7

"To shudder at the bare recital of those acts": Child Abuse, Family, and Montreal Courts in the Early Nineteenth Century

IAN C. PILARCZYK*

> The case of Emelie [*sic*] Granger was tried for cruelly beating and ill-treating a female child. The offence was clearly brought home to the defendant by one single witness, namely, the child upon whom the outrage was committed. The child, an orphan only nine years of age, gave her evidence in a clear and concise manner. The acts of violence to which she swore … are such as would cause the most hardened character to shudder at the bare recital of those acts.
>
> – *Montreal Transcript*, 14 November 1840

The trial of Emilie Granger, charged with abusing her nine-year-old niece, was witnessed by an overflow crowd in 1840. The spectacle of a young girl testifying against an abusive relative was rare enough to guarantee a rapt audience.[1] Cordille Levesque was under the guardianship of her aunt and uncle, but her aunt's violent and capricious temperament had taken a toll on the young girl. Her plight came to the attention of a neighbourhood physician called in to treat her while bedridden. Horrified at what he saw, he had Cordille removed to board with another relative and filed a complaint against Granger on a charge of "aggravated assault and battery on a child of ten years": "Je trouvai la susnommé [Cordille] tellement meurtrie dans le bras gauche à l'articulation du coude qu'il étoit impossible de s'aperçevoir s'il était cassé et l'épaule droite est encore si enflé que je ne puis pas décider actuellement dans quel état il est. J'ai aussi aperçu plusieurs coups sur la tête et sur le corps, ceux de la tête pourait cause une abcès."[2]

After one beating left her covered in bruises, Granger allegedly told her niece, "Si tu ne dit pas á ton oncle que tu as tombé eu bas de l'escalier je te tuerai."[3]

Granger's threats ultimately did not dissuade Cordille from swearing out an affidavit before a local justice of the peace.[4] Five months later, a grand jury of the Court of Oyer and Terminer and General Gaol Delivery found a true bill against Granger for abusing her niece.[5] At trial, Cordille was the principal prosecution witness, one newspaper observing that she delivered her testimony "in a clear and remarkably intelligent manner considering her youth."[6] Newspaper coverage summarized rather than transcribed her testimony, but it was clear that the evidence presented was considered shocking to period sensibilities. Her aunt, described as an otherwise respectable woman, had been "in the habit of practicing every description of cruelties on her person, such as beating her with sticks and other offensive weapons; locking her up in the cellar and in cupboards for hours together," reported the *Montreal Herald*.[7] The *Montreal Gazette* reported that Granger had been "in the habit of often cruelly and inhumanely beating her, and on some occasions, of inflicting such wounds upon her as to cause the blood to flow profusely."[8] Cordille's treating physician was among the Crown witnesses, repeating the claims made in his original complaint that he had considered her life to have been "in the most imminent danger" as a result of her mistreatment.[9]

It is unknown what testimony Granger's counsel presented, although it clearly proved unavailing. One account records that her attorney attempted to establish "certain palliative facts," but since the events in question had "occurred at different periods from those laid in the indictment … [they] could have no relation to the injury done to the orphan child."[10] Whatever the nature of the evidence, the jury deliberated for only a few minutes before returning a guilty verdict.[11] Granger's status as a respectable woman did not insulate her from prison any more than it had from prosecution, as she was sentenced to three months' incarceration.[12] Indeed, in such cases judges may have been horrified by such unladylike conduct and hence even more prone to censure it.[13]

Granger's prosecution was noteworthy for the time, certainly, and equally certainly child abuse prosecutions were far from common. Then, as now, the family sphere could be a dangerous place for infants, but Granger's conviction reflected that when a family member's treatment of a child posed a serious risk to health, Montreal courts of this

period were prepared to intervene. The fact that she was Cordille's aunt, rather than mother – or, more to the point, her father – may well have helped tip the scales in favour of intervention.

This chapter discusses the phenomenon of child abuse prosecutions in the judicial district of Montreal during the period 1825–50, through examining all extant judicial records for courts having criminal jurisdiction, supplemented by review of all available period newspapers. Thirty-three cases against twenty-eight relatives and guardians were identified in which abuse was alleged by parents and guardians against the children in their care. Despite the law's traditional deference to parents and guardians in how they chose to discipline their children, such cases indicate that society and the legal system did impose limits on parental treatment of the Crown's youngest subjects, meting out sanctions in cases of the physical and sexual mistreatment of children. During a period that predated statutory protections and institutions devoted to promoting child welfare, stories such as that of Cordille Levesque contribute to an understanding of changing social patterns, reflecting the tension between deeply held paternalistic beliefs and the tentative steps by courts to delineate limits on parental authority. This study also augments a subject that has received comparatively less attention than other examples of domestic violence, such as spousal abuse, and moreover does so for a period under-examined compared to the second half of the nineteenth century.[14] A brief history of child protection as well as the legal regime under which the courts operated will be offered, followed by an examination of prosecutions of family members and guardians for a variety of offences including assault and incest.

Childhood in the Nineteenth Century

Historically, the Western tradition viewed children rather more as chattel than as individual rights-holders. Historically, also, the most dangerous place for children frequently has been within the family.[15] In England, the courts of Henry I intervened when a child was killed by anyone other than a parent, but under the common law, parents (notably, fathers) exercised largely unfettered authority over their children.[16]

Protection of children in Western jurisdictions before the late nineteenth century was not unknown, however. For example, in 1641 the Massachusetts Bay Colony enacted *The Body of Liberties*; a very progressive legal code for its time in many ways, it proscribed parents from

exercising "unnatural severity" towards their children, and accorded children legal redress in the event their parents did so.[17] Still, parents made ready use of corporal punishment in correcting children, and the term *unnatural severity* was sufficiently ambiguous to allow for wide latitude in judicial interpretation.

Changes in the nature of punishment in private eventually led to changes in modes of public punishment. By mid-century in the United States, corporal punishment was eliminated from many public schools.[18] Reform movements advocated the abolition of slavery, capital and corporal punishment, and animal cruelty during the mid-Victorian era, all of which reflected a growing revulsion towards physical abuse directed against sentient beings in positions of subordination or helplessness.[19]

The 1830s onwards marked a period of institution-formation, designed to assist blind, deaf, mentally impaired, orphaned, or disadvantaged children.[20] Philanthropists and social crusaders became increasingly involved with children's issues, establishing schools and orphanages, facilitating emigration of neglected children to British North America and elsewhere, and forming societies to combat child abuse and neglect.[21]

Some historians have pointed to this period as marking a turning point, reflective of a change in the conception of childhood itself.[22] Along with that greater concern for the sanctity of childhood was a growing concern about the family unit, particularly later in the century.[23] Despite a growing concern with children's developmental needs, they remained a prominent part of the workforce throughout the nineteenth century (and beyond) in Western jurisdictions, during which they were routinely exploited, maimed, and even killed by the cogs of industry. The New England states began to pass child labour laws in the 1840s.[24] In all industrialized countries of that period, the perceived need to regulate child labour was evident. In 1835, 43 per cent of the workers employed in the English cotton industry were minors.[25] It was not until the latter part of the century that legislation was passed that regulated working conditions for minors, serving to ameliorate the worst abuses of the Industrial Revolution.[26]

