of 55 000, 150 000, and 250 000, this yields prosecution rates in the courts of about 1.8, 2.0, and 1.8 per thousand, roughly double that for the equivalent courts in New France in the 1750s.⁷⁴⁹ And yearly averages themselves are misleading. Consider rather that in the fifteen-year period between 1779 and 1793, for example, at least 1600 people were charged with offences in the Quarter and Weekly Sessions alone, of whom only about 12%

⁷⁴⁷Fernand Ouellet, *Economic and Social History of Quebec, 1760-1850* (Ottawa: Gage, 1980): 334-37.

⁷⁴⁸This will be addressed by Mary-Anne Poutanen in her forthcoming doctoral dissertation.

⁷⁴⁹For the higher courts of royal justice (roughly equivalent to the Quarter Sessions plus the King's Bench) in the colony as a whole, André Lachance has calculated an annual average of about twenty cases in the period 1748-1759 (*Crimes et criminels en Nouvelle France*: 82). As well, for police matters in the *Prévôté* of the *gouvernement* of Quebec (roughly the equivalent of the Weekly Sessions), John Dickinson has calculated an annual average of about fourteen cases for the period 1750-54 ("Réflexions sur la police en Nouvelle-France": 516). If we consider that in Lachance's data, the *gouvernement* of Quebec accounted for only about a third of all crimes, we can extrapolate Dickinson's figure to about 42 cases per year for the colony as a whole. Together with Lachance's figure, this yields 62 cases per year in the royal criminal courts, or a little over 1 per 1 000 in population, using Lachance's average population of 59 104 for the period. This does not account for the number of people charged with criminal offences in seigneurial courts, nor with cases of interpersonal violence dealt with in the civil courts; on the other hand, my figures do not include those charged before justices acting summarily out of court.

represented people charged more than once; and similarly, in the seven years between 1815 and 1821, the equivalent number was perhaps 4500, again with a recidivism rate of only about 17%.⁷⁵⁰ Further, though we have no reliable figures for anything but the Quarter Sessions on the numbers of prosecutors and witnesses, we can safely consider that they would probably at least double this number. We then begin to approach a not insignificant proportion of the population at large that had personal contact with the criminal justice system.

D. The results

The final important approach to understanding the impact of the criminal justice system at the level of the justices is to look at the concrete effects of official contact with a justice of the peace. In fact, being named in a criminal complaint did not really matter to a defendant if it had no real impact. Thus, William Lampher and Jacob Tyler could complain vociferously to James McGill that Louis Dupré, Michel Belhumeur, Baptiste Lousignan, Baptiste Rose, and Augustin Saint-Sauveur dit Lecuyer had invaded their house in Varennes; but since there is no indication that anything ever came of this complaint, its practical impact on Dupré and the others was nil.⁷⁵¹ Indeed, of 1734 defendants altogether named in Quarter Sessions complaints that I sampled between 1785 and 1830, only 583 reached some formal resolution in the court itself, or about a third; and of these, only 232 were formally found guilty. The most immediate conclusion is that the criminal justice system was not "working", in that it could not enforce its orders; but if we look more closely at where this sort of filtering was happening, and what happened to those who were not filtered out, we find a somewhat different picture.

⁷⁵⁰The calculation of the recidivism rate is based purely on the names of the defendants, so that if anything it may be a bit high, given cases where two defendants had the same name.

⁷⁵¹QSD 13/11/1785.

1. The filtering effect

Of the 1734 defendants in Quarter Sessions complaints, at least 1246 came in contact with the criminal justice system at least once, usually appearing before a justice to enter into a recognizance to appear, indicating that the initial actions of the police were successful. This represents what is called in modern police terminology a "clear rate" of 72%; in Quebec today, the clear rate in assault cases, the highest of all non-traffic offences, is 74%.⁷⁵² The clear rate that appears from these documents may be inflated, given that as we shall see, justices outside of Montreal may not have sent in complaints made before them when none of the defendants appeared and entered into a recognizance to keep the peace; indeed, the apparent clear rate for complaints made by justices outside of Montreal was a phenomenal 78%. However, for Quarter Sessions complaints before Montreal justices, where the sources probably cover most depositions taken before them, the clear rate was still 67%; and for summary complaints before Montreal justices in cases involving interpersonal violence, the only category where it is possible to know whether or not the defendant ever appeared before the justice, the clear rate, judged by the number of defendants who entered into recognizances to keep the peace or (more rarely) were committed to gaol, was 66%. Given that both of these rates are based upon my actually finding and matching the appropriate documents in the archives, they are probably low; so at a cautious estimate, a prosecutor who went before a justice could expect that about two thirds of the time, there would be some real impact on the people against whom he or she complained.

In Quarter Sessions complaints, the filtering continued on the route to a formal court case. In strict legal theory, once a defendant had appeared before a justice and entered into a recognizance to appear at the next Quarter Sessions, the case should ultimately have ended up before the grand jury. Neither the justice

⁷⁵²Canadian Crime Statistics, 1992: 2-41.

nor the complainant had the right to discontinue the action, since the king's peace had been broken, and any fine imposed belonged to the king; the only important legal ways in which a case could be arrested before reaching the grand jury were if the King's attorney discontinued the case by filing a motion of *noli prosequi*, or if the court itself issued an order in a case where there was not enough evidence to lay an indictment, both rare occurrences.⁷⁵³ But this formal model was not followed in the district of Montreal. Thus, of the 1246 defendants who actually came in contact with the system, only 684, or 55%, turned up in the registers of the Quarter Sessions, with 525 of the remainder having entered into recognizances to appear but not fulfilling them.⁷⁵⁴ Of these 684, there is a definite indication of only 425 actually appearing in court at all, by their entering a plea or some other indication (though it was not always clearly indicated whether a defendant actually appeared in cases where, for example, the grand jury rejected the bill of indictment). In other words, the attrition rate between appearance before a justice (1246 defendants), and appearance in the formal court of Quarter Sessions (425 defendants), was about two thirds; and overall, from being named in a complaint (1734 defendants) to appearing in court (425 defendants), about three quarters. And most of the filtering occurred in the second stage of a criminal process, between the appearance of a defendant before a justice and the appearance of the defendant in the Quarter Sessions itself. The high clear rate combined with the large attrition before the case reached the Quarter Sessions suggests a criminal justice system that was not at all impotent, but which many prosecutors used to bring their opponents before a justice but not any further, whatever the formal law might be.

⁷⁵³Between 1803 and 1828, the cases of thirty defendants were discontinued by a *noli prosequi* filed by the king's attorney; though it is often more difficult to know when the court itself ordered a case dismissed, this occurred explicitly about twenty times between 1787 and 1817.

⁷⁵⁴The remainder consisted of thirteen defendants committed to the common gaol, and 24 where I found an indictment against them among the sessions papers but there was no indictment recorded in the registers of the court.

The importance of this prosecutorial initiative is also suggested by the variance by period of the number of complaints that went on to the court, which as we saw varied considerably by period. Thus, of complaints made between 1785 and 1799, about 60% went on to appear in the registers of the court; in 1800, the proportion dropped down to 37%, but in 1805, resurged to 51% and stayed at a similar level in 1810 (46%), 1815 (43%), and 1820 (47%); but in 1825 and 1830, it dropped to 27% and 26% respectively. There is nothing to explain the drop in this latter period other than a generalized avoidance by prosecutors of the Quarter Sessions; certainly, as the massive volume of cases in the King's Bench at the same time suggests, the state was not any less able or willing to enforce the orders of the criminal justice system.

Once in court, the filtering of cases continued. Jean-Marie Fecteau discusses the process in cases brought before the King's Bench, and notes that it came especially at the level of the grand and petty juries.⁷⁵⁵ This also held true in the Quarter Sessions, although the filtering was even more varied. This was in part because of the different trial procedures used for different offences in the court. Common-law offences such as assault and battery and larceny were subject to the full panoply of the English jury trial, complete with preliminary inquest by the grand jury and trial by the petty jury; but in the case of statutory offences such as bastardy or weights and measures offences, and also offences connected with the operation of the court, such as constables or jurymen who neglected to appear, cases were tried summarily by the justices themselves. Overall, about three-quarters of cases that came before the court concerned offences that were only triable by indictment, while a quarter were triable summarily by the justices, although it is sometimes difficult from the registers of the court to distinguish between the two.⁷⁵⁶

⁷⁵⁵*Un nouvel ordre des choses*: 132-134.

⁷⁵⁶Thus, in cases of simple assault where the prosecutor appeared and declared himself satisfied, it is impossible to tell whether, if the case had gone on to a formal trial, it would have been tried by jury or the justices themselves would have treated it as a summary case and imposed a recognizance to keep the peace, as

For many defendants, the formal procedure that was meant to be followed was unimportant, since they did not come to any formal resolution in the court at all. Thus, of 4804 defendants in Quarter Sessions cases between 1765 and 1830, fully 1671, or 35%, did not come to some sort of formal resolution in the court, in the sense that they were entered as cases in the registers but did not come to a point where the formal requirements of the law had been fulfilled; in about a quarter of these, the prosecutor was explicitly mentioned as having defaulted or not appeared. Of the remainder, another 324 were "resolved" by the prosecutor explicitly appearing in court to declare himself satisfied, usually before the grand jury had rendered a verdict. In other words, the cases of only 2809 defendants, or 58% of those who appeared in the registers of the court, were decided by some formal verdict.

A formal verdict could come in a variety of guises: in summary trials, the justices could dismiss a case or summarily impose a fine; and in trials by indictment, the grand jury could reject the bill of indictment, the defendant could plead guilty, and the trial jury could render a verdict of guilty or not guilty, though there were also a range of less important possibilities such as the filing of a motion of *noli prosequi*. In a general sense, an action in the Quarter Sessions could end in one of three main ways. It could end with a decision against the defendant, where the defendant either pleaded guilty or was found guilty by the court or the trial jury; this included cases where the court summarily imposed fines on constables and jurymen, since in this case the court was acting as both prosecutor and judge. It could end with a decision in favour of the defendant, by being dismissed by the justices, the grand jury, or the trial jury. And it could be resolved before any formal decision by the judicial system, either by the prosecutor declaring his or her satisfaction, or by explicitly not turning up to prosecute. Further, it could also come to none of these resolutions, at least as far

they did on other occasions. Likewise, in cases where the only record was of the defendant being called on his or her recognizance and not appearing, the clerk of the peace often did not even bother to record the charge.

as the registers of the court show. Table 3.3 presents the outcome of cases in the Quarter Sessions, broken down by period. Though the table is based on all cases in the registers, both those tried summarily and those tried by indictment, the same general trends held true for indictable offences considered alone.

TABLE 3.3: RESULTS OF QUARTER SESSIONS CASES

Result	1764-1773	1779-1793	1794-1799	1800-1809	1810-1823	1824-1830
Against defendant	46%	28%	41%	39%	28%	22%
For defendant	37%	20%	24%	25%	27%	28%
Resolved	8%	31%	17%	13%	13%	18%
No resolution	7%	19%	15%	23%	31%	32%
Other	2%	2%	3%	1%	<1%	<1%

All figures are by defendant.

Douglas Hay is correct in his assertion that in the period immediately following the institution of British rule, the courts followed very much the same pattern as those in England, with a little under half of outcomes going against the defendant, and most other cases being filtered out at various stages in the formal court process.⁷⁵⁷ However, in the rest of the period a very different pattern emerges. Between 1779 and 1793, cases in the court were especially likely to be resolved, and less than a third of defendants who appeared in the registers had outcomes that went against them. Between 1794 and 1799, under the Tory justices, the situation was closer to that before 1773, though with a higher proportion of cases that were settled or had no resolution. But from 1800, regardless of composition of the magistracy, the proportion of outcomes against defendants declined steadily, so that by the end of the 1820s, less than a third of defendants in the registers had outcomes that went against them, much as in the period from 1779 to 1793. This was largely the result of the greater proportion of

⁷⁵⁷"The Meanings of the Criminal Law in Quebec": 89-90.

cases that were either resolved or had no resolution (reaching half of all cases during the last period), but also reflected an increasing proportion of defendants who had formal outcomes in their favour.

Though I have conflated all results for and against the defendants, it is nonetheless important to consider the role of juries, both the grand juries that vetted bills of indictment before they went to trial, and the trial juries that heard the evidence and decided between the parties. With the increasing focus on popular participation in criminal justice systems based on the English model, the part played by juries has recently come under a great deal of scrutiny, with scholars such as Peter Greene insisting upon the importance of the jury as one of the key ways in which society at large shaped the criminal trial.⁷⁵⁸ There have been fewer studies of the jury in Canada before the nineteenth century, though several researchers on Quebec and Lower Canada have touched on the subject: thus, Jean-Marie Fecteau has pointed out the importance of juries, and especially trial juries, in the filtering process at the level of the King's Bench;⁷⁵⁹ Douglas Hay has suggested that the meaning of the English trial jury did not transfer successfully to Quebec in the decade following the Conquest, with the Canadian elites in particular unwilling to accept the notion that they might be judged by their social inferiors;⁷⁶⁰ and as for the jurymen themselves, Terry Chapman and Louis Knafla have stated that, like justices, they represented less than one percent of the population of the colony.⁷⁶¹

The jury was a very important institution in Quebec and Lower Canada, a means whereby the middling ranges of society were co-opted into the operations of both criminal justice and local administration, but also a way for people from

⁷⁵⁸Thomas A. Green, *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury, 1200-1800* (Chicago: University of Chicago Press, 1985); Green and J.S. Cockburn, *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (Princeton: Princeton UP, 1988).

⁷⁵⁹*Un nouvel ordre des choses*: 132-134.

⁷⁶⁰"The Meanings of the Criminal Law in Quebec": 96-97.

⁷⁶¹"Criminal Justice in Canada": 272.

these classes to express themselves, especially at the level of the grand jury. And as Fecteau's work shows, trial juries in particular were crucial to defining the experiences of those who came before the higher criminal courts. However, as far as prosecutors and defendants before the justices were concerned, juries played a much less important role. In the first place, the Quarter Sessions was the only court of the justices where there were juries at all, with all others involving summary judgement by the justices themselves; thus, juries had no role, for example, in the fate of vagrants, disobedient servants, and street prostitutes, nor in any cases involving breach of English or colonial statutes or the regulations of the justices themselves. And secondly, even among complaints destined for the Quarter Sessions, the extent of the filtering that occurred before cases actually got to a formal court meant that a minority of these cases ever came before the grand jury, and fewer still before a trial jury. Beyond these caveats, jury verdicts overall appear to have followed much the same pattern as in the King's Bench. Thus, the grand jury accepted bills presented to them and passed them along for trial about 85% of the time in the eighteenth century, and about 81% in the nineteenth; and trial juries found defendants guilty about 65% of the time in the eighteenth century, and about 62% in the nineteenth. In other words, in perhaps half of cases where it was one or the other of the juries that made the final decision, that decision was in favour of the prosecutor.

If we turn away from the Quarter Sessions to the other venues in which the justices judged offenders brought before them, a different picture emerges. There are no records that allow us to determine the outcome of cases where justices imposed summary fines or imprisonment: the only records of the former concern people who were actually convicted; and though the summary complaints brought before Montreal justices do concern matters such as desertion and vagrancy in which summary imprisonment was a common result, the records of the gaol and House of Correction are too scanty to be able to determine how many people charged with these offences were actually sent to gaol. There are only a few indications: of seven service cases decided summarily by the police magistrates

between May and December 1810, only two resulted in commitments, while in the remaining five the offender was admonished and sent back to his or her master; and likewise, of fourteen defendants in summary complaints for breach of service in the sessions papers in 1830, only five turn up in the gaol register for the same year, though the number committed to the House of Correction is unknown.

The picture is clearer for summary complaints brought before the justices in Montreal regarding cases of interpersonal violence, for if the defendant entered into a recognizance to keep the peace, this recognizance was usually preserved with the complaint. We saw that about two-thirds of defendants complained against appeared before the justices and entered into a recognizance to keep the peace. In effect, since this was a formal "outcome", at least two thirds of defendants were found "guilty" in the sense that they were forced to enter into the recognizance.

Finally, with regards to the Weekly Sessions, the sources are more limited. We know the outcome for 22 defendants in Weekly Sessions cases recorded in the register of the Quarter Sessions between 1779 and 1784, and of these nine resulted in fines, and four in other measures against the defendant; this yields a conviction rate of about 60%. Likewise, there are the records of 38 cases heard by the Weekly Sessions in 1778 concerning disobedience by French-Canadian militians; of these, 29 cases resulted in fines being imposed, or about 75%.⁷⁶² Further, there are also the records of another series of militians tried by the justices in Weekly Sessions in 1782-1783 for disobeying the *corvée* ordinance; of 195 defendants in all, 111, or 57%, were found guilty or had other measures taken against them.⁷⁶³ Finally, there is the register of the Weekly Sessions for 1829; of 248 defendants in all, 101 pleaded or were found guilty, or 41%. From all of this, we can safely say that the conviction rate in the Weekly Sessions was probably between 40% and 70%; and though not much to go on, it does suggest

⁷⁶²NA RG4 A1: 7564-66, 7568, 7574, 7583-84.

⁷⁶³NA RG4 A1: 8418-35.

that in the Weekly Sessions, defendants were more likely to be found guilty of the charges brought against them than in the Quarter Sessions, though there was still a significant amount of filtering going on.

The scope of all of this filtering has enormous implications for understanding the meaning and impact of the criminal justice system. Most obviously, it demonstrates how activity in the formal courts was only one part of the justice system, and how relying on the records of formal courts can distort our understanding of that system. But beyond that, it suggests how the system at the level of the justices could be used by prosecutors for their own ends, without the system itself taking control of the process. But does this demonstrate a fundamental weakness in the system, where justices were continually issuing orders, such as recognizances to appear, that they could not enforce? To answer this, we must turn to what actually happened to those defendants whose cases did come to a formal conclusion in the justice system, and where that decision was against them.

2. Punishment and enforcement

The sentences imposed by justices were very largely a function of the offence itself. In the case of statutory offences, almost all of those dealt with in Weekly Sessions, the penalty was usually specified in the act or ordinance, leaving the justices with little choice in the sentence they imposed. Thus, selling liquor without a license was automatically punishable with a £10 Sterling fine or, if the defendant did not pay, three months in gaol;⁷⁶⁴ and disobedience of the militia ordinance carried with it an automatic £5 fine.⁷⁶⁵ The only exception was in cases of vagrancy and breach of service, where the justices had far more latitude, with

⁷⁶⁴14 George III c. 88 (the Quebec Revenue Act).

⁷⁶⁵17 George III c.8 (1777).

the power to impose variable terms up to three months in the House of Correction or, in the case of breach of service, fines up to £10.⁷⁶⁶

In the sorts of offences generally tried in the Quarter Sessions, the justices in theory had a much greater latitude, and indeed, in common-law offences they had the discretion to impose whatever sentence they chose, short of those that involved loss of life or limb. The sentences in consequence varied wildly: for assault, from the 6d fine on Catherine Jolicoeur in 1809 to the six months in the common gaol on John Whealon in 1780;⁷⁶⁷ and for petty larceny, from the half an hour in the pillory on Mary Campbell in 1793, to the six months in the House of Correction at hard labour plus 39 lashes on the market-place on Jean-Baptiste Mathieu in 1811.⁷⁶⁸ However, the justices in general followed some very standard sentencing practices, based on the offence. In about 90% of cases involving interpersonal violence (mainly assaults and batteries), the justices imposed a fine and/or a recognizance to keep the peace, with the fines varying from the 6d mentioned above to £100, though about 80% were £1 or less and a third were 5sh or less; the other 10% of sentences involved imprisonment of one sort or another, often in combination with a fine and a recognizance to keep the peace. In contrast, 90% of convictions in cases involving property and public morality (largely petty larceny and prostitution-related offences) resulted in imprisonment and/or corporal punishment, mostly from a month to six months in the common gaol or, after 1802, the House of Correction; corporal punishment, either whipping or the pillory, was comparatively more frequent in the eighteenth century, but still imposed by the justices through to the 1820s.⁷⁶⁹ The implications here are very clear: in cases in which interests of class and state were not

⁷⁶⁶Vagrancy convictions were based on English statute law, primarily 17 George II c.5; on the law relating to masters and servants, see above, pages 50 and 54.

⁷⁶⁷QSR 4/1809, 1/1780.

⁷⁶⁸QSR 4/1793, 10/1811.

⁷⁶⁹Of fifty cases where corporal punishment was imposed, half were in the eighteenth century, which accounted for only a quarter of all judgements.

paramount, which was most cases involving interpersonal violence, the justices generally did no more than impose a monetary penalty on the defendant, which in many cases amounted to a relatively small sum; but in cases where considerations of class and elite morality were stronger, they replied with much harsher penalties.

It is possible to establish how effectively the justices enforced the penalties imposed in their various courts in the case of fines only, given the paucity of the gaol and House of Correction records; at any rate, summary imprisonment implied in itself that the justice had the defendant to hand to commit her or him. For fines, there is only any certainty for the Quarter Sessions during the period covered by the estreats of fines, since there is no consistent source for Weekly Sessions cases that overlaps the records of fines paid.⁷⁷⁰

In cases before the Quarter Sessions, the justices generally did not impose a sentence unless the defendant was before them in court, and they almost always specified as part of the sentence that the defendant was to be committed until the sentence was satisfied. As a result, almost all defendants fined in the Quarter Sessions paid their fines: between October 1788 and July 1795, 67 of 71 defendants; between 1811 and 1823, 263 of 297 defendants; and in 1826 and 1827, 26 of 34 defendants. This high rate of payment is a remarkable testimony to the power that the court could exert if necessary to enforce its orders.

The enforcement of fines imposed by the justices in Weekly Sessions and summarily was less sure, especially in the eighteenth century. Justices generally could not summarily imprison those who simply refused to pay fines imposed upon them, although as in civil cases they could seize the defendant's goods to make good the fine, through issuing a warrant of distress.⁷⁷¹ The only notable exception again was fines imposed on those who directly affronted the interests or

⁷⁷⁰The last estreat of fines for the Weekly Sessions ends in 1828, before the beginning of the 1829 register.

⁷⁷¹The procedure is outlined in most colonial acts and ordinances involving summary fines by the justices.

sensibilities of the elites or the state, as in deserting servants or those who misbehaved in church, in both of which cases a defendant not paying the fine could be summarily committed; this was how Cézaire Archambault came to be in the common gaol of Montreal in September 1825, committed by Barthelemy Rocher for not paying the £1 fine he had imposed for indecent behaviour in the church of Saint-Roch. And the same held true for offences where the state was more directly involved, notably those against the militia ordinances and defendants who would not or could not pay the hefty £10 Sterling fine for selling liquor without a license, both of whom could also be committed to gaol summarily; thus, the calendar of the Montreal gaol for 1778 contained some 65 militians committed for breach of the militia ordinances;⁷⁷² and as mentioned, in 1819 and 1820 the Montreal justices committed thirteen unlicensed tavernkeepers to the common gaol. In contrast, crimes where elites were, in theory, as likely to be defendants as other groups in society, such as not cleaning the snow in front of ones' lands, were punishable by fine but not enforceable by imprisonment; the desire to protect the "liberty" of those not at the margins of society was very clear.

The difficulties of enforcing these sorts of sentences comes through clearly in the testimony of John Burke, the clerk of the peace, when trying to explain the difference between the amount of fines actually imposed in the Weekly Sessions between 1779 and 1787, totalling about £1700, and the amount that he could account for, totalling £1150. For the remainder, his main excuse was that

a great number of persons fined, from time to time, had not paid their fines, some from poverty and distress, having neither goods or any sort of moveables or other sort of effects or property whatsoever, others from having gone away, from their places of abode to some different distant parish or place so as not to be found, so that their fines could not be recovered, and tho warrants were issued against several of them, for the purpose of levying their fines, it was to no effect.⁷⁷³

⁷⁷²NA RG4 A1: 7654-57.

⁷⁷³NA RG1 E15A volume 13 file "Committee on Public Accounts 1793".

On the other hand, this still meant that two-thirds of fines were either paid or accounted for in some other way, such as being remitted by order of the governor. Similarly, in a list of 106 militians condemned to pay fines in 1782-1783, only 54 were marked as paid, or about half; but other sources allow us to identify another nine who paid, and the number whose fines were remitted by the governor is unknown.⁷⁷⁴

By the nineteenth century, the collection of fines imposed in the Weekly Sessions at least became more sure. Thus, between April and November 1810, after the opening of the Police Office, the justices imposed fines totalling about £250; of these, they had collected £143; but £65 of the remainder was owing by a single person for buying regimental effects from soldiers, who had been committed to gaol in default of payment, so that only £41, or less than a fifth of all fines imposed, remained either uncollected or unpunished.⁷⁷⁵ Further, though it is impossible to know the total number of convictions for selling liquor without a license, at least 323 people paid their £10 Sterling fines in these cases between 1811 and 1826, and in the latter period were probably spurred on by the imprisonments of 1819 and 1820. There was however at least one area in which the enforcement of fines was not so sure, those imposed with regards to the rules and regulations of police made by the justices themselves. Thus, a list of convictions between 1821 and 1824 where the defendants had not paid their fines included 78 names, beside some of which was the notation "nulla bona", indicating that a warrant of distress had been issued but the constable or bailiff who attempted to serve it had been unable to do so.⁷⁷⁶

Despite the flaws and imperfections, none of this suggests a justice system that was completely unable to impose itself on the population at large. Almost all

⁷⁷⁴NA RG4 A1: 8418-35; RG1 E15A volume 13 file "Committee on Public Accounts 1793" (account of Saint-Georges Dupré).

⁷⁷⁵*Montreal Gazette* 26/11/1810.

⁷⁷⁶ANQM P20.

defendants fined in the Quarter Sessions paid up; when a prostitute or a vagrant was committed summarily to the gaol or the House of Correction, she or he was definitely committed; though a significant proportion of people fined summarily or in the Weekly Sessions did not pay, most did; and non-payment was not without its risks, at least in cases such as selling liquor without a license, where a defendants' goods could be seized and he or she imprisoned. But just as importantly, these considerations also show how the system was riddled with bias and inequality; and it is to these biases that we must now turn.

III. The biases of justice

There are many ways of considering the biases of a justice system. One is to look at overt malversation on the part of those who made up the system, mainly police and justices; and as we saw in our discussion of each, there are many examples of conduct by both police and justices that was neither legal nor ethical. But Jean-Marie Mondelet's trial of himself, the accusations against the watch, all are no more than individual instances and isolated examples which do not in themselves tell us much about what ordinary people could expect in general when they came in contact with the criminal justice system at the level of the justices. For this, we must look at the people themselves, and especially how factors such as their place of residence or their class could affect their contact with the justices.

A. The geography of justice

One of the features of ancien-régime criminal justice systems that is often pointed out is that they were very largely urban institutions designed for, targeted at, and used by an urban population. This is one of the main points of those who emphasize the marginality of the criminal justice system. Thus, Olwen Hufton suggests that village communities in large portions of the continent's seemingly most centralized and powerful nation-state, France, came in contact with the criminal justice system only very rarely, and then usually in cases that involved somebody from outside of the community. Offences that involved only community members, up to and including murder, were often dealt with without recourse to the justice system of the state; and even in cases where the interests of the state were more directly involved, such as assaults on tax-collectors, rural communities were often able to resist the penetration of royal justice.⁷⁷⁷ The work of Thompson, Hay, and the other proponents of the conflictual view of the eighteenth-century criminal justice system suggests that this independence of the countryside from the formal criminal law was weaker in England, with the rural

⁷⁷⁷"Le paysan et la loi en France au XVIIIe siècle".

propertied elites more successful in using the criminal law as a means of controlling their tenants and servants, in part through the considerable powers accorded to justices of the peace; but even for England, studies have shown that people from rural areas were much less likely to come before the courts either as prosecutors or as defendants.⁷⁷⁸ And as for New France, André Lachance has shown that about 60% of crimes that came before the royal courts originated in the three main towns, which constituted at most 20% of the colony's total population; a situation which mirrored that found by John Dickinson for the civil courts.⁷⁷⁹

In analyzing the geography of contacts between the people of the district of Montreal and the criminal justice system at the level of the justices, the most obvious approach is to divide the district between its "urban" and "rural" parts, in other words between Montreal and the rest of the district; this is the classic division used by contemporaries, and followed by many historians. The recent work of Serge Courville has shown that this sharp dichotomy is questionable, especially in the nineteenth century, since by 1831 smaller towns and villages that were neither urban, in the sense of Montreal, or rural, in the sense of individuals living on widely-spaced farm lots, accounted for about the same proportion of the district's population as Montreal itself.⁷⁸⁰ Unfortunately, the court records do not consistently allow for the sort of distinction between city, village, and country that is used by Courville, since they are often no more specific about the place of residence of the parties, or the place of the offence, than the seigneurie, parish, or township. Further, as Courville points out, most of the growth of this village

⁷⁷⁸For example, Robert Shoemaker's work shows that prosecution rates in the urban parts of Middlesex were from five to ten times higher than in the county's rural areas (*Prosecution and Punishment*: 276).

⁷⁷⁹Lachance, *Crimes et criminels en Nouvelle-France*: 79; Dickinson, *Justice et justiciables*: 142. Dickinson's work shows that Quebec City, with 20% of the population of its district, accounted for three-quarters of the business before the *Prévôté*.

⁷⁸⁰"Esquisse du développement villageois au Québec: le cas de l'aire seigneuriale entre 1760 et 1854", *Cahiers de Géographie du Québec* 28(73-74)(1984): 31.

population occurred between 1815 and 1831, at the very end of the period covered by this study. As a result, I have retained the split between Montreal and the rest of the district, although preferring the terms "Montreal" and "non-Montreal", since Montreal included the entire parish of the same name, and the rest of the district was not strictly "rural". And since it is also important to test for the presence of people from outside of the district of Montreal as well, I have used "non-district" as a third category.

Figures 3.6 through 3.9 present the proportion of prosecutors and defendants from Montreal, from the other parts of the district, and from outside of the district, in both Quarter Sessions complaints (those destined for trial in the Quarter Sessions where the documents were returned by the justice into the office of the clerk of the peace) and Quarter Sessions cases (complaints that actually made it into the registers of the court), the only two aspects of the justices' business where the surviving records give a sufficiently consistent indication of the place of residence of the parties. The most evident observation is that, just as in New France, parties from Montreal itself were far more likely to be involved in these sorts of cases than those from other parts of the district: apart from the period before 1794, about 60% of both defendants and prosecutors were from the parish of Montreal, when it only accounted for about 10% of the population of the district. In other words, the rate per population for Montreal was about thirteen times as high as that in the other parts of the district.

