

# THE JUDICIAL PROSECUTION OF CRIME IN THE LONGUE DURÉE: QUEBEC, 1712-1965

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Numbers in square brackets indicate the beginning of each page in the published version

[85] This paper presents preliminary results of an empirical, quantitative examination of the judicial prosecution of crime in Quebec over the last three centuries. As historians have often noted, while the long-term quantitative analysis of the history of crime and criminal justice is fraught with uncertainty and beset by methodological problems, it can also be very useful, notably by providing a foil against which closer examinations of discourse, practice and concrete experience can be built.<sup>1</sup> Such an analysis has yet to be made for the history of Quebec. Historians such as André Lachance, Jean-Marie Fecteau, Marie-Aimée Cliche, André Cellard and myself have undertaken studies of particular periods, places, courts or crimes;<sup>2</sup> criminologists have analyzed crime and crime repression in Quebec mainly since the 1960s;<sup>3</sup> but there has been no attempt to present a synthetic view of the development of crime and criminal justice across Quebec history, the equivalent of the quantitative analyses of Gatrell on England or [86] Davidovitch and Aubusson de Cavarlay on France or the overviews in syntheses such as those of Emsley or Friedman.<sup>4</sup>

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<sup>1</sup> For example, J.A. Sharpe, *Crime in Early Modern England, 1550-1750* (London: Longman, 1999): 59-63.

<sup>2</sup> André Lachance, *La justice criminelle du roi au Canada au XVIII<sup>e</sup> siècle: tribunaux et officiers* (Québec: Presses de l'Université Laval, 1978) and *Crimes et criminels en Nouvelle-France* (Montréal: Boréal Express, 1984); Jean-Marie Fecteau, *Un nouvel ordre des choses: la pauvreté, le crime, l'Etat au Québec, de la fin du XVIII<sup>e</sup> siècle à 1840* (Montréal: VLB, 1989); Marie-Aimée Cliche, "L'infanticide dans la région de Québec (1660-1969)", *Revue d'histoire de l'Amérique française* 44(1)(1990): 31-59 and "Un secret bien gardé: l'inceste dans la société traditionnelle québécoise, 1858-1938", *Revue d'histoire de l'Amérique française* 50(2)(1996): 201-226; André Cellard, "Le petit Chicago: la 'criminalité' à Hull depuis le début du XX<sup>e</sup> siècle", *Revue d'histoire de l'Amérique française* 45(4)(1992): 519-543; Donald Fyson, "The Biases of Ancien Régime Justice: The People and the Justices of the Peace in the District of Montreal, 1785-1830," in Tamara Myers et al. (ed.), *Power, Place and Identity: Historical Studies of Social and Legal Regulation in Quebec* (Montreal: Montreal History Group, 1998): 11-35.

<sup>3</sup> See for example Denis Szabo and Marc LeBlanc (ed), *Traité de criminologie empirique: phénomène criminel, justice pénale et mesures pénales* (Montréal: Presses de l'Université de Montréal, 1994).

<sup>4</sup> V.A.C. Gatrell and T. Hadden, "19th century criminal statistics and their interpretation", in E.A. Wrigley (ed), *19th-century Society: Essays in the Use of Quantitative Methods for the Study of Social Data* (Cambridge: Cambridge University Press, 1972): 336-396; V.A.C. Gatrell, "The Decline of Theft and Violence in Victorian and Edwardian England", 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, 1980): 238-370; André Davidovitch, "Criminalité et répression en France depuis un siècle (1851-1952)", *Revue française de sociologie* 2(1)(1961): 30-49; Bruno Aubusson de Cavarlay, "Can Criminal Statistics Still Be of Scientific Use? The French Criminal Justice System, 1831-1980", *Historical Methods* 26(2)(1993): 69-84; Clive Emsley, *Crime and Society in England, 1750-1900* (London: Longman, 1996); Lawrence M. Friedman, *Crime and Punishment in American History* (New York: Basic Books, 1993).

This paper makes no pretence of presenting a synthesis of crime and criminal justice in Quebec; the current state of research, especially for the period from the mid-19th century onwards, does not allow it. Rather, it simply attempts to piece together various statistics on criminal court activity in Quebec from the 18th century through to the mid-1960s, in order to present a largely descriptive, somewhat impressionistic view of the broad sweep of developments in criminal prosecution. Breaking with a criminological and historiographical tradition that often focuses long-term analysis on serious crime only,<sup>5</sup> the paper takes crime in the broadest possible sense, from the most serious indictable offences to infractions of municipal by-laws. However, the paper does not analyze crime itself, which in general historians can never know quantitatively, given the prevalence of unreported crime, but rather the judicial prosecution of criminalized behaviour. The focus is thus on the middle of the criminal justice system, between policing and punishment. I chose to examine court activity mainly because it allows for the construction of the longest and most consistent series, running from the eighteenth century forwards and generally covering most of Quebec, whereas other records such as those of police activity start later and are often geographically limited.<sup>6</sup> This of course leaves aside the question as to whether court statistics (or arrest statistics, for that matter) can tell us anything about crime in society [87] in general; but that debate lies beyond the scope of this paper. For the moment, we can affirm that at the very least they reflect the activity of a central part of the regulatory state.

Given the long period, there is no consistent source for the analyses presented here. Up until the 1830s, before the advent of official criminal statistics, the data comes essentially from studies of the judicial archives. On the French régime, the study relies mainly on the figures presented by André Lachance on more serious criminal cases, supplemented by information on the lower courts from other studies, especially those of John Dickinson and Jean-Philippe Garneau.<sup>7</sup> From the Conquest to the Rebellions, the paper draws largely on data collected by Jean-Marie Fecteau and by myself, much of it

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<sup>5</sup> For example, both Davidovitch and Aubusson de Cavarlay explicitly leave aside the lowest level of offences, the *contraventions de police*; the same approach is adopted in the section on justice in F.H. Leacy (ed), *Historical Statistics of Canada*, 2<sup>nd</sup> edition (Ottawa: Statistics Canada / Social Science Federation of Canada, 1983), available at <<http://www.statcan.ca/english/freepub/11-516-XIE/sectionz/sectionz.htm>>. Other historians have noted the shortcomings of such an approach; see for example Sharpe, *Crime in Early Modern England*: 69-77.

<sup>6</sup> For differing views on the relative merits of police and court statistics, see for example Chris A. Williams, "Counting Crimes or Counting People: Some Implications of Mid-Nineteenth Century British Police Returns", *Crime, Histoire & Sociétés* 4(2)(2000): 77-93 and Neal Slone, "Evaluating Court Statistics as a Data Source for Studying Nineteenth-Century Crime", *Historical Methods* 26(2)(1993): 85-93. Arrest records in Quebec begin only in the mid-nineteenth century and then only for the main cities; even in the 1950s, police statistics still provided only partial coverage of police activity (Nicolas Zay, "Gaps in Available Statistics on Crime and Delinquency in Canada", *Canadian Journal of Economics and Political Science* 29(1)(1963): 75-89).

<sup>7</sup> Lachance, *La justice criminelle du roi* and *Crimes et criminels*; John Dickinson, "Réflexions sur la police en Nouvelle-France", *McGill Law Journal* 32(3)(1987): 497-512; Jean-Philippe Garneau, *Justice et règlement des conflits dans le gouvernement de Montréal à la fin du Régime français*, M.A., Université du Québec à Montréal, 1995.

unpublished.<sup>8</sup> For the 1840s to the 1860s, which have yet to be studied in any systematic detail, I've relied on a few scattered statistical accounts published by judicial and police officials, along with statistics on court activity produced annually by the Quebec government from 1860 onwards (referred to in this paper as *Judicial Statistics*, though the title varied), supplemented by a few summary incursions into the judicial archives. Finally, for the 1870s to the 1960s, I've used statistics on "criminality" (actually on judicial prosecutions and convictions) produced by the federal government between 1876 and 1965 (referred to in this paper as *Criminal Statistics*, though again, the formal title varied); for comparative purposes, I've also collected the equivalent statistics for Ontario from 1880. I've not gone beyond the mid-1960s, partly because of changes in the nature of the statistical sources, but also because the more recent period has been extensively studied by criminologists.

Evidently, even within the narrower confines of a study of criminal court activity, rather than crime in society as a whole, my sources are open to critique. Different sources provide different information on the activity of the courts. Hence, to the mid-19th century, the data mainly concerns formal complaints brought before the justice system, leaving aside complaints dealt with more informally by police; from 1884 onwards, the paper is based almost exclusively on convictions, since that was what was consistently reported in *Criminal Statistics*; and from 1922, the study excludes juvenile delinquents, when a different and not directly comparable system was introduced for delinquency statistics. There are gaps that still need to be filled by further research. For example, for the crucial period from the 1830s to the 1860s, I have only a few limited samples; and from the Conquest to the 1860s, the data largely concerns the two main judicial [88] districts of Montreal and Quebec, leaving aside smaller districts such as Trois-Rivières or Gaspé. Finally, official statistics, on which the study mainly relies from the 1840s on, have been subjected to all sorts of criticism, ranging from the empirical unreliability of the numbers collected to the influence of the broader political economy of counting crime.<sup>9</sup> In general, I've attempted to account for the potential problems in the selection of the data used, in the questions asked and in the interpretation of the results. Though I have only limited space to go into the details, Appendix I addresses some of the methodological issues and others are raised in the text itself. At any rate, given the inherent inaccuracies of this sort of exercise, my main interest is in large-scale trends, not in precise variations that may be as much the result of differing source preservation or reporting as actual changes.

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<sup>8</sup> See, notably, Fecteau, *Un nouvel ordre des choses*, and Donald Fyson, *Criminal Justice, Civil Society, and the Local State: The Justices of the Peace in the District of Montreal, 1764-1830* (Ph.D., Université de Montréal, 1995).

<sup>9</sup> On the politics of crime statistics, see for example Howard Taylor, "The Politics of the Rising Crime Statistics of England and Wales, 1914-1960", *Crime, Histoire & Sociétés* 2(1)(1998): 5-28 and "Rationing Crime: The Political Economy of Criminal Statistics since the 1850s", *Economic History Review* 51(3)(1998): 569-90, and Robert M. Morris, "Lies, Damned Lies and Criminal Statistics: Reinterpreting the Criminal Statistics in England and Wales", *Crime, Histoire & Sociétés* 5(1)(2001): 111-127.