The rise of the anti–child labour movement contributed to the growing societal awareness of children's issues. However, as has been suggested in the English context, it may also have contributed to anti–child cruelty crusades in another way: "Correspondingly, the need to shield the young from parental misuse became palpable because late Victorian

children spent more time at home, in closer contact with their mothers and fathers, than did working children two generations earlier."[27]

Scholars have offered contrasting views of whether Anglo-American society and law put meaningful limits on child abuse and neglect in the antebellum period, with perhaps the majority view being that parents were seldom constrained for any behaviour short of causing permanent injury or death, and that society expended little effort to define and standardize terms such as *cruelty*, *immoderate correction*, and *neglect*.[28] Other scholars have concluded that there were limits on parents' treatment of their children, regardless of the promulgation of statutory or other protections.[29] The reality is that there were few concerted, systemic attempts to address child abuse in the first half of the nineteenth century. In the United Kingdom, for example, public discussion of children's issues became more noticeable in the 1830s, prompted by the anti-slavery crusade, even if other issues took primacy.[30] As has been famously stated about nineteenth-century English society, it "diminished cruelty to animals, criminals, lunatics and children (in that order)."[31] Indeed, the SPCA was founded in 1824, sixty years before a similar organization devoted to child welfare.[32] In Montreal of this period, abusing an animal could lead to fines and incarceration.[33]

Despite the lack of concerted social movements in that direction, in most Anglo-American jurisdictions there were limited judicial constraints on child abuse and neglect. These may have been inconsistent, fitful, and sporadic, but courts as a general rule certainly did take cognizance of the worst excesses committed by parents and guardians. As has been noted about New England, parents were held to account for "overstep[ping] the community's standards for abuse or neglect." Newspapers reveal that parents who abused their offspring were considered "unnatural" and the cruelty as "horrific" or "barbaric," echoing language used in Montreal of this period.[34] It is perhaps most accurate to say that for most Western jurisdictions, child abuse and neglect was not yet a pressing societal concern and was addressed inconsistently at best – but at some times, and in some places, courts sanctioned parents for such acts.

Prior to the 1830s, policies towards children were marked primarily by spiritual concerns, or reflected the state's preoccupation with population growth, drains on the public purse, crime, or manpower needs. In later decades another concern was to surface: an awareness of the need to protect children as they matured to adulthood.[35] In terms of statutes that could be more properly characterized as "child protection"

legislation, apprentices were the first group to be accorded legislative protection in the nineteenth century. In 1851, the English Parliament provided for three years' incarceration on conviction for wilful neglect or malicious assault on an indentured child.[36] Two years later, Parliament enacted *The Act for the Better Prevention of Aggravated Assaults upon Women and Children*.[37] However, not only was that act not intended to address abuse within the family, but prosecutions brought under it were almost exclusively for violence against women.[38] A law allowing legal proceedings to be brought against parents for child neglect was not enacted until 1868.[39] The first piece of Canadian legislation specifically addressing child abuse outside of the labour context mirrored the 1853 U.K. act and was adopted for the Province of Canada in 1858.[40]

With respect to the Quebec experience, the colony of New France (as Quebec was known before the Conquest) was established on rigid, legally reinforced family and hierarchal relationships. Children and wives were subject to the *puissance paternelle* of the male head-of-household, enshrined in the Coutume de Paris and reflective of the fact that to French society the "patriarchal family was the ideal social unit."[41] Courts in New France gave wide latitude to men who beat their wives and children, intervening only in cases deemed notorious or life-threatening. Private complaints, accessible to wives who sought *séparation de corps* from husbands on grounds such as brutality, profligacy, or mental aberration were of no use to children who were bereft of legal standing.[42] The rigidity of French practice was seemingly little different in Quebec after the Conquest, and it has been noted that "severe treatment of children continued in early nineteenth-century Canada, which was largely composed of immigrants from traditional rural communities in the British Isles."[43] The civil law in Lower Canada enshrined parents' rights to physically discipline their charges, deeming acts prosecutable only if they resulted in permanent injury or risk of death.[44] The Civil Code of 1866, for example, codified the hegemony of patriarchal authority over children, including the right of physical correction.[45]

By this period, however, the historical record suggests that the reality was more nuanced. This period reflected the beginning of social reform in Quebec and Canada, with a growing awareness of the importance of institutions better adapted to serve children. Canadian lawmakers began discussing reformatories and corporal punishment of children by 1843.[46] A decade earlier, social reform began in earnest in Quebec.[47]

Legislation obviously could be only part of the solution.[48] However, Montreal courts of the period were already imposing limits on the ex-

ploitation and mistreatment of the vulnerable. In the context of master-servant law, for example, employers clearly had legal recourse when employees violated the terms of their employment.[49] But so, too, did servants: apprentices, domestics, and others sought redress in local courts against their employers for violations of the duties owed them. Servants, including minors, sought cancellation of indentures and recovered damages for such offences as unlawful withholding of wages, wrongful termination, physical mistreatment, and contractual breach – and moreover were frequently successful.[50]

Courts were also accessible forums for allegations of spousal violence. Montreal courts dealt with such complaints against both husbands and wives in significant numbers during this period.[51] As Smith has noted, "Intimate violence was a phenomenon that, even if it was not coming under closer censure and control, was certainly being monitored and prosecuted within a larger cultural world in which other forms of violence were losing their former claims to legitimacy."[52] Spousal assault prosecutions were magnitudes more frequent in Montreal of this period; no doubt there were many pragmatic explanations for this, including that society had moved further along the spectrum of intolerance towards spousal violence than for child abuse.[53] Indeed, one of the main social movements of this period – the temperance movement – effectively depicted the nexus between alcoholism and domestic violence, although wives remained the primary focus.[54] Still, accounts of child abuse and neglect did appear in pre-Confederation temperance publications of the period, and Montreal was at the vanguard of the movement.[55] And although only sporadically, parents were potentially liable for assault and battery, manslaughter, and related crimes for ill-treating their children.[56]

The period 1825 to 1850, then, saw the genesis of movements that were antecedents to the anti–child cruelty crusades of later decades, years that contributed – at different paces, and with differing efficacy – to the reformulation of the authority of the paterfamilias.

Child Abuse in Montreal

The existence of child abuse and neglect in Montreal during this era is somewhat paradoxical, as the issues were heavily veiled from public scrutiny while the phenomenon was nonetheless quite widespread. As has been stated, that period was many years removed from the formation of child protection organizations in any Western jurisdiction,

Quebec included, and there were no statutory provisions specifically designed to deal with child abuse or neglect. In view of a strong deference to family authority and privacy, a pervasive ethos of paternalism, a conservative family tradition, and the fact that children did not have ready access to the legal system, the relative paucity of child abuse prosecutions – hampered further by missing records – should not be surprising.[57] Legal sources should therefore be seen as impressionistic rather than statistically reliable. While myriad factors militated against the legal system taking cognizance of such cases, one need not dig far below the surface to see that child abuse nevertheless did receive judicial attention, and also that many possible cases were never prosecuted.