The only exception to this preponderance of people from Montreal was the period before 1794, when people from Montreal made up between 40% and 50% of prosecutors and defendants. Though the small numbers that these proportions are based on (52 prosecutors and 63 defendants) make it difficult to draw any firm conclusions from this, the contrast between this and the next period, 1794-1799, is striking. As we saw above, this second period also saw a decline in the number of cases in the Quarter Sessions itself; and it came exactly at the time of the greatest tensions between the largely Canadien rural population and the state over the roads and militia laws, and the domination of the Montreal magistracy by

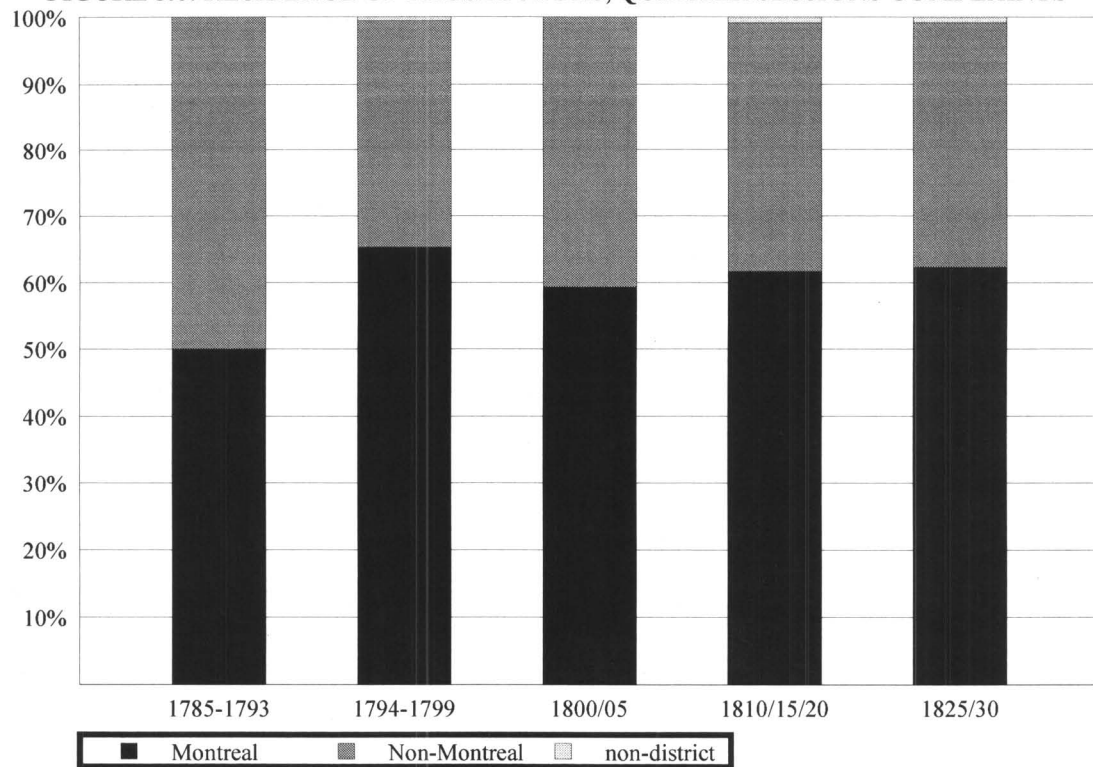
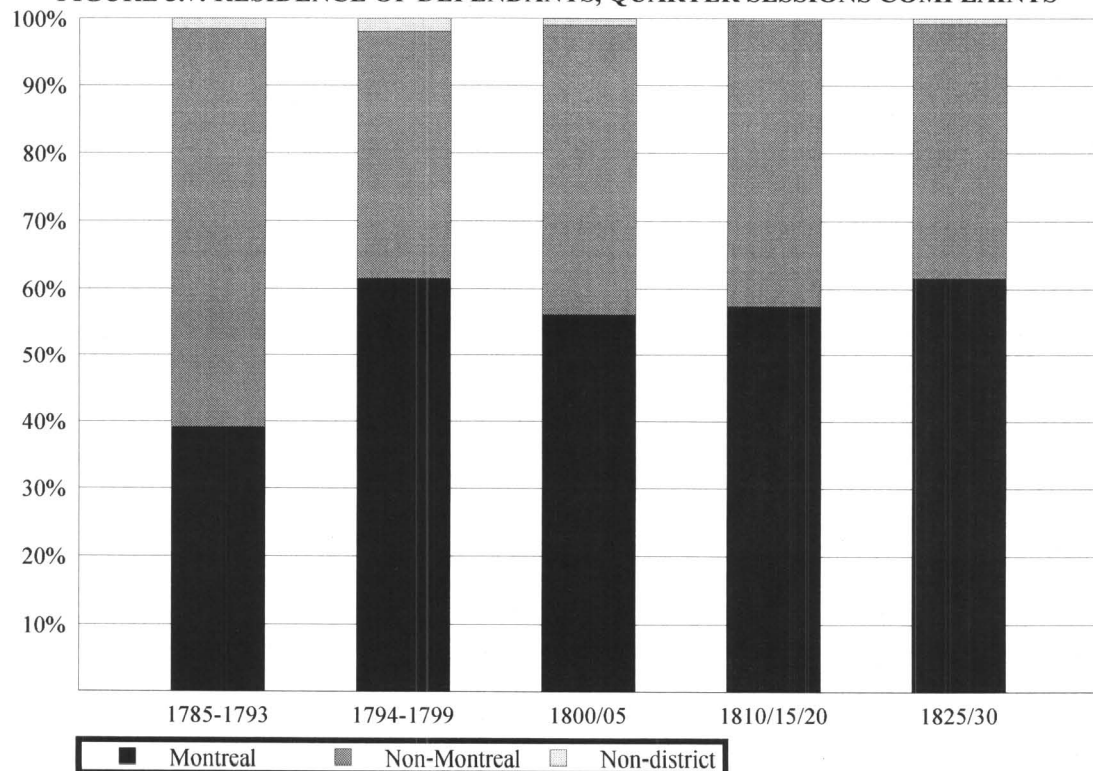
FIGURE 3.6: RESIDENCE OF PROSECUTORS, QUARTER SESSIONS COMPLAINTS**FIGURE 3.7: RESIDENCE OF DEFENDANTS, QUARTER SESSIONS COMPLAINTS**

FIGURE 3.8: RESIDENCE OF PROSECUTORS, QUARTER SESSIONS CASES

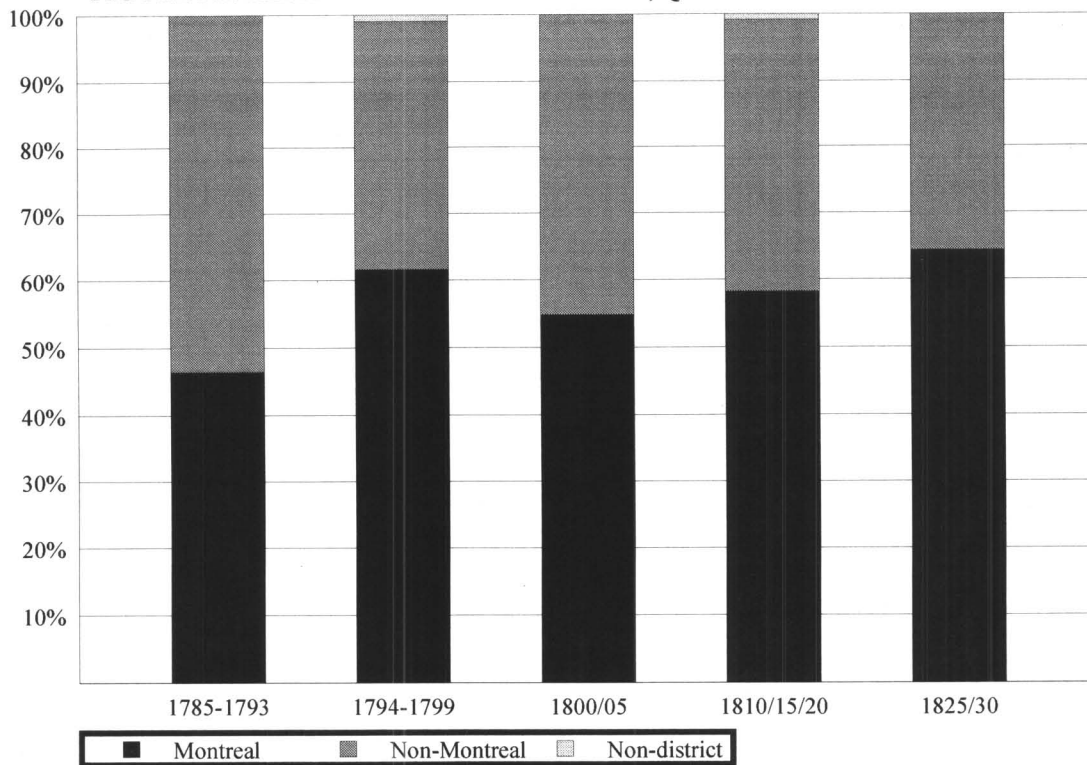
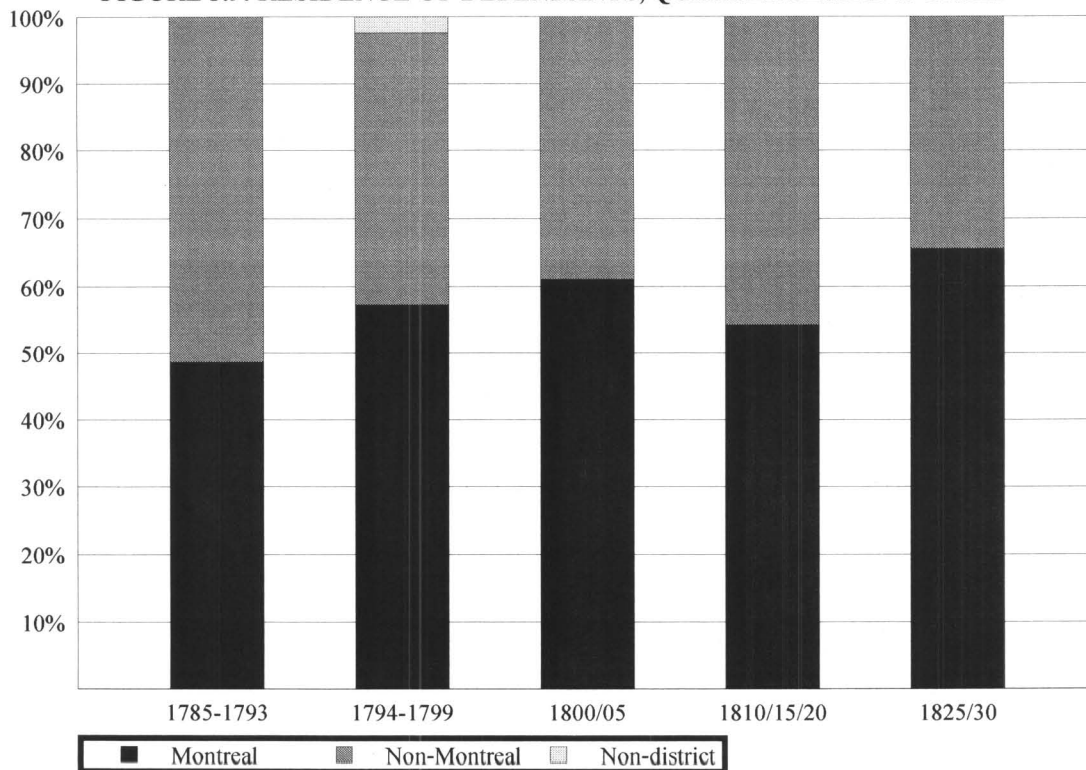


FIGURE 3.9: RESIDENCE OF DEFENDANTS, QUARTER SESSIONS CASES



anglophone tories.⁷⁸¹ All of these factors together suggest that people from outside the city very largely stopped using the official criminal justice system, at least as far as the sorts of personal disputes that dominated the Quarter Sessions were concerned; and though there were slightly more non-Montreal prosecutors and defendants in the first two decades of the nineteenth century, the crisis under Dalhousie and the renewed domination of the magistracy by non-francophone tories in the late 1820s led once again to almost two thirds of defendants and prosecutors in these cases being from the city itself.

There have been three principal reasons advanced why rural populations under the ancien régime had less to do with the criminal justice system of the state than urban-dwellers. The first concerns the relative level of crime in rural and urban areas, with the traditional argument being that there was more crime in the city than in the countryside; thus, for example, Allan Greer suggests this as one of the reasons for the predominance of urban-dwellers in the Lower Canadian courts.⁷⁸² The second is attitudinal, assuming that rural communities are more independent and closed, have stronger community mechanisms, and are thus both less willing and have less reason to resort to an external system to resolve disputes, such as the criminal justice system; this is the primary reason advanced by those who favour the marginal model of the criminal justice system, including Greer and Jean-Marie Fecteau for Lower Canada.⁷⁸³ And the third, related to and often seen as derived from the second, is institutional: that the institutions of the state were far weaker in the countryside than in the cities, and that as a result it was both more difficult for the state to impose its will on the populace, and for people in rural areas to have access to state mechanisms.

⁷⁸¹See above, pages 130-140.

⁷⁸²*The Patriots and the People*: 91.

⁷⁸³This is perhaps the most important point made by Hufton in "Le paysan et la loi en France au XVIII^e siècle"; it is echoed in Greer, *The Patriots and the People*: 97-99, and Fecteau, *Un nouvel ordre des choses*: 77.

Of these three reasons, the first is impossible to gauge from the records of the courts. As Robert Shoemaker points out, the number of assault cases that turned up in the criminal courts almost certainly had very little to do with the number of assaults actually committed;⁷⁸⁴ and this was even more true of the whole range of lesser regulatory offences. It is thus fundamentally impossible to tell from the court records whether proportionally less residents of, say, William Henry were involved in assaults than those of Montreal, or for that matter whether more people in Beauharnois cleaned the snow from in front of their lands than in the Faubourg Saint-Laurent, even when none of the former were ever charged with not doing so while the Faubourg's residents were regularly pursued in the Weekly Sessions for this offence.

The effects of the paucity of the structures of the criminal justice system are easier to judge. As discussed earlier in this study, the justices, courts, and police who made up this system were not nearly as disorganized, unprofessional, and generally anemic as has previously been argued, especially in the nineteenth century. Throughout the period from 1764 to 1830, the formal courts were certainly centered at Montreal, and in the eighteenth century there were few justices outside of the city; but there had always been bailiffs in the countryside, and by the 1810s and 1820s there were increasing numbers of active justices and police in the other parts of the district. Thus, by the 1820s, if a prosecutor wanted to make a complaint, there was probably an active justice within a few miles, and a bailiff or constable willing to serve the warrant or summons if paid the appropriate fee.

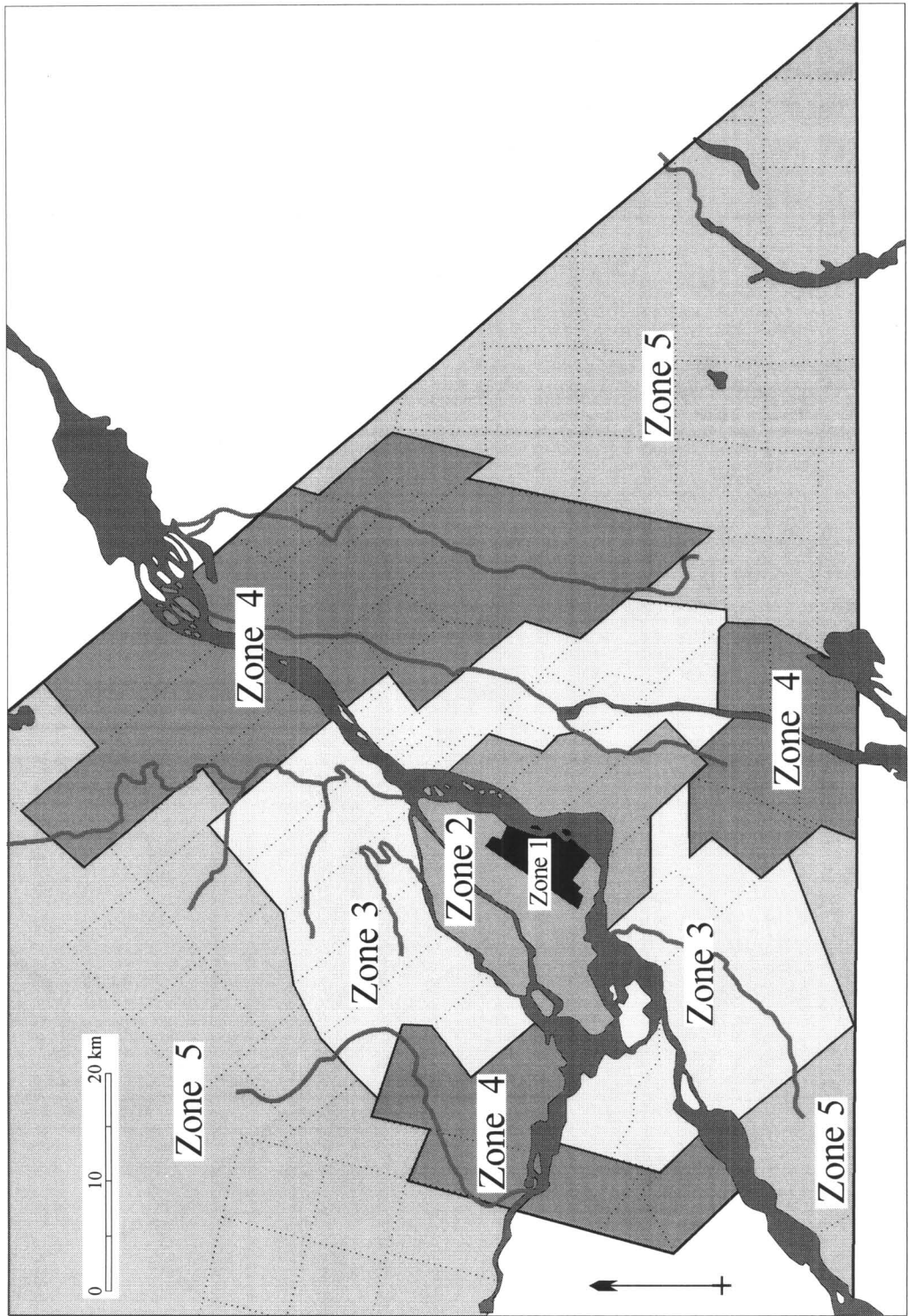
If an unequal access to the formal structures of the criminal justice system was the main reason for the preponderance of urban-dwellers before the justices, we would expect to see at least two trends. First, with more active justices and police outside of Montreal in the 1810s and 1820s, there should have been a proportionally greater number of people from outside of the city coming in contact

⁷⁸⁴*Prosecution and Punishment*: 7.

with the criminal justice system. However, as we saw this was apparently not the case, and instead the number of prosecutors from outside of the city, at least in cases sent on to the Quarter Sessions, declined if anything, although this decline may have been partly the result of justices and prosecutors further from the city being more reluctant to send cases on to the Quarter Sessions for trial. And secondly, if it was the distance from Montreal itself, where the Quarter Sessions sat, that was a major dissuading factor, then complaints from outside of Montreal should have been much less likely to end up in the registers of the Quarter Sessions than those from Montreal itself. And yet, as a comparison of Figures 3.6 and 3.8 shows, there was no such evident trend, with little difference in the proportion of Montreal and non-Montreal cases among complaints in general, and among complaints that made it into the registers of the court.

In order to gauge more accurately the effects of distance from Montreal on involvement with the justice system, I have sub-divided the district into roughly concentric zones, as shown on Figure 3.10, based on their distance from and accessibility to Montreal. Zone one is the parish of Montreal itself; Zone two comprises the rest of the Island of Montreal, Isle-Jésus, and the seigneuries on the south shore, all with easy access to the city by land or water; Zone three is made up of the seigneuries immediately surrounding those, still with relatively easy access to Montreal; Zone four is the seigneuries furthest from Montreal, on the periphery of the district, especially the lower Richelieu, most of L'Acadie country south of Saint John, and the seigneuries furthest inland (apart from Petite-Nation); and Zone five is the land outside of the core seigneurial zone, in other words the townships, along with Saint-Armand and Petite-Nation. As with any arbitrary division, my choice in assigning areas to zones can be questioned. However, I have attempted wherever possible to keep socio-geographically cohesive areas together, such as L'Acadie country or the Varennes-Verchères area; and though there has not yet been any study of pre-industrial travel times, I have performed a very rough check using offences that occurred outside of Montreal where the

FIGURE 3.10: GEOGRAPHICAL ZONES USED IN ANALYSIS



complainant went before a Montreal justice to make the complaint, by examining the number of days between the offence and the complaint.⁷⁸⁵

Tables 3.4 and 3.5 present the proportion of non-Montreal prosecutors and defendants from each zone outside of the city, along with the proportion of the total non-Montreal population of the district in each zone according to the censuses of 1790 and 1831.⁷⁸⁶ Again, the results are ambiguous, although there is some evidence of the effects of distance from the city. Thus, prosecutors from Zones two and three, both within a day's journey of Montreal, were more willing to launch a complaint destined for trial in the Quarter Sessions than those from the further zones: with 75% of the population outside of Montreal in the 1790s, they represented about 85% of non-Montreal parties; and with about 55% of the population in 1831, they represented about 80% of non-Montreal parties in 1810, 1815, and 1820, though this dropped to about 60% in 1825 and 1830. On the other hand, parties were no more likely to come from the Island of Montreal, Isle-Jésus, or the seigneuries immediately across the Saint Lawrence from the city, than they were from the seigneuries immediately surrounding these. Beyond this core zone, parties from the further seigneuries, Zone four, were highly under-represented, accounting for example for only 12% of non-Montreal prosecutors in 1810/1815/1820 when they made up 36% of the population outside of the city. Indeed, in my entire sample I found only ten complaints from Berthier and Sorel, the two most important seigneuries on the periphery of the district. On the other hand, despite the frequent complaints from the townships about their distance from

⁷⁸⁵I ensured that Zone two did not extend much beyond areas for which I had evidence of a complainant arriving in Montreal on the same day of the offence; I had examples of this for Saint-Vincent-de-Paul, most of the Island of Montreal, and Longueuil, though I also included the south-shore seigneuries from Caughnawaga to Boucherville since all had direct ferry links to Montreal. Zone three extended no further than cases where the complainant arrived in Montreal the next day, for which I had examples from L'Assomption to Saint-Eustache on the North Shore, Vaudreuil and Soulanges, Beauharnois, Saint John, and Chambly; I also included Rouville, since Pierre Goguet, the Saint-Hilaire habitant, arrived in Montreal the same day, and also the Varennes-Verchères area, which had ferry links to Montreal and was no further than L'Assomption.

⁷⁸⁶See above, note 231.

**TABLE 3.4: RESIDENCE OF NON-MONTREAL PROSECUTORS
QUARTER SESSIONS COMPLAINTS AND CASES**

	1785-1799			1800/05/10/15/20/25/30		
	Quarter Sessions complaints	Quarter Sessions cases	population in 1790 census	Quarter Sessions complaints	Quarter Sessions cases	population in 1831 census
Zone 2	47%	40%	34%	31%	29%	17%
Zone 3	38%	39%	41%	43%	42%	33%
Zone 4	12%	16%	25%	16%	16%	36%
Zone 5	3%	5%	?	10%	13%	15%

**TABLE 3.5: RESIDENCE OF NON-MONTREAL DEFENDANTS
QUARTER SESSIONS COMPLAINTS AND CASES**

	1785-1799			1800/05/10/15/20/25/30		
	Quarter Sessions complaints	Quarter Sessions cases	population in 1790 census	Quarter Sessions complaints	Quarter Sessions cases	population in 1831 census
Zone 2	41%	37%	34%	30%	25%	17%
Zone 3	42%	37%	41%	41%	43%	33%
Zone 4	11%	16%	25%	17%	17%	36%
Zone 5	6%	10%	?	12%	15%	15%

the courts of justice, they accounted for parties in more or less the same proportion as their population.

All of these figures nevertheless seem to confirm the notion of an ancien-régime style criminal justice system that was primarily used by and directed against urban residents. And more generally, they give credence to Allan Greer's postulate of a rural habitant society that was in large part untouched by a state that had not yet reached modernity. But though the preponderance of urban-dwellers is undoubted, we must be very careful about what exactly these figures represent. In the first place, the sessions papers preserved by the clerk of the peace, on which these calculations are based, are almost certainly skewed towards complaints involving urban dwellers. They probably cover the bulk of complaints laid before Montreal justices, whether or not any further action was taken, especially after 1810 with the professionalization of the magistracy and the opening of the Police Office in the same building as the office of the clerk of the peace. But they very likely do not cover all complaints laid before justices outside of Montreal, for unless a defendant entered into a recognizance to appear at the Quarter Sessions, there was neither a practical nor a legal reason for the justice to send the documents in to Montreal. Indeed, if we consider only case files which included a recognizance from at least one defendant, the overall proportion of prosecutors and defendants from Montreal in the nineteenth century drops to slightly over 50%.

Secondly, this under-representation of rural parties probably reflects in part an unwillingness of people from outside the city to go before the formal courts in Montreal rather than an outright avoidance of the criminal justice system in general. There are hints that in the areas furthest from Montreal, justices were more likely to impose, and prosecutors to accept, a resolution that did not involve a costly trip to Montreal, at least in the sorts of less serious cases that were decided by the justices themselves. Thus, judging by the case-files in the sessions papers, Montreal justices in the 1810s and 1820s imposed recognizances to keep the peace in about a quarter of assault cases that came before them, with the

remainder destined for trial in the Quarter Sessions. In contrast, all eight of the assault cases that Henry Crebassa and Robert Jones, the William Henry justices, recorded in their notebook in 1822-1823 were resolved by imposing a recognizance to keep the peace on the defendant, and neither sent any cases on to the Quarter Sessions in Montreal for trial in 1820, 1825, or 1830, though in the 1820s they committed at least 27 prisoners to the common gaol for more serious crimes where these other options were not available. Similarly, consider Joseph Douaire de Bondy, the active Berthier justice. During the period that he was active, up to 1824, he was the justice outside of Montreal who most regularly submitted accounts of the fines he imposed summarily; and the gaol calendars from the same period show that he committed at least 23 prisoners to the common gaol for more serious offences. And yet, in my entire sample I found only one complaint made before him that he sent in to Montreal for trial in the Quarter Sessions. Both William Henry and Berthier were in Zone four, the zone which from the records preserved in Montreal would seem to have had the least contact with the criminal justice system of the state; and yet Crebassa, Jones, and Bondy were apparently very active in ways that would not show up in the Montreal records. Contacts between people outside of Montreal and the criminal justice system at this level are thus largely hidden, and judging their scope is impossible unless further records of non-Montreal justices turn up.

An 1825 letter from Jonas Abbott, a Saint-Armand justice of the peace, to the clerk of the peace, is very suggestive of this willingness to resort to the criminal justice system at the local level of the justices, but not to go any further. In sending in the documents regarding the complaint of John Gibson jr., a Sutton farmer, against Thomas Waters, "a transient person", for assaulting him, Abbott explained why he had not written out in full the recognizances of the parties and witnesses:

I herewith enclose you sundry papers for the Quarter Sessions of the peace. I have heretofore been in the habit of making out recognizances at full length, which has occasioned me a great deal of writing, and in some instances have transmitted bonds, which have been taken on the most flagrant kind of assault and battery, neither the complainant nor respondent has appeared, the bonds never called for, and here the matter ended -- the whole country in this part of the realm [sic] is well apprised of this -- and many of our inhabitants dont hesitate to break the King's peace every day of their lives -- give bail for their appearance at the General Quarter Sessions of the peace -- and laugh at the magistrate the moment recognizance is entered into. We who are appointed conservators of the peace are placed in a very awkward situation in this respect -- the thing is too generally known -- however I am willing and wish to do my duty as a magistrate, and should it become necessary in this case, to make out the bonds at full length, the moment I am acquainted of it, it shall be done, and transmitted to you without loss of time. I feel very confident that neither the complainant, respondent, or witnesses will appear at court, my reasons for so believing is that the parties have been to me requesting that I would not send the papers to Montreal, saying they could settle the matter amongst themselves. However the papers are now before you, and if incompleat, have the goodness to write me, and I shall attend to your order.⁷⁸⁷

The letter and the case illustrate the essential paradox of the criminal justice system outside of Montreal in the early nineteenth century. On the one hand, the system was not at all lacking in presence and strength: to complain to Abbott, Gibson had only to travel a short distance, at most fifteen miles even if he lived in the furthest corner of Sutton, and certainly not the full distance to Montreal as would have been the case under the French régime; and the arrest warrant that Abbott issued was certainly successful, since Waters did in fact appear before him a week later. But on the other, Abbott was clearly incapable of forcing Gibson and Waters to do much more than that, appear before him; and just as Abbott predicted, there is no mention of the case in the Quarter Sessions registers. In this case, and, from Abbott's comments, many others, the criminal justice system of the state was very clearly a tool, to be used as necessary and discarded when no longer needed; and what suited people outside of Montreal was not making the lengthy trip to Montreal, but simply having their opponent brought before a justice.

⁷⁸⁷QSD 18/6/1825.

Another indication of this sort of use of the criminal justice system by rural inhabitants comes from the places of the parties involved. Overall, my sample of complaints, both those destined for trial at the Quarter Sessions and those for summary resolution by Montreal justices, contained 1662 complaints where I knew the residence of all of the parties.⁷⁸⁸ As Table 3.6 shows, the vast majority of complaints involved parties from the same place, whether Montreal or some place outside of the city. For complaints that involved prosecutors and defendants from outside of the city, about 70% involved only people from the same parish, seigneurie, or township, such as the 1793 complaint of Josephte Rose, the wife of Antoine Clement, a Pointe-Claire habitant, against Joseph Mador, another habitant from the same place, for assault and battery;⁷⁸⁹ and another 10% only people from neighbouring places, such as the 1830 complaints of Patrick Madden, a Saint John tailor, and Truman Blakley, a Saint-Athanase toll-keeper, against each other, also for assault and battery.⁷⁹⁰ No more than a quarter of complaints involved parties from further apart than this; only 15% involved prosecutors and defendants from both Montreal and outside of the city; and of these latter, about a quarter involved only parties from Montreal or the parishes immediately surrounding it.⁷⁹¹ And as for parties from outside of the district of Montreal, they were involved in only a very small proportion of complaints.

What all of this suggests is that in the district of Montreal, a significant part of the criminal justice system at the level of the justices, namely complaints destined for the Quarter Sessions and summary complaints brought before Montreal justices, did not fit at all the "classic" pattern of an ancien-régime criminal justice system where people outside of the towns only came in contact

⁷⁸⁸There were 73 complaints in which the place of residence of one of the parties was unknown.

⁷⁸⁹QSD 11/12/1793.

⁷⁹⁰QSD, *Blakley v. Madden*, 12/11/1830 (recognizance only), and *Madden v. Blakley*, 18/11/1830 (recognizance only).

⁷⁹¹Of the 98 complaints, 27 only involved parties from Lachine, Saint-Laurent, Longue-Pointe, or Longueuil.

TABLE 3.6: PLACE OF RESIDENCE OF PARTIES IN COMPLAINTS

Place of residence of parties in each complaint	1785-1830	1785-1799	1800-1830
All parties from Montreal	1045	147	898
All parties non-Montreal and from same place	463 (68%)	74 (70%)	389 (68%)
All parties non-Montreal and from same or neighbouring place	63 (9%)	14 (13%)	49 (9%)
All parties non-Montreal but not all from same or neighbouring place	34 (5%)	5 (5%)	29 (5%)
Parties from both Montreal and non-Montreal	98 (15%)	10 (10%)	88 (15%)
One party not from district	22 (3%)	2 (2%)	20 (3%)

with the system in cases involving "others", those outside of the community. There are certainly examples of rural inhabitants using the justice system to deal with aggressions by strangers, such as the 1830 complaint of Joseph Beaudreau and Amable Dufresne, Longue-Pointe farmers, against Joseph Beauchamp, who declared himself to be from Saint-Roch, for stealing their chickens and a harness;⁷⁹² and there are also examples of prosecutors from Montreal itself using the system in their dealings with the rural community, such as the 1815 complaint of William Gilkerson, of the Montreal firm of Porteous and Gilkerson, against Jean-Baptiste Brabant and Toussaint Legault, Saint-Friole inhabitants, for stealing pieces of beef while transporting it to Kingston for his firm;⁷⁹³ but these were very much the exception.

The discussion thus far has revolved around complaints destined for the Quarter Sessions, which mainly concerned disputes between individuals, and the surviving summary complaints, which mainly involved the same sorts of cases;

⁷⁹²QSD 29/9/1830.