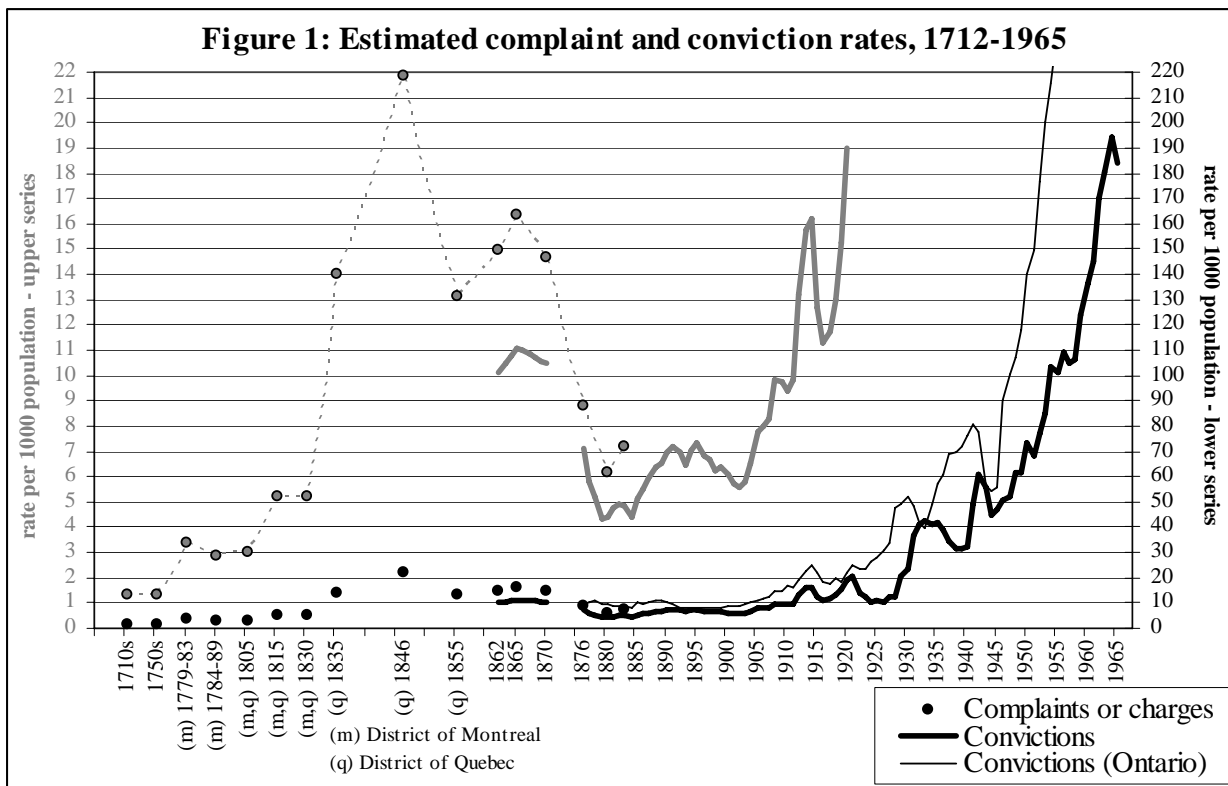
And more generally, the paper should be seen as a thought exercise that seeks to raise questions that can be addressed by more detailed studies, rather than as a definitive attempt to measure and characterize recourse to the criminal courts; as such, it is subject to error and revision.

The paper is divided into three main sections. The first presents estimates of overall rates of prosecution and conviction from the 18th century to the present. The second examines more closely the profile of offences that led to people coming before the courts. And the third turns briefly to some factors of differentiation, notably geography and gender. Given the constraints of space inherent in the publication of conference proceedings, the historical and historiographical context has been kept to a minimum; and the tentative nature of much of the data has also led me to be very restrained in advancing interpretive and explanatory hypotheses.

## 1. PROSECUTION AND CONVICTION RATES

Perhaps the most basic question one can ask regarding the operation of the criminal justice system is the overall rate of prosecution of criminalized behaviour. Figure 1 presents the rate of complaints and convictions per 1000 population in Quebec, from 1712 to 1965. The lower series, in black, give the overall trend across the entire period, using the scale on the right; the upper series, in gray, are a 10x magnification of the lower series (for Quebec only) up to 1920, using the scale on the left.

[89]



[90] Though the data for earlier years is sketchy, the general trends are clear. First, there was an upward trend from the 18th century to the first third of the 19th. Complaint rates were perhaps twice as high in the later 18th century than they were before the Conquest; though we should recall the uncertainty and potential underestimation of the pre-Conquest figures. Complaint rates had almost doubled again by 1815; though in the District of Montreal (the western third of the colony, with about half its population), the early 19th-century increase was less dramatic, even taking into account the under-reporting of prosecutions discussed in the Appendix.<sup>10</sup> Overall, it seems evident that relatively more people were being prosecuted for criminal offences in the 1820s than under the French régime or during the early years of British rule. This suggests that the criminal justice system in these years (much like the state as a whole) was far from a static, ancien-régime hold-over that would only begin to change with the 1840s "revolution in government".<sup>11</sup>

A more dramatic upsurge in prosecutions began in the 1830s and, with ups and downs, continued through the 1840s to the 1860s. Again, caveats are in order. First, the figures for 1835, 1846 and 1855 are based only on the District of Quebec which, because of the large transient population in the port of Quebec, may well have been exceptional (though it still represented about a third of the population of the colony). Still, even considering only those years where there is data for both the districts of Quebec and Montreal, the prosecution rate almost tripled between 1830 and the early 1860s; and as a further indication, even in the city of Montreal, the arrest rate in the 1860s and early 1870s was about double what it had been in the early 1850s.<sup>12</sup> A second caveat is that the undeniable rise in the activity of the criminal justice system may have begun earlier than what prosecution figures alone suggest. As we shall see, much of the rise can be attributed to an increase in the prosecution of public order offences in the cities, notably public drunkenness and the various categories of vagrancy. The statistical tables from the 1840s, 1850s and 1860s used for Figure 1 include large numbers of people arrested for drunkenness and the like but then dismissed summarily by the magistrates — no doubt, mainly people being held overnight. There are indications that this sort of practice was already going on in the 1820s, but that bureaucratic procedures were such that these people did not show up in the official records, even though their experience was not materially different from those arrested and released [91] in the 1840s and

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<sup>10</sup> Excluding summary prosecutions before rural justices, the complaint rate in the early 1820s was perhaps one and a half times that in the later 1780s; by the end of the 1820s, for reasons I have discussed elsewhere, linked partly to political unrest, it had actually declined (Fyson, *Criminal Justice*).

<sup>11</sup> As argued for example in Fecteau, *Un nouvel ordre des choses*.

<sup>12</sup> Excluding so-called "protection" cases, which are discussed below, arrest rates by the Montreal City Police in 1852 and 1853 were about 45 per 1000 ("Statistics of Crime in the City of Montreal", NA RG4 C1, vol. 345, file 362; see however the Appendix of this paper for caveats) whereas in the 1860s and early 1870s they were generally between 90 and 100 per 1000 (Annual Reports of the Chief of Police, 1863-, Archives de la ville de Montréal; kindly provided by Marcela Aranguiz and Jean-Marie Fecteau).

1850s.<sup>13</sup> Still, whatever its exact extent, and whether it began in the 1820s or the 1830s, the mid-century rise seems evident: the conviction rate alone in the 1860s was still double the complaint rate in the 1820s. There seems little doubt that this was at least in part a reflection of the impact of changes in administration and government, such as the increasing professionalization of the police and the magistracy.<sup>14</sup>

From the mid-1870s to the early 20th century, however, an opposite trend occurred: conviction rates at least declined, reaching levels quite a bit lower than they were at mid-century. This decline is particularly interesting in that it corresponded to a similar decline in England that has been much debated, but not in France, which saw a slow but steady growth in criminal prosecutions from the 1850s to the 1930s (though it should be noted that the French data only concerns the two more serious categories of crime, *crimes* and *délits*).<sup>15</sup> For Quebec, Pierre Tremblay noted a similar decline in his studies of imprisonment in Montreal, and suggested that it invalidated both the hypothesis of the pathological effects of industrialization and urbanization (since Montreal was growing rapidly) and that of class control of the criminal justice system. He proposed instead a variety of explanations mainly linked to the judicial system itself, such as a more tolerant attitude on the part of police and courts.<sup>16</sup>

In the current state of research on the police and the courts in the later nineteenth century, I would not hazard any such hypotheses, though we will come back to the question elsewhere in this paper. At the very least, [92] we can rule out the possibility that the decline was simply an artefact of the sources. The conviction figures for 1862-1870 come from a different source (*Judicial Statistics*) than that for 1876 on (*Criminal Statistics*) and may not have exactly the same basis. But there was still an obvious decline from 1876 to the early 1880s in the data from *Criminal Statistics*; and this despite the fact that

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<sup>13</sup> Essentially, it appears that in the 1820s, many people were arrested and briefly confined by the city watchmen and the police, but never formally charged, so that they remain invisible in the court and prison records. See for example ANQQ E17 1960-01-036/1688 #318, which shows that in the late 1820s, many people arrested by the watch and constables in Quebec City were imprisoned but then released the next day without being formally charged; similarly, in Montreal, prisoners were taken to the watch house to be kept overnight. By the mid-1830s, in Quebec City at least, these same people began to be charged formally by the policemen who arrested them, and thus show up in the court and prison records. Before the advent of the city watches in the late 1810s, there is no indication that this sort of practice was widespread.

<sup>14</sup> See for example the articles in Allan Greer and Ian Radforth (eds), *Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada* (Toronto: University of Toronto Press, 1992).

<sup>15</sup> On England, Gatrell, "The Decline of Theft and Violence"; on France, Davidovitch, "Criminalité et répression en France depuis un siècle": 124 and Aubusson de Cavarlay, "Can Criminal Statistics Still Be of Scientific Use": 80, both compared with French population figures. See also Lynn McDonald, "Theory and Evidence of Rising Crime in the Nineteenth Century", *British Journal of Sociology* 33(3)(1982): 404-420, who presents a more general case for the decline of criminal prosecution in the nineteenth century, including in France.

<sup>16</sup> Pierre Tremblay and André Normandeau, "L'économie pénale de la société montréalaise, 1845-1913", *Social History / Histoire sociale* 19(37)(1986): 177-199; Pierre Tremblay, "L'évolution de l'emprisonnement pénitentiaire, de son intensité, de sa fermeté et de sa portée: le cas de Montréal de 1845 à 1913", *Canadian Journal of Criminology* 28(1)(1986): 47-68. See also Jean-Marie Fecteau, Marie-Josée Tremblay and Jean Trépanier, "La prison de Montréal de 1865 à 1913: évolution en longue période d'une population pénale", *Les Cahiers de droit* 34(1)(1993): 27-58, which comes to similar conclusions.

federal statisticians complained that in earlier years, the activity of some Quebec jurisdictions was under-reported.<sup>17</sup> More importantly, the general trend is confirmed when we look at other series that are more consistent across the period. Apart from Tremblay's figures on imprisonment in Montreal, in the city's Recorder's Court, for which fairly consistent annual reports exist from 1864, there was a decline from between 80 and 100 cases per 1000 population through to the mid-1870s, to between 20 and 40 cases per 1000 in the 1890s and 1900s.<sup>18</sup> A similar though less radical decline was evident in the Recorder's Court of Quebec City, from over 30 convictions per 1000 population in the early 1870s to under 20 in the late 1880s; and the absolute number of commitments to the Quebec prison also dropped by more than two thirds between the 1860s and the 1890s, while the district's population remained stable.<sup>19</sup> Finally, arrest rates in both Montreal and Quebec City also dropped dramatically.<sup>20</sup>

As with the "rise" from the 1830s, there is also the potential problem of bureaucratic reshuffling. Notably, the arrest records for both Montreal and Quebec City show the police taking in increasing numbers of people for "protection", a category initially included, in the records, among arrests but then, by the end of the century, listed separately as a police service; by the end of the century, these "protection" cases often accounted for more people than actual arrests. As the 1917 Annual report of Montreal's Chief of Police noted, many were "hommes [or femmes] arrêtés pour ivresse [93] et à qui on a donné protection". Hence, just as in the 1820s, there may have been a partial de-judicialisation of this sort of public order crime, a bureaucratic sleight-of-hand that shifted offenders who were essentially treated the same way from courts (and thus court statistics) to police, and from police arrests to police services; whether this represented a softening of police attitudes towards the popular classes, or the short-circuiting of due process, remains to be explored. Still, even adding all the "protection" cases, arrest rates in Montreal at least declined by about half between the 1860s and 1870s and the 1900s and 1910s, suggesting that the overall decline in criminal court activity was more than just a reflection of

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<sup>17</sup> At least one component of *Judicial Statistics*, summary convictions by justices of the peace out of sessions under provincial and municipal laws, may initially not have been included in *Criminal Statistics*, at least in early years; this is what one might deduce from the wording of the relevant statutes, 32-33 Victoria c.31 (1869) and RSC 1886 c.178, the "Act respecting Summary Proceedings before Justices of the Peace", which asked for returns only of convictions in matters under federal jurisdiction, and 39 Victoria c.13 (1876) and RSC 1886 c.60, the "Criminal Statistics Act", which required the clerks of all courts to send in returns of all convictions, but in the case of justices of the peace asked only for the returns provided for under the 1869 act. The uncertainty will remain unresolved until an examination can be made of the original manuscript returns from which *Criminal Statistics* was prepared. On under-reporting, see for example the introduction to *Criminal Statistics for the Year 1886*, in *Sessional Papers* 51 Victoria (1888), number 4B, or the more general observations in George Johnson, *Crime in Canada: A Monograph* (Ottawa, S.E. Dawson, 1893): 3, 5.