Accounts of infant bodies found in and around Montreal were a constant reminder of infanticide and the high infant mortality rates common to the period. At the same time, foundling hospitals struggled to keep up with a steady stream of abandoned infants while older children were left to fend for themselves. In the fall of 1829, for example, a ten-year-old child stricken with smallpox was found in the suburbs; his mother having died, his father and other remaining relatives deserted him. How could a person be "so lost to every feeling of humanity as to abandon a child in such a situation to death, by disease or hunger, in a city where a Hospital is open for the reception of such unfortunates?," railed the *Montreal Gazette*.[58] Sadly, child abandonment was not uncommon, and these accounts were reported with a frequency that is shocking to modern-day sensibilities. A pronounced disconnect is apparent, however, between the strong rhetoric of condemnation and the anaemic legal response. Abandonment, for all its moral turpitude and potential lethality, was not a prosecutable offence.[59]

Child neglect was an evident social problem, with older children found wandering in public areas; all too often their parents were habitual inebriates. With the formal establishment of the Montreal Police in 1838 and sporadic coverage of their activities and that of the Police Court, references to neglectful and drunken parents inevitably surfaced. *L'Ami du Peuple*, detailing news from the Montreal police station in 1839, including the following: "Bureau de Police, Station A. Dimanche Nov. 24: Une miserable femme fut ramasse dans la rue dans un état d'ivresse complete, avec un petit enfant dans ses bras. L'enfant fut envoyé a la maison de l'un de ses proches parens … Mardi 26, Station B: un jeune enfant fut trouvé a une heure du matin, nus pied, dans les rues, et l'on sut bientôt qu'il était celui de M. et Mad. Davidson, qui s'était sauvé au milieu des disputes ordinaires et désordonnees de ses

parens. Le pauvre petit eut péri sans doute sans les prompts secours qui lui furent donnés par la police. Le père et la mère furent loges à la Station jusqu'au lendemain matin. Puisse cette légère correction leur inspirer plus de quiétude à l'avenir."[60]

Flagrant instances of child abuse were occasionally publicized, such as the saga of a young girl beaten and whipped by her mother all over her body, including the soles of her feet.[61] Accounts of children being neglected to the brink of starvation were also press fodder; one such account called for prosecution of the malefactors "to the utmost rigour of the law."[62] This call to action was not unusual, nor was the fact that none followed.

It is also true that the limitations of the sources often make it difficult to determine what final disposition may have resulted. Many accounts in the press could not be tied to legal proceedings – although the case of the drunken Davidsons was an exception – and even when complaints were filed, the inability to trace those cases to a formal conclusion is an omnipresent frustration. For example, in 1844 a true bill was found against a parent "pour avoir cruellement battu son enfant âgé de 8 ans," but no information could be adduced as to the circumstances or outcome.[63]

Child abuse generally came to the attention of the Crown in one of two ways: through the activities of the constabulary, who happened upon or responded to an incident of child abuse, or more commonly through the filing of a complaint before a local magistrate. Numerous obstacles would have hampered prosecutions for child abuse. Besides the disabilities of lack of statutory or common law protection, children faced a multitude of economic, social, psychological, legal, and other obstacles that militated against their seeking protection of the laws; foremost among them was the relative inviolability of family privacy.[64] Jurists generally would have recognized the right of fathers to discipline their children physically, so in order to trigger a legal response the punishment would have had to be seen as excessive.[65]

In a period that predated child protection agencies by decades, there were also no social workers or child advocates combing back alleys and tenements.[66] Many cases of violence against children were probably mis-categorized by coroners and physicians.[67] Even should a complaint have been filed, evidentiary encumbrances further hindered prosecution. The youngest victims of assault were commonly disqualified from testifying, as they were presumed unable to understand the nature and consequences of the oath they were required to take.[68] Spouses were

legally incapacitated from testifying against each other as the result of marital privilege, even if one was a witness.[69] In the absence of the investigative apparatus of the modern state, allegations of child abuse were likely to come before courts only after the instigation of third parties.[70] Given that violence against children most frequently occurred in the home, and set against a backdrop of a strongly entrenched patriarchal ethos, it was only the rare instance of child abuse that surfaced. Moreover, it must be noted that, like for spousal violence in general, "many suits were initiated not with the intention of reaching a judicial decision based on a jury verdict, but rather with the much more limited desire to draw an external, authoritative voice into the dispute in the hopes of realizing some kind of immediate result."[71]

As previously mentioned, the constabulary was responsible for uncovering or responding to a considerable number of the identified cases.[72] In the summer of 1829, for example, a mother was repeatedly seen immersing her child in the river. A group of bystanders kept vigilant watch while the police were summoned, and she was committed to prison for breach of the peace.[73] Similarly, a father was arrested in 1848 after taking his seven-year-old son to the waterfront, tying a rope to the boy's waist and the other end to a nearby post, and then pushing the child into the water. A Good Samaritan dragged the child out of the water while another summoned the authorities. Following his arrest, the father maintained that he had intended to punish his son without intending any bodily harm.[74] In both instances there was confusion as to whether the parents had truly attempted to drown their child, but unassailably both had put their child at risk.

The outcome of proceedings depended on the circumstances, charges, and court before which the parent appeared. The usual outcome for summary proceedings held before the Police Court was for the magistrate to "admonish and discharge" the offender, as happened in April 1839 to Mary McShewen for assault and battery against her child.[75] Later that same year, two parents were jointly charged for illusage, with the same result, as was a father arrested for drunkenness and "turning his child out of doors" in the dead of winter.[76] In other situations, the presiding judge required that the defendants provide a surety to keep the peace.[77] One such situation involved Elizabeth (Betsey) Kennedy, a spinster who had frequent altercations with the law. Kennedy had borne two illegitimate sons in the late 1830s with Henry Driscoll, a man of respectable social standing who served as a justice of the peace. While judicial archives have obvious limitations as sources

of information for reconstructing personal relationships, their immortalization in the annals of the criminal courts began soon after the elder of their two sons was born. Driscoll and Kennedy maintained separate places of habitation, the children lodging with Kennedy. The first identified court appearance by one of the parties involved Driscoll's arrest in April of 1840 on charge of having assaulted Kennedy.[78] Two weeks later their roles were reversed, Driscoll having charged her with misdemeanour, and alleging that she harassed him with "persevering persecutions":

> Betsey Kennedy ... by violent language and abuse endeavours to extort money from him although he duly supplies her with lodging, clothes, and money for the comfortable support of the said two children, and molests and disturbs him so as that he cannot live peaceably, and quietly follow properly his business and avocation ... [She] frequently brings the said children to his door, and pushes one of them in, and makes them cry, and after having pushed one of those children in as aforesaid, afterwards returns and abusingly demands from him the same child, and sometimes brings them to his door in bad weather and thinly clad (although he has supplied them with comfortable cloathing [*sic*]), and endeavours by making an outcry in the street and by pretending to cry, and by falsely stating that this Deponent lets the said children starve, occasions this deponent public scandal.