⁷⁹³QSD 11/3/1815.

but there were other parts of the criminal justice system that more regularly involved disputes or confrontations between people who were not from the same place. The most evident of these were the summary convictions by justices of the peace for desertion by voyageurs and by indentured seamen, which could lead to either a fine or a term in the common gaol or the House of Correction. By their very nature, these two sorts of cases did not usually involve people from a single place in the district of Montreal: in the first it was fur-traders, usually based in Montreal or Lachine, seeking to discipline voyageurs from a wide range of rural parishes, from Vaudreuil to Saint-Ours; and in the second, it was ships' captains, usually foreign (although only ever referred to in the records as the captain of such and such a ship, "now in the harbour of Montreal") using the justice system of this port of call to discipline indentured seamen who were also almost always from outside of the colony. Unfortunately, few records of these sorts of cases have survived, apart from the occasional complaint included among the case-files; however, the records of the gaol and summaries of committals to the House of Correction show that they were a small but steady part of prisoners committed.⁷⁹⁴

As well, the criminal justice system also provided some very specific ways in which the state itself could reach out into the countryside to exercise its control. The Weekly Sessions was a Montreal court, which as we saw was largely intended to police the town itself. But the urban justices who made up the Weekly Sessions did not hesitate to extend their jurisdiction to cover the entire district, especially in matters where the interests of the state were concerned. In the eighteenth century, this primarily concerned militia and *corvée* duties, which accounted for about 30%

⁷⁹⁴Between 1810 and 1826, the gaol calendars record 51 such committals, thirteen against deserting seamen and 38 against deserting voyageurs, with an additional nine committals for unspecified desertion, most of which probably involved indentured servants; but given that in all desertion cases offenders could be released at any point if they promised to return to their service, and that indentured seamen in particular could only be imprisoned until their ships left port, the actual number was probably considerably higher. Between 1826 and 1830, however, the gaol register itself shows 26 such committals, fifteen against seamen and eleven against voyageurs, though with an additional 33 committals for unspecified desertion. The summaries of committals to the House of Correction show that from September 1802 to March 1805 there were 45 committals for desertion of service in general (*JHALC* 13: 458), though from April 1811 to December 1815 there were only twenty (NA RG1 E15A volume 29 file "House of Correction Montreal 1816). None of these records reflect deserters who were simply fined or ordered to fulfil their contracts.

of convictions in the court, and which concerned very largely people from outside of the city. In the nineteenth century, it was through convictions for selling liquor without a license: of 105 such convictions between 1810 and 1829 where the sources provide the place of residence of the defendant (out of 468 convictions altogether), 62, or about 60%, were from outside of Montreal; and these ranged across the entire district, from Contrecoeur to Rigaud, and from Stukely to Saint-Roch, with indeed more convictions in Zones four and five than in Zones two and three.

None of this, of course, is to argue that urban dwellers were not in closer contact with and more heavily touched by the criminal justice system; and it also does not change the fact that at the level of the Quarter Sessions, the criminal business of the justices was primarily urban. But it does suggest that the geography of contacts with the justice system was more complex than the classic urban/rural split, with only townsmen affected in any great way by the system and with rural inhabitants coming in contact with it only very rarely and reluctantly. And can we even assume that the preponderance of urban dwellers was necessarily the reflection of an "ancien-régime" criminal justice system and, more generally, a pre-modern state, as both Allan Greer and Jean-Marie Fecteau have suggested? It certainly did harken back to New France, and was similar to what has been found in many other ancien-régime societies. But there is one key flaw to this argument: this same pattern of a much stronger presence of people from Montreal itself in the criminal justice system also held true almost a hundred years later, at the beginning of the twentieth century, long after the arrival of the "modern" state. Thus, taking 1901 as an example, the conviction rate in the judicial district of Montreal, which included not only Montreal itself but also the rest of the Island of Montreal, Isle-Jésus, Vaudreuil-Soulanges, and part of the south shore, was 3.0 per 1000 population for indictable offences and 13.9 per thousand for summary offences; in contrast, the conviction rate for the rest of what had been, a hundred years earlier, the district of Montreal, was only 0.3 per thousand for indictable

offences and 1.2 for summary offences, or about a tenth of what it was for Montreal itself.⁷⁹⁵

B. The effects of ethnicity

The same sorts of complexities and paradoxes that emerged in our discussion of the geography of contacts between society at large and the criminal justice system of the state apply even more strongly to another feature of these contacts that has attracted the most attention from historians of Quebec and Lower Canada, namely the dislike or distrust by the Canadien majority of the criminal justice system implanted and, as is usually assumed, run by the English conquerors. Apart from Hilda Neatby's assertion that Canadiens in the 1770s and 1780s found the system both fair and useful, most historians have argued that in the decades between the Conquest and the Rebellions, Canadiens generally avoided using the criminal justice system of the state. Thus, Douglas Hay notes that about two-thirds of the accused in the King's Bench for the province as a whole between 1764 and 1775 were non-francophones, and uses this to suggest Canadien hostility to the system; and although he nuances this by pointing out that Canadiens were more likely both to prosecute and to be prosecuted in the Montreal Quarter Sessions, he points out that non-Canadiens were still heavily over-represented.⁷⁹⁶ Similarly, Jean-Marie Fecteau suggests that "tout se passe comme si la justice du roi s'abbatait surtout sur ses anciens sujets, se réservant la faculté, par moments, de faire des exemples parmi les nouveaux sujets francophones", and also postulates a "boycott" of the criminal justice system by Canadiens in the eighteenth century.⁷⁹⁷ Allan Greer also suggests that this aversion of the Canadiens to the formal justice system of the state continued in the

⁷⁹⁵The criminal statistics are taken from *Criminal Statistics for the Year Ended 30th September, 1901* (Ottawa: Department of Agriculture, 1902); the population figures are from the *Census of Canada, 1901. Volume 1: Population* (Ottawa: Department of Agriculture, 1901).

⁷⁹⁶"The Meanings of the Criminal Law in Quebec": 84-85.

⁷⁹⁷*Un nouvel ordre des choses*: 128-129; "Between the Old Order and Modern Times": 297.

early nineteenth century, at least outside of the cities.⁷⁹⁸ And Louis Knafla takes an even more extreme view:

In Lower Canada, where the English criminal law was superimposed on a French-speaking society, the law was despised from the outset, and hostility increased from the 1790s down to the mid nineteenth century. The distance of the courts, the infrequency of their sittings, the long and technical proceedings, and the more severe justice assisted in the alienation of the Canadiens to the English that have become a permanent scar on the face of the country.⁷⁹⁹

If we consider the story of the attempted arrest of Joseph Dupras dit Pratte, of Lachenaie, in Terrebonne in August 1797, as narrated by Charles-Baptiste Bouc, the local member of the legislative assembly, we cannot help but be persuaded of this hostility:

Ayant été demandé par le sieur Joseph Borgne, docteur pour donner aistance a un émeute quille y avoit, sur la place de la paroisse de Terrebonne, et étant rendue sur le lieux et ayant vu M. Destimonville prie par un homme qui le tenoit par la gorge, et ayant voulu donner toute son assistance pour empêcher que M. Destimonville fut étranglé, a l'instant le nommé Joseph Duprast dit Pratte c'est avancé en proferant cest parole "étrangles ces saine Anglois en me parlant vous mavez atrapé lanné derniere vous mavez voulu epouventé en menpêchant daller a Montreal pour moposé auz bille des chemains mais je nest pas voulu vous ecouter et parse que nous avont manquer notre coup tueons pendant que nous pouvont nous somme dans un temps de liberté" et ayant demandé aux bailli qui etoit alors present de faire son possible pour areter cette homme le bailli ayant fait son possible fut frapé a plusieurs reprise et lui ayant vu oter son baton de conétable alors le sergent de millice et venu avec six homme pour areter le dit duprast le sergent a été tres maltrété et malgré les homme il cest enfuit en les injurant aux tant qu'il lui etoit possible jurant contre les oficier et toute personne autorisé a mentenir la paix ce que je sertifis.⁸⁰⁰

But though Dupras' anger towards authority is undoubted, there are complexities here that go beyond a simple defiance on the part of a Canadien towards the police and the justice system of the English rulers. In the first place, everybody involved in the case was Canadien: not only the parties and witnesses (Dupras, Bouc, Borgne, and D'Estimonville), but also Félix Jolie, the Lachenaie justice of

⁷⁹⁸*The Patriots and the People*: 91-100.

⁷⁹⁹"Aspects of the Criminal Law, Crime, Criminal Process and Punishment in Europe and Canada": 7.

⁸⁰⁰QSD, Bouc v. Dupras, 26/8/1797.

the peace before whom Bouc made his statement; Pierre Panet, the justice who, jointly with Jolie, issued the arrest warrant by which Dupras was arrested two days later and also took Dupras' recognizance to appear in the Quarter Sessions in Montreal in October; and in all probability, the bailiff, the militia sergeant, and the militians. Further, despite his defiance of the "sainé Anglois" Dupras, or at least his attorney, turned up in the Quarter Sessions in Montreal as he had bound himself to do, although the case went no further than that.

If we examine the prosecutors and defendants at the level of the justices, we get a different picture of the ethnic character of the criminal justice system than that provided by the higher courts. As noted in my discussion of the justices themselves, I am uncomfortable with the classic division of Quebec historiography between "French-Canadian" and "English", or "Canadien" and "Britannique", given that there is no room in this categorization for natives, blacks, Jews, Germans, or any of the other ethno-cultural groups in the colony. However, in the court records all there usually is to go on is the names of the participants. As a result, I have divided those who came before the justices into three broad ethnic groups, based on the apparent linguistic origin of their names: francophones, anglophones, and others.⁸⁰¹

Figures 3.11 through 3.18 present the ethnicity of those who came in contact with the justices in various settings. As they show, anglophones and

⁸⁰¹These categories themselves are subject to criticism, given that the latter two are not so much coherent ethnic groups as agglomerations, and the third in particular is a residual group; however, given my limited information about these people, it is the best that I can do.

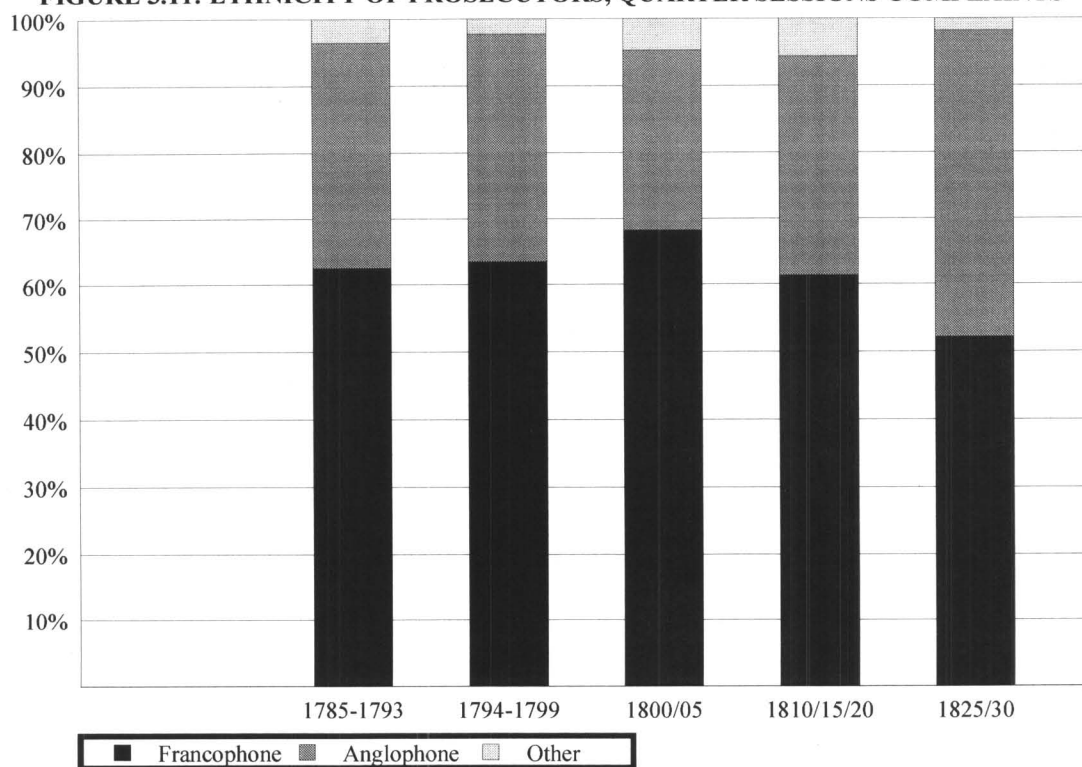
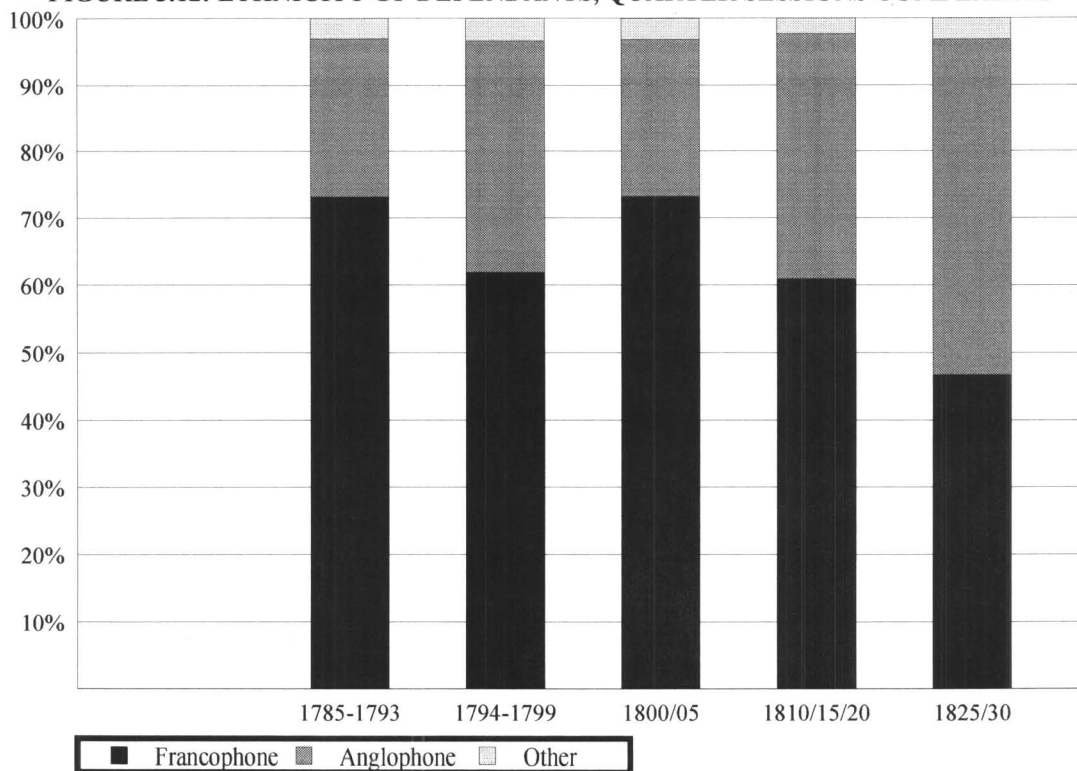
FIGURE 3.11: ETHNICITY OF PROSECUTORS, QUARTER SESSIONS COMPLAINTS**FIGURE 3.12: ETHNICITY OF DEFENDANTS, QUARTER SESSIONS COMPLAINTS**

FIGURE 3.13: ETHNICITY OF PROSECUTORS, QUARTER SESSIONS CASES

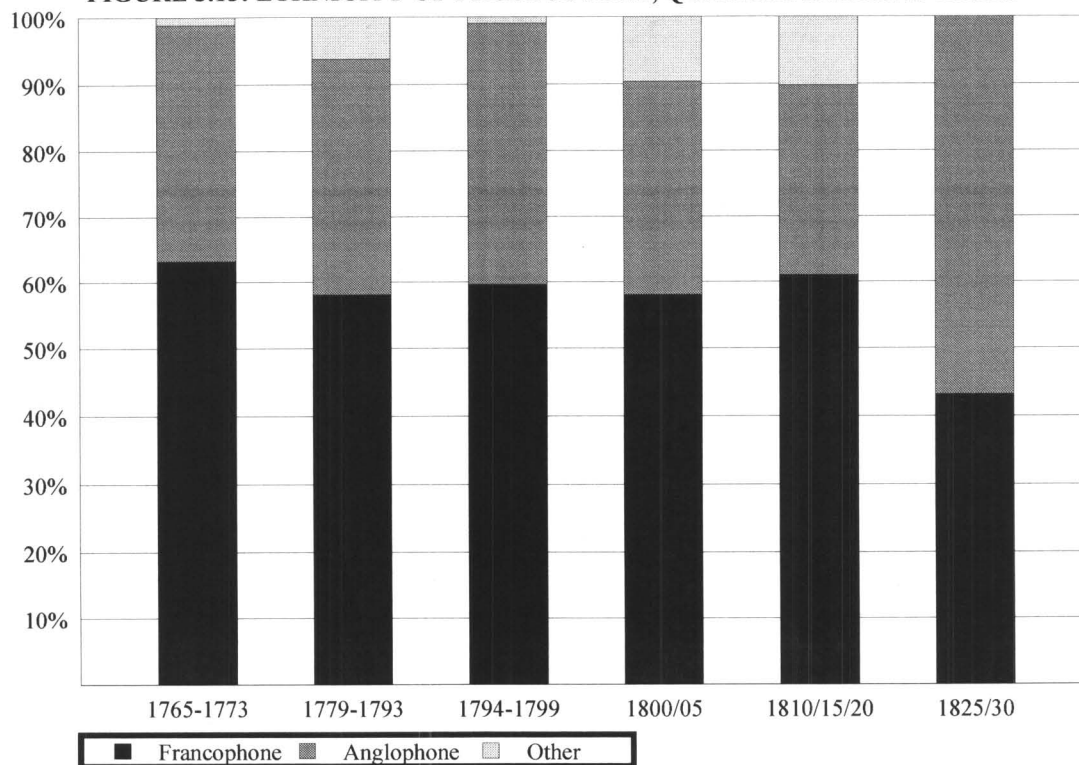


FIGURE 3.14: ETHNICITY OF DEFENDANTS, QUARTER SESSIONS CASES

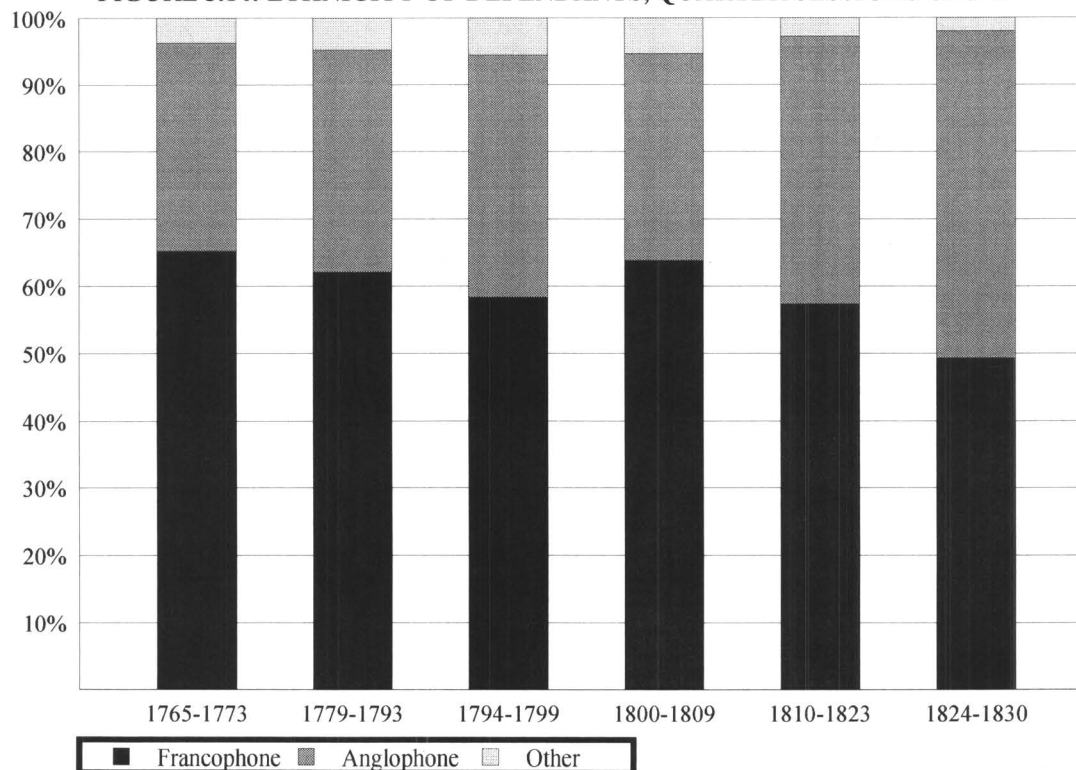


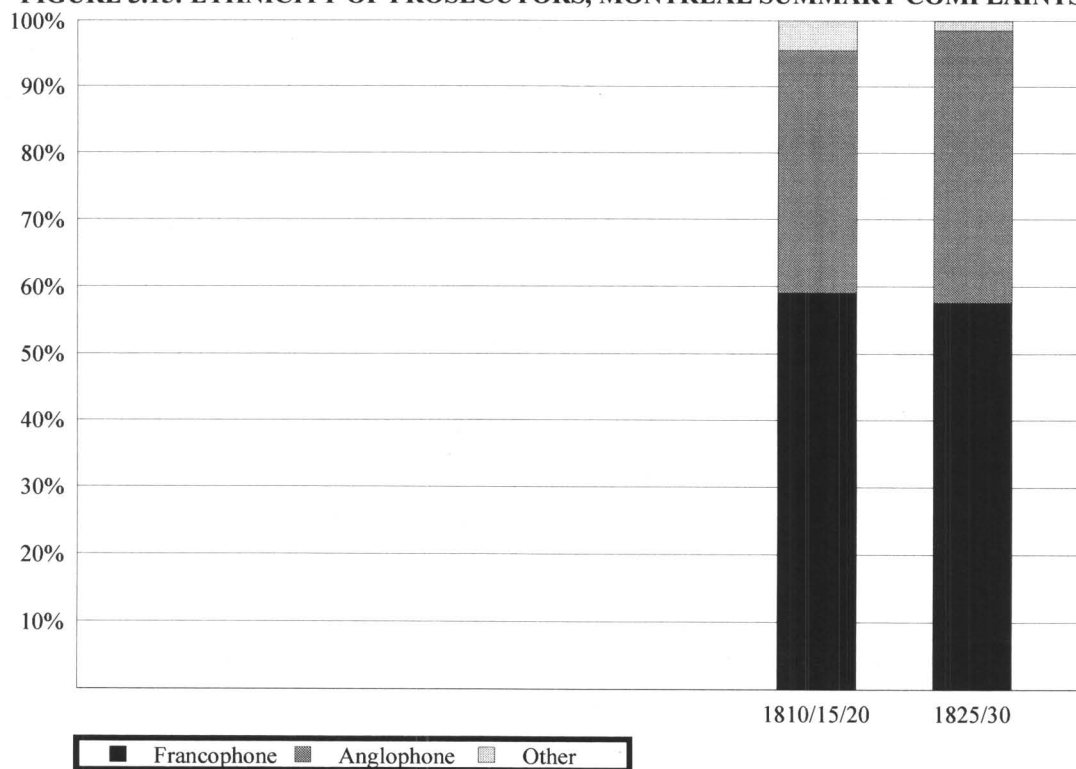
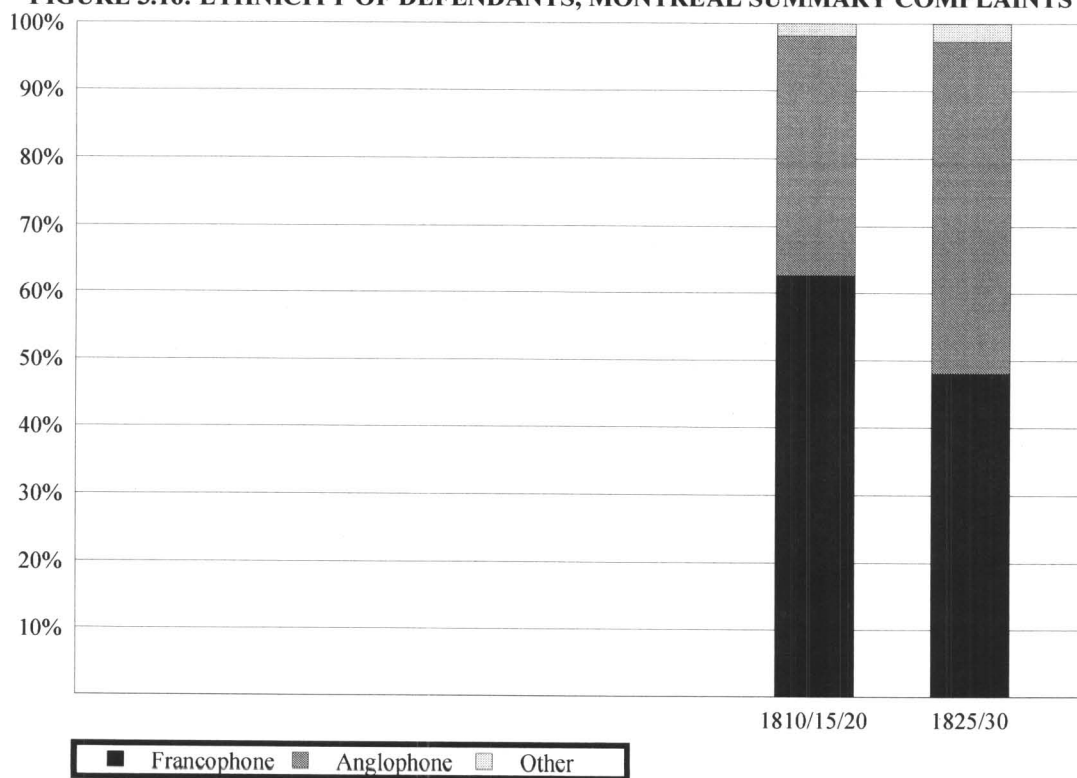
FIGURE 3.15: ETHNICITY OF PROSECUTORS, MONTREAL SUMMARY COMPLAINTS**FIGURE 3.16: ETHNICITY OF DEFENDANTS, MONTREAL SUMMARY COMPLAINTS**

FIGURE 3.17: ETHNICITY OF PROSECUTORS, WEEKLY SESSIONS CASES

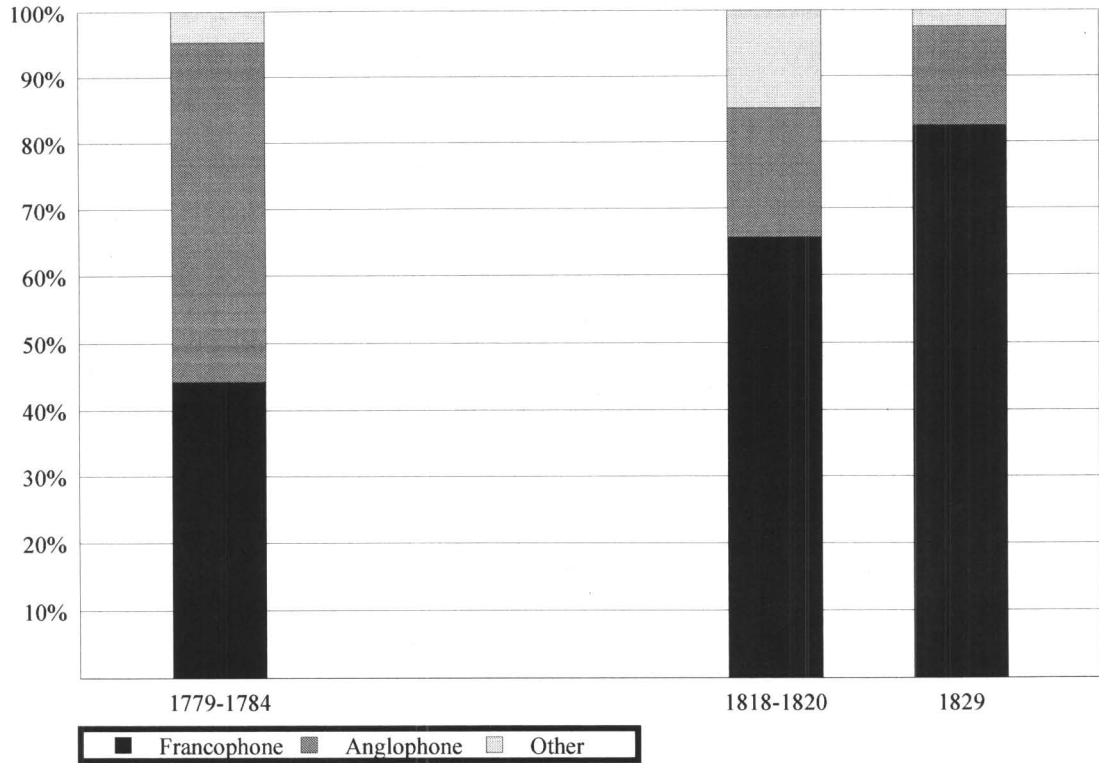
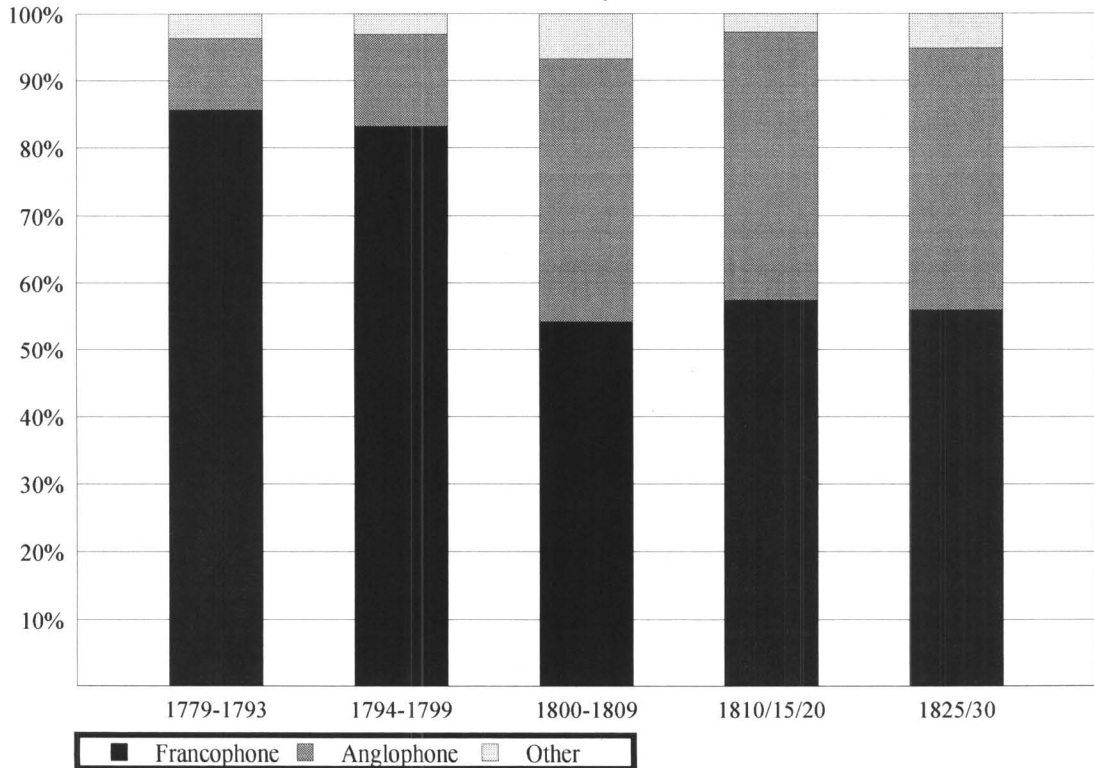


FIGURE 3.18: ETHNICITY OF DEFENDANTS, WEEKLY SESSIONS COMPLAINTS



others were consistently over-represented in all aspects of the justices' work, given that they made up no more than 5% of the population of the district up to the mid-1780s, and perhaps 20% in the nineteenth century;⁸⁰² on the other hand, apart from the second half of the 1820s, francophones were in the majority, generally making up 60% or more of both prosecutors and defendants. Indeed, for the last two decades of the eighteenth century, about 80% to 85% of defendants in the Weekly Sessions, the court which directly touched the largest number of people, were francophones, approaching their proportion in the population at large.

Further, most of the apparent under-representation of francophones was more a reflection of the urban bias discussed above. As Figures 3.19 and 3.20 shows, francophones made up around 80% of non-Montreal prosecutors in Quarter Sessions complaints in the eighteenth and early nineteenth centuries, though this dropped dramatically to less than 60% in the late 1820s; in contrast, they generally made up only about half of Montreal prosecutors, apart from a slightly higher proportion in the early 1800s. If we consider that the population of the parish of Montreal in 1831 was 67% Catholic, while that outside of the city was 84% Catholic, we can see that in both cases, francophones were less under-represented than the overall figures show.