<sup>18</sup> Annual Reports of the Recorder from 1864, Archives de la ville de Montréal (kindly provided by Marcela Aranguiz and Jean-Marie Fecteau). These figures exclude civil cases for the recovery of municipal taxes.

<sup>19</sup> Based on figures collected by Jérôme Boivin for an unpublished seminar paper, Laval University, autumn 2003; commitments declined from almost 2000 in the early 1860s to under 500 in the 1890s.

<sup>20</sup> In Montreal, from almost 100 arrests per 1000 in the 1860s and 1870s to around 20 per 1000 at the turn of the century; in Quebec City, from about 35 per 1000 in the early 1860s to about 17 per 1000 in the early 1880s (the latter figures from *Archives de la ville de Québec*, QC1-01\1370-01 to 04).

differing bureaucratic practices; and at any rate, the decline in actual convictions seems incontrovertible.<sup>21</sup>

Returning to Quebec as a whole, after the decline in convictions the last quarter of the 19th century, a dramatic upsurge began again in the 20th century, definitively passing the highest mid-19th century rates by the 1930s, and with conviction rates skyrocketing especially from the 1940s on. Given the more consistent nature of the data, the trend is undeniable; by the 1960s, the conviction rate alone was far more than a hundred times the charge rate under the French régime, with the total number of convictions for penal offences each year being the equivalent of almost a fifth of Quebec's total population. The overall pattern was similar to that of Ontario, though the Quebec rate was consistently lower and there were some important variations between the two provinces, notably in the mid-1930s and mid-1940s. The exact reasons for the increases and decreases from the 1910s to the 1940s remain to be explored; but to understand the overall pattern, we must turn to the types of offences that were being prosecuted before the courts.

## 2. THE PROFILE OF PROSECUTED OFFENCES

Along with overall rates of prosecution and conviction, another fundamental question one can ask of criminal justice statistics is the nature of the offences for which people were being brought before the courts. One of the principal problems with examining the pattern of offences across a long period of time is the changing definition of offences: for example, the classic shift from "loose, idle and disorderly" in the early nineteenth century to "vagrancy" or "disturbing the peace" in later years, which for men at least referred essentially to the same penalized behaviour. The standard categories formerly used by official statisticians are of little use. For example, the classic division between indictable and summary offences, based as it is on the procedural route through the system, tells us nothing of the nature of the offence. Likewise, the major categories used in *Criminal [94] Statistics*, and taken up in publications like the *Canada Yearbook*, *Historical Statistics of Canada*, or general surveys of crime in Canada, apply only to indictable offences, and at any rate, group far too many offences under the generic category "other".

In this paper, I've adopted instead the approach of many historians, and grouped offences into categories often used in historical studies of crime and criminal justice, and which are based on the nature of the offence, not its course through the justice system: offences against the person, offences against property, offences against the state, public order offences, morality-related offences, regulatory

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<sup>21</sup> From an average of about 115 per 1000 in the 1860s and 1870s to about 60 per 1000 in the 1900s and 1910s. The arrest data used for Quebec City, which had no published police reports after 1868, does not include protection cases after the 1860s.



offences and labour matters. Offences against the person and property are relatively self-explanatory, being made up largely of violence and theft respectively. Offences against the state are direct attacks on the core interests of the state, such as assaults on officers or resistance towards military service, along with revenue matters. Public order offences include disturbing the peace, drunkenness and vagrancy, in their various guises. Offences against morals are victimless vice-related offences such as prostitution, gambling, and sexual nonconformity. Regulatory offences are all other minor victimless offences such as infractions of municipal bylaws or traffic offences. The labour category is a reminder that until the 20th century, as in England, labour relations were dealt with in part through the criminal courts, through charges of desertion of service, disobedience, and the like.<sup>22</sup>

I have also added two intermediate categories to represent two specific groups of common offences that do not fit easily into the larger categories. First, in the criminal statistics used from the 1840s onwards, the charge "disturbing the peace" and its analogues could refer either to specific threats of violence or disturbing the public peace more generally, and thus overlaps offences against the person and public order offences; I have thus used a separate category to represent it. And secondly, prosecutions related to alcohol-licensing regulations (essentially, the illicit sale or production of alcohol) overlapped offences against the state and offences against morality, since throughout the period, alcohol regulation concerned both revenue and moral issues, as well as being closely related to regulatory offences such as infractions of market regulations. Even with these two additional intermediate categories, there is evidently overlap and imprecision between the categories. For example, public order offences such as drunkenness and vagrancy also had a strong moral flavour; thus, at least in the first half of the nineteenth century, women charged for being "loose, idle and disorderly" (which I have classed as a public order offence) were generally being charged for prostitution. And likewise, though I have decided to include drunk driving as a regulatory rather than a morality offence, it too was arguably also the latter. Nevertheless, the [95] long-term stability of the categories gives a reasonable impression of the shifting emphasis of prosecution and its relation to the purported actions or inactions that led to individuals being criminalized.

Figure 2 shows the relative importance of different categories of offences among all prosecuted crimes, from the early 18th century to 1862. First, there was only little change across the Conquest. Both before and after, offences against the person and regulatory offences (including alcohol licensing) dominated, followed by offences against property (though this latter had gained in importance in the years following the Conquest). The great increase in the relative importance of offences against the state

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<sup>22</sup> See for example Douglas Hay, "Master and Servant in England: Using the Law in the Eighteenth and Nineteenth Centuries", in Willibald Steinmetz (ed), *Private Law and Social Inequality in the Industrial Age: Comparing Legal Cultures in Britain, France, Germany, and the United States* (Oxford: Oxford University Press, 2000): 227-264.

in the period 1779-1783, the reflection of a campaign against *habitants* who refused to transport army supplies, was only a temporary deviation from the norm. The formal change in legal regimes and state institutions thus did little to alter patterns of prosecution, with a focus both on police in the ancien-régime sense and on private recourse to the criminal courts for matters of violence and, to a lesser extent, of property.

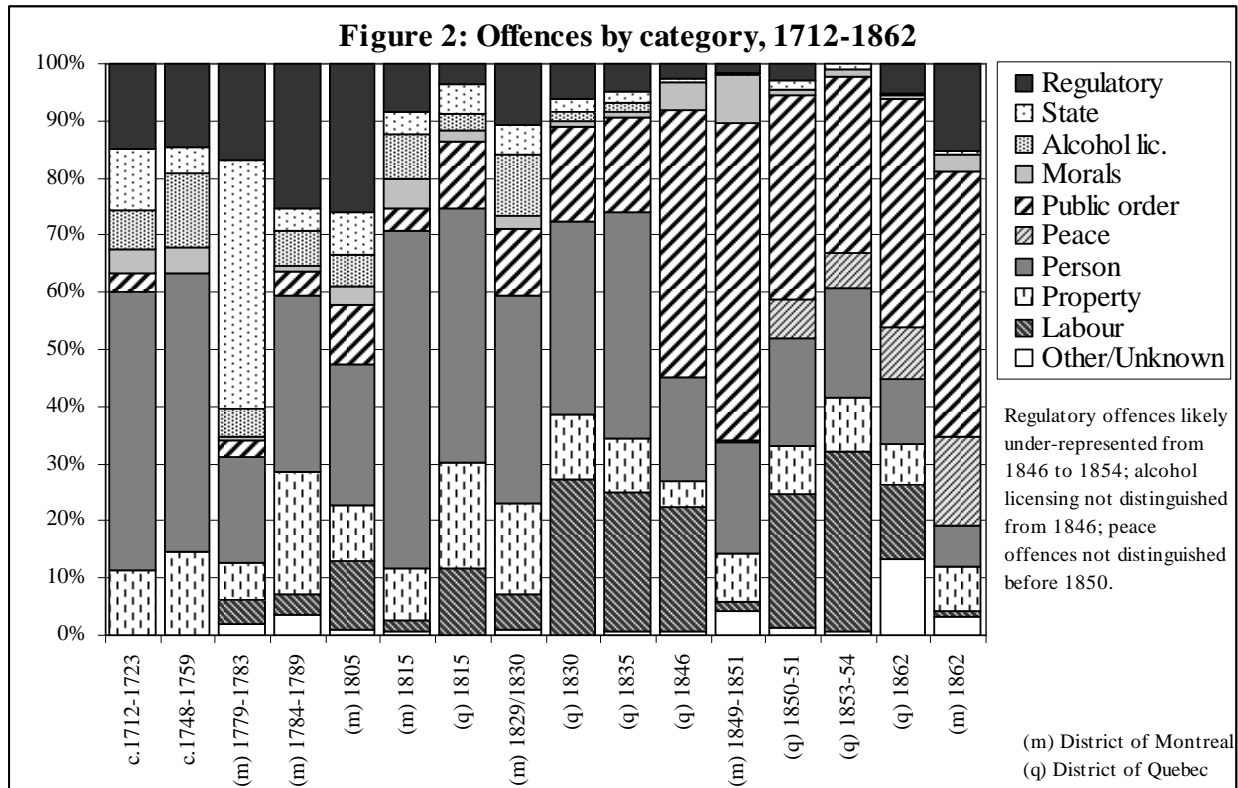
With some variations, such as the rise of labour-related prosecutions and somewhat less emphasis on regulatory offences, this pattern held through to the 1820s; if anything, in the 1810s, offences against the person were more predominant than ever, with the distribution of offences remarkably close to that under the French régime. But from the 1830s and, especially, the 1840s, public order offences became increasingly important, and by the 1860s, vagrancy, drunkenness, disorderly conduct and disturbing the peace made up the bulk of criminal prosecutions in Quebec.<sup>23</sup> As elsewhere in the western world, mid-19th-century Quebec thus saw the growth in attempts to control the unregulated public conduct of the popular and especially the marginal classes, linked in part to the growth of police forces. It is largely this phenomenon that led to the mid-century increase in prosecution rates, with the focus of the criminal justice system shifting from the disputes of individuals to social regulation. Still, social regulation was not the only focus of the justice system. Even at mid-century, interpersonal disputes still accounted for between a third and a half of the business before the criminal courts. And in Quebec City, a busy international port, the large numbers of disputes between ships' captains and seamen accounted for up to a third of the business of the courts, which illustrates as well the importance of purely local factors.