Driscoll continued that Kennedy made him "inexpressibly miserable" and "inspires him with an apprehension that, at length, goaded to desperation by her persevering persecutions, he may endeavour to repulse her by some bodily force."[79] As a result of his complaint she was arrested and lodged in the local prison.[80] Kennedy's subsequent court appearances were prompted by her mistreatment of their children. In July 1841, a neighbour witnessed her grabbing her son, pinning him between her knees and striking him in the face with such violence that she bloodied her own hand as well as the child's apron. The neighbour's wife prevailed upon her husband to seek out her landlord rather than to interpose himself directly; the landlord then sent his daughter-in-law to retrieve the child, thus concluding a chain of "intervention by proxy." The neighbour further alleged that Kennedy was frequently inebriated and "when in that state is of such a violent temper as to be unfit to have the charge of children."[81]

Kennedy was summoned before a local justice of the peace in September of the same year. There is more than a hint of irony in that proceeding, as the justice in question was Henry Driscoll, the child's father.[82] Driscoll required Kennedy to provide a surety of twenty pounds for her future good conduct, but failed to specify the duration of time for which it applied.[83] Sureties essentially interposed the coercive arm of the state between the parties, and while of limited efficacy were nonetheless often sought by complainants.

Those cases illustrate the tensions inherent in the law's response to parental violence towards children. No doubt jurists felt that they had authority to censure parents' modes of discipline, but that expression had its limitations. Moreover, any rulings must be viewed contextually, as these judgments flouted traditional deference to family privacy and entrenched tenets of paternalism. Table 1 outlines all the instances of identified legal proceedings that involved child abuse at the hands of family members, including sexual offences, and their final dispositions. Only complaints where children were alleged to be the primary victims were included, which necessarily undercounts the phenomenon. Many acts of violence were directed at multiple relatives (including children) and, tellingly, in these situations children receded into the background: violence against a spouse and child, for example, was usually prosecuted as if only against a spouse.[84]

These cases – those in which violence against children were the gravamen of the legal complaint and those in which they are were not – necessarily can be only a fraction of the actual incidence rate. There was also significant attrition among cases, with nearly a quarter of identified cases lacking any evidence of a formal disposition. While all period juridical sources suffer from lacunae, that figure is itself suggestive. Penetrating the veil of family privacy was not easily done during this period, and it could only be a small minority of children whose sagas were heard by local courts.

Another striking phenomenon is the near-absence of any trials for domestic child homicide, or filicide. In contrast, infanticide prosecutions were far from infrequent – thirty-one cases being identified for this period – and numerous instances of children being killed by non-relations were found in the archives.[85] As has been said about other Western jurisdictions, "the disappearance of children does not seem to have been of particular interest among the poor, whose rate of reproduction was perhaps greater than was felt necessary by the rest of society."[86] Deaths of children simply did not merit heightened attention in many jurisdictions, and no doubt many young victims went to their graves without further scrutiny. Child murder was not condoned, but

Table 1. Child Abuse Prosecutions, 1825–50

Charge		No Bill	Aquit	Admon. & . disc.	Surety	Convicted & jailed	N/I
Murder	$n = 2$	–	–	–	1	1*	–
Carnally knowing and abusing female child under 10 years	$n = 1$	–	1	–	–	–	–
Incest	$n = 1$	–	–	–	1	–	–
Ravishment	$n = 1$	–	–	–	–	–	1
Abduction	$n = 1$	–	–	–	–	1 (3 years)	–
Attempted murder / assault with intent to murder	$n = 3$	1	–	–	2	–	–
Assault with intent to maim	$n = 1$	–	–	–	–	1 (9 months)	–
Aggravated assault	$n = 4$	–	–	–	–	1 (3 months)	3
Threats and menaces	$n = 2$	–	–	–	–	1 (9 days)	–
						1 (5 days)	
Assault and battery	$n = 7$	–	–	2	2	1**	2
Ill-usage/ill-treatment	$n = 6$	–	–	5	–	1 (7 weeks)	–
Misdemeanour	$n = 1$	–	–	–	–	–	1
Dangerous lunatic	$n = 1$	–	–	–	–	1***	
Breach of the peace	$n = 1$	–	–	–	–	–	1
Misc.	$n = 1$	–	–	1	–	–	–
TOTAL	$n = 33$	1	1	8	6	9	8
% of total		3.0%	3.0%	24.2%	18.2%	27.3%	24.2%
Adjusted total		4.0%	4.0%	32.0%	24.0%	36.0%	

* reprieved from sentence of death
** incarcerated for lack of bail
*** institutionalized

neither was it aggressively condemned, investigated, and prosecuted, and a child who did not receive protection on the family premises was unlikely to find it elsewhere. As parents were assumed to be the arbiters of a child's well-being, the public was loath to intercede vigorously if the antithesis proved true.[87] Some scholars have claimed that causing the death of a child did not trigger the same societal response as a wife killing or husband killing.[88] As children became more valued by society, there was more vociferous condemnation of such acts.[89]

The Montreal experience may have more closely mirrored that of nineteenth-century New England than other jurisdictions, as "New Englanders and their public officials acted decisively, especially in the eighteenth and early nineteenth centuries, whenever child murder was suspected."[90] Tightly knit communities, many united on the grounds of ethnicity, made Montreal an unlikely place for non-infant child homicides to go unnoticed. The filicide rate for Quebec appears from the historical record to be low; some 140 cases for the entire province over the span of two centuries.[91] Within the period under examination, only two cases of domestic child murder, or attempted murder, were identified. One of these involved a washerwoman named Elizabeth Birch, who allegedly tried to murder her two children in 1830. The earliest identified reference to her case appeared in the *Vindicator*, which stated that she was committed to jail "for an attempt on the lives of two of her own children. One of them she was in the act of hanging when prevented; the other received some severe wounds on the head."[92] Following her arrest, several neighbours filed affidavits of support on her behalf.[93] Her landlord offered alternative explanations for the children's injuries, alleging the daughter had fallen down the stairs and hit her head on a rock. He described her eight-year-old son as a "turbulent boy inclined to give trouble," but maintained he had never seen Birch discipline him. He further claimed that she and her neighbours were on bad terms, which he suspected was the impetus for the accusations against her.[94]

Another tenant also came to Birch's defence, attesting that a fortnight earlier he had seen her son running around the yard with a cock under his arm that he had stolen. His mother removed a cord from a water bucket, with which he assumed she intended to whip him, and tied him by the neck to a post in the stable.[95] Returning to the kitchen, Birch purportedly exclaimed that "sooner than he should take anything from any person to the value of a copper I would nail him by the ear to the

floor." Those affidavits evidently swayed the authorities, as Birch was admitted to bail.[96]

The 1829 case of Judith Couture, the starkest case of family violence, is an outlier in this study, as she slashed the throats of five of her children while allegedly being mentally deranged.[97] Few of the records have survived, although it is known that she was arrested and charged on 19 January 1829, and ultimately convicted, sentenced to death, and reprieved.[98] As instructive as Couture's story might have been, missing records do not allow for further reclamation of her case, although it appears likely she was shown clemency as a result of being adjudged insane.[99]

One can expect the spotty nature of records to affect the ability to reclaim accounts of child violence that did not result in homicide. While details are often scarce, the archives disclosed over thirty such cases, including cases in which parents were convicted. The longest period of incarceration – three years – was imposed against a stepfather convicted of attempting to abduct his stepdaughter.[100] More typically, cases resulting in incarceration involved crimes such as aggravated assault. A sentence of nine months was given to Betsey Kennedy, the mother who had borne two illegitimate sons with a local justice of the peace. In January 1844 a grand jury found a true bill against her for "stabbing with intent to maim" her five-year-old son.[101] At her trial it was established she was an inebriate who often brutalized her children and had stabbed her child in the forehead with a knife.[102] The nature of her barbarous conduct was underscored by the revelation that "when she inflicted the wound, she made use of most unbecoming language"![103] She was convicted, although the jury recommended leniency. According to the only surviving account of her trial, "The Court in passing sentence on the prisoner, condemning her to an imprisonment of 9 months in the House of Corrections, animadverted, at length, on the evil effects of intemperance, and reminded the prisoner of the consequences of the conviction had against her, which, according to the late criminal Statute laws granted in the Province, amounted to felony, subjecting her to imprisonment in the Provincial Penitentiary for life; a place to which she, in all probability, would have been consigned but for the humane recommendation of the respectable Jury."[104]

Betsey Kennedy was clearly not of respectable background, unlike the jury that tried her, and also unlike Emilie Granger. The extent to which Kennedy's relationship with Henry Driscoll, JP, had ramifications on the outcome of her case cannot be known. Granger's status did

not insulate her from prison for ill-treating her young niece, as demonstrated by her three-month prison sentence. Ultimately, Cordille's saga ended the way it did because third parties championed her cause, and she was even more fortunate in that relatives provided for her after she was removed from her aunt's custody.