⁸⁰²Estimating the exact proportion of the population of the district of Montreal that was not francophone is almost impossible, and there have been no detailed studies beyond the overall estimates for the entire colony prepared by historians such as Fernand Ouellet (*Economic and Social History of Quebec*: 659). Up to the mid-1770s, the number was certainly very small, certainly less than 5%, but this increased rapidly with the arrival of Loyalists and soldiers during and after the American revolutionary war. The information provided by Hubert Charbonneau and R. Cole Harris in the *Historical Atlas of Canada (Volume 1: From the Beginning to 1800)* (Toronto: UTP, 1987): plates 46 and 68, and *Volume 2: The Land Transformed, 1800-1891* (Toronto: UTP, 1993): plate 4) places the figure in 1800 for the entire colony at 25 000 to 30 000 people of British background out of a total population of 220 000, or about 10% to 15%; but since most of these were in the district of Montreal itself, the total proportion in that district was probably higher. The census of 1831, for the district of Montreal (excluding the townships east of Lake Memphramagog), shows that 82% of the population overall was Roman Catholic (*JHALC* 41: Appendix Oo); the actual proportion of francophones was probably slightly lower, since while virtually all francophones were Catholics, not all non-francophones were non-Catholic.

FIGURE 3.19: ETHNICITY OF NON-MONTREAL PROSECUTORS, QUARTER SESSIONS COMPLAINTS

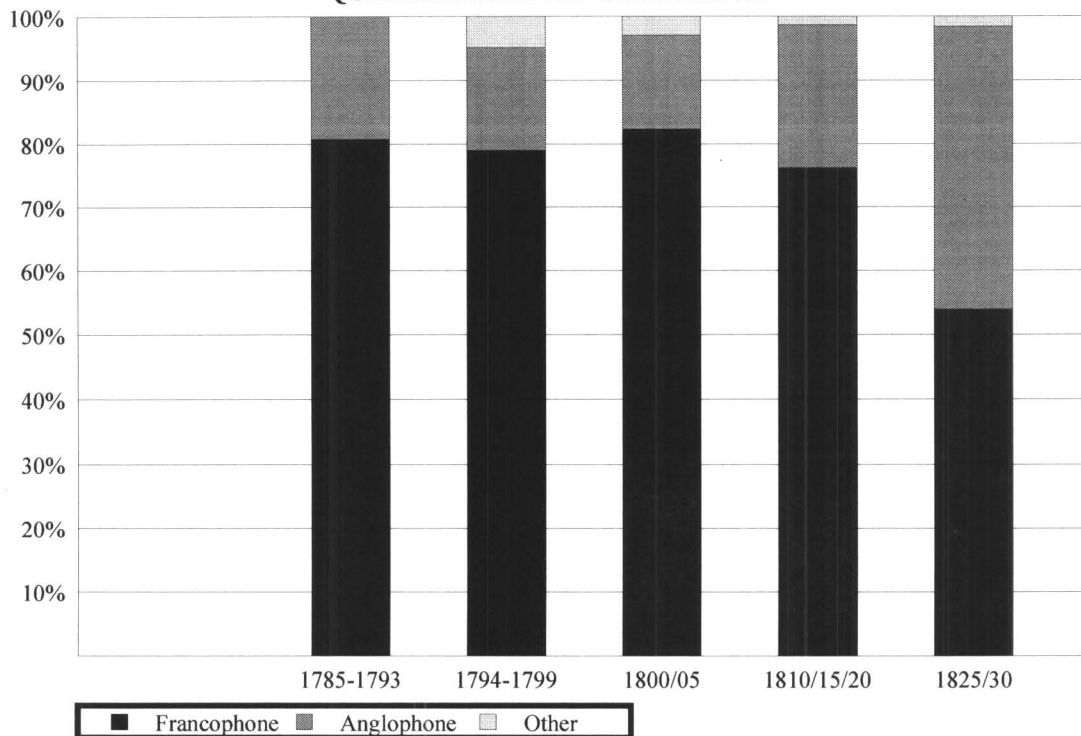
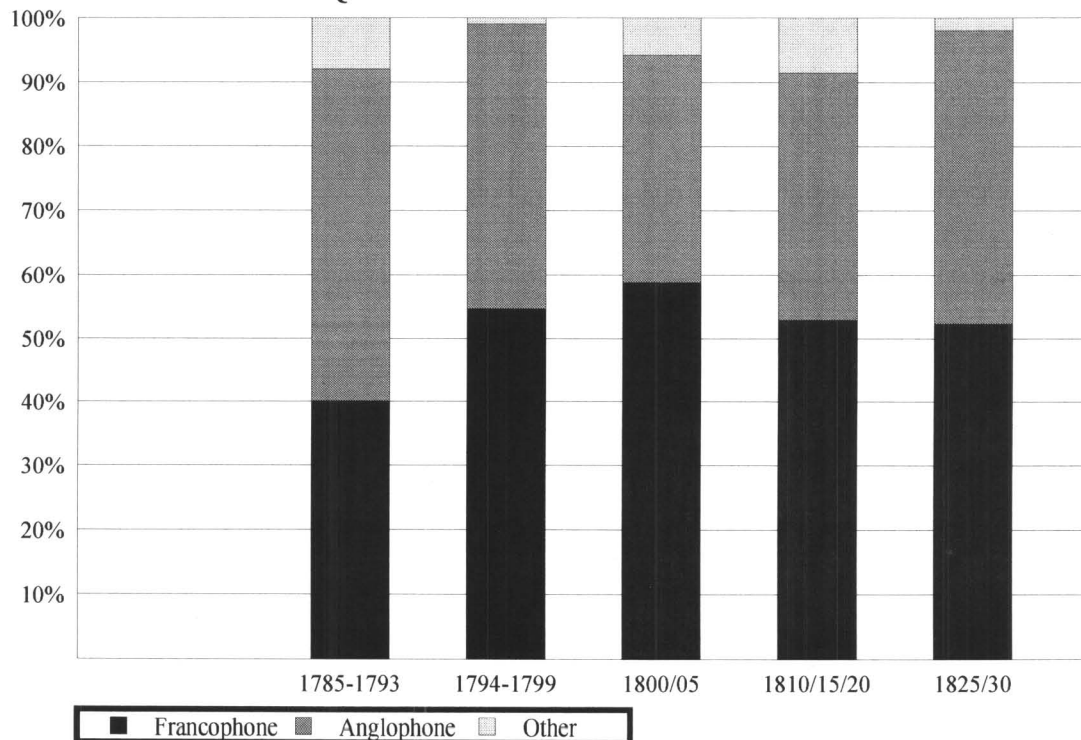


FIGURE 3.20: ETHNICITY OF MONTREAL PROSECUTORS, QUARTER SESSIONS COMPLAINTS



A further insight into the ethnic character of the justice system comes when we look at who was prosecuting whom. Table 3.7 presents the ethnicity of prosecutors and defendants in Quarter Sessions cases, for both the eighteenth and the nineteenth centuries; for ease of analysis, it amalgamates anglophones and others, and considers each prosecutor-defendant pair as a single instance, so that a case with two prosecutors and four defendants produces eight instances. In both periods, cross-ethnic prosecutions were very much in the minority, with about 80% and 70% of instances involving a francophone prosecuting a francophone, or a non-francophone a non-francophone. Further, though in the eighteenth century francophones were less likely to prosecute non-francophones, this was not true in the nineteenth. It is thus very difficult to see the Quarter Sessions at least as a locus for ethnic conflict; and the same picture also held true for Quarter Sessions complaints (where in the nineteenth century about 75% of prosecutor-defendant pairs were not cross-ethnic) and summary complaints before Montreal justices (where the equivalent proportion was also about 75%).

TABLE 3.7: ETHNICITY OF PARTIES, QUARTER SESSIONS CASES

Ethnicity of parties	1765-1799	1800-1830
Francophone prosecutor and defendant	380 (47%)	260 (43%)
Non-francophone prosecutor and defendant	246 (31%)	170 (28%)
Francophone prosecutor, non-francophone defendant	68 (8%)	91 (15%)
Non-francophone prosecutor, -- francophone defendant	108 (13%)	84 (14%)

Note: information from 1794 on is derived from cross-linking complaints with entries in the Quarter Sessions registers in order to determine prosecutors.

If we once again break apart anglophones and other non-francophones, and concentrate only on the latter, there are further hints of the complexity of the relationship between Lower Canadian society and the criminal justice system at the

level of the justices. As one might expect, blacks and natives, two groups who were marginalized by the dominant white community, did appear as defendants before the justices. We have already witnessed the treatment of George, the black who was whipped through the town at least once and perhaps twice in the mid-1760s; and on another scale, consider the 1830 complaint of Ignace Hodossi, the constable of the Old Market in Montreal, against Paul and Jean-Baptiste Sacoyatinta, Caughnawaga natives: "[ils] étoient ivres sur le dit marcher ce matin, faisoient du bruit et troubloient la paix publique, en sorte qu'après leur avoir dit de ne point faire du bruit, les dits sauvages m'ont assailli et battu", which led to both, the following day, entering into recognizances to keep the peace towards Hodossi.⁸⁰³

What is revelatory, however, is that in some cases, blacks and natives also used the system as prosecutors. Thus, in 1799, Agathe Sagosennageté, the wife of Thomas Arakouanté, a Caughnawaga trader, travelled to Montreal to complain to Patrick Murray that Otiogwannon Ontsientani, "un des chefs des sauvages de Caughnawaga" had, a few days previously, "entré chez elle a Caughnawaga et la dit que si elle voudroit aller a l'église de Caughnawaga qu'il l'empechera par violence" and the next day "l'a menacé que si elle alloit a la dite eglise qu'il la jetteroit dehors, que depuis les dites menaces elle n'a pas été a l'église ou il seroit coutume d'aller tous les jours et elle craint qu'en allant a la dite eglise le dit Otiogwannon lui fera quelque tort coporel"; about a week later Ontsientani was arrested by Jacob Marston, the high constable, and taken to Montreal, where he entered into a recognizance to appear at the next Quarter Sessions (with Marston himself as one of the sureties). John Lees was thus only technically correct when he stated in 1801, in sending in the complaint of Pierre Tehasitaere against Thomas Awessassiion for hitting him on the shoulder with a rock and then hitting him several times on the head with a drinking glass, that "I suppose it is the first instance of an Indian prosecuting another in a judicial manner for a beating;

⁸⁰³QSD 18/8/1830.

however I think it full time that the gentry should be brought under the civil law and encourage it as much as I can."⁸⁰⁴ Likewise, consider the case of Catherine D'Amour, a black woman and the wife of William D'Amour, who in 1795 accused Marie Lapierre, the wife of Pierre Henri, of stealing several items of clothing from her; Lapierre was indicted in the Quarter Sessions and faced a full jury trial, though she was eventually found not guilty.⁸⁰⁵ It is hard to draw any broader conclusions from the handful of similar cases that I came across; but it does suggest how the criminal justice system at the level of the justices could cut both ways, both as a tool of oppression, and as a tool of the oppressed.

If we return to the question of francophones before the justices, the only significant exception to the general picture was the Weekly Sessions, where as Figures 3.17 and 3.18 showed most defendants in the eighteenth century were francophones, while most prosecutors in the late 1810s and in 1829 were francophones. This gives an interesting insight into the changing nature of the state at this very local level. Recall that the Weekly Sessions was very largely a court where the state enforced obligations, to itself and to the public at large (though the line between the two was blurred); and it was also a court where official prosecutors played an important role. In the eighteenth century, most of these official prosecutors were non-francophones, most notably the clerks of the peace, John Burke and John Reid. The militians who were prosecuted in the late 1770s and early 1780s for disobeying the *corvée* laws cannot have been unaware of the implications of these English urban officials enforcing the will of the colonial administration on them, although since most of the active bailiffs at the time were francophone, the face of the justice system that came knocking on the door was probably not an English one. But by the late 1810s and 1820s, much of the lower bureaucracy in Montreal that was responsible for these sorts of prosecutions was in the hands of francophones: John Delisle, the clerk of the

⁸⁰⁴QSD, Lees to Reid, 31/7/1801.

⁸⁰⁵QSD 27/11/1795; QSR 10/1/1796.

peace, a francophone though a highly anglicized one; Jacques Viger, the roads surveyor for Montreal, a notable supporter of the Patriotes; Pierre Boucherville, the inspector of chimineys (and also an active justice), another Patriote sympathizer; the majority of the active constables, most of the watch, and, after 1823, the high constable, Adelphe Delisle. We are then treated to the curious spectacle of a largely francophone judicial bureaucracy as one of the main means by which an English colonial state sought to impose itself on the population at large, especially in Montreal itself but also, in specific cases such as selling liquor without a license, in the countryside.

In the aspect of the work of the justices where francophones were most consistently involved as both defendants and prosecutors, complaints destined for the Quarter Sessions and Quarter Sessions cases themselves, the larger presence of francophones than in the higher criminal courts can be traced in large part to the character of the system itself. As we saw in the previous sections, the police and the active magistracy, far from being completely dominated by non-francophones, had a strong and in some periods overwhelming francophone, largely Canadian presence; the main exceptions were the period up to 1770, the late 1790s, and the late 1820s. Further, the criminal law and criminal procedures applied at the level of the justices, though resting on a foundation English law, were in practice not that different from those in New France before the Conquest, especially in regard to proceedings preliminary to trial. Threats and assaults, the bread-and-butter of the Quarter Sessions, were treated very similarly in both systems, with the initiative left up to the prosecutors; and as for cases in the Weekly Sessions, the law applied was more local than English. At this low level, there was indeed a strong continuity between the practice of the two criminal justice systems, whatever the formal laws might be.

Indeed, if we focus on perhaps the most obvious "ethnic" element of the justice system, the language of justice, we can see very clearly how an alien legal system was in practice substantially reshaped by the imperative of large numbers of francophones among the parties, the officials, and even the magistrates. Both

Douglas Hay and Jean-Marie Fecteau have suggested that one of the reasons for the francophone "boycott" of the criminal justice system that they postulate was the fact that the higher criminal courts were very much English, with English judges, English documents, and trials conducted in English by English law officers. But this did not apply at the level of the justices, either in preliminary proceedings, or even in the courts themselves.

In the first place, throughout almost the entire period, as Fecteau notes in passing, all preliminary documents could be in either English or French, depending on the language of the party whom it concerned and the justice who was making it out. Depositions, arrest warrants, summonses, recognizances; there are numerous examples of all in both languages. Thus, when Marguerite Babineau of Vaudreuil complained in 1820 to André-Dominique Pambrun, the local justice, that Antoine Chenier had kicked her and hit her with a rake, when she was four months pregnant, both the deposition before Pambrun, and the arrest warrant that he issued to Gilles Guerbois, the local bailiff, were entirely in French; but when Guerbois brought Chenier before John Mark Crank Delesderniers, another Vaudreuil justice who despite his name was an anglophone, Delesderniers wrote out Chenier's recognizance to appear in English.⁸⁰⁶

Indeed, the only judicial document that had to be in English was the bill of indictment presented to the grand jury when a case went to trial in the Quarter Sessions; and the language of this document was immaterial to either the prosecutor or the defendant, since the prosecutor testified orally before the grand jury, and the defendant was not allowed to see the indictment unless the court made a special ruling. As for the operations of the justices' courts, even the Quarter Sessions, the most formal of the courts, did not operate solely in English, even in the period before 1775, but rather in a mixture of French and English, depending on the parties of the case. Even the official judgements in the registers were sometimes written in French, reflecting a clerk who was simply transcribing

⁸⁰⁶QSD 24/2/1820.

the language used in court. Accommodation was also made for people who spoke neither English nor French: the number of discharged German soldiers in and around Montreal following the American revolution was such that the courts employed a special German interpreter.⁸⁰⁷

What all of this suggests is that the Canadian majority, far from boycotting the criminal justice system, was quite at home using it when necessary. The only period where a real boycott is evident is the late 1820s; and this is not at all surprising given the control exerted by the francophobic Gale and his Tory colleagues.

C. Class and the criminal law

As with geography and ethnicity, the class of prosecutors and defendants played an ambiguous role in shaping their contacts with the criminal justice system. One of the strongest arguments of the consensual view of the English system is that participants in the courts, both defendants and prosecutors, were generally not from among the elites whom the conflict theorists proposed were using the criminal law. This has been shown by almost every detailed study of the English criminal justice system, such as those by Peter King, John Beattie, Robert Shoemaker, and others.

In order to analyze the class of those who came before the justices, I have divided them into six socio-professional groups. The first group consists of those who were truly part of the elites, especially merchants and members of the liberal professions, but also including those distinguished by the title "gentleman" or "esquire". The second group contains those who were definitely not part of the elites, but also not really part of the popular classes: in this "middling" group I

⁸⁰⁷In NA RG4 A1: 8628, there is a petition dated September 1783 from Godlive Frederick Brown of Montreal asking for compensation for having for some times past served as an interpreter in the King's Bench, the Common Pleas, the Quarter Sessions, and the Weekly Sessions between the court and discharged German soldiers.

placed clerks, mid-level government bureaucrats such as the quartermaster or foreman of the watch, and small shop-keepers such as grocers, tavern-keepers and bakers. The presence of these last in this group rather than in the next is perhaps questionable, but I wished to err on the side of over-estimating the size of the non-popular group. The remaining four groups break down the popular classes into sub-groups: skilled labourers, especially artisans, with whom I have also included low-level officials such as ordinary constables; farmers; unskilled labourers, along with servants and apprentices; and a residual group which includes all of those who were on the periphery of colonial society, namely soldiers, indentured seamen, natives, and blacks. This last group may be slightly under-represented among defendants, since I refrained from making any inferences on the social status of a defendant based on the nature of the charge against them, such as prostitution or vagrancy; on the other hand, charges of this nature were only a small part of those in the case-files. As for wives or children, I included them in the social group of their husband or father.

Figures 3.21 through 3.24 present the proportion of prosecutors and defendants in each social group who made complaints before the justices for both Quarter Sessions complaints and Quarter Sessions cases. It is clear that at this level, the vast majority of parties, both prosecutors and defendants, were neither elites nor at the very bottom of the social structure. Elites made up at most 20% of prosecutors at any level and in any period; and even adding the "middling" group only raises this figure to a maximum of 30%. Further, elites were only slightly more likely to be prosecutors than to be defendants. And at the other end of the scale, unskilled labourers and the "marginal" group together made up no more than 20% of defendants, a far cry from the 75% that Jean-Marie Fecteau found in the King's Bench.⁸⁰⁸

⁸⁰⁸*Un nouvel ordre des choses*: 128.

FIGURE 3.21: CLASS OF PROSECUTORS, QUARTER SESSIONS COMPLAINTS

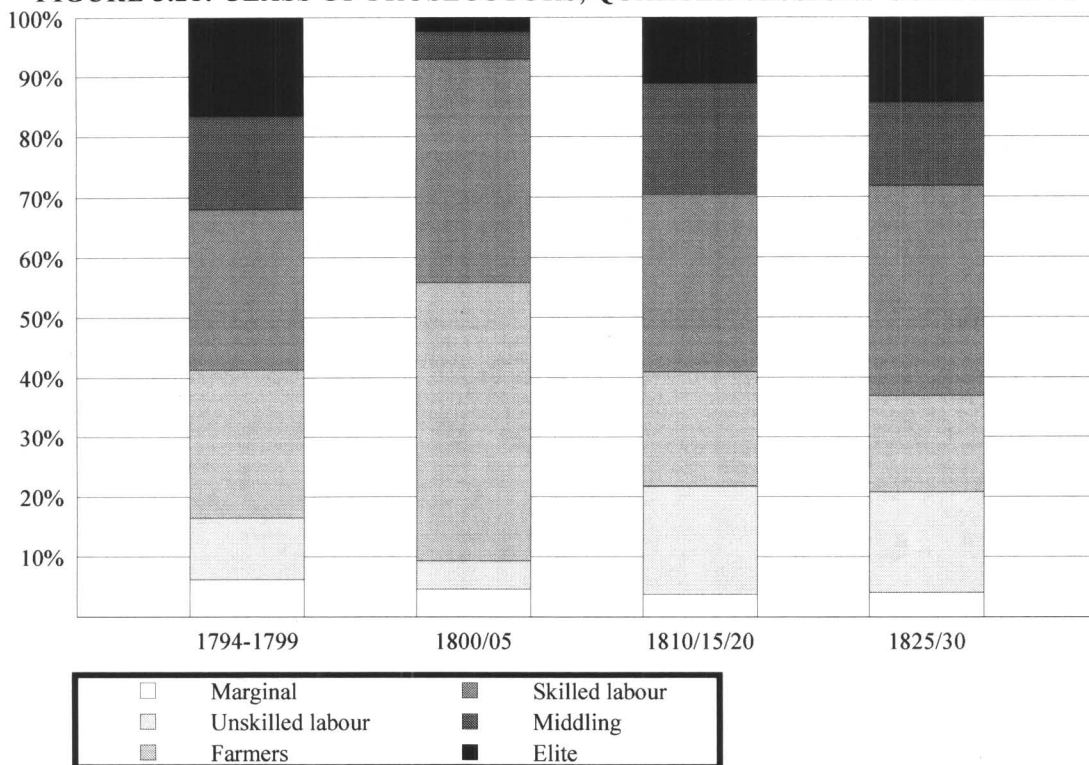


FIGURE 3.22: CLASS OF DEFENDANTS, QUARTER SESSIONS COMPLAINTS

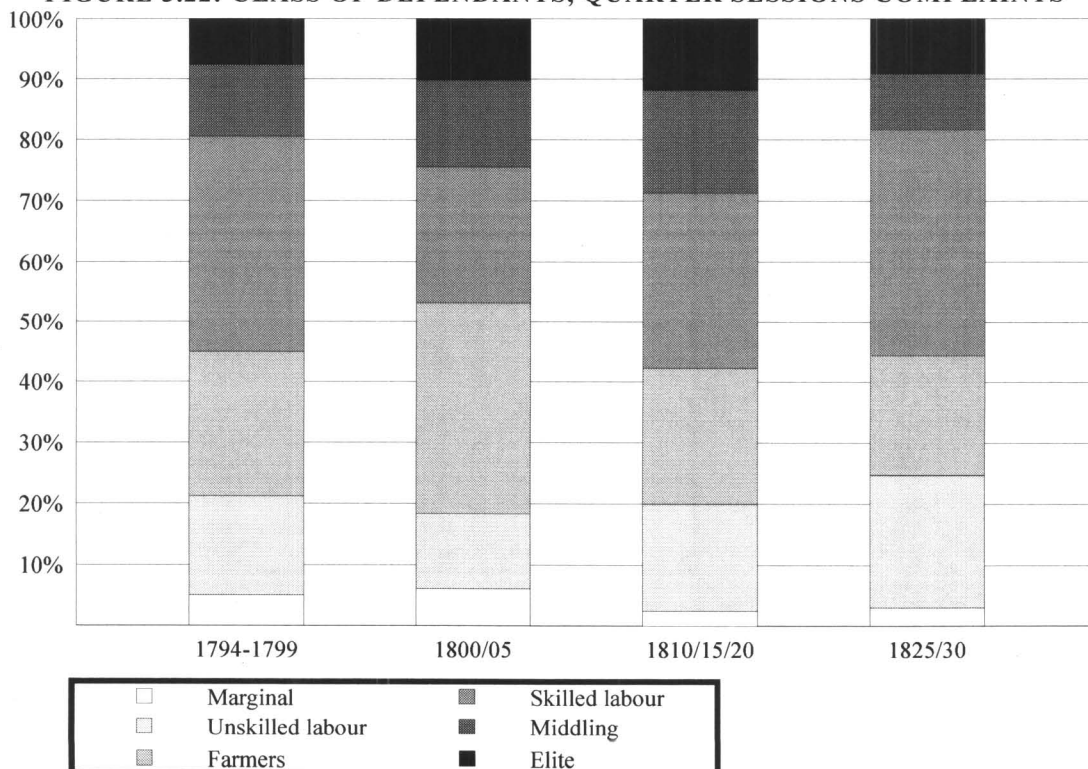


FIGURE 3.23: CLASS OF PROSECUTORS, QUARTER SESSIONS CASES

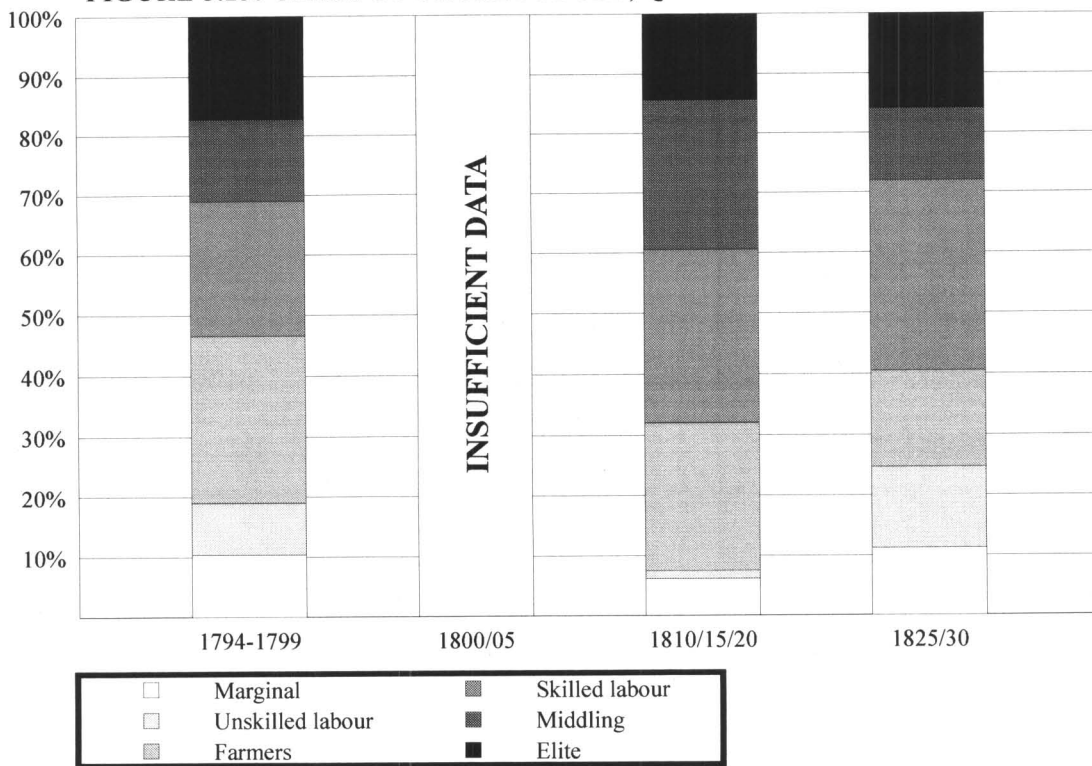
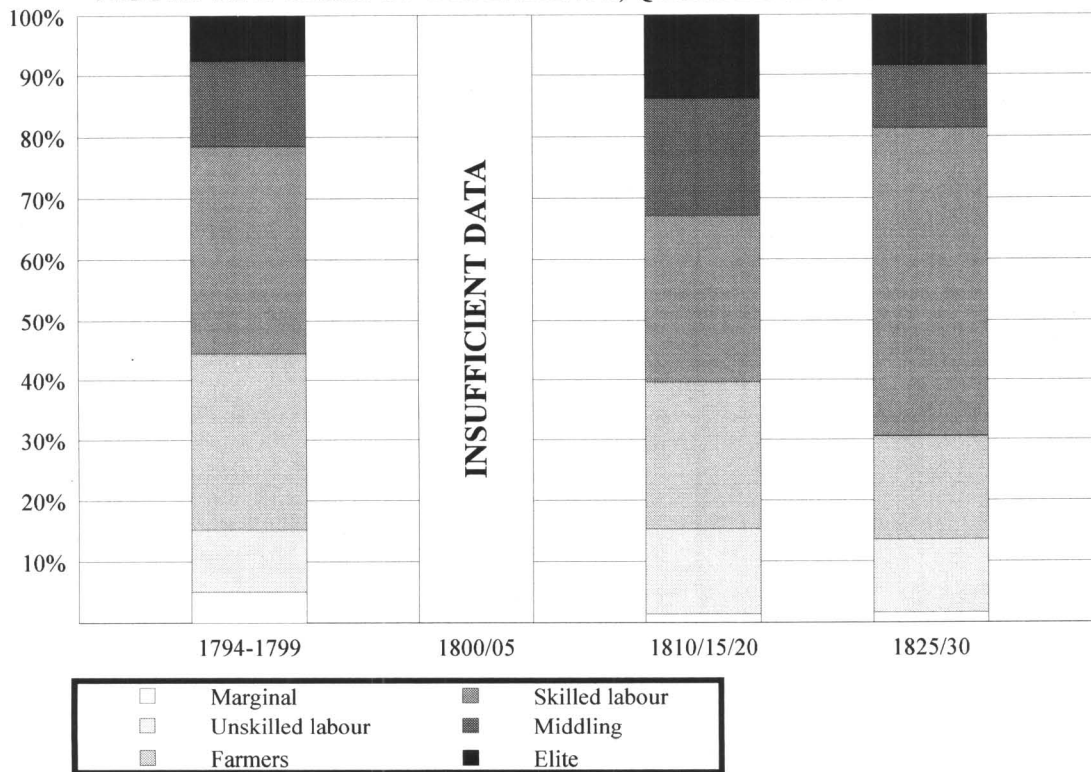


FIGURE 3.24: CLASS OF DEFENDANTS, QUARTER SESSIONS CASES



Further, if we look at who was prosecuting whom, we can see how little of the business of the justices in Quarter Sessions complaints had to do directly with class conflict, and even less with elites using the system against the lower orders. Table 3.8 presents the numbers of prosecutors and defendants from each class who prosecuted each other, based on prosecutor-defendant pairs; unskilled labourers and marginals are grouped together. Of 861 such pairs altogether, 355, or 41%, involved people from the same group; and another 191, or 22%, involved prosecutors and defendants who were very definitely from the popular classes. In other words, at least two thirds of these pairs involved no class conflict whatsoever.

TABLE 3.8: CLASS OF PROSECUTORS AND DEFENDANTS, QUARTER SESSIONS COMPLAINTS

Defendant Prosecutor	Elite	Middling	Skilled labour	Farmers	Unskilled labour/marginal
Elite	26	10	41	19	22
Middling	11	38	50	17	34
Skilled labour	31	36	114	20	44
Farmers	7	10	15	117	28
Unskilled labour/ marginal	16	11	68	16	60

Numbers refer to number of prosecutor/defendant pairs

Further, if we examine the top and the bottom of this hierarchy, there were 22 instances of elites prosecuting unskilled labourers and marginals, but also sixteen of marginals and unskilled labourers prosecuting elites; and 41 instances of elites prosecuting skilled labourers but also 32 of skilled labourers prosecuting elites. Thus, there is nothing but class in the prosecution for fraud that Robert Aird, an important Montreal fur-trader, launched in 1785 against Joseph Boucher of Laprairie, for engaging with Aird to winter in the Mississippi and accepting an advance of 78 *livres* even though he had already engaged himself to Joseph Howard, especially when we consider Aird's final words, "au grand préjudice de

ce dit deposant et au mauvais exemple de toutes autres dans le pareil cas";⁸⁰⁹ and we cannot avoid a similar conclusion in the 1830 prosecution of Joseph Kollmyer, a Montreal merchant tailor, against eleven journeyman tailors for combining to raise their wages by refusing to work, and threatening any who tried to work for him.⁸¹⁰ But we see the other side of these power relations when we consider the complaint that Louis Laplante, a labourer from Sainte-Anne, launched against François Dumoulin, a merchant for the same place, in 1794: when he and Joseph Poulin, a guide, went to Dumoulin's house to tell him that they could not make it to the wintering because Poulin was sick and they lacked provisions, Dumoulin

se mit en grande colère et lui dit de se déshabiller, ce a quoi luis déposant ne voulait point consentir, disant qu'il avoit trop loing pour se rendre chex lui sans capot. Pour lors le dit François Demoulin lui dit qu'il le deshabilleroit lui même et arracha le couteau de dedans la guenne du deposant et coupa les habillements de dessus le corps du dit deposant lui donnant des coups de poing le blessa sur la main en coupant la manche du capot.⁸¹¹

Laplante had Dumoulin arrested on a warrant from Hubert Lacroix, a Vaudreuil justice, and carried the case to a full trial in the Quarter Sessions, where Dumoulin was found guilty and fined 20sh.⁸¹²

Class did have some effect on the course a complaint took, though not as much as one might expect. Table 3.9 presents the results of both Quarter Sessions

⁸⁰⁹QSD 1/4/1785.

⁸¹⁰QSD 24/11/1830.