Figure 3 continues the same series, though based on convictions rather than on prosecutions. Public order offences continued to dominate right through to the early 1900s; in fact, in comparative terms, they remained consistently more important in Quebec than in Ontario, where in the same period, public order offences generally made up only a third of all convictions. The repressive power of the state thus remained focussed on the marginals and the excluded, though again perhaps a quarter to a

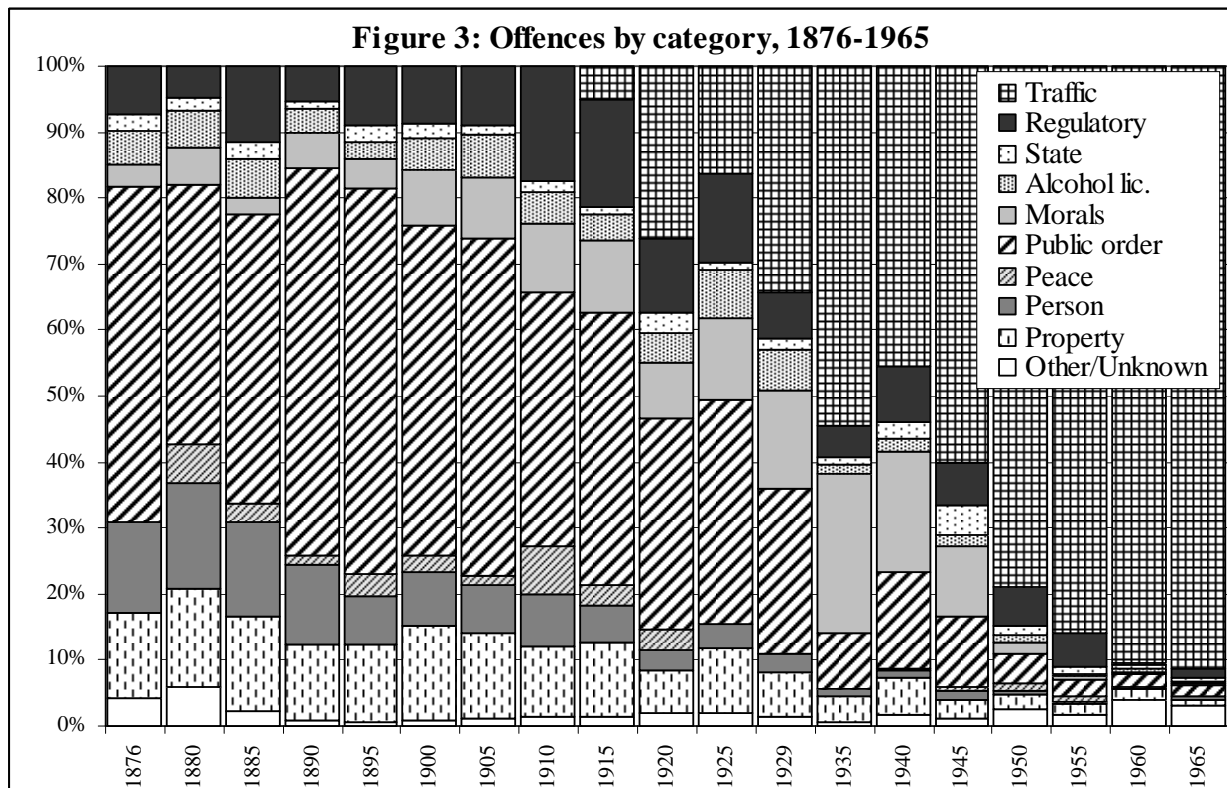
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<sup>23</sup> One caveat is that the figures from the 1830s to the 1850s probably underestimate regulatory offences; but these were likely fairly unimportant, as the figures from the early 1860s suggest.

[96]



[97]



[98] third of convictions stemmed from interpersonal disputes. Given this relative stability from the 1840s through to the end of the 19th century, the decline in criminal prosecutions in the last quarter of the century cannot be explained by a shift in the focus of prosecution.

In the 20th century, the story was a quite different one. There was a phenomenal growth in importance of that subset of regulatory offences related to the automobile, made up principally of speeding, parking and other traffic-related matters. Traffic offences rapidly came to dominate convictions by the 1940s and dwarfed all else by the 1950s and 1960s; it was mainly they that led to the vast rise in conviction rates in the 20th century. Here, Quebec also closely followed North American, English and French trends, though the dominance of traffic offences in Quebec came somewhat later than in Ontario, where they had already passed the 50% mark by the late 1920s. As Clive Emsley has pointed out for England, this represented the further growth of the "policeman-state", already underway in the 19th century. It also represented a fundamental shift in the attention of the criminal justice system, from the marginals and excluded to the population as a whole, with concomitant effects on popular and even middle-class attitudes towards the police, the courts and the state in general; though for Quebec, as for Canada as a whole, this has yet to be explored.<sup>24</sup>

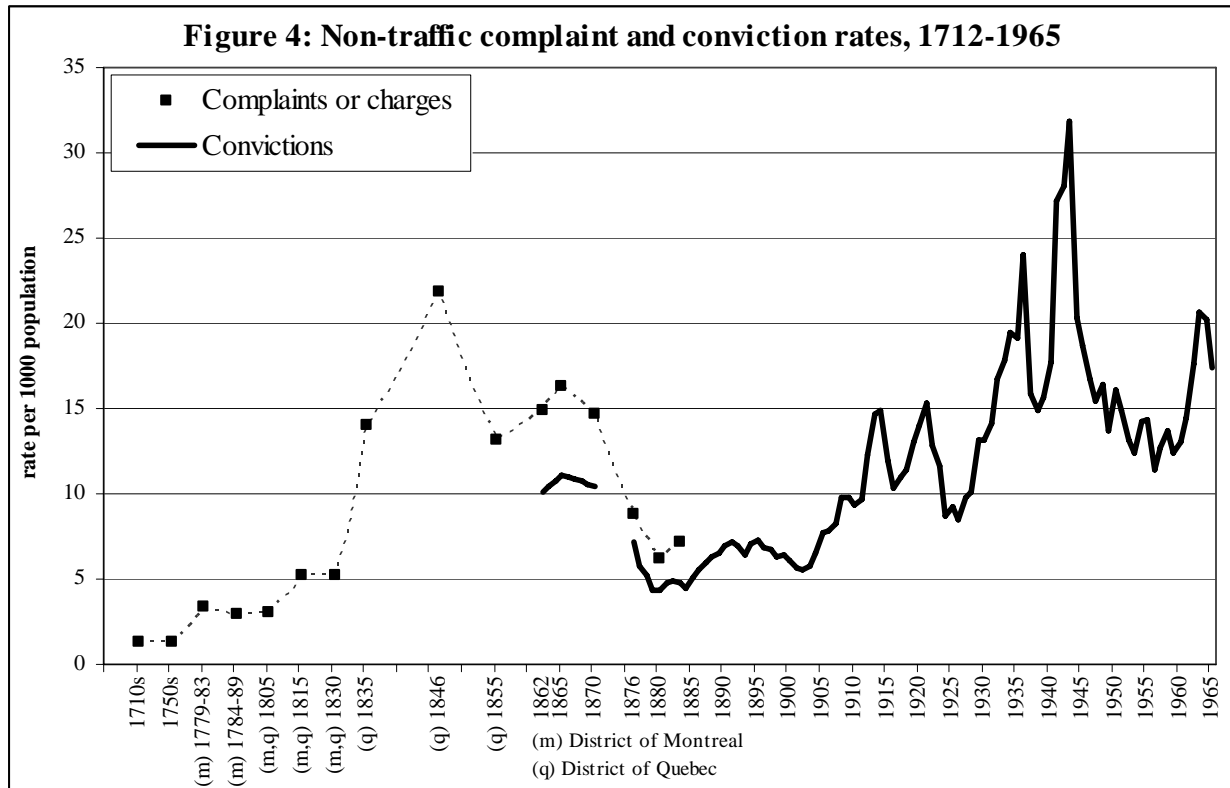
So important did the automobile become that statistically, traffic-related offences drown out all others. So as better to understand what was going on outside the car (or at least, outside of traffic), Figures 4 and 5 consider non-traffic offences alone. As Figure 4 shows, in terms of complaint and conviction rates, the trend was of course the same until the 1920s, but markedly different thereafter. In fact, after an overall rise from 1900 to the mid 1940s, with dramatic peaks in the 1920s, 1930s and 1940s, there was an equally dramatic decline in the rate of convictions for non-traffic offences from the late 1940s, reaching levels in the 1950s that were not much higher than they had been in the mid-19th century. Quebec in this respect was no different from Canada as whole or the United States, where it is suggested that the 1950s were a period where criminal prosecutions, and perhaps crime as a whole, declined, followed only in the 1960s by a rapid increase in prosecution rates.<sup>25</sup> And once again, this shows clearly how the rise in criminal prosecution rates was in fact very largely linked to the rise of traffic offences.

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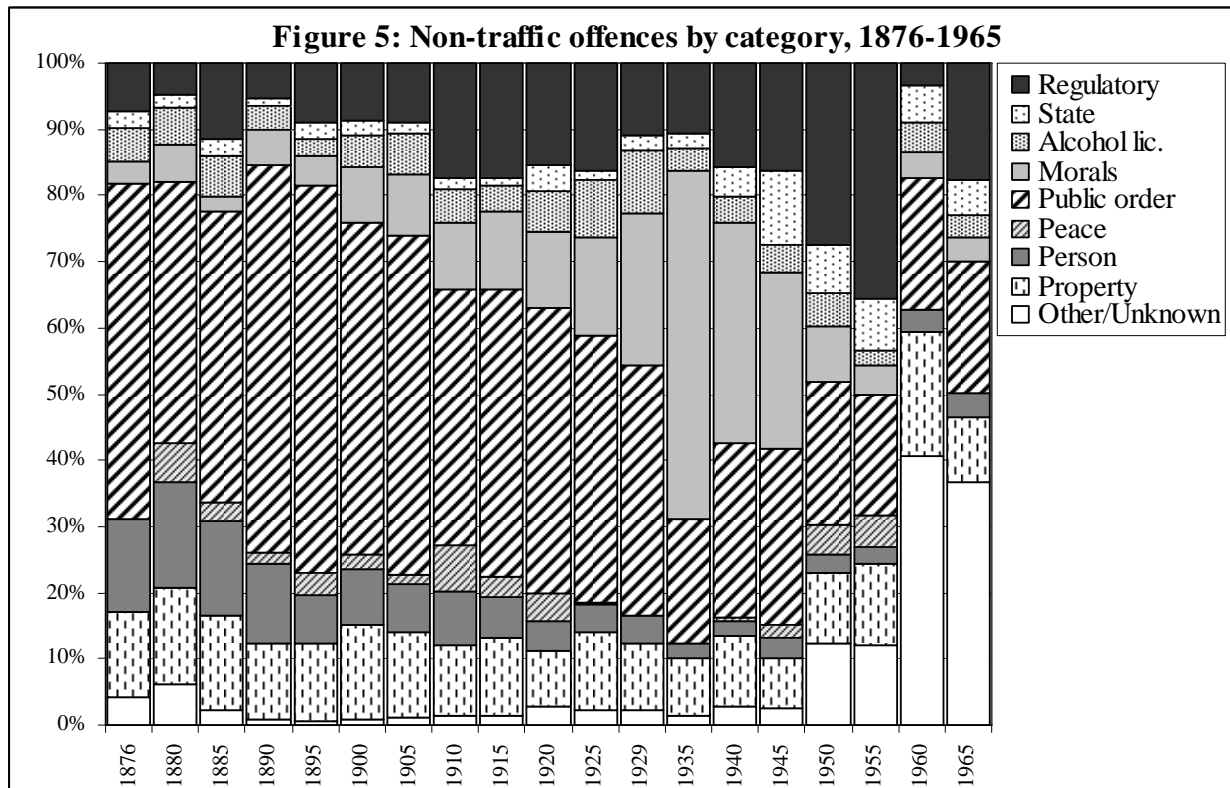
<sup>24</sup> Clive Emsley, "Mother, What Did Policemen Do When There Weren't Any Motors?" *The Law, the Police and the Regulation of Motor Traffic in England, 1900-1939*, *Historical Journal* 36(2)(1993): 357-381. See also Friedman, *Crime and Punishment in American History*: 277-282; Howard Taylor, "Forging the Job: A Crisis of 'Modernization' or Redundancy for the Police in England and Wales, 1900-39", *British Journal of Criminology* 39(1)(1999):113-135; and Aubusson de Cavarlay, "Can Criminal Statistics Still Be of Scientific Use?": 81.