As shown in table 1, fully one-sixth of all cases of violence against children led to prison sentences, ranging from five days to three years. One aberrant case led to incarceration of a different type, wherein the mother was charged with being a dangerous lunatic; she had apparently "exposed her person in a state of nakedness, and placed her male child aged of about twelve months on her private parts, saying that she had been told to do so by a Black woman, for the good of her other children." She was committed to the Montreal Lunatic Asylum.[105]

The *threat* of violence, rather than an overt act of violence, could also trigger a legal response. The common law had long held that a threat by itself, without apparent imminent bodily harm, was not actionable.[106] However, two instances were identified in which parents were summarily convicted of making threats. In one, a mother was sentenced to nine days in prison for threatening to murder her child.[107] In the other, a defendant was arrested for having "violemment et cruellement battu et maltraité sa fille," aged seventeen, on the complaint of her neighbour. She further claimed the defendant had stood in the doorway of the complainant's house, facing the street, and shouted invectives, thereby causing a public nuisance.[108] She was summarily tried, convicted, and sentenced to five days in the House of Correction, ostensibly for "uttering threats and menaces."[109]

These cases also reflect the fluidity between criminal charges common during this period. References to noise, disorder, and "disturbing the public peace and tranquility" appear starkly incongruous when coupled with much more serious allegations of physical violence embedded in these accounts. Yet these references were far from unusual, such as a police constable's affidavit alleging a defendant was a "person of brutal and violent habits towards his children" and "in the habit of disturbing the peace and tranquillity … [by] continually annoying and incommoding persons residing under [the] same roof as himself."[110] John Miller's wife asserted he did "disturb the public peace and tranquility and moreover violently assault, beat and strike the deponent's son," a curious juxtaposition as to the relative importance of the two acts.[111] A similar phenomenon was noted in spousal violence complaints during this period, which likewise categorized many acts of violence as breaches of the peace.[112]

This emphasis on "public" rather than "private" offences vividly reflects the role of magistrates who translated a prosecutor's or witness account into the formulaic legal language common to these documents. Justices often shoehorned these accounts into recognizable, familiar, prosecutable legal categories. It also likely reflected a prosecutorial stratagem: the 1838 Police Ordinance authorized police to summarily arrest, and police magistrates to summarily commit, defendants charged with the broadly defined offence of being "loose, idle and disorderly."[113] Domestic violence inevitably resulted in noise and clamour, and crossing the threshold into the public arena ensured that defendants were subject to arrest under this ordinance and to a maximum of two months' hard labour. In contrast, summary conviction by a justice of the peace for assault resulted in a maximum penalty of five pounds and imprisonment for up to two months (not at hard labour) if not paid. The indictment-driven route to a court such as Quarter Sessions had a much higher attrition rate due, in no small part, to its greater formality. These types of assaults – witnessed in alleyways and on sidewalks, glimpsed through open doors or through windows, heard from apartments and houses – were also more likely to come to the attention of police and others and hence more likely to be prosecuted. If this phenomenon happened to coincide with greater juridical comfort addressing public rather than private conduct during this period, which is also possible, that was likely a happy coincidence, as prosecutorial pragmatism was doubtlessly the main driver.[114] To many magistrates, a violent family member being bound to the peace was probably the optimal outcome in terms of balancing public tranquility with preserving the integrity of the family. Family members may have preferred an offending relative be bound to the peace rather than imprisoned, as was common with spousal abuse.[115]

The Dynamics of Domestic Child Abuse

Despite the lack of detail in many of these cases, some general extrapolations may be made from them. To begin, the role of family members as instigators of violence against children is readily apparent. Parents and step-parents appeared as the most common victimizers of children during this period, with mothers and stepmothers appearing most frequently. Similarly to the crime of infanticide, scholars have commonly argued that nineteenth-century child assaults and homicides were crimes usually perpetrated by women, and children constituted the

primary victims.[116] In Montreal, women constituted a slim majority of defendants in child abuse prosecutions, at approximately 58 per cent, but that figure should not be taken as dispositive.[117]

Regardless of their actual numbers, mothers and mother figures featured prominently. Mary Burk was arrested in May 1830 for beating her child in an alley near Notre Dame Cathedral.[118] Sixteen-year-old Jane Berry's stepmother took advantage of her father's absence to seize her and throw her down on the floor, and then "with both hands and feet, assaulted battered bruised and struck the deponent in such a manner as to make her fear for her life." Had it not been for the intervention of their domestic servant, she believed she "would have been killed and murdered on the spot."[119] This was not the only such occurrence suffered at her stepmother's hands; Jane had caused her to be arrested six months earlier for a similar offence. Her stepmother was charged with assault with intent to murder but not indicted.[120] Similarly, Ann Farmer was charged with attempted murder for attacking her stepdaughter with a sharpened piece of iron. Farmer's husband alleged she would have likely succeeded in killing her had he not intervened and requested, in period legal parlance, "justice in the premises."[121] Indeed, it is clear from these affidavits that these acts of aggression were often part of an ongoing pattern of violence, as Ann Farmer, Betsey Kennedy, and others like them repeatedly found themselves in the prisoner's dock charged with having assaulted family members.