⁸¹¹QSD 20/1/1794.

⁸¹²QSR 4/1794.

cases and complaints involving interpersonal violence, by the type of prosecutor and defendant. There are no readily discernable patterns or trends, but if we compare the experiences of those at the top and bottom of the social scale, the effects of class are more evident. Thus, the clear rate for complaints by elite prosecutors, at 77%, was only slightly higher than that for unskilled and marginal prosecutors, at 71%; but the rate of appearance of complaints by elite prosecutors in the Quarter Sessions registers was much higher, at 48%, compared to 33% for unskilled and marginal prosecutors. And this is complemented by another trend: for elite defendants, the clear rate was 82%, but for unskilled and marginal defendants, only 69%; and while the rate of appearance in the registers was 46%

TABLE 3.9: RESULTS OF QUARTER SESSIONS COMPLAINTS AND CASES, BY CLASS OF PROSECUTORS AND DEFENDANTS

	Complaints		Cases		
	Clear rate	Appears in register	No formal resolution/settled	For prosecutor	For defendant
Prosecutors					
Elite	77%	48%	32%	46%	16%
Middling	75%	39%	45%	39%	26%
Skilled labour	72%	31%	33%	33%	33%
Farmers	81%	48%	28%	46%	26%
Unskilled labour/ marginal	71%	33%	42%	26%	32%
Defendants					
Elite	82%	46%	27%	49%	24%
Middling	80%	43%	51%	35%	14%
Skilled labour	83%	44%	40%	35%	20%
Farmers	82%	48%	36%	37%	27%
Unskilled labour/ marginal	69%	23%	30%	21%	49%

for elite defendants, it was only 23% for unskilled and marginal defendants. What these figures suggest is several things. First, prosecutors from the top of the social hierarchy, though only slightly more likely to be successful in having a tangible effect on their opponents than those at the bottom, were quite a bit more likely to pursue their complaint to a formal court; but on the other hand, elite defendants, probably because they were easier to find, were quite a bit more likely to be forced to go before a justice, and also to have their case move on to a formal court. And in court, there was a similar story: again considering only cases involving interpersonal violence, while elite prosecutors had a decision in their favour about 45% of the time, the proportion for unskilled and marginal prosecutors was quite a bit lower, at about 25%. On the other hand, elite defendants had decisions against them about half of the time, while unskilled and marginal defendants only about a quarter of the time. Again, while prosecutors from the bottom of the social hierarchy were less likely to have a case decided in their favour, they were also less likely to have it decided against them.

One factor that goes a long way towards explaining the difference between the use of the formal courts by those at the top and bottom of the class structure, and more generally, the reluctance of prosecutors to move beyond the level of preliminary proceedings, was the costs of justice. Unfortunately, there is not enough information on the costs of cases before the justices for an in-depth study along the lines of John Dickinson's work.⁸¹³ However, the few bills of costs that do remain show very clearly that the bulk of the expense of a complaint came not during the preliminary proceedings, but once a case had reached the Quarter Sessions itself. Thus, consider the costs of the prosecution that Rose Beaulieu launched against Joseph Norbert Faribault, a Montreal gentleman, for assault and battery: the pre-trial proceedings were 12sh 6d for the deposition and warrant, whereas drawing up the indictment alone cost £1 2sh 6d, along with more than £2

⁸¹³"Court Costs in France and New France in the Eighteenth Century", *Historical Papers* 1977: 49-64.

in other court costs, all of which Beaulieu would have had to pay in advance.⁸¹⁴ Even the 12sh 6d represented a considerable outlay, the equivalent of perhaps a week's unskilled labour; and as for the costs of a full Quarter Sessions case, they must have been prohibitive to many, especially among the disadvantaged. When a case was decided in favour of the prosecutor, the justices almost invariably added the costs of the suit to the judgement they inflicted on the defendant; but then there was the problem of actually collecting the amount. Thus, in Beaulieu's case, Faribault did not pay, so that the justices had to issue a warrant of distress against him for the amount owing.

Further, Quarter Sessions complaints involving interpersonal violence were in some ways special, and they must not blind us to the fact that many aspects of the criminal justice system more explicitly involved class conflict and class oppression. Other Quarter Sessions complaints, for example those for petty larceny and the keeping of disorderly houses, were by the very nature of the offence directed against the popular classes, and though they were numerically far outweighed by cases of interpersonal violence, their effects on the defendants in particular were far more devastating, as we saw in our discussion of the penalties inflicted by the justices.

Likewise, though we have less information on the class of people involved in other aspects of the criminal justice system, we can safely say that in many of these venues class inequalities were more important. Thus, the King's Bench in the district of Montreal very likely followed the same pattern as that found by Jean-Marie Fecteau for the district of Quebec, with an overwhelming preponderance of defendants from the margins of society, although whether the prosecutors in these cases were necessarily elites is a question that awaits further study. And at the level of the justices themselves, other aspects of their work included much stronger biases of class. Thus, as Figures 3.25 and 3.26 show, more than half of defendants in summary complaints brought before Montreal

⁸¹⁴QSD 4/4/1820.

FIGURE 3.25: CLASS OF PROSECUTORS, MONTREAL SUMMARY COMPLAINTS

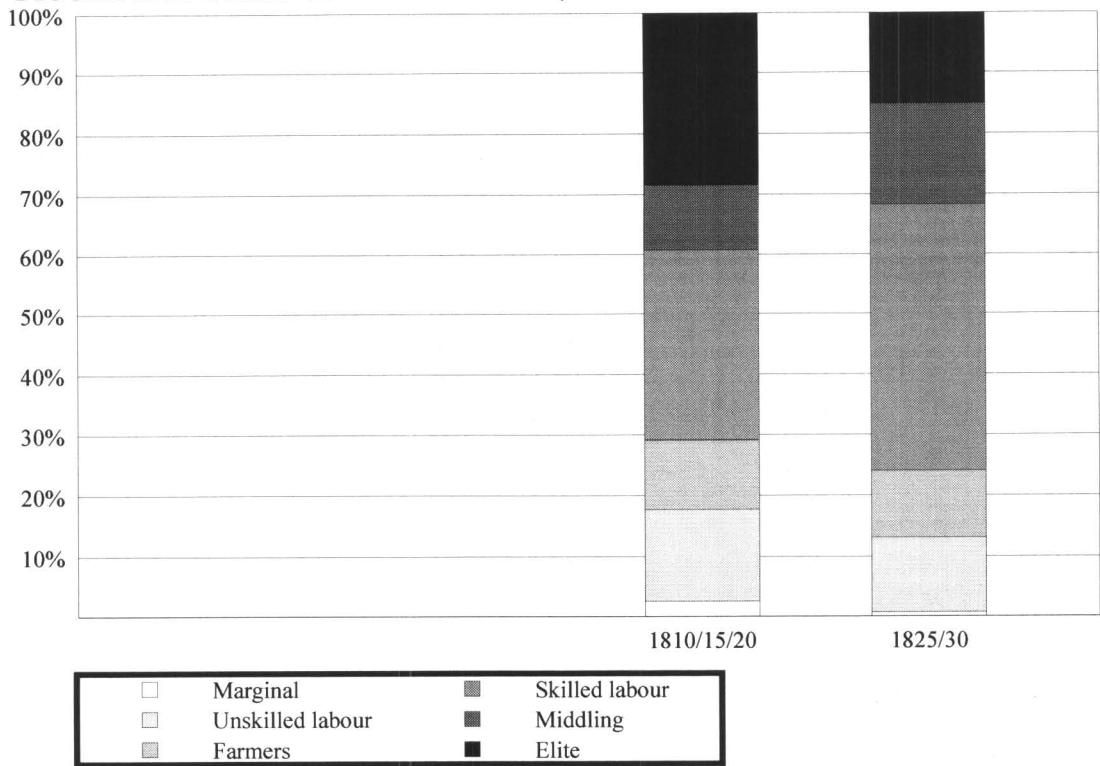
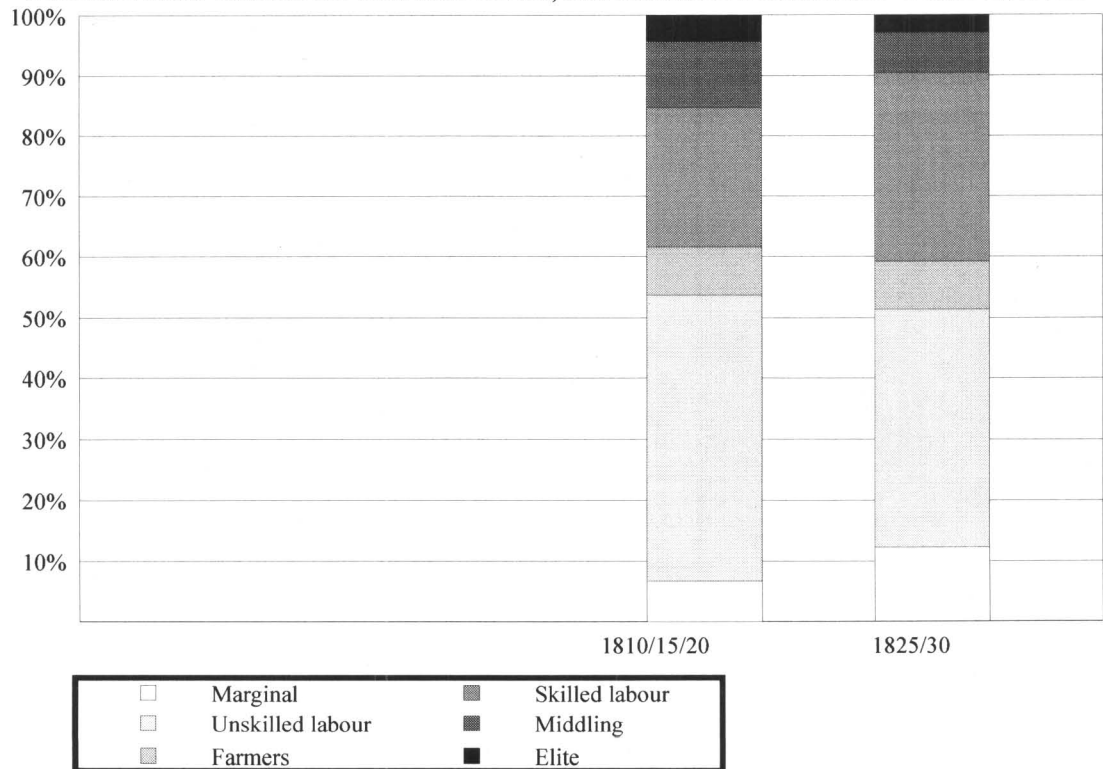


FIGURE 3.26: CLASS OF DEFENDANTS, MONTREAL SUMMARY COMPLAINTS



justices were unskilled labourers or "marginals", while about 30-40% of prosecutors were either elites or from the middling group. In large part this reflects the mixture of business done by the justices at this level, which included a number of complaints for breaches of service, especially desertion by voyageurs prosecuted by important fur-trading merchants.

What this leaves us with, once again, is a paradox, a system that was at once very definitely used by the elites for their own purposes, and to a certain extent biased in their favour, but which also could be used, at least in part, by the popular classes for their own purposes. Mary-Anne Poutanen has shown that even prostitutes, certainly at or near the bottom of the social hierarchy, though they themselves were heavily targeted by the criminal justice system, used the system to charge other prostitutes and clients with assaults and other crimes.⁸¹⁵ And this applied more generally to those who came in contact with the criminal justice system as a whole. And when we turn to the experience of women in the criminal justice system, we find this same paradox once again.

D. Women and the justices

Gender issues have not attracted much attention from those who have written on criminal justice in Quebec and Lower Canada, largely because at the level of the higher criminal courts, where most attention has been focussed, women played a very small role. Thus, Jean-Marie Fecteau, in finding that over 95% of defendants in the King's Bench between 1775 and 1840 were male, simply remarks that "la criminalité des tribunaux supérieurs est très majoritairement une criminalité masculine."

At the level of the justices, however, the situation was less clear-cut. As Figures 3.27 through 3.32 show, women were a small but consistent part of the people who came before the justices in Quarter Sessions complaints, in Quarter Sessions cases, and, at least in the nineteenth century, in summary complaints to

⁸¹⁵"Reflections of Montreal Prostitution in the Records of the Lower Courts": 106-108.

FIGURE 3.27: GENDER OF PROSECUTORS, QUARTER SESSIONS COMPLAINTS

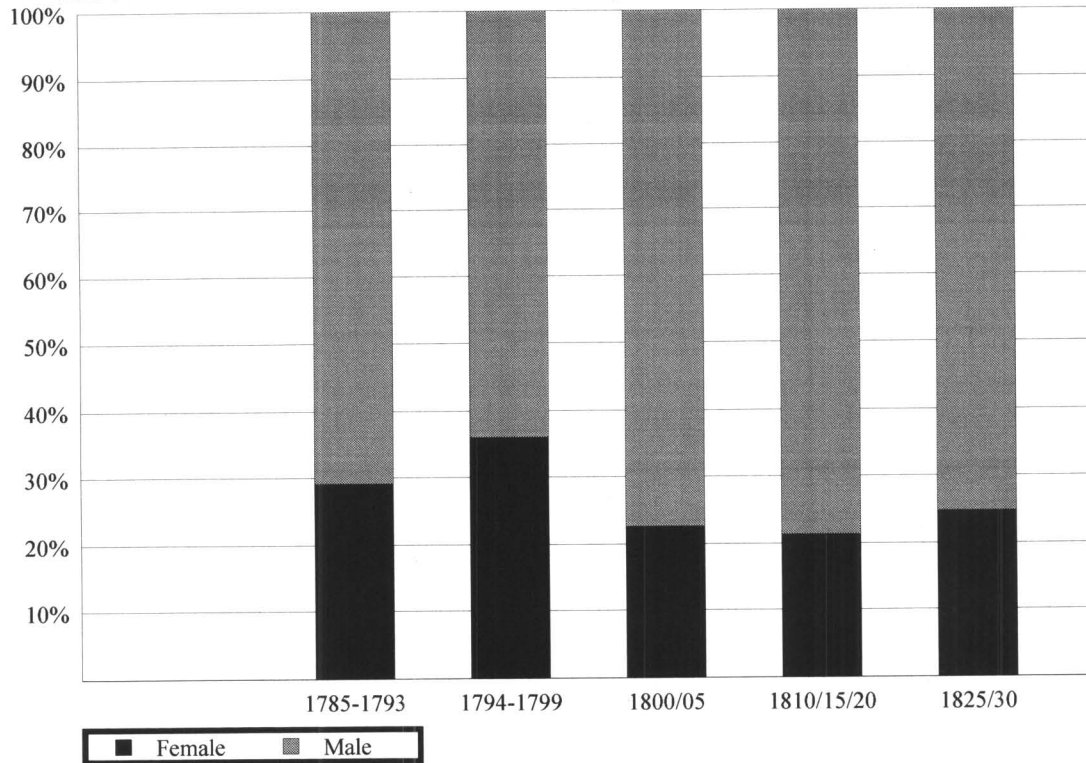


FIGURE 3.28: GENDER OF DEFENDANTS, QUARTER SESSIONS COMPLAINTS

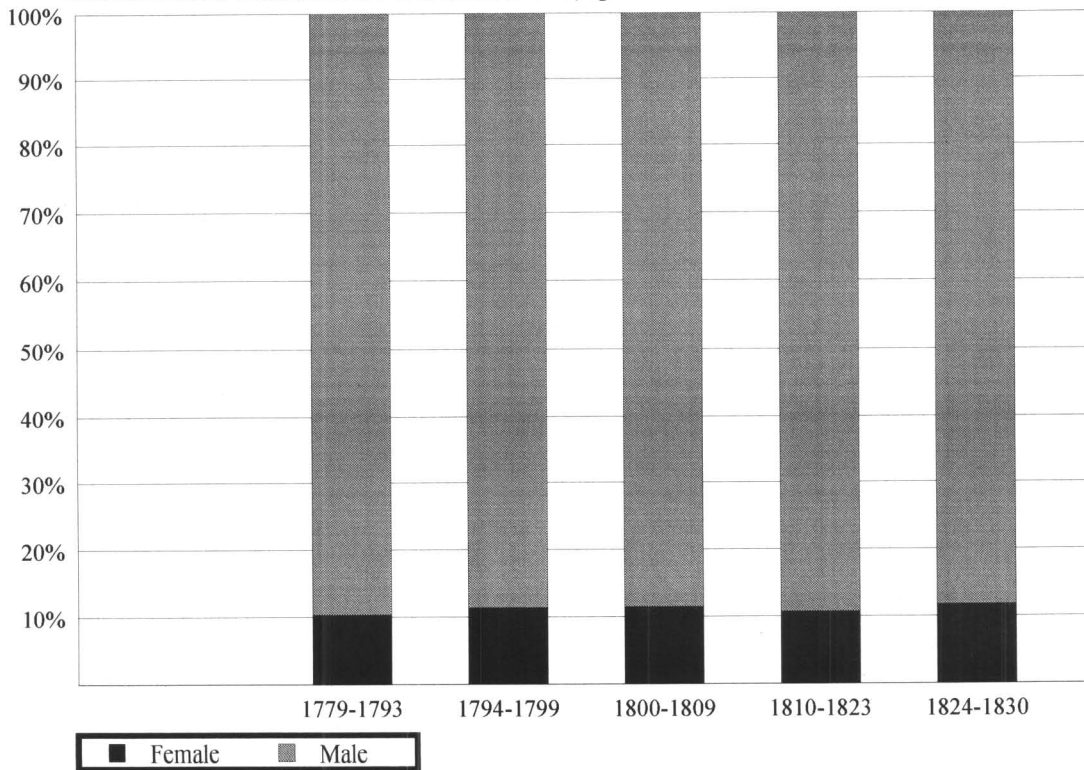


FIGURE 3.29: GENDER OF PROSECUTORS, QUARTER SESSIONS CASES

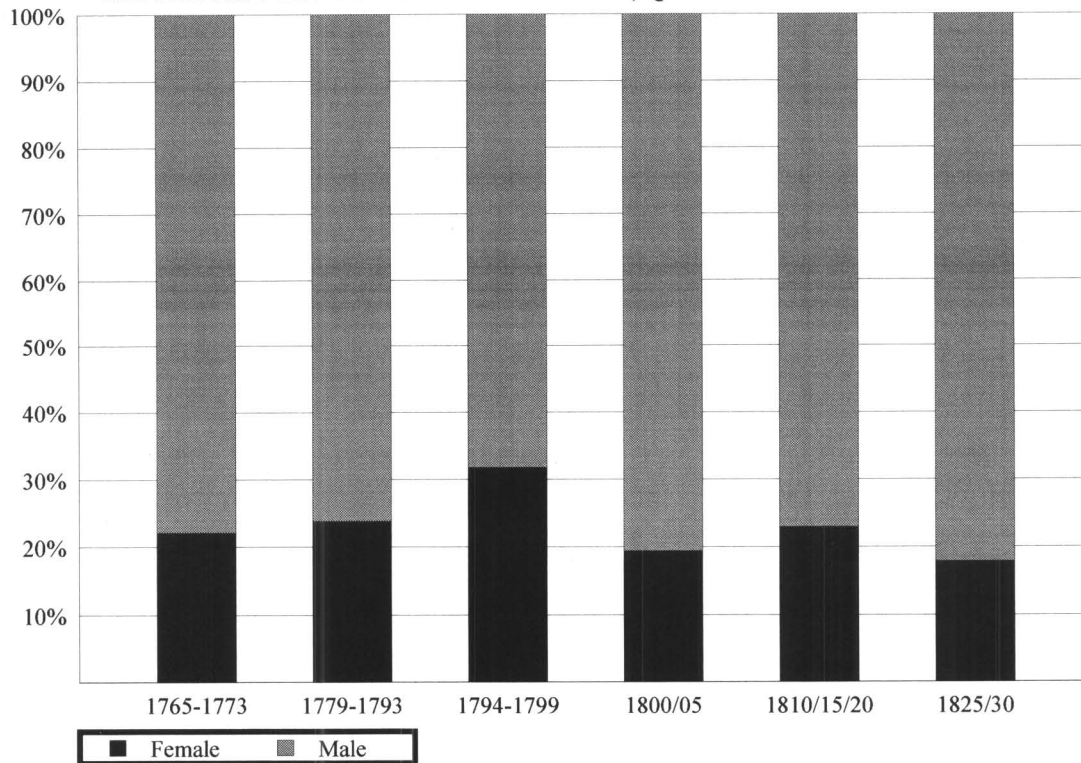


FIGURE 3.30: GENDER OF DEFENDANTS, QUARTER SESSIONS CASES

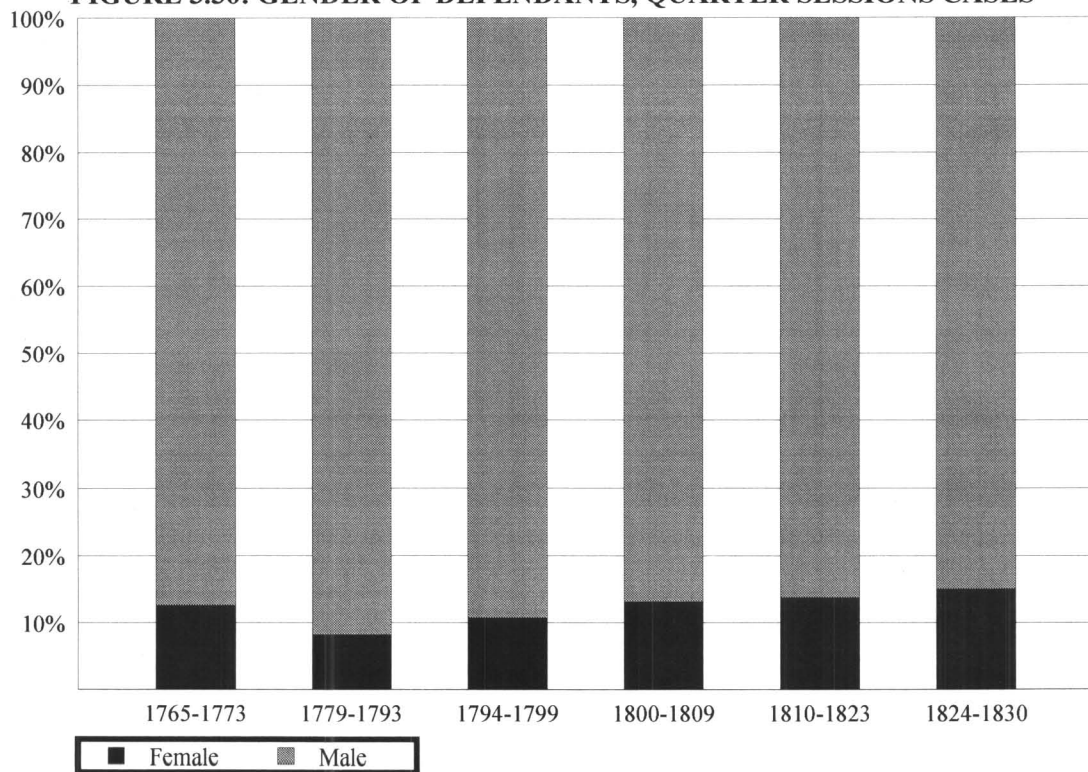


FIGURE 3.31: GENDER OF PROSECUTORS, MONTREAL SUMMARY COMPLAINTS

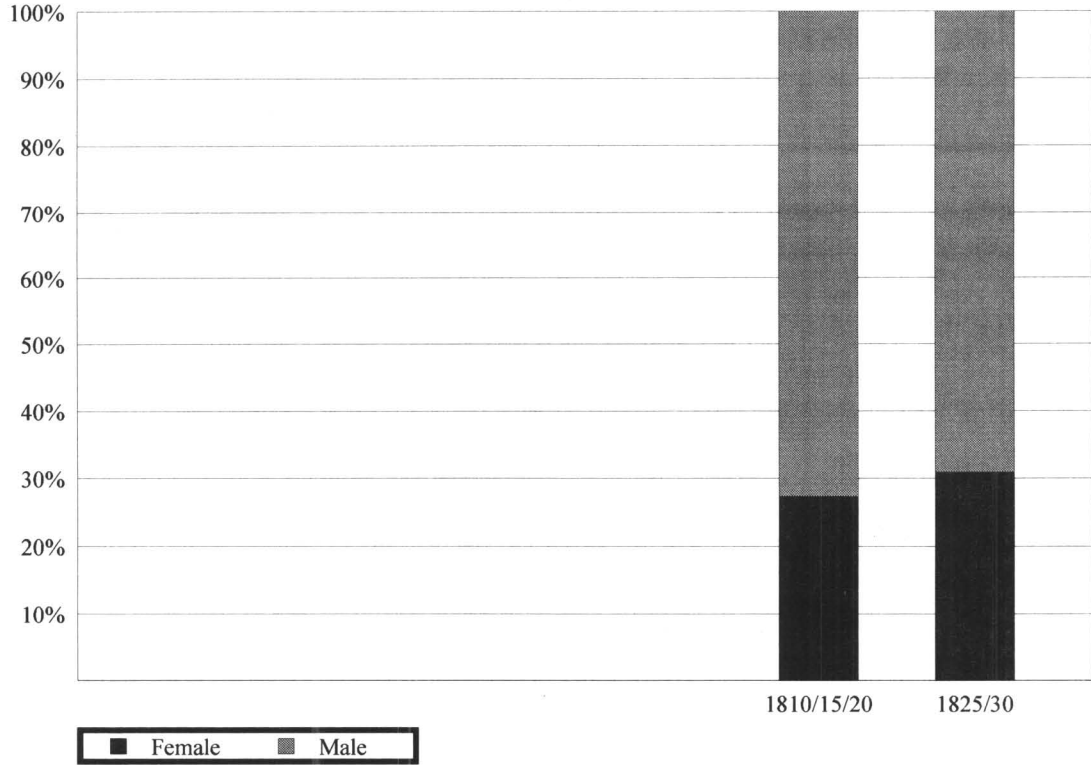
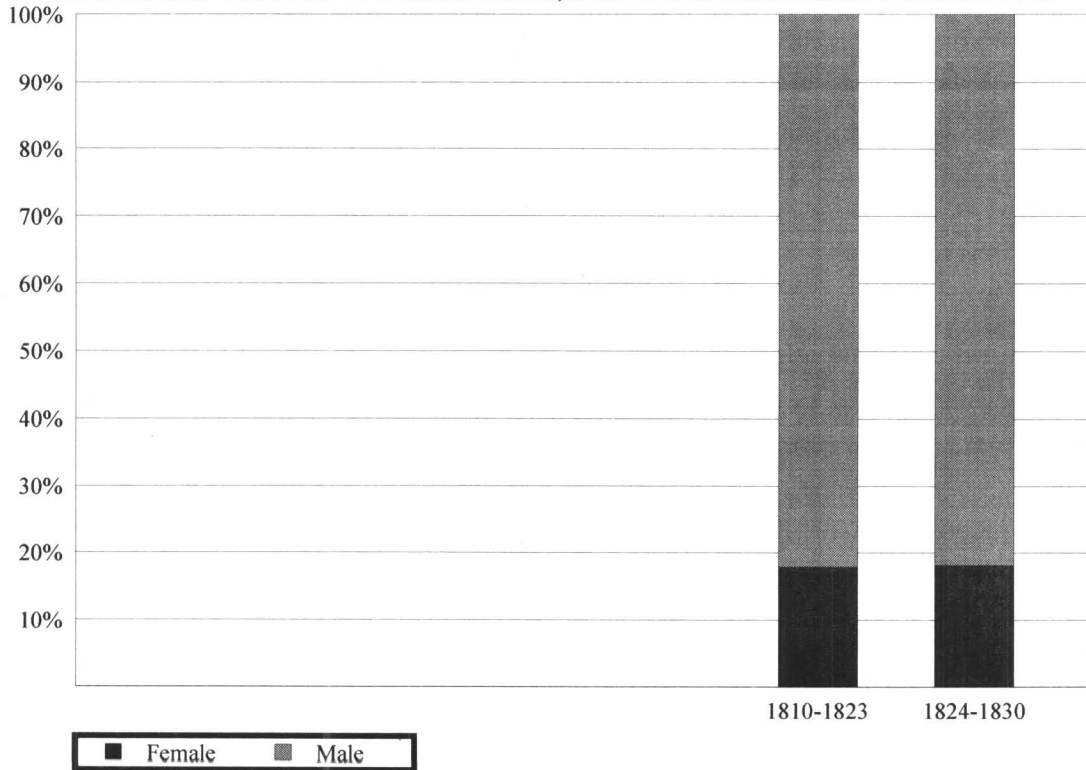


FIGURE 3.32: GENDER OF DEFENDANTS, MONTREAL SUMMARY COMPLAINTS



Montreal justices. Women, as well, were more likely to come before the justices as prosecutors than as defendants; indeed, they accounted for between 20% and 30% of prosecutors in these various venues, but only about half that proportion of defendants. In the Weekly Sessions, women were barely present at all, never appearing as prosecutors, and only very rarely as defendants, accounting for less than 4% of those convicted in the court. On the other hand, women had a much greater presence among prisoners committed summarily to the common gaol and, especially, the House of Correction. Indeed, in this latter institution their committal rate approached or exceeded their proportion in the population at large: between 1802 and 1805, almost half of those committed to the House of Correction were women;⁸¹⁶ between 1811 and 1815, they accounted 74 of the 141 people committed summarily;⁸¹⁷ and in four calendars of the House between 1816 and 1826, women accounted for 44 of 52 summary committals.⁸¹⁸

The variability of the presence of women in these different venues had everything to do with the specificity of the offences for which they came in contact with the justice system. Thus, the Weekly Sessions was a venue primarily concerned with enforcing formal obligations to the state, and such obligations were directed primarily at men. Women were exempted from some of these obligations simply because they were women, as was the case for militia service; but in others, their exemption was based not on their sex, but because the majority of them did not own property. Thus, in the few cases where women did appear, they were mostly widows charged with offences contingent upon the ownership of property, such as selling liquor without a license, not levelling the snow in front of their lands, or refusing to have their chimneys swept.

When they did come before the justices, women were there in five main ways, in ascending order of numerical importance: as prosecutors in bastardy

⁸¹⁶*JHALC* 13: 458.

⁸¹⁷NA RG1 E15A volume 29 file "House of Correction 1817".

⁸¹⁸QSD, calendars of the House of Correction, 4/1816, 7/1821, 7/1825, 4/1826.

cases; as defendants in petty larceny cases; as defendants in the whole nexus of public morality offences centered on prostitution and vagrancy; and as both prosecutors and defendants in assault cases, including cases of domestic violence. In order to illustrate the meaning and impact of the criminal justice system for women, I will focus on two of these, bastardy and domestic violence.

Bastardy cases illustrate the criminal justice system at its apparently most responsive towards women. Prosecutions for bastardy had a long tradition in Quarter Sessions in England: they allowed unwed mothers to sue the father of their child for the costs of childbirth, for the expenses of raising the child, and for punitive damages.⁸¹⁹ The practice was continued in the Quarter Sessions in Quebec: thus, for example, Clair Lebeau successfully prosecuted Dr. George Plunket for bastardy in 1785, and was awarded 40sh lying-in expenses, an allowance of 2sh 6d per week until the child was five years old, 20sh in damages, and her expenses in coming to town. And the registers of the Quarter Sessions in the eighteenth century record another 41 such cases. These prosecutions also marked a continuity from the practice in New France, where Marie-Aimée Cliche found almost a hundred cases where women launched legal proceedings against men who got them pregnant.⁸²⁰

Bastardy cases primarily involved Canadiens, who accounted for between 80% and 90% of both prosecutors and defendants; and they were largely a rural phenomenon, with only one case from Montreal among the fifteen cases where I have been able to determine the geographic origin of the participants. None of the women were from the elites, since the key to a bastardy case was proving that the mother was unable prevent the child from becoming a burden on the parish; but as Cliche found in New France, some of the men being sued were clearly members of the elites, such as Lebeau's prosecution of Plunket above, or Rebecca Samuel's

⁸¹⁹In eighteenth-century Sussex, bastardy cases represented almost 15% of the business of the Quarter Sessions (Wilson, "The Court of Quarter Sessions and Larceny in Sussex": 75).