<sup>25</sup> See for example P.J. Giffen, "Official Rates of Crime and Delinquency: Problems of Analysis", in Edmund W. Vaz and Abdul Q. Lodhi (ed), *Crime and Delinquency in Canada* (Scarborough: Prentice-Hall, 1979): [99]35-38.

[99]



[100]



[101] Looking at the nature of the non-traffic offences for which people were convicted before the courts, as in Figure 5, we can see that up to the 1920s, convictions for public order offences continued to far outweigh those for property and violence, as had been the case since the 1840s. However, in the twentieth century, and especially from the 1920s, public order offences were increasingly joined by specific morality offences as the main non-traffic offences for which defendants were convicted, and in the 1930s and 1940s, convictions for morality offences outweighed those for public order offences.<sup>26</sup> From the 1950s, morality and public order offences very suddenly lost their importance. Unfortunately, the data for the 1960s and, to a lesser extent, the 1950s, is difficult to interpret due to the increasing number of summary offences classed in *Criminal Statistics* simply as "Other" without any details; still, there seems to have been an increase in the importance of regulatory offences. This was perhaps an echo of what Helen Boritch and John Hagan noted for Toronto somewhat earlier, with a shift from arrests for drunkenness and vagrancy to an emphasis on arrests for by-law offences.<sup>27</sup>

We can examine the changing importance of public order and morality offences in more detail by focussing on certain selected offences, as in Figure 6. The growth of convictions for morality offences in the 1920s, 30s and 40s is evident, with the importance of gambling offences being particularly striking. The Quebec portrait reflects the inter-war attack on vice that has been examined by historians such as Andrée Lévesque and Suzanne Morton.<sup>28</sup> Despite Quebec's reputation for both corruption and tolerance, prosecutions of morality-related offences such as gambling and prostitution were significantly more important than in bluestocking Ontario, where public order offences such as drunkenness and disturbing the peace continued to outweigh morality offences.

From the late 1940s, however, convictions for morality offences in Quebec quite suddenly declined. This transformation pre-dates the Quiet Revolution by a decade or more and perhaps reflects the decline of the social and political power of traditional institutions such as the Church. Convictions for drunkenness and vagrancy, on the other hand, showed no remarkable fluctuations. Instead, after an increase at the beginning of the twentieth century, they remained roughly steady in absolute terms from about the 1910s to the 1960s, with between 10 000 and 20 000 convictions per year, though with something of a decline in the mid-1950s. It is almost

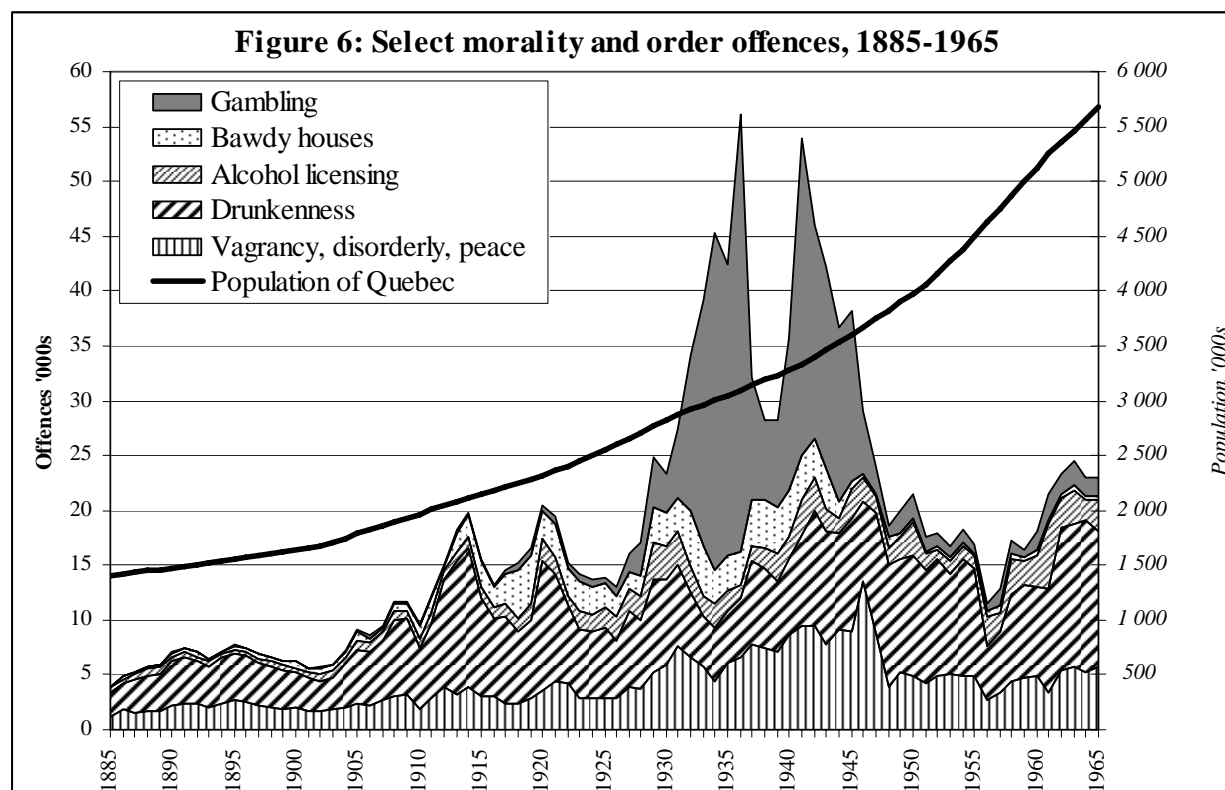
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<sup>26</sup> It should be noted that some public order convictions of women were actually convictions for morality offences (notably, vagrancy, disorderly conduct and the like as a charge for prostitution); however, these made up a relatively small proportion of all public order offences, which mainly consisted of men arrested for drunkenness or disturbing the peace.

<sup>27</sup> Helen Boritch and John Hagan, "Crime and the Changing Forms of Class Control: Policing Public Order in 'Toronto the Good', 1859-1955", *Social Forces* 66(2)(1987): 307-35.

<sup>28</sup> Andrée Lévesque, *La norme et les déviantes: Des femmes au Québec pendant l'entre deux guerres* (Montréal: Les éditions du Remue-Ménage, 1989); Suzanne Morton, *At Odds: Gambling and Canadians, 1919-1969* (Toronto: University of Toronto Press, 2003).

[102]



[103] if the criminal justice system could only absorb a set number of such convictions; and given the steady increase in Quebec's population, their overall importance could not but decline.

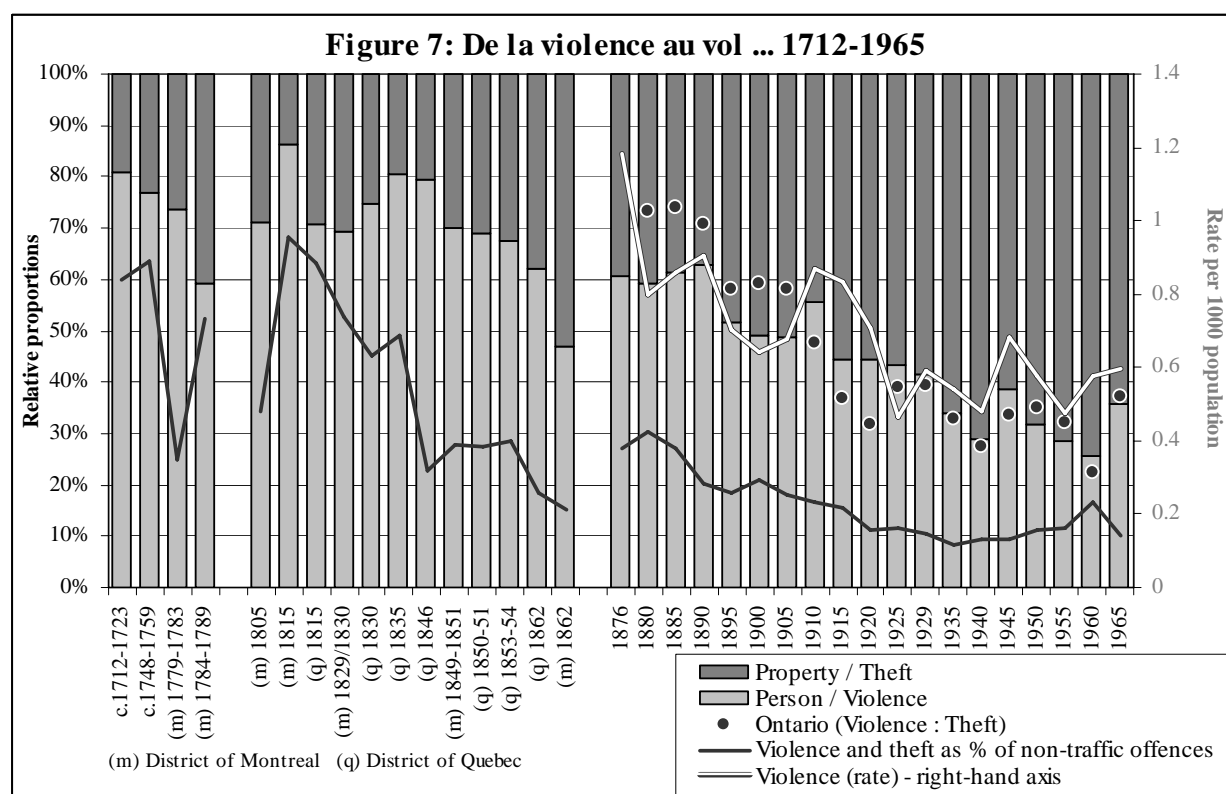
Finally, returning to the *longue durée*, what of the classic modernization hypothesis, "de la violence au vol"? The general assertion is that there was a shift from violent crime to property crime, which reflected the gradual civilization of society.<sup>29</sup> Figure 7 shows the relative proportions of offences against the person and offences against property in Quebec; to 1862, it includes all such offences, but from 1876 it covers only the somewhat more precise categories of violence and theft.<sup>30</sup> Overall, it seems that Quebec did indeed follow the general trend, with an overall inversion of the relative proportions of these two types of offences. Thus, in the early 19th century, there were four times as many prosecutions for offences against the person as for offences against property; by the 1950s and 1960s, theft outweighed violence by a factor of over two to one. Further, even if we consider all violent crimes including robbery and the like, the rate of prosecutions and convictions for violent offences dropped. Thus, in the 1860s, there were between 2 and 3 prosecutions for violent offences per 1000 population; by the 1870s, this had dropped to a little under 2, and by 1880, to about 1.3. And as Figure 7 shows, the rate of convictions for violent offences (using the scale on the right) suggests that this downwards trend continued from the

<sup>29</sup> See for example the articles in Eric A. Johnson and Eric H. Monkkenon (ed), *The Civilization of Crime: Violence in Town and Country Since the Middle Ages* (Urbana: University of Illinois Press, 1996).

<sup>30</sup> Theft with violence, such as robbery, is split between the two categories.

1870s through to the 1950s and 1960s. All of this seems to confirm the relative decline in the violence of Quebec society, especially in the nineteenth century; though a more definitive examination of the question remains to be undertaken. Still, the apparent shift from violence to theft must be taken in context. First, the change in the relative positions of violence and theft came quite a bit later in Quebec than in countries like England, where crimes against property already far outweighed crimes against the person by the late 18th century; though it appears to have been at about the same time as in Ontario, with some variations. And more importantly, within the broader context of the evolution of all offences, as Figure 7 shows, there was a steady decline in the importance of both theft and violence, even compared only to non-traffic offences. Indeed, across the entire period, the evolution of criminal prosecutions in Quebec can better be summed up as "de la violence au vol, en passant par le désordre," with the crucial periods of change being the 1830s to 1840s and the 1920s to 1940s. This was certainly modernization; but not really that proposed by the "violence au vol" hypothesis.