Emilie Granger's conviction for cruelty towards her niece illustrates that parents and step-parents were not the only offenders. Mary O'Brian was charged with having "continually taunted, abused and even beaten and maltreated" her daughter and four grandchildren, including grabbing them by the throat and slapping them as they slept. After O'Brian once again attacked her daughter and "threatened to have [her] blood," the daughter sought her arrest so that she could be bound to keep the peace.[122]

Children who physically interposed themselves between an abusive parent and the object of their rage often bore the brunt of violence, as demonstrated by the saga of sixteen-year-old William Bagnell in 1832. In a poignant affidavit sworn from his hospital bed, William attested that he had been bedridden at his parents' house when he was roused by the cries of his mother calling out "Murder!" as she attempted to fend off his father's blows. William seized his father by the arm and asked "whether he intended to murder [his] mother," to which his father replied "he would and me likewise" before throwing William

down the stairs, kicking him several times between the shoulder blades, and ejecting him into the street. William was hospitalized after his injuries began to fester.[123] It was seemingly more common for relatives to utilize the legal system rather than to physically resist violence, particularly so with female relatives, as reflected by the complaints filed by John Miller's daughter and wife in 1843.[124]

Not surprisingly, non-related third parties (such as neighbours) were among the most common complainants.[125] One defendant, described as "very severe," was seen to have beaten his children with a large stick and "strike them in a brutal manner with his fists and feet." As a consequence of habitual maltreatment, the three children had run away several times, with one witness recalling that he found them cowering in a stable, while another asserted that one of the boys was malnourished and that the daughter was at risk of "suffer[ing] materially in her health and condition."[126] A blacksmith likewise filed a complaint for aggravated assault and battery in August 1833 against parents for habitually beating and mistreating their ten-year-old "imbecile" daughter.[127]

Predictably, it was a rare occurrence to have a child as the main complainant; in those instances a non-custodial parent might assist. Catherine Clifford and her father filed depositions against Rosa Clifford; Catherine's complaint, filed under the generic offence of "misdemeanour," alleged the mother was in the habit of "beating striking illusing and illtreating" her, and that "she has reason to fear and doth verily believe that her said mother would again violently assault beat and illuse her as aforesaid."[128]

With respect to the ethnicity of perpetrators, as far as can be determined, French Canadians constituted just over one-third of defendants, the remainder being of English or Irish ethnicity. This may have reflected demographics, given that this period saw Montreal having a non-French-Canadian majority.[129] While some court records did not allow for identification of the gender of victims, a clear majority of the identified victims were female.[130] Among the questions this raises, was violence against male children more acceptable and hence less likely to be reported, or were female children more likely to be hurt, and therefore more often came to the attention of authorities?

These cases clearly illustrate the nexus between alcoholism, violence, and neglect.[131] The editor of *L'Ami du Peuple*, in commenting on a case involving the arrest of two drunken mothers, noted, "Il est a regretter qu'il n'existe pas un asyle ou l'on puisse donner refuge aux enfans, qui ont le malheur d'être nés de semblables mères."[132] Newspapers and court records were replete with account of inebriated parents found

carousing in the streets while their ragged children huddled in doorways in a futile bid for shelter.[133] Mary Burk, a notorious prostitute and drunkard of "great violence of character," was imprisoned for nearly two months for having beaten her young daughter in a public street, the complainant fearing the child might perish if not removed from her mother's care.[134] Ten-year-old Janet Sutherland likewise had a violent and alcoholic mother but was fortunate to have a father willing to take legal action on her behalf. In May 1838 her father filed a complaint against her mother for having been chronically abusive and having "committed a most violent assault and battery … thereby splitting her [daughter's] head open so as to cause the blood to flow from the wound inflicted in profusion." He added that his wife was a habitual drunkard and "commits such outrages when in a state of inebriety."[135] Similarly, John Miller's wife attested that as a result of the "intemperate habits of her said husband she has reason to fear for her life, in addition to the violence he inflicted on their daughter."[136]

Allegations of mental aberration were likewise quite common, even when not formally charged as such. Betsey Kennedy, the mother who had two illegitimate children with Justice of the Peace Henry Driscoll, is such an example; in March 1842, approximately six months after her previous involvement with the law, a Montreal physician attested that he was tréating her for "aberration of intellect" but that he now deemed her irrefutably insane. Kennedy showed a desire to suicide, he claimed, and in all likelihood "if not put under sufficient constraint, will obey some suggestion of her own diseased imagination, in the injury of some description or other, to those about her."[137] Whether she was in fact deranged cannot be known, but clearly she escalated her acts of violence, as she was convicted two years later for stabbing her five-year-old son.[138] Perhaps tellingly, there is no evidence that her mental competency was an issue at trial, nor was it referenced during sentencing. A finding of insanity would have been unsurprising to most jurors, given the common view that women were prone to hysteria, melancholy, and other mental/emotional lapses. Similarly, an armourer for His Majesty's 15th Regiment had his wife arrested multiple times in 1831–2 for mental derangement and violence, aggravated by her alcoholism.[139]

Family violence was an endemic feature of everyday life, and the court dockets reflect this. Prosecution was often ill-suited to addressing pathological behaviour within the family, nowhere more so than in cases involving violence against children. Children remained the most vulnerable of all classes of victims. The cases that came to the attention

of legal authorities were certainly just a fraction of the actual incidents of family violence directed at children, and the records that survive smaller still.

Incest as Social Phenomenon

Physical violence and neglect were not, of course, the only ways in which children suffered during this period. Emotional and psychological harm was not captured within the judicial archives, while one of the most pernicious forms of child abuse – sexual assault – also remained largely invisible within period sources.

By the latter decades of the nineteenth century, as Western societies had become increasingly sensitized to the plight of abused and neglected children, it was also recognized that incest (or "domestic sexual abuse") was a form of family violence.[140] While "violence" often implies lack of consent – and certainly the law reflected a distinction between incest and rape insofar as the latter constituted a non-consensual act of violence – even when the act fell short of rape in the legal sense it remained a crime perpetrated against children by adults in a position of authority, and consent could not meaningfully exist.[141] The fact that sexual abuse of children within the family is a form of violence therefore appears incontrovertible.[142] This is not to say that incest was seen as such during this period, as it surely was not.[143]

The lens through which one can view incest during this period is, at best, opaque. Judicial records are deeply flawed indicators for myriad reasons, including the fact that such acts occurred covertly, then as now. Furthermore, sexual offences were not openly discussed during this period, and the existence of incest was barely hinted at in the contemporary press.[144] While the extent to which incest occurred is therefore conjectural, it surely did occur.[145] Reanimating the history of behaviour that was cloistered within the darkest recesses of the family and considered unspeakably taboo is daunting.[146] Any cases that surfaced during this era are therefore exceptional because of the multiple factors that would have militated against its discovery. Incest tended to become public only when another intervening event occurred, such as an act of overt violence, pregnancy, or diagnosis of venereal disease, or when it was disclosed by an adult child after leaving home.[147] Publicly raising such claims was not to be done lightly, as social stigma and other repercussions frequently followed, particularly for members of the respectable classes.[148] Victims not infrequently felt guilt and shame

about the acts, in addition to familial pressure and a child's desire to escape the abuse rather than bring it before a legal forum.[149] There were also evidentiary impediments, not only related to child witnesses but also due to marital privilege.[150] Most concretely, the judicial archives cannot be expected to contain much in the way of illumination for the overarching reason that, as will be discussed, incest was generally *not* prosecutable during this period. Many factors therefore militated against the surfacing of incest within official records.[151]

Like other forms of child victimization, incest has been a known phenomenon from antiquity to the present. The prohibition against incest in English legal history had its origins in the Old Testament admonitions found in Leviticus.[152] Statutory prohibitions against incest were first promulgated during the reign of Henry VIII, mainly to govern incestuous marriage.[153] In 1563, the Church of England formulated a table that set out prohibited relationships and provided the foundation for much of the legislation passed in common law jurisdictions in the seventeenth century onwards.[154] Those jurisdictions, however, were not to include England. The Statute of Henry VIII was dispensed with during the reign of Mary I and never reinstated. From the time of Mary I onwards, the criminal law of England did not take cognizance of incest, leaving the matter solely to the ecclesiastical courts.[155] In 1857, the Church of England was deprived of its jurisdiction over matrimonial cases by operation of the *Matrimonial Causes Act*, which allowed for divorce on grounds of incestuous adultery.[156]