⁸²⁰"Unwed Mothers, Families, and Society during the French Régime", in Bettina Bradbury ed., *Canadian Family History: Selected Readings* (Toronto: Copp Clark Pitman, 1992): 33-65.

prosecution of Samuel Judah, an important Montreal merchant, in 1781. The power relations involved in such cases are illustrated by the case of Marguerite Lavigne of Varennes, who charged her master, Jean Monjean, a farmer, with having sex with her several times on promise of marriage but refusing to marry her once she got pregnant.⁸²¹ However, in other cases, the defendant was as clearly not well-off; thus, when François Dirigé dit Laplante was condemned to pay £3 to Marguerite Varin in 1790, he was given fifteen days to find the money "on account of his poverty".⁸²²

Again, as in New France, some of these prosecutions at least were not mainly at the woman's impetus, but rather that of a man, most likely the woman's father or employer. Indeed, in several cases the clerk of the peace listed a man as the prosecutor, a legal impossibility, such as when Louis Sarazin prosecuted Mesaach Seers in 1781 for "being the father of her natural child whereof she was delivered some time ago".⁸²³ However, there were also at least two widows who prosecuted men for bastardy; and many of the women making complaints were willing to go to considerable trouble to ensure that their cases were successful, as when Marie-Louise Reine, a nineteen-year-old, travelled all the way from Yamaska to Montreal to swear her complaint against Pierre Petit fils.⁸²⁴

Apart from the people involved, bastardy cases also illustrate the complex interaction between French civil and English criminal law in eighteenth-century Quebec and Lower Canada. In England, criminal bastardy suits were the only way an unwed mother could seek remedy in her own name, since seduction suits, the main civil remedy, could only be launched by her father or employer.⁸²⁵

⁸²¹QSD 30/1/1786.

⁸²²QSR 4/1790.

⁸²³QSR 4/1781.

⁸²⁴QSD 21/1/1794.

⁸²⁵Constance Backhouse, "Seduction", in *Petticoats and Prejudice*: 41-42.

However, there was no such impediment under French civil law; most of Cliche's cases were brought in the civil courts. And yet, the bastardy cases that I found were brought mainly by Canadian women, and all but two of the cases in the period after 1779, when French civil law was explicitly restored.

Without a comparative examination of the records of the Common Pleas, the main civil court, we can only guess at the reasons for this. However, it may have stemmed from the fact that in the Quarter Sessions after 1779, bastardy suits were consistently successful, and in all but two of the cases where the woman persisted to a full trial before the justices, the man was found guilty. The threat of a bastardy suit was thus a powerful weapon to induce an illegitimate father to make some sort of arrangement with the woman he had impregnated, especially when one considers the case of Etienne Grinier of Repentigny, who spent three months in jail because he was unable to satisfy the court-imposed payment to Therese Latouche;⁸²⁶ and indeed in fully half of all bastardy suits the woman either declared herself satisfied, or simply dropped the prosecution.

But bastardy cases also illustrate how, while the criminal law could be a tool for women, the decisions of the justices who made up the Quarter Sessions could severely curtail this tool, for after 1795 bastardy prosecutions ceased entirely. In that year, David Ross, a young lawyer who three decades later would himself become Montreal's chief magistrate, argued that Anne Grandmaitre's complaint against Joachim Foubert should be dismissed as "there is no law in force in this country that authorises the Justices in sessions to take cognizance of complaints of this nature". Technically, Ross was correct, since the Poor Laws, which formed the basis of bastardy prosecutions in England, were among those "laws of a purely local nature" that were not automatically transferred to the colony. After deliberating, the justices agreed and dismissed the complaint, despite the arguments by Grandmaitre's lawyer, Louis Foucher, that "there is a law which authorises the Justices in sessions to take cognizance of complaints of

⁸²⁶QSR 7/1787.

this nature and that since the establishment for [sic] the Quarter Sessions in this province they have uniformly taken cognizance of such complaints."⁸²⁷ Subsequently, the justices refused absolutely to hear any bastardy complaints. Thus, in August 1815, Marie Savary, the widow of Michel Peltier, a Saint-Mathias blacksmith, brought a bastardy complaint against Antoine Meunier, the son of a Saint-Mathias farmer, swearing it before Louis Guy at Montreal with the assistance of her attorney; two weeks after making the complaint, she managed to have Meunier brought before Philip Byrne, a Saint-Jean-Baptiste justice, to enter a recognizance to appear at the next Quarter Sessions; but at the court, the justices summarily dismissed the charge as "not being within the jurisdiction of this court."⁸²⁸ One of the principal ways in which women, and rural women in particular, had used the criminal justice system in the eighteenth century had thus disappeared.

The experience of women resorting to the justice system in cases of domestic violence illustrates even more clearly the ambivalence of the system. On the one hand, it is very clear that for some women, the police and the courts were an important tool in responding to violent physical abuse from their husbands. Consider the deposition that Catherine Robertson made to Samuel Gale in 1830 against her husband David, a Montreal comb-maker:

My husband has frequently abused ill treated and used personal violence towards me and threatened to deprive me of life; that he has in the violence of his passion on some occasions thrown down the stove at the risk of setting the house and neighbourhood on fire, broken the furniture and inflicted severe blows on me. That last night he beat me again, knocked me down and jumped with his feet upon my body in such wise as to endanger my life. That on a previous occasion three days before he jumped with his feet upon my body and injured me so much that in consequence I vomited shortly after about two quarts of blood. And I verily believe that I shall be deprived of life by his violence unless he shall be imprisoned or compelled to give security.⁸²⁹

⁸²⁷QSR 1/1795.

⁸²⁸QSD 7/8/1815; QSR 10/1815.

⁸²⁹QSD 1/3/1830.

After the latest assault, she went to her next-door neighbour, Andrew Watt, a cooper, who called the watch and had her husband taken into custody. The criminal justice system had not protected her from her husband's violence; but it had provided a means for her to protect herself from her husband after the fact, at least temporarily.

The case of Marie Sançon and her husband, the butcher Jean Lessart (or John Lesser), is also suggestive of the ways in which women could use the criminal justice system. In January 1798 Sançon appeared in the Quarter Sessions to ask that Lessart be compelled to enter into a recognizance to keep the peace, and the court accordingly ordered a six month recognizance, which Lessart entered in to. Three months later, however, Sançon was back in court along with her husband, and "acknowledged that her fears derived from the ill-treatment and menaces of the said John were removed, and prayed a discontinuance of her complaint against him, and that he might be discharged from his recognizance."⁸³⁰ Indeed, while women made consistent complaints against their husbands for battering them, at least 300 in the period between 1800 and 1830 before Montreal justices alone, they almost never pursued these complaints as far as a formal court case. Women who came before the justices to make complaints about domestic violence had the same legal options as assault victims in general, since the rule of evidence preventing women from testifying against their husbands did not apply in cases where the wife was the plaintiff;⁸³¹ and thus in theory they could bring their husbands to full trial at the Quarter Sessions. However, they almost never did so: in almost every case, wife-batterers were arrested and then either bound to keep the peace or, in default, imprisoned; and of the few complaints of spouse abuse that became cases in the Quarter Sessions, most were resolved by the court summarily imposing a recognizance to keep the peace.

⁸³⁰QSR 1/1798, 4/1798.

⁸³¹Burn, *The Justice of the Peace* IV: 407.

This last raises a second point, that since most wife-battering cases were dealt with summarily, by having the husband enter into a recognizance to keep the peace, most of the evidence on women who prosecuted their husbands for assault comes from complaints brought before justices in Montreal itself. This does not mean that women from outside of Montreal did not use the criminal justice system in this way. Thus, the notebook of Crebassa and Jones contains the cases of Nathalie Braux asking for security of the peace against Pierre Baillac dit Lamontagne, her husband, and also Mary Valois versus Antoine Valois (though the relationship in this case was not specified) for assault, in both of which cases the justices imposed a recognizance to keep the peace. And there are also several cases in which women travelled from the far parishes to Montreal to complain against their husbands: thus, Magdeleine Allard, the wife of Charles Maillou, a Saint-Denis farmer, came before Jean-Marie Mondelet on September 16, 1820, to complain that her husband had been beating her for several years, and a week earlier had wounded her in the leg and thrown her from the bed onto her child's cradle; Mondelet issued an arrest warrant, and four days later Maillou was in Montreal entering into a recognizance to keep the peace for six months.⁸³²

Apart from their geographical origin, women who came before the justices in cases of spouse abuse represented the same sorts of people who came before the justices in general, though if anything more francophone, and drawn more the popular classes: two-thirds of the women were francophone, and of fifty cases where the occupations of their husbands is known, all but eight were skilled labourers or below, and only two definitely from the elites,

It is also clear that police and justices often took domestic violence very seriously. The case of Joseph Joutras, arrested by Montreal constables in 1800 for beating his wife, has already been mentioned; and Richard Hart, Montreal's police and then high constable, even went so far as to charge his fees in several cases of wife battering to the government, alongside charges for arresting thieves

⁸³²NA MG8 F89 volume 6: 3657-3687; QSD 16/9/1820.

and murderers, although they were later disallowed along with most of his other charges.⁸³³ Likewise, husbands who battered their wives were much more likely to end up in gaol on preliminary imprisonment than those in assault cases in general: while wife batterers made up only 5% of complaints brought before the justices in 1810, 1815, and 1820, they accounted for 20% of prisoners committed to the gaol on assault charges in the same period, although whether this was as a result of the justices demanding a higher bail in these cases, or the community in general refusing to enter into bail for wife-batterers, is difficult to know.⁸³⁴

Whatever the reasons, the willingness of justices to send wife batterers to prison must have been one of the reasons that women were willing throughout the period to bring these complaints before the formal criminal justice system. And in the few cases of domestic violence that did make it to the Quarter Sessions, the justices were unwilling to impose any limitation on the rights of wives to testify against their husbands in cases of domestic violence. Thus, in 1815, at the trial of Michel Bourgoïn dit Bourguignon for assaulting Marguerite Laurin, his wife, Bourgoïn's lawyer objected to the admissibility of Laurin's evidence "the said being against her husband." But the justices on the bench, including Thomas McCord and Jean-Marie Mondelet, over-ruled the objection and admitted Laurin's evidence.⁸³⁵

We must not, however, think that the justice system was a pro-active force in dealing with domestic violence. Battered women faced all of the same barriers as other prosecutors, such as the centralization of the justice system in Montreal and the costs of a prosecution, but they also faced additional barriers that were

⁸³³From Hart's accounts, in NA RG1 E15A.

⁸³⁴A possible distortion is that if wife batterers were kept in gaol for longer than other assault defendants, they would more readily turn up in the monthly gaol calendars; however, either case suggests a harsher attitude towards wife batterers.

⁸³⁵QSR 1/1815. The jury in the case, however, rendered a special verdict, "that they find the fact stated in the indictment to be true and that Marguerite Laurin the prosecutrix is the wife of the said defendant"; after hearing the attorneys on both sides, the justices interpreted this as a not guilty verdict, though they forced Bourgoïn to enter a recognizance to keep the peace for a year.

particular to their case. Kathryn Harvey's study on wife-battering in Montreal in the 1860s and 1870s has shown that though women often went to the police and the courts with these cases, the barriers they faced once they got there were enormous; and many of these same barriers existed in the late eighteenth and early nineteenth centuries.⁸³⁶

In the first place, not all justices were equally willing to facilitate domestic violence prosecutions. Under Samuel Gale in the latter half of the 1820s, for example, though the number of women bringing complaints involving domestic violence before the justices in Montreal remained steady, only five wife-batterers were committed to the gaol in Montreal, of 196 prisoners committed in all between 1826 and 1830 for assaults and threats, a sharp drop from the 1810s and early 1820s under Jean-Marie Mondelet and Thomas McCord. And consider the comments made by Chartier de Lotbinière, the aristocratic Vaudreuil justice, in a covering letter enclosing the documents relating to the complaint of Magdelaine Treslerd, the twenty-year-old daughter of one Treslerd, against her father for beating her on several occasions: in explaining why he had not required Magdelaine to enter into a recognizance to prosecute, he stated that "dans les divisions et difficultés de famille, il faut autant que possible, laisser une porte ouverte aux accomodements."⁸³⁷

As well, the "neutrality" of the criminal justice system in matters of domestic violence is evident from the fact that it was not only wives who could turn to the justice system against their husbands, but also husbands against their wives. Thus, in 1794 it was John Calgouff who initiated the contact with the justices when he complained to John McKindlay on January 23 that Elizabeth Peter, his wife, "has for some time past absented herself from her conjugal duty and refused to return to his house without any just cause; and doth reside with her

⁸³⁶"To Love, Honour and Obey: Wife-battering in Working-Class Montreal, 1869-79", *Urban History Review* 19(2)(1990): 128-140.

⁸³⁷QSD, Chartier de Lotbinière to Reid, 14/10/1809.

father Julius Peter who illegally retains her in his house, and encourages her in her said conduct;" anomalously, McKindlay issued a summons to Peter and her father to appear at the next Weekly Sessions to answer to the complaint; on Tuesday, January 28, Peter appeared before McKindlay and entered into a recognizance to keep the peace for the next six months, but at the same time swore out a complaint against Calgouff, stating that she feared for her life due to his repeated threats and menaces; and the same day, Calgouff completed the circle by himself entering into a recognizance to keep the peace for six months.⁸³⁸ And there were a few rare instances, about 10% of domestic violence cases in all, where husbands complained against their wives for physical abuse. Thus, in 1820 John Forbes, a Saint-Eustache farmer, complained that his wife, Isabella Dingwall,

hath upon several occasions attempted to take the life of and murder this deponent, that on the thirteenth instant, he was attacked and violently seized by his said wife by the throat, and was then and there nearly strangled, that she hath repeatedly attempted to stab this deponent with a sword and with knives which she had hid for the purpose of killing the deponent, that the said Isabella Dingwall hath publicly threatened and declared that she would kill and murder this deponent and hath frequently in the night time made search for the deponent armed with a knife and other weapons to kill the deponent, that this deponent hath been obliged to save his life to leave his house and employ persons to save and protect him, that the deponent doth further swear that the said Isabella Dingwall hath purchased poison and hath attempted to poison the deponent and others of his family, that he doth verily believe that unless the said Isabella Dingwall is taken and confined that she will murder him the deponent and others of his family.⁸³⁹

And finally, as Kathryn Harvey points out, even if police and justices had all the will in the world to stop spouse abuse, there were severe limits to the extent to which the justice system could really protect women from abusive husbands. Abusive husbands were well aware that they could be arrested: John Skelton, for example, a Montreal butcher, declared to Marie Gosse, his wife, that "si elle ... ne le faisait pas arreter ... elle se souviendrait de lui".⁸⁴⁰ But this did

⁸³⁸QSD 23/1/1783 and 28/1/1793.

⁸³⁹QSD 28/3/1820.

⁸⁴⁰QSD 2/8/1820.

not stop them beating their wives: Marie-Josephte Brais, the wife of Toussaint Renaud dit Desloriers, a Longueuil farmer, declared in December 1830 that her husband had beaten her so much that fifteen days ago she had been obliged to have him arrested, but he had continued so that she had to leave the house with her children;⁸⁴¹ and indeed Marie-Louise Saint-Aubin of Saint-Laurent stated that Antoine Legault dit Delorier, her husband, "aurait dit à la dite déposante que si elle le fesait prendre, il ferait bruler ses batimens".⁸⁴²

One case in particular illustrates the very real limits of taking this route and soliciting judicial intervention, that of Marie Reeves, the wife of François Vinet dit Souigny, of Longue-Pointe. As a result of her husband's abuse, Reeves had on several occasions had recourse to the justice system, and on September 28, 1821 had him arrested and committed to the gaol by Jean-Marie Mondelet. A month later, Vinet managed to mortgage his property to procure bail; and on January 1st, 1822, he murdered Reeves by hitting her repeatedly with a piece of fire-wood.⁸⁴³

Nevertheless, women continued to come before the justices with complaints against their husbands; and that these often poor, often illiterate wives were willing to use the power of the state to counter the physical power of their husbands is testimony of the degree to which they felt that it could serve their needs. And in many cases, these women were successful in their attempts to exercise this limited power. Take the case of Josette Levasseur: in 1784 she charged her husband, Jean-Baptiste Racine, with "treating [her] ill." By the time the case came to trial, Racine had been in prison eight days, and Levasseur simply did not appear to prosecute any further.

⁸⁴¹QSD 3/12/1830.

⁸⁴²QSD 2/11/1825.

⁸⁴³*Montreal Herald* 5/1/1822; gaol calendars 8/9/1821 and 2/1/1822 in NA RG4 B21.

IV. The uses of the justice system

If anything comes out of the preceding discussion of the routes that people took through the justice system at the level of the justices, and the factors that shaped their contacts with it, it is that there is no easy way of encapsulating in a few words the uses to which this justice system was put. Neither the consensual nor the conflictual model explain entirely how or why the criminal justice system at the level of the justices worked: the first does not help us understand the fate of the militians imprisoned in the Montreal gaol in the late 1770s, or the hundreds of tavernkeepers who paid their fines; and it is very difficult to fit into the second all of the cases where labourers and artisans prosecuted each other. But what of the third model, of the criminal justice system as marginal and largely outside the normal life of the community? We have already seen that the justice system was not as weak as it has been portrayed, either in its structures or its operation; and the characteristics of the people who came before the justices seems to suggest that it touched a larger cross-section of the population than usually postulated, though still shot through with very significant biases. Beyond this, though, lies the question of the attitudes of the people themselves towards using the justice system in their intimate affairs. And while the sort of general overview of the system that I have undertaken precludes any exhaustive examination of such questions of mentalités, which are far better suited to focussed studies, a few preliminary observations on the place of the justice system in the regulation of intimate affairs are in order.

In the first place, it is crucial to establish from the outset that most of the actions or inactions that could lead to complaints before the justices never came to the official attention of the criminal justice system at all. Even today, most crimes of interpersonal violence are not reported to the police,⁸⁴⁴ and this is even more true of the whole range of lesser regulatory offences, where the level of

⁸⁴⁴Recent surveys have found that in Canada, only 36% of non-sexual assaults, 14% of violent incidents against women, and 13% of sexual assaults, are ever reported to police; and less than half of assaults reported to police ever lead to a charge being laid (*Canadian Crime Statistics, 1992: 16, 2-1*).

prosecutions reflects far more an increased effort of the state, such a campaign against drunk driving or jay-walking, than the actual number of drunk drivers or jay-walkers. But it is difficult to argue that the justice system today is in any sense marginal; thus, the fact that most crimes do not come to the attention of a criminal justice system does not in itself mark it as marginal.

Secondly, as Allan Greer and Jean-Marie Fecteau have suggested, many incidents, especially outside of the city itself, were probably deflected from the formal criminal justice system through informal arbitration.⁸⁴⁵ Although there has as yet been no study that addresses this issue directly,⁸⁴⁶ and the records of the criminal courts themselves are very poor sources for understanding arbitration, the examples discovered by Greer are suggestive. However, even where disputes were settled by arbitrators, it is important to remember that just as in England,⁸⁴⁷ the arbitrators could themselves be justices of the peace, since as we saw, many active non-Montreal justices, especially in the period between 1800 and the mid-1820s, were drawn from roughly the same group of local notables who have been postulated as the main arbitrators to whom parties turned. Though the absence of the records of almost any non-Montreal justices means that understanding these proceedings is very difficult, there are again a few suggestive examples. Thus, though not in the post-1790 district of Montreal itself, consider the explanation given by the Chevallier de Niverville, a Trois-Rivières justice, in 1791 as to why he had never submitted any fines to the government in the period he had acted as a justice, since 1785:

⁸⁴⁵Greer, *The Patriots and the People*: 97-100; Fecteau, *Un nouvel ordre des choses*: 77.

⁸⁴⁶Jean-Philippe Garneau, of the Université de Québec à Montréal, is currently working on this subject.

⁸⁴⁷Shoemaker, *Prosecution and Punishment*: 81-94.

naient eu aucune avie des regelemens de cette emplois jai tousjour ajie comme harbitre dans les difficultés qui ont été présente devans mois et tousjour travaillé a les acorder ce qui a tousjours assé bien réussie et cant il [illegible, something to the effect of parties remaining un-reconciled] je les condanné a frais de lussier.⁸⁴⁸

Likewise, a failed arbitration lay behind the complaint that James Sawers, a William Henry justice, sent on to the Quarter Sessions for trial, involving the assault of Pierre Prévost on Antoine Frapper père, both Saint-Cuthbert habitants:

having heard what both parties had to say, I determine that the defendant pay to the plaintiff all the charges of the constable, the witnesses, the time the plaintiff's husband has been sick, and the surgeon's bill, all which amount to a little more than thirty shillings at this time. The defendant will not pay more than six dollars; and the plaintiff will not put up with that small sum, not knowing how much the surgeon's bill will amount to; so not agreeing to my determination, they chuse rather to carry the cause in before the next Court of Quarter Sessions of the Peace, to be held at Montreal in April next ensuing.⁸⁴⁹

And informal arbitration probably explains why the entry in the notebook of Joseph Porlier, the Saint-Hyacinthe justice, in 1819, listing the case of Louis Poulin fils versus Michel Davion dit Pretaborir "pour l'avoir traité de voleur de poisson", was crossed out without any further notation.⁸⁵⁰

But the presence of this filtering even before an incident became a formal complaint does not preclude the criminal justice system being one of several primary tools in the regulation of community disputes, rather than an instrument of last resort. If we take the largest category of offences with victims that were dealt with by the justices, the various species of threats and assaults, we can see that members of Quebec and Lower-Canadian society brought complaints before the justices that involved the most intimate of relationships, between families, friends, and neighbours. Wife battering is the most obvious example, but there are many others. Consider, for example, the complaint that Alexis Guyon dit Lemoine, of L'Assomption, made against Joseph Rolland fils in 1799 before

⁸⁴⁸NA RG1 E15A volume 13 file "Committee on Public Revenue 1793".

⁸⁴⁹QSD 2/2/1795.

⁸⁵⁰Archives du séminaire de Saint-Hyacinthe, BSE17 2 24/9/1819.

George McBeath, a L'Assomption justice: having gone the previous evening to ask Rolland,

son troisième voisin, pour quelle raison il avait donné des coups de pieds et frappé son enfants surquoi ledit Rolland auroit répondu que le déposant Alexis Guyon avoit des enfants trop mal élevée et que setoit des grossiers, que c'est pour cette raison qu'il avoit ainsi frappé; à l'instant le dit Rolland sans aucune formalité auroit aussi frappé et maltraité le dit Alexis Guyon déposant de plusieurs coup de poing sue l'oeil et plusieurs partie de son visage. ayant dans sa main le dit Joseph Rolland un moine ferrée de sa pointe qui ce seroit servi pour frapper le déposant⁸⁵¹

Or the 1825 complaint of Louis Rémillard, a Saint-Cyprien farmer, against Laurent Tremblay, a labourer from the same place, for hitting him and calling him a "sacré crasse" after Rémillard went to Tremblay's house to fetch back his wife, who was there.⁸⁵² Neither of these suggest a reluctance on the part of either Rémillard or Guyon to go before a justice to make a complaint about matters that were very personal.

Indeed, we can see this even more clearly if we look at the length of time that passed between an actual offence and the prosecutor's arrival before a justice to make a complaint. If the criminal justice system was used only as a last resort, when all other means of arbitration had failed, we would expect to see a significant delay between the date of the crime, and the date that the prosecutor appeared before the justice. However, as Table 3.10 shows, in about 60% of all cases the prosecutor arrived before the justice either the same day or the next day; and this held true across the period, the type of crime, and the ethnicity and gender of the prosecutor. The only exception was complainants from outside of Montreal, where only 40% of the complaints were made the same or the next day. However, 54% were made within two days; and these numbers are also certainly skewed by the fact that the source, the case-files, privileges documents produced by Montreal justices. Indeed, if we consider only complaints that non-Montreal prosecutors made before non-Montreal justices, the proportion of complaints made

⁸⁵¹QSD 27/5/1799.

⁸⁵²QSD 25/4/1825.

TABLE 3.10: TIME BETWEEN OFFENCE AND COMPLAINT BEFORE A JUSTICE

Time between offence and complaint	All complaints	1785-1799	1800-1830	1824-1830
Same day	280 (23%)	27 (23%)	253 (23%)	86 (22%)
Next day	462 (38%)	36 (39%)	426 (39%)	177 (44%)
2 days	123 (10%)	19 (16%)	104 (10%)	38 (10%)
3-5 days	158 (13%)	17 (14%)	141 (13%)	50 (13%)
6-10 days	69 (6%)	6 (5%)	63 (6%)	12 (3%)
11-30 days	70 (6%)	10 (8%)	60 (6%)	22 (6%)
31+ days	45 (4%)	4 (3%)	41 (4%)	15 (4%)
Time between offence and complaint	Personal violence	Non-Montreal	Francophones	Women
Same day	235 (24%)	57 (14%)	174 (24%)	69 (21%)
Next day	374 (38%)	102 (26%)	274 (37%)	147 (44%)
2 days	107 (11%)	55 (14%)	80 (11%)	29 (9%)
3-5 days	133 (14%)	75 (19%)	99 (13%)	39 (12%)
6-10 days	57 (6%)	41 (10%)	48 (6%)	14 (4%)
11-30 days	53 (5%)	40 (10%)	41 (6%)	20 (6%)
31+ days	25 (3%)	30 (8%)	24 (3%)	13 (4%)

within a day rises to 49%, and within two days to 62%, meaning that rural complainants may have taken, on average, an extra day to make their complaint.

What all of this seems to show is that going before a justice to make a complaint, far from being a last resort, was one of several primary mechanisms which people used in response to aggressions against them. We must of course be careful in interpreting the table, for in many cases we do not know the anterior circumstances of the relations between the prosecutor and the defendant, and at least in offences of personal violence, the actual assault that led to the complaint may have been only the last in a series. This was almost always the case in complaints by battered wives, where the woman invariably stated that her husband had been beating her for weeks, months, or years; and it is also revealed in complaints such as that of Mary Sutherland against William Collins, a Montreal labourer, in 1830, where Sutherland complained that Collins had been coming to her house at night numerous times over the last two or three months and threatening to beat her and break down her door.⁸⁵³ On the other hand, there are many more cases where there is no mention of such antecedents; and though it is entirely possible to argue in these cases that previous conflicts existed which were simply not mentioned in the complaints, this again does not change the fact that people were willing to lay their personal lives and affairs open before justices of the peace. Thus, consider the complaint that Augustin Girard dit Jean-Pierre, of Saint-Eustache, made before Louis Chaboillez in Montreal in 1800:

il se seroit marié en face d'Eglise le [28 Avril] même jour environs les neuf heures du matin avec Marie Josette Calvé et quele soir vers les dix heures Alexis Bouthelier de la Côte des Neiges auroit enlevé sa dite épouse, et la transportée hors de sa vue, ignorant ce qu'il en a fait, et a tout lieu de prenimier que ce même Alexis Bouthillier a enlevé par violence sa dite épouse⁸⁵⁴

Girard travelled from Saint-Eustache to Montreal the same day to bring this "affaire de famille" before the official justice system of the state in Montreal; and

⁸⁵³QSD 9/12/1830.

⁸⁵⁴QSD 28/4/1800.

at least by one measure, he was successful, since three days later Bouthelier entered into a recognizance to appear.

Conclusion

Consensual, conflictual, marginal; the criminal justice system at the level of the justices was all three and none at the same time. Just like the stories of Magdelaine Surprenant, the militians, and Ann Taylor with which I began this section, there are ample cases that illustrate each of these faces of the system. And in some ways trying to determine which of these three was paramount, whether quantitatively or theoretically, inevitably leads to reductionism. From an experiential perspective, it did not matter to Taylor that prostitution-related offences comprised only a small part of the justices' business, to which they applied special proceedings, since it was that part of their business that applied to her. To the militians who paid their fines, it did not matter that once the war with the American colonies was over, the *corvée* and militia ordinances were rarely applied; it still cost them £5 apiece, the equivalent of twenty *minots* of wheat, or ten cords of wood, or 300 pounds of beef.⁸⁵⁵ And to Magdeleine Surprenant, it did not matter that her trip to the Quarter Sessions in Montreal was unusual for a rural woman: she still made the complaint before Paul Lacroix in Laprairie, and still brought herself and her "fruit" across the ice in January 1791, to find herself denied satisfaction by the twelve men on the jury.

⁸⁵⁵Ouellet, *Economic and Social History of Quebec*: 105.

GENERAL CONCLUSION

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It is not my intent to argue that there was a modern state in place in Quebec and Lower Canada before the Rebellions, nor that the power of the state, and its penetration into civil society, was the same at the Conquest as it was at Confederation. Even concentrating on the single manifestation of the state that I examined, the criminal justice system at the level of the justices, it is undeniable that the system of the 1860s was far different from that of the 1760s, and resembled far more closely our notion of the modern criminal justice system. Perhaps most importantly, as state-formation theorists point out for government in general, the old system was not at all centralized. Justices of the peace, for example, were indeed very independent of the central administration, even those like Thomas McCord and Jean-Marie Mondelet who received substantial salaries from the state, as the confrontation over the high constable shows. And there was very obviously little control by the central administration over the police, since the structures of policing differed markedly from what was outlined in colonial legislation, and most of the effective control over the police was exercised by the justices themselves.

But a lack of centralized control does not necessarily imply a lack of power. This was one of the most important points raised by marxist historians of the English criminal justice system such as E.P. Thompson and Douglas Hay: just because the criminal justice system was not directly an organ of the central administration in London, does not mean that it was not an oppressive burden on the popular classes, and if anything its impact was even greater by its being controlled by the local propertied elites. Further, most municipal police forces even today are not controlled by the central government, but by local authorities who occupy the same relative position in the state as the justices of the peace; and as the recent incidents regarding the Chambly police force suggest, the relationship between these local police and the central administration are sometimes acrimonious.

At any rate, my contention is more simple: that there was in fact a state-sponsored criminal justice system in place before the Rebellions that, for all of its internal contradictions, inefficiencies, and irregularities, could and did have a significant impact on those who came in contact with it; that both this system and the way that society at large interacted with it were not static between the 1760s and the 1820s, but evolved considerably, developing many of the traits that would later characterize the criminal justice system of the "modern" state, such as professional police and magistrates, and bureaucratic formalism; and that as a consequence, the period following the Rebellions did not mark as sharp a break in the nature and impact of the state in general, and the criminal justice system in particular, as has lately been assumed, although there is no denying that there were significant changes in that period as well.

Indeed, from the perspective of policing and criminal justice, the late 1830s and early 1840s were in some ways an anomaly. Take, for example, the police presence in the city of Montreal itself. Alan Greer notes that when the new Montreal police was set up in July 1838, its 122 men meant that there was one policeman for every 314 inhabitants, a remarkably low ratio.⁸⁵⁶ In the mid 1820s, as we saw, there were perhaps four police constables and 24 watchmen; with a city population of about 22 000 in 1825, this meant that there was about one professional policeman for every 800 inhabitants, or a little over a third as many police as in the late 1830s. But as Greer remarks himself, the number of police dropped sharply in 1841 due to budgetary constraints, to only 62, or one for every 600 inhabitants.⁸⁵⁷ Further, if we go back to the mid-1760s, in a town with a population of perhaps 4000 the justices assigned wards to eight bailiffs, or one per 500 people! This is not the whole story, since the organization of the police mattered as much as their actual numbers; on the other hand, Mary-Anne Poutanen has found that the number of women arrested on charges of being loose,

⁸⁵⁶"The Birth of the Police in Canada": 22.

⁸⁵⁷*Ibid.*: 28-29; Turmel, *Premières structures et évolution de la police de Montréal*: 44-45.

idle, and disorderly showed a substantial rise beginning in the mid-1830s, before the re-organization of the "new" police.⁸⁵⁸ Further, to assert, as Greer does, that "Victorian police forces were very much the creatures of government -- municipal and, to some extent, provincial -- and their personnel were entirely servants of the state" is fundamentally to overstate the extent to which police in the nineteenth century were faceless bureaucrats, and to ignore the countless cases of these "true" police being involved in prostitution, drunkenness, corruption, and other activities which worked directly against the interests of the governments they were purportedly serving.⁸⁵⁹

What marked the criminal justice system of the state in Quebec and Lower Canada before the 1830s was in fact a great deal of hidden strength and professionalism. Consider, for example, the high clear rates in Quarter Sessions cases, and the very large proportion of those fined in the court who paid their fines; neither suggest powerlessness. And to state that "constables and watchmen might capture the odd thief and make life difficult for vagrants and unlicensed tavern-keepers, but they were not equipped, nor were they numerous enough, truly to master the streets"⁸⁶⁰ does disservice to the experience of the thousands of people arrested and imprisoned for everything from breach of service through assault and battery to murder by Montreal's active, professional police, let alone the even larger number who were simply arrested and brought before a justice to give bail.