[104]



[105]

### 3. FACTORS OF DIFFERENTIATION

Thus far, the paper has discussed only overall, Quebec-wide figures. Yet the experience of criminalization was far from homogeneous, both across Quebec and within Quebec society. For



example, even in the 1950s, there was a world of difference between criminal prosecution in the city of Montreal, with its hundreds of thousands of convictions each year, and in the rural district of Kamouraska, east of Quebec City, with its 138 convictions for summary offences (and none for indictable offences) in 1955. And whereas of about 750 people fined for mainly regulatory offences in Montreal's Court of Weekly Sessions of the Peace between 1779 and 1795, only 24 were women, among the 228 people committed to Montreal's House of Correction between 1822 and 1825, mainly for disorderly conduct, 145 were women. The effects of geography and gender on criminal prosecution are thus clear; and the remainder of this paper concentrates on these two factors of differentiation. There were obviously other broad factors that influenced criminal prosecution, such as social class, ethnicity and age. However, the sources used for this study allowed for long-term analyses only of the effects of geography and gender; analysis of the other factors will have to wait for further studies using different sources.<sup>31</sup>

### 3.1 The Geography of Justice

An oft-debated hypothesis of criminal justice history is the link between criminal prosecution and urbanity.<sup>32</sup> In studies of both Jean-Marie Fecteau and myself on Quebec in the 18th and early 19th centuries, the link is clear: urbanites were many times more likely to find themselves before the criminal courts than their rural counterparts.<sup>33</sup> For that period, one might look to factors such as the limited presence of the state in the countryside, poor transportation networks, rural cultural autonomy, and the like. But what of the period from the mid-19th century onwards, when justice in Quebec was decentralized into twenty or so judicial districts and when the state increasingly penetrated the countryside?

As a general indicator of the link between urbanity and justice, I've broken down the province into four groups of judicial districts: the District of Montreal itself, increasingly consisting mainly of the city of Montreal and its urban periphery; the District of Quebec, including Quebec City but [106] also a large rural hinterland; the three districts containing the three next largest cities, Trois-Rivières, Hull and Sherbrooke; and finally, the other districts, which remained largely rural up until the mid-20th century.

Broken down this way, as in Figure 8, conviction rates do indeed demonstrate eloquently the link between urbanity and criminal prosecution. Up until the 1920s, the District of Montreal's conviction rate

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<sup>31</sup> For an examination of relative influence of class, ethnicity, geography and gender in shaping the experience of the criminal justice system for a more focussed period, see my article "The Biases of Ancien Régime Justice".

<sup>32</sup> Compare for example Denis Szabo and Marc Leblanc, "Vie urbaine et criminalité", *Recherches sociographiques* 9(1-2)(1968): 67-81 with Eric A. Johnson, *Urbanization and Crime: Germany 1871-1914* (Cambridge: Cambridge University Press, 1995).

<sup>33</sup> Fecteau, *Un nouvel ordre des choses*; Fyson, "The Biases of Ancien Régime Justice".

was consistently double or triple that of the District of Quebec, and many times that of the rural districts. With the growth of traffic-related offences from the 1920s, along with the concentration of vice-related prosecutions in the city of Montreal, the District of Montreal's rate shot up, reaching almost ten times that of the District of Quebec in the mid-1940s, while the District of Quebec's rate remained stagnant and even declined; both it and the other districts with larger cities would only catch up at the very end of the period. In the more rural districts, which still made up 40% of the province's population in the 1950s, the conviction rate remained tiny; only in the 1960s does there seem to have been the beginnings of a significant increase. The inference is clear: in Quebec at least, there was most certainly a link between cities and crime, and more specifically, between large cities and crime; and the rhythm of criminal prosecution was place-dependant. Figure 8 also suggests that the late 19th-century decline was reproduced throughout the province. This weakens the case for an explanation based on the sort of concerted change in practices by police and courts that has been suggested for England, given that the justice system in Quebec was by this time very decentralized.<sup>34</sup>

Overall, it is clear that generalizations from Quebec-wide prosecution statistics can be misleading. As well, studies of Montreal alone can tell us little about the experience of criminal justice elsewhere in Quebec.<sup>35</sup> This can be illustrated by considering the break-down of offences outside of Montreal, as presented in Figure 9 (which, due to the limitations of *Criminal Statistics*, only extends to 1940). The pattern of offences outside of the metropolis remained fixed in a 19th-century mould right up until 1940, with the continued importance of public order offences, no striking increase in morality-related offences and only the very beginnings of traffic-related prosecutions. Even this figure is somewhat misleading, since it lumps together districts with large cities (such as Quebec and Hull) and largely rural districts. As Figure 10 shows, the pattern of prosecution in largely rural districts followed its own logic, most notably with the much greater importance of offences involving private victims (offences against the person and offences against property) and, interestingly, the very

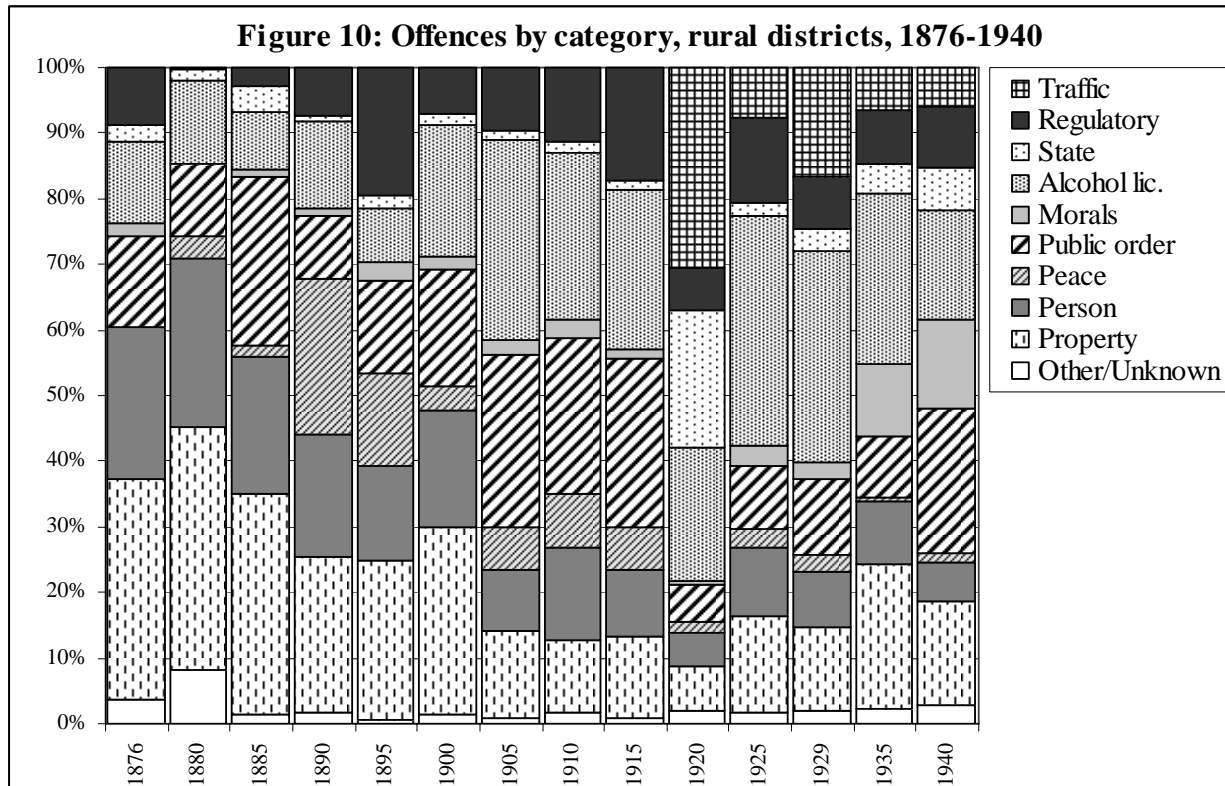
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<sup>34</sup> See for example Taylor, "The Politics of the Rising Crime Statistics of England and Wales" and "Rationing Crime" and for a contrary view, pointing to decentralization as an argument against the concerted manipulation of criminal statistics, Morris, "Lies, Damned Lies and Criminal Statistics". Quebec's justice system up until the 1950s at least was far more decentralized than England's.

<sup>35</sup> With some notable exceptions, such as André Cellard's article on criminality in Hull ("Le petit Chicago"), virtually all studies of crime and criminal justice in Quebec from the 1840s to the 1950s have concentrated on Montreal.



[109]



[110] strong presence of convictions for the illicit production and sale of alcohol, not only under the stricter government regulation imposed from the 1920s, but even before. If we recall as well the importance of labour disputes in nineteenth-century Quebec City, or the alcohol-related prosecutions noted by André Cellard for Hull, linked to its border-town status, it becomes evident that when seeking to understand what influenced the pattern of criminal prosecutions, local factors may be as important as broad societal transformations such as urbanization and industrialization.

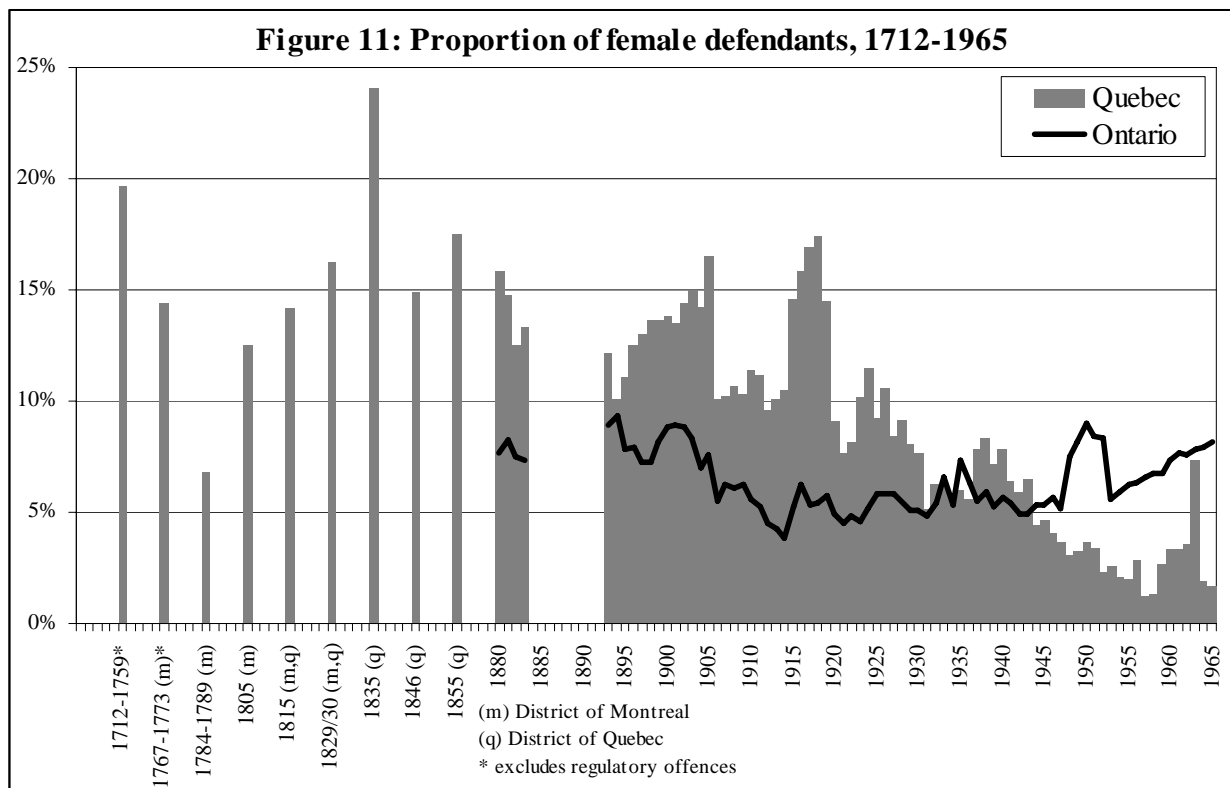
### 3.2 The Effects of Gender

If geography biased the experience of criminal justice, so too did gender. Historians have consistently noted the relative absence of women both as defendants and as plaintiffs before the criminal justice system;<sup>36</sup> and Quebec was no exception. Indeed, compared to Europe, women in 18th and early 19th-century Quebec were relatively less present in the criminal justice system. As Figure 11 shows, with one exception, women in Quebec in the years sampled never made up more than 20% of defendants. There was perhaps something of a decline across the Conquest, to about 15%, but the