For the period under examination, it was the southern United States where legal prohibitions against incest were most pronounced and its application most instructive in providing background for the Montreal experience. In the absence of common law proscriptions, courts in the antebellum South generally refused to penalize defendants for incest until legislatures promulgated laws governing it.[157] It was father-daughter incest that was considered most loathsome, as it flew in the face of the self-control necessary for a patriarch to fulfil his familial responsibilities.[158] If force was used, the defendant could alternatively be charged with sexual assault – a nuance that, as we shall see, was also demonstrated in Montreal.[159]

The appellate decisions rendered by courts in the Southern United States evince a degree of contradiction, characterized by one scholar as a mixture of "rhetorical condemnation and reluctance to prosecute patriarchs."[160] The rulings and language of those courts left no doubt that incestuous behaviour was seen as destructive to family integrity.[161]

In the same breath as those courts condemned incest, however, they treated it as aberrant and minimized its frequency. By so doing, jurists avoided drawing causal connections between the act itself and the power structure of contemporary families that led to this form of social pathology. Those courts were thus able to "preserve the patriarchal ideal" while minimizing intrusion into the family sphere.[162]

Unlike a variety of other Anglo-American jurisdictions during this period, England and British North America had no statutory prohibitions against incest.[163] As Parliament had not seen fit to provide for its punishment, courts remained reluctant to criminalize it. That reluctance was compounded by the entrenched authoritarian-paternalistic family model, such that the law was loath to intercede itself more than was deemed absolutely necessary. In a statement that also rings true for British North America of the period, Anthony Wohl has written about Victorian England that "incest, far more hidden than prostitution, gambling, drunkenness or even the white slave trade, was unlikely to become the subject of a Victorian hue and cry. Its setting – the home – precluded it; those exploited by it, mainly young girls, had no one to champion their cause until the last decades of the century. That the state should be called in to protect girls from the lust of brothers and fathers was too unpalatable a notion for the mid-Victorian generation."[164]

Legislatures and jurists alike evidenced a pronounced reluctance to grapple with the issue. Some scholars have concluded that the topic of incest was not only considered unseemly, it was simply too explosive an issue on both sides of the Atlantic. According to that theory, "emphasis placed on the cultivation of affection and sentiment," coupled with the importance placed on sexual purity, resulted in an "intense and intricate emotional climate within the household that led, in many cases, to latent incestuous feelings."[165] Incest may also have proven to be too ambiguous and troubling: ambiguous insofar as it involved issues not present in other cases of sexual abuse;[166] troubling insofar as it triggered deep-seated antipathy towards discussing sexual matters and intruding into the realm of the private.[167] In Canada it was not to become a federal crime until 1890, although some colonies (not Quebec) had criminalized it prior to Confederation.[168] Relatively little is known about the prosecution of incest in other nineteenth-century jurisdictions, and that typically for later periods. Leslie Erickson's study of the prairies for the late nineteenth and early twentieth centuries is an outlier insofar as she uncovered seventy-one cases, indicating that courts there grappled with incest fairly regularly.[169] Other Canadian

jurisdictions, including British Columbia and Ontario, show far fewer for overlapping periods.[170]

In analysing the judicial response to incest in Montreal of this period, one is effectively attempting to reanimate a crime that did not exist. This is not to say that incestuous acts were not committed, a claim that would be patently untrue.[171] Rather, it is to say that such acts were not indictable unless subsumed under other rubrics such as sexual assault.[172] Even so, Crémazie's *Les lois criminelles anglaises*, perhaps the leading Quebec treatise on criminal law for the period, neither contains an entry for incest nor references it in the section on sexual assault.[173]

However, like child rape, incest was viewed as more infamous than sexual assault itself, seen as a moral offence of the highest order, while sexual assault was deemed largely a crime against person and reputation. Incest was paradoxically both a greater and lesser offence than rape – lesser, because the law did not provide for its punishment, and greater, because it was seen as particularly heinous. Rape was governed by statute, which had different sanctions, depending on whether the child was below the age of ten or twelve, the former being a capital crime and the latter being a misdemeanour punishable by two years in prison and a fine.[174] The legal requirements to sustain a rape charge would not have been satisfied in most instances, and even were this not the case, the many factors that traditionally militated against women's success in prosecuting cases of sexual assault would have been fully operative.[175] Predictably, few cases came to light, and all but a small minority were destined to fail, based on the rigidity and deeply gendered constructs of the common law.[176] If a defendant was not charged with ravishment or a similar crime, it was unclear how a charge of incest could be sustained.

Incest was nearly invisible in Lower Canada and Quebec, legally speaking, during the first half of the century. With no specific criminal provisions governing it – and with incest being viewed similarly to other "unmentionable" crimes such as buggery and bestiality – it could not have been otherwise.[177] On those rare occasions when it was referenced, the infamy with which it was viewed was unequivocal. An 1846 account, occurring outside of the district of Montreal, referred to the crime as "almost unheard of in the annals of humanity," and the perpetrator, sentenced to death after being convicted of raping his daughter, as possessing "character of unexampled demoralization."[178]

The newspaper's assertion that this was a rare crime was true insofar as few cases involving child rape by a relative came before courts.

Despite the fact that incest inhabited a juridical no man's land, however, references to incest occasionally surfaced within the archives, usually in the context of other domestic crimes, such as Elmire Legault *dit* Deslauriers and her uncle Louis, who were charged with having killed their two illegitimate children.[179] Similarly, an 1832 affidavit by a spouse charging her husband for uttering threats and assault and battery referenced that he had abandoned their marital bed and slept with his seventeen-year-old stepdaughter in the "presence of her and four infants," the stepdaughter becoming pregnant as a result.[180] While in neither instance was the incestuous conduct subject to criminal sanction in its own right, accounts such as those provide what I term "shadow evidence" of incest.[181]

As mentioned earlier, charges of incest were doomed to fail unless subsumed under other legal categories such as rape, unlawful carnal knowledge of a female, or other related offences. In the same way as the victims of child abuse tended to recede into the background, so too did the incestuous acts that lay at the heart of many of these crimes. Only four prosecutions that implicated incest, explicitly or implicitly, were found in the judicial archives for this quarter-century span.[182] The first of these occurred in August 1826, in which a brutal assault was alleged to have been perpetrated on a seven-year-old girl by Joseph Massé, her uncle. It was a "most atrocious crime," hissed the *Montreal Gazette*, going on to explain that the "wretch" had given the young girl rum until she was intoxicated, after which he "violated her person with circumstances of aggravation too shocking to be detailed."[183] Massé was indicted and tried for carnally knowing and abusing a female child under the age of ten years.[184] The trial disclosed that the niece had been spending the day at Massé's house and was found lying on the cellar floor, intoxicated and bloodied. Even more damning was that the defendant had confessed to the crime after his apprehension. Under standard procedure of the period, however, confessions that might have been coerced were inadmissible, including those that may have been induced by the hope of escaping prosecution or leniency. His niece did not testify, and it is far from certain whether she would have been found competent to do so by virtue of her age.[185] The presiding judge also did not allow Massé's confession to enter into evidence and he was quickly acquitted.[186]