The hidden strength and professionalism also held true for other aspects of the state in Quebec and Lower Canada. Consider the institutions of local government. Bruce Curtis describes them in the Canadas as a whole as almost non-existent: "Local powers of taxation and administration were mainly in the hands of appointed justices, who exercised such powers either individually or

⁸⁵⁸This is from information communicated to me personally.

⁸⁵⁹For an overview of police malversation in Montreal, see Brodeur, *La délinquance de l'ordre*.

⁸⁶⁰Greer, "The Birth of the Police in Canada": 19.

together when assembled for Quarter Sessions ... The magistracy was not itself stipendiary, nor were other local governmental officials salaried ... The absence of systematic organs of local government seriously limited the capacity of the central government to institute and carry out any social policy and police on a continuous and regular basis."⁸⁶¹ Allan Greer and Ian Radforth take a similar perspective in the introduction to *Colonial Leviathan*: "A whole new level of government was instituted in the Canadas when, beginning in the 1830s, municipal institutions were belatedly set up for the cities and towns."⁸⁶² And yet, the city of Montreal at least had a "systematic organ of local government" from 1796, the Special Sessions of the Peace, an institution entirely separate from the Quarter Sessions and almost identical to a nineteenth-century town council in its operations and functions, complete with regular weekly or bi-weekly meetings, committees, votes, party politics, and chronic budgetary constraints;⁸⁶³ the only difference was that the elites who dominated the sessions, the justices, were appointed rather than being elected from among themselves. Further, the city's bureaucracy before 1833 can hardly be considered unprofessional, given the permanent salaries attached to the posts of town crier, roads surveyor (Jacques Viger himself, the future mayor), town paviour, and a host of lesser employees. And the sheer fact of having a "representative" government was no guarantee of a more efficient, professional, or powerful city administration. Consider the complaint of P-A Weilbrenner, Montreal's inspector of police, to the city's new Municipal Council in 1833:

⁸⁶¹"Representation and State Formation in the Canadas": 65, 68.

⁸⁶²"Introduction", in Greer and Radforth eds., *Colonial Leviathan*: 4.

⁸⁶³This is based on research in the minutes of the Special Sessions of the Peace (SSR).

Comparez la situation de votre inspecteur de Police avec celle de l'Inspecteur des chemins qui devait remplir les mêmes devoirs avant lui ... J'exposerai: 1. Que votre inspecteur se trouve chargé d'une tâche qui n'est rien moins que celle de l'inspecteur des chemins avant l'existence du conseil; les devoirs en sont même bien plus multipliés. 2. Qu'il est parfaitement seul pour remplir une telle tâche ... L'inspecteur de police, pour un salaire de cinquante louis, remplit les devoirs de l'inspecteur des chemins qu'en percevoit un de deux cents livres. Le même inspecteur des chemins avant l'établissement du conseil de la ville, avoit pour l'aider dans la surveillance des réglemens de police le Grand Connétable au quel la magistrature avoit alloué à cet effet un salaire de cinquante louis ... On dira peut être que l'Inspecteur des chemins pour un salaire de deux cents livres avoit d'autres devoirs à remplir; oui, mais aussi personne n'ignore qu'il y avoit alors, comme aujourd'hui, une personne chargée de veiller et de diriger les travaux publics, et payée aussi par les magistrats. L'inspecteur des chemins avoit l'intendance sur les deux autres officiers, je veux dire, le Grand Connétable et le conducteur des travaux. Sans s'arrêter à désirer le salaire de ceux-ci ou de celui-là, votre inspecteur vous prie encore de remarquer ce qu'il vient de dire, il y a un instant, que la surveillance des regelemens de police impose des devoirs bien plus multipliés qu'avant l'existence du conseil de ville.⁸⁶⁴

All of this discussion of the nature of the state, however, leaves aside the most crucial issue of all: what the criminal justice system truly meant for the people of Quebec and Lower Canada, or at least those in the district of Montreal. From our brief overview of the contacts that people had with the system, what is clear is that at the level of the justices, this meaning was ambiguous, unclear, and almost impossible to characterize neatly. The large number of cases involving interpersonal violence, the small number involving property, the many where both prosecutors and defendants were similar sorts of people, and the very personal nature of many of the issues brought before the justices, often within no more than a day or two, all suggest social consensus and a willingness to use the system to resolve personal disputes. Further, it is very clear that there was no generalized boycott of the criminal justice system by Canadiens, at least until the late 1820s, a situation that can be attributed in part to the predominance of francophones among the justices and the police. And the extent to which prosecutors in cases destined for the Quarter Sessions had the discretion to withdraw their actions at almost any

⁸⁶⁴Weilbrenner to City Council, 27/9/1833, in AVM VM43.

stage in the proceedings shows how they could use the system to their own advantage.

But though people could use the system, they could also be ill-used by it. The system was not class-neutral, especially in cases where the interests or values of the elites were threatened, such as breach of service, larceny, or prostitution and vagrancy, where the justices in particular imposed much harsher penalties than for cases involving interpersonal violence. And though the effects of class on access to the justice system and on the results are ambiguous, it is certain that elite prosecutors could better afford to pursue their cases through the courts, and elite defendants to pay the fines imposed on them. As well, contact with the system was biased by factors such as geography and sex, though both women and people from outside of Montreal itself were not at all absent. Battered wives are a case in point: they used the system to a point, having their husbands arrested and put in gaol when the abuse reached a critical level, but did not go much beyond that point.

What emerges is a paradox: a system where the cases of most defendants never reached a formal conclusion, but which was nonetheless not powerless to enforce its orders; and a system riddled with barriers and biases, but which many people still turned to and came in contact with. And as I suggested above, I would argue that it is neither possible, nor even desirable, to go beyond this paradox. To impose a rigid model on such a multifaceted institution as the criminal justice system, is to miss the point of the system; since its whole essence was fluidity and ambiguity.

Having begun with a story expressed in court documents, I will end with another one, which brings together these diverse themes. It involves the 1806 conviction of Jonathan Darby, of Odeltown, in Lacolle near the American border, for selling liquor without a license. Darby was convicted in the Weekly Sessions in Montreal on September 2, by the two Canadian justices on the bench, Jean-Marie Mondelet and Hyppolite Saint-Georges Dupré, and fined the standard £10 Sterling, or £11 2s 2d currency. The conviction was at the suit of James Ker,

the clerk of the markets in Montreal: it thus represented an official prosecution of an offence against the state, by an urban bureaucrat, and directed against a person who lived in one of the further, though not the furthest, corners of the district of Montreal, and one in which a Canadian magistracy exerted itself against an English offender.⁸⁶⁵

On September 25, when Darby had neglected to pay the fine, Mondelet and Saint-Georges Dupré issued a warrant of distress against him, a standard pre-printed form in English, filled out in the hand of the clerk of the peace and signed and sealed by the justices. The warrant was directed to Samuel Andres, a Laprairie resident who seems to have filled a number of minor government posts, acting not only as a bailiff in both civil and criminal cases, but also as a tide-waiter, or minor employee of the customs. It directed Andres to seize enough of Darby's goods and chattels to satisfy the amount of the fine, plus £3 6sh 8d for the costs of the suit, plus 2sh 6d for the warrant, plus what the warrant referred to as "reasonable charges of taking and keeping such distress", and if the fine and costs were not paid within four days, to sell what he had seized.

It was not, however, until November 19 that Andres travelled to Odeltown to make the seizure. There, with James Goslin, an Odeltown bailiff, as his recors, he seized what he declared to be the entire contents of Darby's house: among other things, two cherry tables and six chairs, an iron pot and a kettle, a bedstead with a small feather bed and a quilt, a looking-glass, five bushels of buckwheat and ten of Indian corn, a grindstone, and a cow. Seizing did not mean physically taking them into his possession, but simply declaring that he had seized them, and after doing so Andres constituted Goslin and Jonathan Sawyer as guardians of the goods and returned to Laprairie. Four days later, Andres published his seizure at the door of the nearest parish church, Sainte-Marguerite-de-Blairfindie, half-way to Montreal, and announced the date of the sale as November 28; and on that day he returned to Odeltown to make the sale.

⁸⁶⁵WSD 25/9/1806.

The sale proceeded by auction, with the goods sold to the highest bidder, for cash only, and disposed of all of the goods seized to a half-dozen different people, including Andres and Goslin themselves. More strikingly, all of the goods were sold for sums far below their real value, the cow for example going for 5sh to Timothy Livingston, and the quilt to Goslin for 1sh 6d; the sale in all raised only £2 10sh, which did not even cover the fees that Andres charged for the seizure and sale, over £3 (though reduced by the un-named justice who "taxed" or approved Andres' account to £2 14sh). In consequence, four months later, by order of Joseph Bedard, Ker's counsel and an eminent Montreal lawyer, Andres returned to Odeltown to begin the entire process over, and once again seized what seems to have been the entire contents of Darby's house, this time with Joseph Griffin, a bailiff and Montreal professional substitute constable, as his recors, though James Goslin witnessed the seizure, and with William Wilsie and Goslin as the guardians of the goods.

Thus far, everything points to a rather tragic tale of state oppression, with the goods of a poor household, down to the bed and the cow, seized and sold to satisfy a government excise tax; with both the police who were doing the seizing and selling and the neighbours profiting by acquiring the goods at artificially low prices; and with the urban official prosecutor unwilling to be satisfied even with this. But here the situation becomes complicated: for the list of goods that Andres seized the second time was almost identical to that he had seized the first time, including the cherry tables and chairs, the pot and kettle, the bedstead, feather bed, and quilt, the looking-glass, the grindstone, and the cow, though the buckwheat and corn had been replaced by three geese; further, the second seizure included most of the goods that had been "bought" by Andres and Goslin themselves the first time.

This puts a whole different spin on the artificially low prices of the first sale. Was the whole thing a fiction concocted by Andres, Goslin, and the neighbours to satisfy the legal requirements, with everyone chipping in to "buy" a household item at the lowest possible price? Or was the involvement of Goslin

and Andres as buyers in the original sale a way for them to extort money from Darby without actually ruining him? Whatever the case, and it is impossible to determine which, through the complicity of Andres and Goslin (though all within the letter of the law) neither Ker nor the receiver general received their shares of the fine, with at most only Andres being paid his costs. And the situation became even more complicated with the second seizure. Andres made the seizure on March 18, with, as noted, Goslin as both witness and guardian, and the sale date was set for March 27. But on March 23, Goslin, acting through his attorney in Montreal, James Reid, the future chief justice of the district of Montreal, filed a motion in the Weekly Sessions against Andres to prevent him selling about half of the goods seized, which Goslin (though he had originally witnessed their seizure) declared to be his property, including the cow (sold at the first sale to Livingston) and the cherry tables and chairs (first sold to William Cleveland). Andres accordingly heeded this motion, and at the sale itself (with a new bailiff, Reuben Ward, as recors) sold only the articles not claimed by Goslin. Once again, most of the goods were sold at prices far under their actual value, and with the various bailiffs involved (Andres, Goslin, and Ward) all buying items; and in a further complication, Darby himself and his wife, Sarah, themselves "bought" several items, such as three geese by Sarah Darby for 2sh. This time, the proceeds of the sale were only £1 4sh, while Andres' expenses were over £3; so once again there was no actual benefit to either Ker or the crown.

None of this was in any way overtly illegal, for Andres followed all the proper forms and made all the correct declarations. But it was not the first time that Andres had been "unable" to serve a warrant of distress: a year previously, when directed by Jean-Philippe Leprohon and Etienne Saint-Dizier to serve a warrant for the same offence, again at the suit of Ker, against Raphael Lanctot of Blairfindie, Andres simply returned the warrant with the notation that though he went to Lanctot's house, he could not find any goods at all to seize.⁸⁶⁶ On the

⁸⁶⁶McCord Museum box "Legal Papers" file "Montreal - Court of Common Pleas".

other hand, this did not mean that Andres was ineffectual as a police officer. Thus, in 1805, in his capacity as tide-waiter he had sworn a complaint against Thomas Holmes, a Laprairie tavernkeeper, for insulting him and hitting him in the face when Andres demanded the certificates of lading for a boat bound for Montreal, and pursued Holmes as far as a true bill in the Quarter Sessions, though no further;⁸⁶⁷ he received fees in 1806 and 1807 for arresting Thomas Garonianté and Jacques Caharoton,⁸⁶⁸ and as late as 1810, Jean-Marie Mondelet charged him with serving a warrant in Laprairie.⁸⁶⁹ And Goslin too, the other main participant in the Darby scheme, was an active officer: in 1808, he participated in the arrest of five deserters; and as late as 1818-1820 he was still being paid for arresting prisoners in the Lacolle-Foucault area.⁸⁷⁰

The key point about the whole affair involving Darby was its ambiguity. The documents can be read in many ways: Andres and Goslin as corrupt police imposing themselves on a poor household; Andres and Goslin as the vehicles for the penetration of an urban-based justice system into the countryside; Andres as a shrewd operator with a keen feeling for the loop-holes of the law; Goslin as a community member doing what was possible to protect his neighbours from the rigours of the law. And the involvement as Goslin's attorney of Reid, the future Chief Justice and thus embodiment of what the natives protecting Garonianté called "the Montreal Law", sheds a whole new light on the meaning and function of the criminal law in Quebec and Lower Canada.

⁸⁶⁷QSD 29/4/1805, QSR 7/1805.

⁸⁶⁸NA RG1 E15A, sheriff's accounts.

⁸⁶⁹QSD, Démarais v. Lavaline dit Poissan, 13/5/1810.

⁸⁷⁰NA RG1 E15A, sheriff's accounts.

APPENDIX I: ACTIVE JUSTICES IN THE DISTRICT OF MONTREAL, 1764-1830

Date ranges for activity are first and last dates active.

Names outside of parentheses are usual names.

* consistently active

‡ *ex officio* from that date (if no date, only ever *ex officio*)

+ on commission after 1830

NAME	ON COMMISSION	ACTIVE (WITH PLACE)
Abbott, Edward	1776-1785	1779 (Montreal) 1786-1787 ⁸⁷¹ (Sorel)
Abbott, Jonas*	1805-1830	1807-1830 (Saint-Armand)
Adhémar, Jean-Baptiste(-Amable)*	1788-1800	1788-1795 (Montreal)
Archambault, Amable	1822-1830 +	1829-1830 (Saint-Hyacinthe)
Archambault, Jacques	1805-1810, 1815-1830 +	1806-1830 (Saint-Roch)
Auldjo, Alexander*	1796-1813	1797-1809 (Montreal)
Auldjo, George	1824-1830	1827-1829 (Montreal)

⁸⁷¹Censured by the board of inquiry for acting as a justice when not on the commission.

Ball, Ezra	1808-1826	1812-1814 (Barnston)
Barbeau, Jean*	1820-1826	1820 (Saint-Hyacinthe)
Barbeau, Louis*	1826-1830 +	1829-1830 (L'aprairie)
Barbier, Louis-Marie-Raphaël	1821-1828	1824 (Berthier)
Barcelo, Jacob	1826-1830 +	1830 (Saint-Benoît)
Barker, Oliver	1799-1821	1804-1814 (Odeltown)
Barnes, John	1784-1785	1785 (Sorel)
Barron, Thomas	1824-1830 +	1827-1830 (Argenteuil)
(Beauvais dit) Saint-James, René	1822-1830	1825-1830 (St-Vincent-de-Paul)
Benedict, Peter	1806, 1810-1821	1810-1816 (Argenteuil)
Bingham, Solomon	1824-1830 +	1825-1830 (Noyan)
Bistodeau, Joseph	1817-1821, 1830 +	1819-1820 (Saint-Hyacinthe)
Blake, Charles*	1794-1810	1794-1807 (Montreal)
Blanchard, William	1821-1830 +	1823-1829 (Argenteuil)
Boileau, René (père)	1794-1810, 1812-1821	1801 (Chambly)
Bondy, Joseph Douaire de*	1806-1828	1807-1824 (Berthier)
(Boucher de) Boucherville, Pierre-Amable*	1815-1830 +	1819-1830 (Montreal)

(Boucher de) Boucherville, René-Amable	1785-1786‡	1786 (Boucherville) 1799-1804 (Montreal)
(Boucher de) La Bruère, René	1810-1828, 1830 +	1818-1827 (Boucherville)
(Boucher de) La Bruère de Montarville, Joseph*	1786-1813	1786-1812 (Boucherville)
Bourassa, Ignace	1796-1799	1799-1801 ⁸⁷² (Laprairie)
Bourdages, Rémi-Séraphin*	1830 +	1830 (Sainte-Marie)
Bouthillier, Jean*	1800-1830 +	1800-1825 (Montreal)
Bouthillier, Pierre*	1794-1815	1799-1812 (Chateauguay)
Bowron, William	1819-1830 +	1819-1821 (Foucault)
Brayshay, Thomas	1765-1775	1765-1766 (Montreal)
Brewster, Henry B.	1821-1830	1822 (Isle-aux-Noix)
Brown, Alexander	1821-1830 +	1823-1830 (Dunham)
Brown, James	1820-1830 +	1827-1829 (Argenteuil)
Brown, Lawrence G.*	1826-1830 +	1827-1830 (Beauharnois)
Bruguiet, Jean-Baptiste	1790-1821	1815 (Chateauguay)

⁸⁷²Definitely not on the 1799 general commission, nor on any of the subsequent commissions of association that I found, but nevertheless acts as a justice at least twice after the issuing of the commission.

Bullock, William	1806-1830	1811-1815 (Stanstead)
Byrne, Philip*	1803-1830	1803-1812 (Saint John) 1815-1825 (Saint-Jean-Baptiste)
Byrne, William	1803-1821	1803-1808 (Saint John)
Caldwell, James*	1806-1815	1807-1815 (Montreal)
Cameron, Duncan	1796-1821	1798 (Caldwell's Manor)
Caron, Alexis	1794-1800	1795-1800 (Lachenaie)
Carter, Christopher	1790-1821	1796-1820 (Sorel)
Cartier, Joseph (fils)	1821-1830+	1829-1830 (Saint-Antoine)
Cartier, Joseph (père)	1817-1825	1819-1823 (Saint-Antoine)
Chaboillez, Louis*	1799-1813	1799-1813 (Montreal)
Chaffers, William Unsworth	1827-1830+	1828-1830 (Saint-Césaire)
Chartier de Lotbinière, Michel-Eustache-Gaspard-Alain*	1785-1796‡	1789-1814 (Vaudreuil)
Chaussegros de Léry, Louis-René*	1807-1818‡	1809-1829 (Montreal)
Chesser, John	1809-1821	1811 (Argenteuil)
Clarke, Isaac Winslow*	1796-1822	1797-1821 (Montreal)
Coffin, Nathaniel	1797-1810	1797 (Missisquoi)

Collins, Henry	1799-1821	1820 (Saint-Hyacinthe)
Collins, John	1765-1773	1767-1768 (Montreal)
Connolly, John	1794-1821	1799 (L'Assomption)
Conroy, Patrick	1788-1810	1793-1794 (Caldwell's Manor) 1794-1795 (Saint John) 1807 (Stanstead)
Constantin, Jean-Baptiste	1822-1830 +	1823-1830 (St-Vincent-de-Paul)
Cook, George	1805-1826	1807-1819 (Saint-Armand)
Cook, Jacob	1822-1830 +	1824-1829 (Saint-Armand)
Cook, Jasper	1810-1821	1819 (Saint-Armand)
Corbin, François*	1788-1796	1788-1791 (Sorel)
Crebassa, Henry*	1820-1830 +	1821-1830 (Sorel)
Cruickshank, Robert*	1794-1809	1794-1805 (Montreal)
Curtis, Solomon	1817-1821	1819-1820 (Foucault)
Cuthbert, Alexander	1800-1810	1803 (Dorvilliers)
Cuthbert, James	‡	1770-1771 (Berthier)
Cuthbert, James	1800-1811‡	1812-1821 (Berthier)
Cuthbert, James (jr)	1824-1830 +	1825-1826 (Lanoraie)

Davidson, John	1819-1821, 1830 +	1821-1823 (Saint-Régis)
Davis, Theodore	1827-1830 +	1828 (Rigaud)
Decoigne, Louis	1815-1826	1820-1825 (Blairfindie)
Decoigne, Louis-Mars*	1791-1821	1799-1800 (Soulanges) 1802-1815 (Vaudreuil)
Delesderniers, John Mark Crank	1815-1821	1820 (Vaudreuil)
Derek, Conrad	1818-1830 +	1820-1830 (Foucault)
Desrivières, François*	1800-1828	1800-1821 (Montreal)
Dessaulles, Jean*	1803-1810, 1814-1821	1805-1810 (Saint-Hyacinthe)
Dézéry, Pierre-Amable	1810-1821	1818 (Isle-Perrot)
Doty, John	1786-1788	1786-1788 (Sorel)
Doucet, François-Olivier	1818-1821	1818-1820 (Saint John)
Doucet, Nicolas-Benjamin	1826-1830 +	1830 (Montreal)
Du Calvet, Pierre*	1769-1775	1769-1774 (Montreal)
Ducharme, Dominique	1819-1830	1820-1828 (Lac-des-Deux-Mont.)
Duchesnois, Etienne	1805-1810, 1817-1821	1806-1820 (Varennes)
Duff, Donald*	1821-1830 +	1824-1830 (Lachine)

Dufort, Vincent*	1819-1826	1820-1825 (Chateauguay)
Dumas Saint-Martin, Jean*	1764-1775, 1788-1794	1764-1773 (Montreal) 1788-1793 (Montreal)
Dunlop, James*	1796-1810	1797-1803 (Montreal)
Durocher, Jean-Baptiste-Amable*	1800-1810	1800-1810 (Montreal)
Dutalmé, Pierre-Paul	1805-1821	1813-1820 (Saint-Denis)
Dwyer, John	1823-1830 +	1828-1830 (Saint-Hyacinthe)
Faribault, Joseph-Edouard*	1803-1830 +	1805-1829 (L'Assomption)
Filion, Antoine	1805-1830	1808-1828 (Soulanges)
Finlay, James*	1776-1797	1777-1797 (Montreal)
Fitch, Elzear	1790-1796	1792-1794 (Saint John)
Fleming, John	1826-1830	1829-1830 (Montreal)
(Fleury) Deschambault, (Joseph)-Etienne*	1785-1811	1805-1810 (Longueuil)
Fleury Deschambault, (Louis-Joseph de)*	1810-1821	1811-1821 (Montreal)
Fleury Deschambault, Louis de	1826-1830 +	1827 (Longueuil) 1829 (Saint-Denis)
Foretier, Pierre*	1776-1815	1778-1805 (Montreal)
Forsyth, Thomas*	1796-1810	1796-1799 (Montreal)

Fournier, Jean-Baptiste	1819-1830	1820-1830 (Rigaud)
Franchère, Gabriel*	1788-1796	1788-1796 (Montreal)
Fraser, Simon	1806-1821	1807-1815 (Sainte-Anne)
Frémont, Charles	1815-1827	1816-1818 (Montreal)
Frobisher, Benjamin*	1783-1787	1783-1787 (Montreal)
Frobisher, Joseph*	1788-1810	1788-1809 (Montreal)
Gagnier, Pierre-Rémi	1800-1810	1807-1810 (Saint-Eustache)
Gale, Samuel (jr)*	1824-1830	1824-1830 (Montreal)
Gaucher (dit) Gamelin, Ignace	1819-1830	1820-1825 (Soulanges)
Gauvin, Louis-H.	1830 +	1830 (Blairfindie)
Globensky, Frédéric-Eugène	1828-1830 +	1830 (Saint-Eustache)
Goddard, James Stanley*	1764-1765, 1776-1796	1778-1784 (Lachine)
Gordon, Ann	1765-1775	1769-1770 (Saint-Sulpice)
Grant, Charles William*	‡	1816-1830 (Montreal)
Grant, David Alexander	1788-1806	1806 (Montreal)
Grant, John	1826-1830	1829 (Saint-Régis)
Gray, Edward William	1776-1788	1777-1788 (Montreal)

Green, Gardner	1798-1805	1803 (Bolton)
Griffin, Henry*	1826-1830	1827-1830 (Montreal)
Grisé, Pierre	1794-1830+	1814-1829 (Saint-Denis)
Guerout, Pierre*	1785-1830	1788-1819 (Saint-Denis)
Guy, Louis (fils)*	1800-1830	1800-1815 (Montreal)
Guy, Pierre*	1776-1796	1779-1795 (Montreal)
Hatt, Samuel	1821-1829‡	1821-1830 (Chambly)
Hay, Alexander	1797-1810	1799-1807 (Berthier)
Hazen, Moses	1764-1775	1764-1765 (Montreal)
Henev, Hugues*	1818-1828	1818-1824 (Montreal)
Henry, Alexander*	1794-1824	1794-1821 (Montreal)
Henry, Edme	1803-1821, 1826-1830	1810-1814 (Laprairie)
Hertel de Rouville, Jean-Baptiste-Melchior	1785-1812	1788-1789 (Montreal) 1789-1811 (Chambly)
Hertel de Rouville, Jean-Baptiste-René	1821-1828, 1830+	1822-1828 (Saint-Hilaire)
Hertel de Rouville, René-Ovide*	‡	1778-1791 (Montreal)
Hingston, Samuel J.	1824-1830+	1827-1829 (Godmanchester)

Holmes, Benjamin	1830 +	1830 (Montreal)
Holt, Moses	1790-1799	1794-1798 (Sorel)
Hoyle, Robert	1821-1830 +	1823-1830 (Lacolle)
Hubbard, Phineas	1806-1821	1811-1820 (Stanstead)
Hughes, James*	1796-1825	1799-1811 (Montreal)
Hunter, John	1826-1830	1828-1830 (Huntingdon)
(Irumberry) de Salaberry, Charles(-Michel d')	1815-1818‡	1817-1825 (Chambly)
Ives, Joel	1806-1830	1811-1815 (Stanstead)
Jenne, Gilbert	1797-1821	1815 (Dunham)
Jobin, André	1830 +	1830 (Montreal)
Jobson, Thomas*	1821-1830 +	1821-1830 (Isle-aux-Noix)
Jolie, Felix	1794-1798	1797 (Lachenaie)
Jones, Robert	1796-1810	1799 (Montreal)
Jones, Robert*	1809-1830 +	1815-1830 (Sorel)
Joran, Jacques*	1797-1821	1799-1815 (Montreal)
Jordan, Jacob (sr)	1788-1796	1794 (Terrebonne)
Jordan, Jacob (jr)	1800-1810	1800-1805 (Terrebonne)

Kell, William*	1806-1830	1814-1826 (Argenteuil)
Kidd, Lawrence*	1814-1830 +	1814-1830 (Laprairie)
Kilborn, Charles	1806-1830	1806-1827 (Stanstead)
Kirtland, William H.	1826-1830 +	1827-1830 (Foucault)
Kitson, George	1809-1821	1809-1812 (Sorel)
Knipe, Francis Noble	1764-1765	1764-1765 (Montreal)
Labroquerie, Joseph de (père)	1800-1830	1818 (Boucherville)
Lacroix, (Hubert-)Joseph*	1791-1821	1791-1816 (St-Vincent-de-Paul)
Lacroix, Hubert	1791-1805	1794-1799 (Vaudreuil)
Lacroix, Paul*	1788-1826	1788-1790 (Laprairie) 1799-1813 (Montreal)
Lacroix, Paul	1824-1830	1825-1826 (Sainte-Therèse)
Lalanne, Léon-G.*	1806-1830	1811-1821 (Saint-Armand)
Lambe, Thomas	1764-1765	1764-1765 (Montreal)
Lambert Dumont, Nicolas-Eustache*	1800-1830 +	1801-1830 (Saint-Eustache)
Larocque, François-Antoine (père)	1790-1792	1790-1792 (L'Assomption)
Larocque, François(-Antoine) (fils)	1818-1828	1824-1826 (Montreal)

(Le Moynes de) Longueuil, Joseph-(Emmanuel)	‡	1779 (Montreal)
Leclaire, Joseph-Ignace	1824-1826, 1827-1830 +	1827-1830 (Sainte-Thérèse)
(Le Comte or) Saint-Georges Dupré, (Georges-Hypolite)*	1776-1797	1778-1797 (Montreal)
Lees, John	‡	1798-1806 (Lachine)
Lefebvre de Bellefeuille, Eustache-Antoine	1826-1830 +	1827-1830 (Saint-Eustache)
(Lemaire) Saint-Germain, Hyacinthe	1815-1830 +	1819-1824 (Saint-Eustache)
Lemoine Despins, Jacques(-Joseph)*	1779-1787	1780-1786 (Montreal)
Le Moynes de Martigny, Hugues	1821-1830 +	1825-1826 (Saint-Hyacinthe)
Leprohon, Jean-Philippe*	1800-1830 +	1800-1829 (Montreal) 1830 (Coteau-du-Lac)
Leroux, Laurent	1803-1821	1803-1818 (L'Assomption)
Lilly, John*	1794-1821	1794-1796 (Montreal)
Lindsay, William	1796-1821	1797-1812 (Saint John)
Livingston, John	1764-1775	1764 (Montreal)
Lloyd, Hoyes	1823-1830 +	1829 (New Glasgow)
Luke, Philip	1794-1826	1795-1821 (Saint-Armand)
Lukin, Pierre (fils)*	1830 +	1830 (Montreal)

Lunn, William	1826-1830	1830 (Montreal)
Lynch, Thomas	1766-1775	1766-1767 (Montreal)
Mabbut, Alexander*	1803-1830 +	1803-1830 (L' Assomption)
McBeath, George	1794-1812	1797-1804 (L' Assomption) 1808-1811 (Saint John)
McCallum, Daniel (sr)	1822-1830	1827-1830 (Caldwell's Manor)
McCord, Thomas*	1788-1824	1788-1796 (Montreal) 1808 (Annfield) 1810-1824 (Montreal)
McDonald, Arthur	1828-1830 +	1829-1830 (Chateauguay)
McDonell, Charles	1830 +	1830 (Monnoir)
McGibbon, John	1826-1830 +	1830 (Saint-Régis)
McGill, James*	1776-1792‡	1778-1805 (Montreal)
McGill, John*	1794-1797	1794-1797 (Montreal)
McGill, Peter	1826-1830 +	1827-1830 (Montreal)
McGillivray, William	1805-1814	1809-1813 (Montreal)
McGillivray, John	1825-1830 +	1828 (Grenville)
McKay, Francis	1765-1775	1765-1769 (Laprairie)

McKay, William	1826-1830	1830 (Montreal)
Mackenzie, Henry*	1806-1830	1809-1810 (Terrebonne) 1814-1830 (Montreal)
McKenzie, Roderick	1810-1817‡	1813-1819 (Terrebonne)
McKenzie, Roderick	1827-1830	1830 (Rawdon)
McKindlay, John*	1788-1804	1788-1796 (Montreal)
McLeod, Archibald Norman*	1815-1826	1814-1822 ⁸⁷³ (Montreal)
McMillan, Archibald	1819-1830	1822-1825 (Grenville)
Macrae, William*	1815-1830 +	1815-1830 (Saint John)
McTavish, Simon	1796-1804	1798 (Montreal)
McVey, Thomas*	1813-1821	1814-1820 (Saint John)
Maitland, William	1796-1800	1797-1800 (Montreal)
Malhiot, François	1788-1808	1790-1806 (Verchères)
Malhiot, François-Xavier	1810-1828, 1830 +	1812-1824 (Verchères)
Manning, John*	1806-1821, 1823-1830 +	1807-1830 (Hemmingford)

⁸⁷³ Attends the Quarter Sessions in 1814, a year before being appointed a justice for the district of Montreal; however, from 1810 a justice of the peace for the Indian Territory (whose crimes were tried in Lower Canadian courts), so presence at Quarter Sessions may have been connected to this.