<sup>36</sup> Among many others, see for example Malcolm Feeley, "The Decline of Women in the Criminal Process: A Comparative History", *Criminal Justice History* 15(1994): 235-274 or, on Quebec, André Lachance, "Women and Crime in Canada in the Early Eighteenth Century, 1712-1759", in Louis A. Knafla (ed), *Crime and Criminal Justice in Europe and Canada: Essays* (Waterloo: Wilfrid Laurier University Press, 1985): 157-177.

proportion remained comparable, and was similar to that in other colonies such as Nova Scotia.<sup>37</sup> With some variations, women continued to make up something around 15% of criminal defendants in Quebec through to the end of the nineteenth century. However, at least from the 1880s to the 1920s, women made up a significantly greater proportion of defendants in Quebec than in neighbouring Ontario. This fits well with the now widely-accepted hypothesis of a greater public presence of Quebec women in the 19th and early 20th century than conventional stereotypes suggest. From the 1920s, however, the proportion of female defendants in Quebec declined sharply. By the 1950s, their share was far smaller than in Ontario, and the criminal justice system was focussed almost exclusively on men. One might be tempted, as has been suggested for Canada as a whole, to link this "vanishing female" phenomenon to a shift in the general place of women in society.<sup>38</sup> However, for the 20th century, it does not fit with the increasingly accepted view that Quebec society from the 1920s onwards was in fact modernizing rapidly, and that Quebec women had an increasing public presence. And in fact, the decline in female defendants was

[111]



[112] linked more to the changing prosecution rates of the specific types of offences for which women were mainly prosecuted.

<sup>37</sup> Jim Phillips and Allyson N. May, "Female Criminality in 18th-Century Halifax", *Acadiensis* 31(2)(2002): 71-96.

<sup>38</sup> D. Owen Carrigan, *Crime and Punishment in Canada, A History* (Toronto: McClelland and Stewart, 1991): 440-480.

As Figure 12 shows, women in 18th century Quebec were prosecuted above all for theft and interpersonal violence; their general exclusion from property-holding meant that unlike men, regulatory offences played little part in their being brought before the courts. As with men, a major shift occurred in the 19th century, with the rise of morality and public-order offences; for women, in fact, these types of offences were closely related, since many of the women charged with apparent public order offences such as "loose, idle and disorderly" were in fact being arrested for prostitution. This shift thus represented a move towards the repression of female deviance that focussed on women's sexuality as much as on their unrespectable public presence. The shift also occurred earlier than for men: already in the 1810s, public order and morality offences represented perhaps half of all prosecutions of women, whereas for men, this would only begin to be the case in the 1830s and, especially, the 1840s.

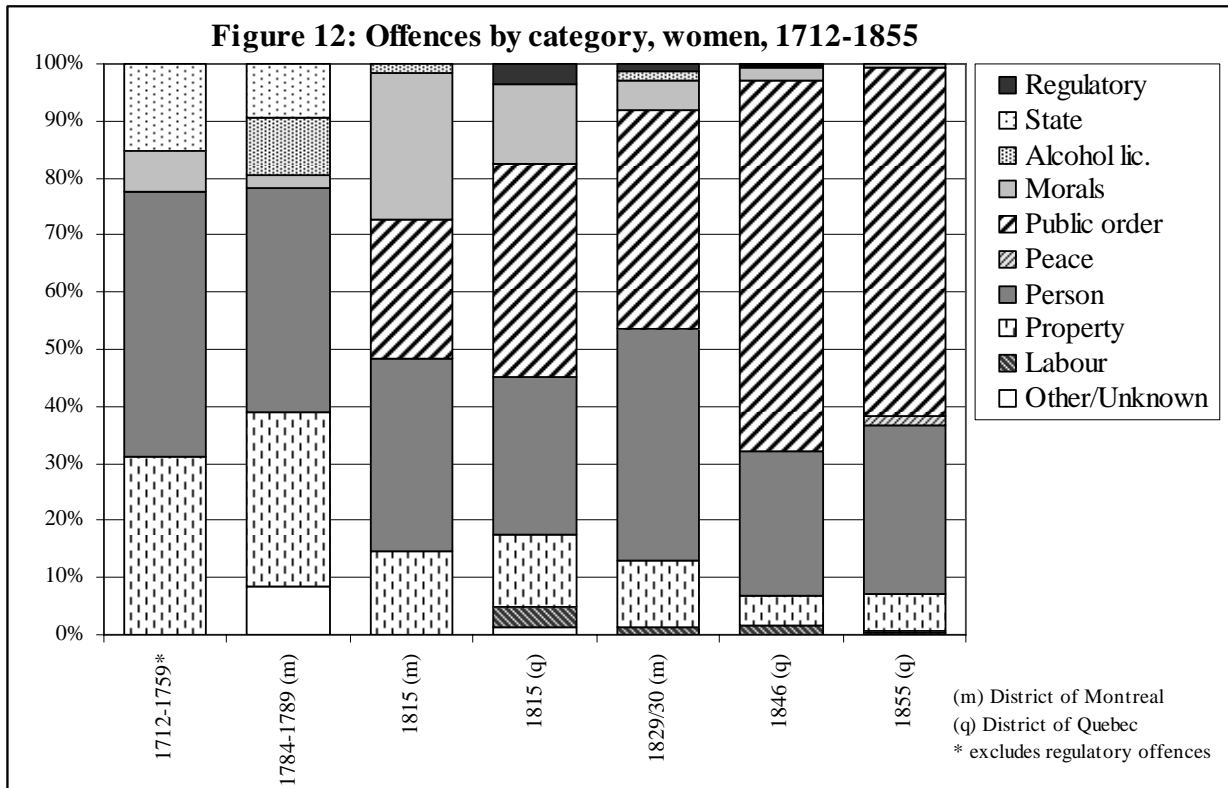
As Figure 13 shows, this particularly female pattern continued and intensified in the later 19th century, and until the 1940s, public order and especially public morality offences dominated the prosecution of women.<sup>39</sup> But from the late 1940s, the pattern of women's offences very quickly came to resemble that of men. There was both a sudden and rapid decline of the importance of morality and public order offences and a dramatic increase in the proportion of traffic-related offences, though the domination of the latter came perhaps a decade later than for men. Evidently, more women were driving, and thus being prosecuted for traffic offences.

The overall decline in the presence of women from the 1870s onwards can thus be attributed directly to shifts in the prosecution of specific types of offences: morality, public order and traffic. If we only consider other offences, such as those against property and the person, the proportion of women did drop dramatically from the early part of the 19th century to the 1870s; but from the 1870s to the 1950s, there was no particular trend, with the proportion of women fluctuating between 4% and 8%. Rather, the overall decline in the proportion of women in the 1920s and 1930s resulted partly from the increase in traffic-related offences at a period before women drove; and the further decline, in the 1940s and 1950s, was likely a reflection of the sudden relative decline of public-order and, especially, morality offences. Still, as with the effects of geography, far more work is needed before we can fully understand the relationship between gender and the judicial prosecution of crime.

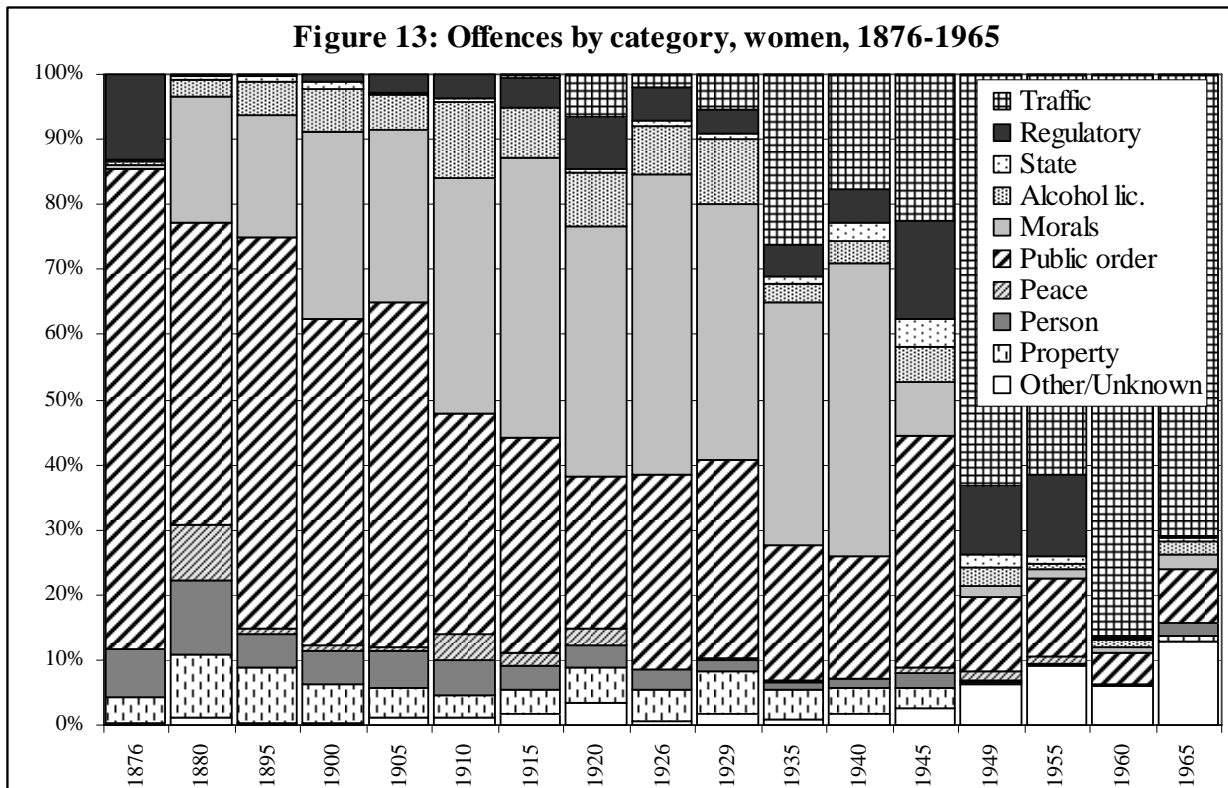
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<sup>39</sup> See Mary Anne Poutanen, *'To Indulge their Carnal Appetites': Prostitution in Early Nineteenth-Century Montreal, 1810-1842* (Ph.D., Université de Montréal, 1997); Tamara Myers, *Criminal Women and Bad Girls: Regulation and Punishment in Montreal, 1890-1930* (Ph.D., McGill University, 1996); and Andrée Lévesque, *Résistance et transgression: études en histoire des femmes au Québec* (Montréal: Éditions du Remue-ménage, 1995).