Manuel, Charles	1824-1830 +	1825-1830 (Beauharnois)
Marchand, Gabriel	1815-1821, 1830 +	1830 (Montreal)
Marchand, Louis*	1794-1830	1814 (Saint-Ours) 1821-1826 (Montreal) 1828-1829 (Saint-Ours)
Marteilhe, John*	‡	1771-1774 (Montreal)
Mather, Samuel	1764-1775	1765 (Saint-Ours)
Mathison, John Augustus*	1827-1830 +	1828-1830 (Vaudeuil)
May, Calvin*	1797-1830	1805-1830 (Saint-Armand)
Mezière, Pierre	1776-1794	1779-1785 (Montreal)
Molson, John (sr)*	1826-1830 +	1827-1830 (Montreal)
Mondelet, Jean-Marie*	1798-1828	1801-1828 (Montreal)
Monk, George Henry	1821-1830	1823-1828 (Lachenaie)
Morrison, Charles	1828-1830 +	1830 (Berthier)
Murray, Patrick	1794-1826	1799 (Montreal) 1806-1812 (Argenteuil)
Napier, Duncan Campbell	1827-1830	1827-1828 (Montreal)
Nevison, Richard	1808-1821	1810 (Soulanges)

(Nivard) Saint-Dizier, Etienne*	1806-1820	1806-1819 (Montreal)
Odell, Joseph (jr)	1806-1821	1816-1818 (Lacolle)
Oldham, Jacob*	1800-1824	1802-1820 (Terrebonne)
Pambrun, André-Dominique	1815-1830	1817-1828 (Vaudreuil)
Panet, Bonaventure	1800-1810, 1815-1830	1829 (Lachenaie)
Panet, Pierre	1776-1778‡	1777 (Montreal) 1795-1797 (Lachenaie)
Papineau, Denis-Benjamin	1824-1830+	1825 (Petite-Nation)
Pardy, William	1821-1830	1823 (Isle-aux-Noix) 1828-1829 (Montreal)
Picotté de Bellestre, (François-Marie)	‡	1789-1793 (Montreal)
Pinsonaut, Paul-Théophile	1807-1810, 1821-1830+	1829 (Laprairie)
Pomeroy, Selah	1814-1830+	1822-1826 (Stanstead)
Porlier, Joseph	1815-1830	1819-1828 (Saint-Hyacinthe)
Porlier, Louis Lamarre*	1788-1810	1788-1798 (Montreal)
Porteous, John*	1776-1782	1778-1782 (Montreal)
Porteous, Thomas*	1800-1830	1809-1813 (Terrebonne) 1818-1829 (Montreal)

Pothier, (Louis-)Toussaint	1788-1810	1791-1799 (L' Assomption)
Potts, Samuel*	1812-1821	1813-1820 (Chambly)
Powers, Joseph	1806-1821	1811-1813 (Saint-Armand)
Quesnel, Joseph	1800-1809	1806 (Montreal)
Raizenne, Ignace	1809-1810, 1813-1828, 1830 +	1815-1826 (Saint-Benoit)
Rankin, David	1794-1810	1802 (L' Assomption)
(Rastel de) Rocheblave, Philippe(-François) de*	1785-1788	1786-1788 (Montreal)
(Rastel de) Rocheblave, Pierre de*	1821-1830 +	1825-1830 (Montreal)
Raymond, Jean-Baptiste	1803-1810, 1812-1821	1805-1809 (Laprairie)
Raymond, Louis	1806-1810, 1817-1830	1818-1829 (L' Assomption)
Richardson, John*	1796-1804‡	1796-1807 (Montreal)
Robertson, Daniel*	1765-1775, 1799-1810	1765-1770 (Montreal)
Robertson, William*	1818-1830 +	1819-1830 (Montreal)
Rocher, Barthélémy*	1800-1830 +	1801-1828 (Saint-Roch)
Rolland, François*	1798-1826	1807-1822 (Montreal)
Ross, David*	1828-1830 +	1828-1830 (Montreal)
Rowe, John	1765-1775	1765 (Montreal)

Ruyter, Henry	1785-1819	1792-1798 (Foucault)
Ruyter, John	1791-1797	1793-1795 (Missisquoi)
Ruyter, Philip	1797-1820	1810-1815 (Saint-Armand)
Saint-Georges Dupré, (Hyppolite)	1800-1826	1806 (Montreal)
Saint-Onge, François	1819-1830	1822-1825 (Saint-Ours)
Saint-Ours, Charles Roc de	1788-1810‡	1788-1804 (Montreal) 1812 (Saint-Ours)
Salls, Hix	1805-1810, 1817-1821	1818 (Caldwell's Manor)
Sanguinet, Ambroise	1805-1810, 1817-1821	1806 (Verchères)
Sanguinet, Christophe	1788-1810	1798 (Varenes)
Sanguinet, Simon*	1788‡	1788-1790 (Montreal)
Sawers, James*	1790-1821	1791-1803 (Sorel)
Schlosser, John	1767-1775	1767-1768 (Lac-des-Deux-Mont.)
Schrue, John	1823-1826	1825 (Hemmingford)
Séguin, François-Hyacinthe	1819-1828	1820-1829 ⁸⁷⁴ (Terrebonne)

⁸⁷⁴Definitely not in the 1828 general commission; activity in 1829 (committing a prisoner to jail, jointly with Joseph Turgeon) may have been as a commissioner for the trial of small causes.

Senet, Joseph	1817-1830	1820 (Montreal) 1827-1829 (Saint-Jacques)
Sevestre, Neveu*	1776-1810	1778-1791 (Montreal)
Shuter, Joseph	1830+	1830 (Montreal)
Simpson, John	1825-1830+	1825-1826 (Coteau-du-Lac)
Smith, William*	1812-1830+	1812-1828 (Saint-Eustache)
Southouse, Edward*	‡	1778-1789 (Montreal)
St Leger, Barrimore (Matthew)	1786-1789	1786-1787 (Sorel)
Têtu, Charles	1826-1830+	1827-1830 (Saint-Jean-Baptiste)
Thomas, Leonard*	1824-1830	1825-1830 (Noyan)
Todd, Isaac*	1765-1775	1765-1769 (Montreal)
Townshend, Micah	1818-1826	1823 (Saint-Georges)
Tremblay, François-Olivier	1813-1821	1814-1816 (Soulanges)
(Trottier) Desrivières Beaubien, Eustache-Ignace	1791-1810, 1815-1816	1803-1808 (Varennes)
(Truillier dit) Lacombe, Jacques	1803-1821	1805-1820 (L'Assomption)
Turgeon, Joseph*	1796-1830+	1799-1829 (Terrebonne)
Turgeon, Michel	1800-1830	1805-1819 (Terrebonne)

Turner, Thomas Andrew*	1821-1830	1822-1830 (Montreal)
Vallée, Pierre	1794-1799	1795-1796 (Montreal)
Vaughan, Clark Roger	1822-1830 +	1824-1830 (Stanbridge)
Vienne, Eustache Martel de	1821-1830 +	1823-1829 (Lachenaie)
Vienne, Jean	1794-1807	1797 (Varenes) 1807 (Lachenaie)
Viger, Denis-Benjamin*	‡	1830 (Montreal)
Vigneau, Joseph*	1820-1830 +	1820-1830 (Boucherville)
Von Iffland, Anthony*	1826-1830 +	1827-1830 (Sorel)
Walker, James	1790-1815	1794-1811 (Sorel)
Walker, Thomas	1764-1765	1765 (Montreal)
Watson, Simon Zelotes	1800-1811	1805-1808 (Laprairie)
Weilbrenner, Pierre	1820-1828	1823 (Boucherville)
Wells, Whipple	1822-1830 +	1825-1826 (Farnham)
Whitlock, John	1798-1821	1803-1807 (Vaudreuil)
Whitman, Joseph	1809-1821	1816 (Lacolle)
Whitney, Paul*	1817-1830	1818-1828 (Dunham)

Willard, Samuel	1803-1830	1826-1829 (Stukely)
Williams, Alvin	1823-1830	1829 (Shefford)
Wilson, Alexander	1799-1822	1813-1818 (Coteau-du-Lac)
Winter, Francis	1803-1810	1806 (Chateauguay)
Wood, Samuel	1823-1830 +	1825 (Farnham)
Woods, William*	1821, 1822-1828	1821-1827 (Sainte-Marie)
Wright, Philemon	1806-1830 +	1819-1827 (Hull)
Wurtele, Josias*	1825-1830 +	1830 (Montreal)
Yule, John*	1815-1830	1816-1830 (Chambly)

**APPENDIX II: COLONIAL ORDINANCES AND ACTS MODIFYING
THE SUMMARY JURISDICTION OF THE JUSTICES, 1764-1830**

Note that not all offences were punishable by the maximum penalty.

Ordinance or act	Venue	Offence	Maximum penalty	Appeal
4 George III, "An ordinance for regulating and establishing the currency ..." (1764)	1 justice	passing clipped coin	1 month + 20sh	none
4 George III, "An ordinance relating to the assize of bread ..." (1764)	1 justice	selling goods with unregulated weights and measures, retailers refusing entry to the clerk of the markets	20sh	none
5 George III, "An ordinance to prevent forestalling ..." (1764)	1 justice	selling bad or blown meat	5sh + forfeiture of the meat	none
	2 justice	forestalling	forfeiture of the articles forestalled	none
5 George III, "An ordinance to prevent rum and other strong liquors being sold to the Indians" (1764)	1 justice	selling liquor to natives	£20	none
5 George III, "An ordinance to prevent disorderly riding ..." (1764)	1 justice	speeding, not providing carriages with bells, carters overcharging	20sh or 4 days hard labour on the highways	none
5 George III, "An ordinance relating to soldiers and seamen ..." (1765)	1 justice	buying equipment from soldiers or sailors, shipmasters hiring sailors already employed, encouraging or aiding deserters, articulated sailors refusing to serve	£20 or 4 months	none

6 George III, "An ordinance, for regulating and establishing the admeasurement of fire-wood ..." (1765)	1 justice	selling firewood fraudulently	1 month + 24sh	none
6 George III, "An ordinance for the better and more regular providing fire-wood for the use of His Majesty's forces ..." (1765)	2 justices	refusing to provide or convey firewood	£20 + committal until paid	none
6 George III, "An ordinance for repairing and amending the high-ways ..." (1766)	Quarter Sessions	contravening roads regulations	finer at justices' discretion	none
6 George III, "An ordinance for granting licenses for retailing rum ..." (1766)	1 justice	selling liquor without a license	£20	Quarter Sessions
8 George III, "An ordinance concerning the licensing of publick victualling houses" (1768)	1 justice	tavernkeepers selling liquor without a license	£20	Quarter Sessions
8 George III, "An ordinance for preventing accidents by fire" (1768)	1 justice	contravening fire regulations	40sh	Quarter Sessions
8 George III, "An ordinance ... relating to the assize of bread" (1768)	1 justice	bakers selling underweight bread	1sh per ounce underweight	Quarter Sessions
9 George III, "An ordinance ... for preventing accidents by fire" (1768)	1 justice	contravening fire regulations	£5	Quarter Sessions

9 George III, "An ordinance concerning bakers ..." (1769)	2 justices	selling bread without entering into a recognizance	£10	Quarter Sessions
13 George III, "An ordinance ... for preventing accidents by fire" (1773)	1 justice	contravening fire regulations	£10 + 5sh per day until contravention removed	Quarter Sessions
17 George III c.4 (1777)	1 justice	forestalling, contravening market regulations	£5	none
17 George III c.7 (1777)	1 justice	selling liquor to natives, trading for their clothes or firearms, settling in their villages	£10 + 2 months, £20	none
	2 justices	trading to the west without a pass	£50 + committal until paid	governor and Council
17 George III c.8 (1777)	1 justice	contravening militia regulations	40sh	none
	2 justices	contravening militia regulations	£20 + 2 months	governor and Council
17 George III c.9 (1777)	Quarter Sessions	debasement of gold or silver coin other than that of Great Britain	£100	none
	2 justices	counterfeiting brass or copper money	£20	none
17 George III c.10 (1777)	1 justice	bakers selling underweight bread	40sh	none
	2 justices	selling bread without entering into a recognizance	£5	Quarter Sessions
17 George III c.11 (1777)	1 justice	contravening roads regulations	10sh	none
17 George III c.12 (1777)	1 justice	carters and ferrymen contravening regulations made for them by justices	20sh	none

				£10 + 5sh per day until contravention removed	Quarter Sessions
17 George III c.13 (1777)	1 justice	contravening fire regulations			
17 George III c.15 (1777)	1 justice	contravening police regulations made by justices		40sh	none
20 George III c.2 (1780)	Quarter Sessions	forestalling, regrating, and engrossing		3 months + value of the goods	governor and council
20 George III c.4 (1780)	1 justice	<i>maîtres de poste</i> and ferrymen contravening regulations made for them		10sh	none
27 George III c.3 (1787)	1 justice	disobeying orders while on the <i>corvée</i> for the king, householders not properly providing for troops quartered on them		10sh	none
	3 justices	refusing to <i>corvée</i> for the king, militia officers misusing their authority, repeat offenders		1 month + £5	governor and Council (over 8 days or 40sh)
28 George III c.3 (1788)	1 justice	felling trees into inland waterways, nearby residents not removing felled trees, officers overcharging for making out manifests for inland shipping, articleed seamen deserting from inland shipping		3 months, £20	none
	3 justices	selling liquor without a license		£10 Sterling	none
28 George III c.9 (1788)	1 justice	contravening regulations on winter travel		10sh	none
29 George III c.1 (1790)	2 justices	disturbing navigation markers on Saint Lawrence below Montreal		3 months + £20	none

29 George III c.3 (1789)	3 justices	petty larceny (goods 20sh Sterling or under) or breach of the peace	any corporal punishment not involving loss of life or limb	none
	1 justice	judicial officials refusing to assist in such cases	10sh	none
30 George III c.6 (1790)	1 justice	harbouring deserting mariners	20sh per day	none
30 George III c.7 (1790)	1 justice	overseers of chimneys refusing to sweep the chimneys of the poor	5sh	Quarter Sessions
31 George III c.1 (1791)	1 justice	selling liquor to canoemen on the Ottawa River	£20	none
33 George III c.1 (1793)	Weekly Sessions	improperly handling gunpowder in harbour of Montreal	£10	none
	1 justice	contravening militia regulations	20sh	none
34 George III c.4 (1794)	2 justices	contravening militia regulations	£10, £5 or 2 months	Quarter Sessions (over 8 days or 40sh)
	2 justices	shipmasters or householders not reporting aliens	£10 per alien	Quarter Sessions
34 George III c.5 (1794)	Quarter Sessions	falsifying alien certificates	6 months	none
35 George III c.5 (1795)	2 justices	contacting ship in quarantine	forfeiture of skiff, canoe, etc. involved	none

	Weekly Sessions		£10 or 6 months	Quarter Sessions
35 George III c.8 (1795)	Quarter Sessions	hawking without a license, hawkers refusing to produce license, hawkers lending out their licenses	£10 or 6 months	none
	Quarter Sessions	witnesses in appeals of such convictions defaulting	£10 or 6 months	none
36 George III c.9 (1796)	1 justice	contravening roads regulations	£2	none
	2 justices	contravening roads regulations	£5	none
	Quarter Sessions	contravening roads regulations	£10	none
36 George III c.10 (1796)	1 justice	engagés for western voyages refusing to go	15 days	none
	2 justices	engagés for western voyages deserting while on voyage	3 months	none
36 George III c.11 (1796)	1 justice	contravening militia regulations	20sh	none
	2 justices	contravening militia regulations	£5	Quarter Sessions (over 40sh)
37 George III c.3 (1797)	Weekly Sessions	contravening regulations on trade between UC and LC	£10	none
39 George III c.5 (1799)	1 justice	contravening road regulations	10sh	none
39 George III c.7 (1799)	Quarter Sessions	selling with unregulated weights and measures, falsifying inspector's stamp	£10 + 2 months	none
40 George III c.8 (1800)	2 justices	aiding deserting seamen, shipmasters harbouring deserting seamen	£20 or 1 month	none
41 George III c.10 (1801)	Weekly Sessions	bathing etc. in Montreal waterworks reservoirs, waterworks workers not fencing or filling in trenches	£5	none

41 George III c.13 (1801)	2 justices	operating unlicensed billiard table	£25 or 3 months	none
42 George III c.8 (1802)	Weekly Sessions	contravening police regulations made by justices for Montreal	£5	Quarter Sessions
	2 justices	contravening police regulations made by justices for other towns	£5	Quarter Sessions
42 George III c.11 (1802)	justices	contravening regulations made by justices for masters/servants/apprentices	£10 or 2 months	[as specified in regulations]
43 George III (3) c.1 (1803)	1 justice	contravening militia regulations	20sh	none
	2 justices	contravening militia regulations	£10, £5 or 1 month	Quarter Sessions (over 8 days or 40sh)
43 George III (4) c.2 (1803)	2 justices	shipmasters or householders not reporting aliens	£10 per alien	Quarter Sessions
	Quarter Sessions	falsifying alien certificates	6 months	none
45 George III c.9 (1805)	1 justice	contravening regulations on piloting rafts between Chateaugay and Mtl	40sh	none
45 George III c.10 (1804)	1 justice	selling goods on Sundays	£10	none
45 George III c.11 (1805)	2 justices	contravening Lachine Turnpike regulations	2 months	Quarter Sessions
45 George III c.14 (1805)	1 justice	contravening regulations for specific toll-bridge	20sh	none
45 George III c.15 (1805)	Weekly Sessions	proprietors not taking measures to preserve apple trees from caterpillars	£5	none

46 George III c.4 (1806)	2 justices	contravening flour packing regulations	10sh per barrel	none
	1 justice	flour inspectors refusing to do their duty, bakers not using wheaten flour for biscuit	£5, 10sh per quintal	none
47 George III c.5 (1807)	1 justice	contravening regulations on post-houses and ferries	1 month + 40sh	none
47 George III c.7 (1807)	Weekly Sessions	selling butchers' meat in Montreal outside of markets, damaging Montreal New Market, clerk of the markets neglecting duty	40sh or 1 month	Quarter Sessions
47 George III c.9 (1807)	2 justices	harbouring deserting seamen or hindering their apprehension	£50 per deserter	none
	1 justice	indentured seamen deserting	40 days	none
47 George III c.11 (1807)	2 justices	aliens circumventing proper procedures	1 month	none
47 George III c.14 (1807)	2 justices	inspectors of police in villages refusing office or neglecting duty, householders refusing entrance to inspectors	£5	none
48 George III c.12 (1808)	1 justice	contravening regulations for specific toll-bridge	20sh	none
48 George III c.19 (1808)	1 justice	contravening regulations on rafts passing through rapids above Montreal	20sh	none
48 George III c.21 (1808)	2 justices	witnesses refusing to appear before commissioners for trial of controverted LA elections or in contempt of such commissioners	£20	none
48 George III c.24 (1808)	1 justice	contravening regulations for specific toll-bridge	20sh	none

48 George III c.26 (1808)	1 justice	contravening regulations for keeping order in churches on Sundays	40sh or 1 month	none
48 George III c.33 (1808)	2 justices	contravening Bedford Turnpike regulations	£5 or 1 month	none
51 George III c.3 (1811)	2 justices	shipmasters or householders not reporting aliens, aliens circumventing proper procedures	£10 per alien, 1 month	Quarter Sessions
	Quarter Sessions	falsifying alien certificates	6 months	none
52 George III c.1 (1812)	1 justice	contravening militia regulations	20sh	none
	2 justices	contravening militia regulations	£25, 1 month	Quarter Sessions (over 8 days or 40sh)
54 George III c.7 (1814)	1 justice	contravening regulations on post-houses	40sh or 20 days	none
55 George III c.5 (1815)	2 justices	bakers contravening regulations	£10	none
57 George III c.3 (1817)	1 justice	contravening regulations for keeping order in churches on Sundays	40sh or 1 month	none
57 George III c.9 (1817)	2 justices	bakers selling bread over price set by justices	£5	none

57 George III c.16 (1817)	Weekly Sessions	contravening police regulations made by the justices	£5	Quarter Sessions
		contravening masters/servant/apprentice regulations made by the justices	£10 or 2 months	Quarter Sessions
		contravening anti-gambling regulations in Montreal	£5, 20sh or 8 days	Quarter Sessions
57 George III c.36 (1817)	2 justices	contravening anti-gambling regulations outside of Montreal	£5, 20sh or 8 days	none
	1 justice	contravening regulations for specific toll-bridge	20sh	none
57 George III c.37 (1817)	1 justice	contravening regulations for specific toll-bridge	20sh	none
57 George III c.38 (1817)	1 justice	contravening regulations for specific toll-bridge	20sh	none
58 George III c.2 (1818)	1 justice	destroying lamps in Montreal	£5 or 3 weeks	none
58 George III c.15 (1818)	Weekly Sessions	overseers of house of industry refusing or neglecting duty	£5	none
		contravening regulations of police for towns and villages	£3	Quarter Sessions
58 George III c.18 (1818)	2 justices	contravening Chambly Canal regulations	£5	Quarter Sessions
59 George III c.6 (1819)	2 justices	contravening Lachine Canal regulations	£5	Quarter Sessions
59 George III c.10 (1819)	1 justice	arbitrators and witnesses in justices' summary civil courts refusing to serve or appear	10sh	none

59 George III c.26 (1819)	1 justice	contravening regulations for specific toll-bridge	20sh	none
1 George IV c.1 (1821)	1 justice	contravening regulations for keeping order in churches on Sundays	40sh or 15 days	none
2 George IV c.9 (1822)	2 justices	ash inspectors not following regulations	£15	none
3 George IV c.12 (1823)	2 justices	hawking without a license, hawkers refusing to produce license	£10	none
	Weekly Sessions	hawking without a license, hawkers refusing to produce license, hawkers lending out their licenses	£10 or 6 months	Quarter Sessions
3 George IV c.16 (1823)	Weekly Sessions	contravening regulations on fish and oil inspection	£10 + committal until paid	none
3 George IV c.21 (1823)	1 justice	contravening regulations for fairs made by justices	40sh	none
4 George IV c.2 (1824)	1 justice	contravening regulations of police for towns and villages	£3	Quarter Sessions

4 George IV c.33 (1824)	1 justice	contravening regulations against abuses prejudicial to agriculture and industry	£3 or 15 days	none
		contravening regulations on fence viewers and inspectors of drains	£2 10sh	King's Bench
		contravening regulations on animal pounds	10sh	none
2 justices		begging outside of Montreal	forcible indenture	none
		contravening master/servant/apprentice regulations outside of Montreal	£10 or 2 months	none
4 George IV c.39 (1824)	1 justice	contravening regulations for specific toll-bridge	20sh	none
5 George IV c.7 (1825)	1 justice	refusing to answer census-takers	5sh	none
5 George IV c.36 (1825)	1 justice	contravening regulations for specific toll-bridge	20sh	none
6 George IV c.8 (1826)	2 justices	shipmasters not providing list of emigrants on board	£10	none
6 George IV c.9 (1826)	1 justice	trespassing on sown land	30sh	none
6 George IV c.29 (1826)	1 justice	contravening regulations for specific toll-bridge	20sh	none
7 George IV c.3 (1827)	1 justice	contravening regulations for keeping order in churches on Sundays	40sh or 15 days	none
7 George IV c.14 (1827)	Weekly Sessions	contravening Saint Anne's market regulations	40sh or 1 month	Quarter Sessions
7 George IV c.21 (1827)	1 justice	contravening regulations for specific toll-bridge	20sh	none

9 George IV c.36 (1829)	2 justices	ash inspectors neglecting duty	£10	none
9 George IV c.37 (1829)	1 justice	contravening regulations against abuses prejudicial to agriculture and industry	1 month	none
		contravening regulations on fence viewers and inspectors of drains	£2 10sh	none
	2 justices	contravening regulations on animal pounds	10sh	none
		begging outside of Montreal	forcible indenture	none
9 George IV c.40 (1829)	Weekly Sessions	contravening master/servant/apprentice regulations outside of Montreal	£10 or 2 months	none
9 George IV c.57 (1829)	Weekly Sessions	contravening Saint Lawrence market regulations	40sh or 1 month	Quarter Sessions
10&11 George IV c.1 (1830)	1 justice	contravening fire regulations	£500	none
		contravening regulations against abuses prejudicial to agriculture and industry	£3 or 30 days	none
	2 justices	contravening regulations on fence viewers and inspectors of drains	£2 10sh	none
		contravening regulations on animal pounds	10sh	none
10&11 George IV c.3 (1830)	2 justices	begging outside of Montreal	forcible indenture	none
		contravening master/servant/apprentice regulations outside of Montreal	£10 or 2 months	none
		contravening militia regulations	20sh + committal until paid	none

10&11 George IV c.42 (1830)	1 justice	selling from stalls of Saint-Hyacinthe market without permission	10sh	none
10&11 George IV c.55 (1830)	1 justice	contravening regulations for specific toll-bridge	20sh	none
10&11 George IV c.56 (1830)	1 justice	contravening regulations for specific toll-bridge	20sh	none

**APPENDIX III: RULES AND REGULATIONS OF POLICE
PROMULGATED BY THE JUSTICES FOR MONTREAL, 1765-1830**

Note that this list does not include temporary orders (such as the annual orders to remove snow), or orders that simply continued previous orders. All rules and regulations apart from those marked † can be found in the registers of the Quarter Sessions at the date given; additional locations are also given.

QG *Quebec Gazette*
MG *Montreal Gazette*
MH *Montreal Herald*
 CIHM Canadian Institute for Historical Microfilming (fiche number)
 Add *Regles et reglements de police additionnels pour la cite et les faubourgs de Montreal, publiés par autorité* (Montreal, 1826)
 Baby Université de Montréal, Collection Baby
 ANQM ANQM, P1000-44/871

Date	Substance	Additional locations
13/10/1765	hobbling horses	
10/4/1766	full set (7 articles)	
10/7/1766	fencing in animals, mastiffs	
8/1/1767	weight of flour and hay, carts in front of Parish Church	
10/4/1769	beggars	
23/12/1771	levelling snow, carters	
5/5/1777†	full set (19 articles)	<i>QG</i> 12/6/1777
20/7/1779	billiard tables	
10/11/1779	goats	
15/1/1780	market	
19/4/1780	butchers, hay/straw, carters	
12/1/1781	various	<i>QG</i> 25/1/1781
30/4/1781	various	<i>QG</i> 17/5/1781
4/12/1781	street-cleaning	
16/4/1782	lotteries	<i>QG</i> 16/5/1782
14/11/1782	firewood	
30/4/1783†	full set (41 articles)	<i>QG</i> 22/5/1783
16/7/1783	rafts	
16/4/1784	billiard tables	
26/5/1785	carters, drains	<i>QG</i> 16/6/1785
21/4/1786	full set (43 articles)	<i>QG</i> 11/5/1786

22/7/1786	markets, carters	<i>QG</i> 10/8/1786
8/5/1787	various	<i>QG</i> 17/5/1787
28/7/1788	various	<i>QG</i> 7/8/1788
17/11/1789	full set (62 articles)	<i>QG</i> 25/2/1790
20/4/1790	ferries	
15/1/1791†	markets	QSD
16/7/1796	carters	
19/1/1797	full (50 articles)	<i>MG</i> 1/5/1797
29/4/1797†	building/paving	<i>MG</i> 8/5/1797
19/7/1797	fire	
19/7/1798	slaughterhouses	
19/1/1799	carriages in market, buildings in river	
30/4/1799	Sunday games on Place d'Armes	
19/7/1799	various	
19/7/1799	hay	<i>MG</i> 29/7/1799
30/4/1800	full set (46 articles)	Baby K-63
12/7/1800	carters' rates	<i>MG</i> 9/11/1800
18/7/1801	beach	
30/10/1801	strangers, fire	<i>MG</i> 9/11/1801
19/7/1802	begging	
19/7/1802	masters/servants/apprentices	
30/4/1803	full set (65 articles)	ANQM
30/4/1804	walls, dung/garbage, crier	<i>MG</i> 28/1/1805
30/4/1805	dung/garbage, woodchips, stray animals	ANQM
19/7/1806	nude bathing, markets	ANQM
19/1/1807	chimney heights/sweeping	
30/4/1807	ferries	
17/7/1807	Commissioners' Street, beach	ANQM
19/7/1808†	markets, fire, New Market, beach	<i>MG</i> 19/7/1808
19/1/1809	New Market	CIHM 42552
29/4/1809†	ovens, carters	<i>MG</i> 26/6/1810
19/1/1810	full set (77 articles)	<i>MG</i> 5/3/1810, CIHM 40238

30/4/1810	market day	CIHM 51800
19/7/1810†	masters/servants/apprentices	MG 17/9/1810
19/4/1811†	masters/servants/apprentices	MG 15/7/1811
19/7/1811†	markets, roads	MG 16/9/1811
17/1/1812†	begging	QSD
30/4/1813†	ferries	MG 18/5/1813
19/1/1814	markets	MG 8/3/1814
19/1/1815†	firewood on beach	MG 27/4/1815
21/4/1815	ferries	CIHM 55296
19/7/1815	hay market	
30/4/1817	full set (112 articles)	MH 21/6/1817, CIHM 40779
19/7/1817	markets, flags/signs	MG 3/9/1817
19/1/1819	begging	
19/1/1821	full set (104 articles)	MH 14/3/1821
28/4/1821	carters	
19/7/1821	beach, markets	Add
19/1/1822	public works, markets	Add
30/4/1822	begging	Add
19/7/1822	carters	Add
25/10/1822	ferries	
24/10/1823	regatiers	
19/1/1824	building	Add, CIHM 43134
30/4/1824	bakers	
19/7/1824	regatiers	Add
30/4/1829	beach, markets	
19/1/1830	markets	
26/4/1830	ferries	CIHM 43703

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VM35 Fonds des juges de paix de Montréal
VM43 Fonds de la Commission de police

Archives du Séminaire de Saint-Hyacinthe

BSE17 2 Registre de Joseph Porlier, juge de paix, Saint-Hyacinthe, 1819

Archives nationales du Québec à Montréal

E17 Québec (province) ministère de la justice (fonds)
P20 Montréal, ville de (fonds)
P148 Phillips, Charles (collection)
P1000-44-871 Montréal, ville de, lois et règlements (fonds)
P1000-45-898 La Prairie de la Madeleine, municipalité de (fonds)
P1000-49-1090 [Village de Terrebonne] (collection)
P1000-49-1102 Émeute (charivari) de juin 1823 à Montréal (collection)
TL30 S1 SS11 [King's Bench / Oyer and Terminer registers]
TL32 S1 SS1 [Quarter Sessions documents]
TL32 S1 SS11 [Quarter Sessions registers]
TL36 S1 SS1 [Weekly Sessions documents]
TL36 S1 SS11 [Weekly Sessions registers]
TP10 S21 SS2 SSS1 Cour sommaire de la seigneurie de Saint-Hyacinthe

Brome County Historical Society

Bolton: Day Book - Ezra Ball 1818
Second Inventory, Personages files
Henry Collins
John Doty
Léon-G Lalanne
Jesse Pennoyer

McGill University, Rare Book Room

MS 338 Montreal, Night Patrol
MS 469 Montreal, Road Committee
MS 719 Montreal, Municipal Administration, James Reid fonds

McCord Museum

Judge Samuel Gale Collection
Andrew Kollmyer Papers
McCord Family Collection
Military Papers Collection
Miscellaneous Legal Papers

National Archives of Canada

MG8 F13 Brome County Historical Society
MG8 F80 Saint-Ours, Seigneurie de
MG8 F89 Sorel, Seigneurie de
MG19 A2 Series III Ermatinger Estate
MG23 GII1 Murray, James
MG23 GII3 Gray, E. W.
MG23 GII10 Sewell, Jonathan
MG23 GII19 Monk, James and family
MG23 GIII3 Ruyter, family
MG24 D8 Wright, Philemon and family
MG24 L3 Baby, Collection
RG1 E1 Executive Council, Minute Books
RG1 E11 Oaths of Office and of Allegiance
RG1 E14 Executive Council Office, Correspondance and Records of the Clerk
RG1 E15A Quebec and Lower Canada, Board of Audit of the Provincial Public Accounts
RG4 A1 "S Series"

RG4 A3 Civil Secretary and Clerk of the Executive Council, registers and day books
 RG4 B19 Lower Canada, census returns
 RG4 B21 Gaol calendars and prison returns
 RG4 B28 Applications for Licences, Bonds and Certificates
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 RG4 B35 Public Accounts
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