[113]



[114]



[115]

## CONCLUSION

Given the preliminary nature of this paper, any conclusions would be premature. Instead, I'll simply recall some of the major interpretive points raised thus far that call for further exploration. First, while the overall upward trend is clear, there has been no simple progression of criminal prosecution or criminal conviction in Quebec since the 18th century. The rates have both risen and fallen, in patterns that generally still need to be explained. Even during the rapid rise in convictions in the 20th century, regular peaks and troughs, as in the 1920s or the 1950s, should caution us against any over-hasty assumptions about the steady increase in the criminalization of society. Second, while the penal norm in Quebec has in general followed the overall trends of Canada and of other western countries, it has also had its own internal rhythm. The consistently lower conviction rate than in Ontario, at least from the 1880s; the concentration on morality-related cases in the 1920s and 1930s; the more rapid decline in the criminality of women in the 1950s; all suggest the importance of seeking explanations not only in the general social trends that have shaped western society since the 18th century, but also in factors specific to Quebec society (though of course avoiding any descent into exceptionalism). And finally, throughout the history of Quebec, the penal norm, and thus the experience of criminalization by the courts, has been heavily determined by factors such as place and gender, and no doubt as well, ethnicity, class and age; all of which should give us pause before we generalize either from overall figures or from geographically limited studies.

## Appendix - Methodology

A full discussion of all the methodological issues involved in putting together the statistics presented in this paper would far exceed the space available; as a result, what follows is relatively summary and undoubtedly incomplete. I have also eschewed any discussion of related but secondary issues such as the construction of population figures for Quebec and for the different judicial districts.

### 1712-1759

Annual averages for two periods (the 1710s and the 1750s) were calculated on the basis of the total of complaints for more serious cases for 1712-1723 and 1748-1759 (Lachance); of convictions only for police cases for 1715-1720 and 1750-1754 (Dickinson) which, as they concerned Quebec City only, were then extrapolated (on the basis of population) to include Montreal and Trois-Rivières; and of complaints for assault and other potentially penal offences that were dealt at the preliminary stage, before reaching the stage of formal penal proceedings, for 1749-1751 (Garneau) and which, as they



concerned the district of Montreal only, were extrapolated to the entire colony. These estimates undoubtedly fall somewhat short of the [116] actual number of cases brought before the justice system. Thus, they do not include penal cases brought before seigneurial courts, although these were relatively uncommon. For police cases, the numbers cover convictions only, thus excluding cases where only a warning was issued or where the case was dismissed, and generally do not include the rural areas of the colony, though Dickinson suggests that the number of police cases outside the cities was probably quite low. And assault and other cases dealt with at the preliminary stages of the process are only included for the second period, though Jean-Philippe Garneau has suggested to me that the practice was probably less common in the earlier years. Nevertheless, the figures presented do give a general order of magnitude.

### 1779-1835

Annual averages were calculated for a number of sample years or periods (chosen for source availability) on the basis of the total of all penal cases, taken from a wide range of sources: most notably King's Bench indictments, complaints destined for Quarter Sessions, Weekly and Special Sessions cases, and complaints dealt with summarily out of sessions through the imposition of peace bonds, summary fines or summary imprisonment.<sup>40</sup> Data was available only for the two main judicial districts, Quebec and Montreal, and not always for both. While data for the higher courts and for the District of Montreal was based largely on direct consultation of the judicial archives and other sources, data for the lower courts for the District of Quebec was based mainly on complaints as described in the *Thémis 2* database, by Archiv-Histo, which describes each document or case-file; while the database seems relatively accurate, it may contain a few errors. For some years, Weekly Sessions figures were based on lists of fines imposed, with the total number of complaints extrapolated by assuming a maximum conviction rate of 70% (based on the evidence of the few remaining registers and complaints files). In general, wherever possible, calculations were on the basis of the number of defendants, so that if a complaint or charge involved more than one defendant, it was counted more than once, and obvious multiple charges for the same offence were eliminated; however, given the vagaries of the sources, this was not always possible. As [117] with the pre-Conquest period, the numbers presented are minimums, with actual

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<sup>40</sup> The main sources are: for the King's Bench, the indictments in ANQQ TL18, as kindly provided by Jean-Marie Fecteau, supplemented by the registers in ANQM TL19 and in the Baby collection (Archives de l'Université de Montréal, P58), registers 57 and 74, by the accounts of the Attorney General in C.O. 42/131, by the figures in Fecteau, *Un nouvel ordre des choses* and by the list of indictments in NA RG4 B16 volumes 10-11; for the Quarter Sessions cases and summary judgements out of sessions, ANQM TL32 (dossiers and registers) and ANQQ TL31 S1 (dossiers, as described in the *Thémis 2* database); for the Weekly Sessions, various returns of fines mainly scattered through NA RG4 A1 and NA RG1 E15A, along with extant documents in ANQM TL36 and in ANQQ TL31 S1 (based on the descriptions in the *Thémis 2* database) and ANQQ TL999; for summary commitments, the gaol and House of Correction registers and calendars in NA RG4 B21, ANQQ E17 and ANQM E17, along with scattered other documents.

cases probably being somewhat higher. Apart from the obvious problems of the completeness of the sources consulted, especially when calculations are based on case files rather than on registers, some aspects of the criminal justice system largely escaped the documentary record. Most notably, though rural justices of the peace imposed sanctions such as fines and peace bonds out of sessions, there is no way of estimating the number of these cases, as few kept any records; while the practice was rare in the 18th century, indications are that especially in the District of Montreal, with its extensive rural population and active magistracy, it became increasingly common in the 1810s and 1820s, and may well have added a third or even a half more to the total number of penal cases. Still, once again, the overall figures are likely fairly indicative of the general order of magnitude and of general trends.<sup>41</sup>

### 1846-1870

The figures for the period 1846-1870 are based mainly on various scattered official statistical accounts of judicial activity prior to 1860 and, from 1860, on the series *Judicial Statistics*, which compiled the activity reports of each jurisdiction in Quebec, the whole supplemented by a few limited incursions into the judicial archives.<sup>42</sup> Like all early statistical accounts, the early attempts at statistical tabulation of prosecutions are often difficult to interpret, even leaving aside the problems of the social construction of statistical knowledge.<sup>43</sup> For example, a table in NA RG4 C1, vol. 345, file 362, appears promising, as it purports to present "Statistics of Crime in the City of Montreal" for 1853, but it actually only concerns offenders arrested by the Montreal City Police and is therefore incomplete; among others, it does not include those arrested by the Water Police, it lists no arrests for assault, which were presumably done by bailiffs or constables acting privately for the injured party, and includes only a fraction of the regulatory cases brought before the Recorder's Court (those in which the City Police were [118] directly involved as plaintiffs). Even *Judicial Statistics*, in theory a comprehensive and uniform series, presents significant methodological problems that have yet to be fully explored and that limit its usefulness. Thus, in many years the returns are incomplete, missing specific major courts such as Recorders or Police Magistrates of Quebec City and/or Montreal; and consistently, many justices of the

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<sup>41</sup> For further discussion of some of the methodological issues, see Fyson, *Criminal Justice, Civil Society, and the Local State*: 271-281, though my understanding of the sources has progressed since then; my forthcoming book on criminal justice in Quebec and Lower Canada will contain a much fuller discussion of these issues.

<sup>42</sup> Apart from *Judicial Statistics*, published annually from 1860 to 1929, both in the *Quebec Official Gazette* and as a stand-alone publication, the main sources used were "Statistics of Crime and Offences in the City and District of Quebec" for 1846 (CIHM 53313); "Statistics of Crime, Quebec" for 1855 (ANQQ E17 1960-01-036/1692); *JHAPC* 1849 Appendix XXX and 1854-55 Appendix AAA; various registers scattered through ANQQ E17; and ANQQ TL31 S1 (as described in the *Thémis 2* database, apart from justices' returns of fines for select years, which were consulted directly). There is much work left to be done in this period, especially the 1840s and 1850s.

<sup>43</sup> See notably the work of Bruce Curtis, for example "The Canada 'Blue Books' and the Administrative Capacity of the Canadian State, 1822-67", *Canadian Historical Review* 74(4)(1993): 535-565 or *The Politics of Population: State Formation, Statistics, and the Census of Canada, 1840-1875* (Toronto: University of Toronto Press, 2000).

peace filed no returns (though these were most likely justices who were inactive). As well, some tables in the series are unclear. For example, the exact meaning of two crucial categories in the tables concerning justices of the peace, "plaints" and "judgements", is murky, and though I have taken them to mean, in general, "complaints" and "convictions", different justices may have interpreted them differently, as they may well have done the provision that they were only required to report "prosecutions for offences of a public nature" (which might or might not extend to matters such as assaults, labour disputes, and the like).<sup>44</sup> Likewise, the tables concerning the activity of District Magistrates are confusing and seem to have been constructed differently by different magistrates' clerks. As well, there may be some overlap between different courts, notably between justices of the peace and other courts, since many complaints before justices were sent on for trial before other courts. For the moment, the figures should be taken as best guesses, subject more than for any other period to future revision as more work is done on criminal justice in the period.

## 1876-1965

For the period from 1876 to 1965, a relatively more homogeneous series of criminal statistics is available, compiled by the federal government: *Criminal Statistics*.<sup>45</sup> As with all statistical series, this series too has its problems, which have been explored in detail by Paul Reed and Eve Kassirer.<sup>46</sup> Among others, and apart from the problems already discussed in the text, the series only provides information on accusations for all offences up to the early 1880s, with only indictable offences covered thereafter, so that from 1884, the series is really only useful for following convictions; information on gender is often missing before 1893; and quite evidently in a few years at the beginning, some smaller judicial districts made no returns. Again without being able to go into all the details, I've tried to take [119] into account as many of these problems as possible; thus, for example, my use of broad categories somewhat palliates the changing definition of specific offences (much as Reed asserts for the broad categories of indictable offences used in *Historical Statistics of Canada*); and when the series changed from a charge-based to an accused-based count in 1949, I continued to use the charge-based tables that were provided for comparative purposes. Other problems pointed out by Reed and Kassirer are less important for the purposes of this paper. Thus, for example, the exclusion of juveniles from the overall statistics from

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<sup>44</sup> As well, given the ambiguous language of the relevant legislation (for example, *Consolidated Statutes of Lower Canada* (1861), c.111, s.1, ss.9), it is unclear whether certain cases may have been counted twice, once at first judgement and once at judgement for the recovery of fines imposed by the prior judgement.

<sup>45</sup> For the years 1876 to 1921, published in the Sessional Papers of the Parliament of Canada (between 1880 and 1922), first by the Department of Agriculture, then by the Department of Trade and Commerce (eventually, the Dominion Bureau of Statistics); for 1922 onwards, published only as a separate publication, by the Dominion Bureau of Statistics.

<sup>46</sup> Paul Reed and Eve Kassirer, *Judicial Statistics As History: A Case Study* (Ottawa: Statistics Canada, 1974); see also Reed's introductory notes to "Section Z: Justice", in *Historical Statistics of Canada*.

1922, though of great significance in itself, had little impact on the overall trends, because the number of juveniles was relatively small. And the problems with changes back and forth between person-based and charge-based counting and with the counting of multiple charges for a single individual, though important for certain crimes, had less effect on the overall trends because they mainly only affected indictable offences, which were a small fraction of the overall number of offences; at any rate, a close examination of the years across which counting changes are said to have been made shows no particularly strong variation even with indictable offences. Finally, the evolution of the overall number of convictions in *Criminal Statistics* follows fairly closely that which can be derived from *Judicial Statistics*, if one takes into account the omissions in the latter, so that each source confirms the other. Given the sheer bulk of the series, which every year ran to over a hundred pages, I only collected yearly figures for the total numbers of convictions, for the gender of those convicted and for certain specific offences; for more detailed analyses, such as breakdowns by offence or by region, I used a five-year sample, modified in one or two instances to take into account particular source problems.