Ironically, it was the defendant's family relationship that had provided him access. Standards of propriety during this era being what they were, there was considerable societal concern about commingling of the sexes. Family was the exception, and the "presumed moral safety of families afforded cousins, uncles and in-laws unsupervised access to female relatives."[187] Untold numbers of females were sexually victimized during the nineteenth century, and the family premises were a fertile hunting ground for predatory men.[188] Fathers were certainly not above reproach in this regard, as Jean Baptiste Schnider was prosecuted for ravishing his eighteen-year-old daughter, Mérante, who claimed he had forced himself upon her from the age of eleven onwards. In her affidavit, she claimed that "qui cette fois, le dit Jean Baptiste Schnider malgré qu'il auroit essayé à connaître la dite deposante charnellement n'aurait pu reussir à cause de son jeune âge" but had continued his attempts until he was successful and had raped her repeatedly since then, his last act of violation having occurred three months earlier.[189]

Mérante's claims were supported by her employer, Marie Muir. Muir attested that Mérante had been employed as a domestic for approximately fifteen days, but that after the eighth or ninth day of her service her father had returned for her.[190] Mérante adamantly refused, prompting Muir to inquire why she reacted so strongly. When pressed, she confessed to Muir that her father had first raped her several years ago and was in the habit of doing so whenever he found her alone in the house. As she got older, she confided, she came to realize the consequences of the abuse she suffered.[191]

The indictment against Mérante's father categorized this as a sexual assault, alleging that he had "illégalement, félonièsement et contre le gré de Mérante Schnider, sa fille, violé … et joui d'elle charnellement."[192] Disappointingly for the historian, the case did not proceed to trial, the docket simply noting "no proceedings had." In addition to the evidentiary obstacles common to rape cases, the long period of abuse she suffered, lack of physical resistance, and her failure to seek legal intervention in a timely manner would likely have foreclosed a successful prosecution. Using a rape indictment to prosecute cases of incest was a well-known, albeit often unsuccessful, strategy.[193] As such, it is no surprise that rape charges would sometimes have been brought, given that statutory provisions addressing incest were lacking, although the notoriety of the crime, the severity of the penalty, and the rigid application of the common law would have stymied prosecutions.[194] The lack of witnesses also helped doom such proceedings.[195]

On the rare occasion when it appeared before the criminal justice system, incest could be subsumed under a miscellany of offences, as

Michael Coleman discovered in 1850 after being convicted of abducting a woman under the age of sixteen, his stepdaughter, Ann.[196] While none of the affidavits have survived, it is known that Coleman was committed to the Montreal Gaol on 18 July 1849 and was tried eight months later in a trial that was covered in the pages of the *Montreal Gazette*.[197] Coleman was apprehended after luring his stepdaughter away from home, paying an acquaintance a half-dollar to assist in his subterfuge. In his opening remarks, the solicitor general argued, "All those who had daughters and sisters were interested in the punishment and prevention of crimes like this," adding that the offence was "fortunately for us, almost unknown in Canada."[198] Coleman's wife was not allowed to testify as a result of spousal privilege, but there were several other prosecution witnesses who bolstered the Crown's case, including the two men who apprehended him. Upon his arrest, one of the men chided him, telling him he would go to hell if he died after committing such debauchery. Unfazed, Coleman responded, "I would sooner go there then go home again to live."

Coleman's defence team pursued a vigorous, two-pronged strategy, arguing that his stepdaughter's age had not been established, and that under the civil law the stepfather was vested with guardianship for Ann and therefore the charge could not be sustained. The Crown could not produce a birth certificate, as she had been born in the United States, but offered testimony to establish her age, which the Court accepted as sufficient. The defence's second argument proved stickier; in rebuttal, the Crown argued that unless Coleman had formally become Ann's legal guardian in lieu of her mother – which it posited could not be, as his criminal act negated this status – legal guardianship remained with the mother. The Court reserved judgment until after a verdict was reached, stipulating that this issue might be raised to arrest judgment, should he be convicted.[199] Coleman was indeed found guilty, the jury deliberating for only a few minutes.[200]

Two weeks would elapse until the Court reconvened to hear a motion for a new trial. While in other cases the familial relationship receded into the background, here it remained central in that a fine point of law rested on whether the charge that the "girl abducted was taken from the possession and custody of her mother, while that mother was under the marital *puissance* of her husband, the abductor, was sufficient." The Court ruled that "the law of nature" granted guardianship over children to the mother, a right that was not completely lost following marriage, but shared with the father:

> Previously to the marriage the law of nature gave the guardianship to the mother. The subsequent marriage did not take it altogether from her. There had been no regular appointment of the stepfather to that guardianship. If then, the father had a right to guardianship, the mother also held it conjointly with him. The right of protutor with which he was invested by his acquisition of the *puissance maritale* did not entirely destroy the right of the mother; it rather invested the stepfather with the duties and responsibilities, than with the rights and powers of the *tutelle* ... In England, where the rights of the husband over the wife are much greater than under our law in Canada, and the legal existence of the wife merged in that of the husband, she was still held to possess this power and guardianship ... The *puissance* of the husband, then, being greater than in Canada, who shall say that the mother, who is under that stricter system, even, left this power, has not with us this power of protection over the morals and safety of her child, in the absence of the father.[201]

In short, the mother was deemed to share guardianship over her minor children – a result that also would have been the case in England, despite the law being more restrictively applied than in Lower Canada. Those rights of authority and guardianship of the mother would be heightened in the instant case, reasoned the Court, as the stepfather was not only absent but was also "endeavouring to debauch" her daughter. Coleman was sentenced to three years in the provincial penitentiary.[202]

While acts of incest were therefore most likely to fall under the rubric of sexual assault cases such as rape, ravishment, and unlawful carnal knowledge, or related offences such as abduction, allegations of incest did occasionally surface more overtly. In April 1838, one defendant was committed to the Montreal jail, ostensibly on that charge, and was admitted to bail five months later. While that case could have proven instructive, no further information was found as the notation simply reads he was committed "for incest."[203] Similarly to the "loose, idle and disorderly" or "breach of the peace" prosecutions seen earlier, this charge reflected the discretionary ability of magistrates in deciding how to categorize offences, as well as the fluidity of criminal charges sometimes couched in terms more descriptive than legally accurate.[204]

Incest bridged the worlds of the public and private, and the overlapping areas of morality and crime. Its very ambiguity, reflected and fed by the failure of the law to categorize it as a discrete legal offence, doomed it to near-invisibility. In other jurisdictions, incest was seen

more as a venal sin than a criminal offence.[205] In Montreal of this period, rigid social mores precluded anything more than oblique references, if that, and certainly did not lead to public agitation on the issue of incest or the sexual exploitation of children.[206] Indeed, the crime was unsavoury and unpalatable in many ways, but addressing it meant contesting the sanctity and primacy of the family.[207] And while the conviction rate elsewhere has been shown to be higher than for sexual assault cases in general, and higher than those for child rape, the Montreal experience in contrast reflected a near-absence of convictions.[208]

The Dynamics of Incest

Those cases, as limited as they are, allow for some circumspect extrapolation. In all instances, the malefactors were male.[209] The perpetrators were usually fathers or father figures such as stepfathers or uncles.[210] Conversely, all alleged victims were female.[211] Incest tended to be a premeditated, sustained pattern of abuse, as reflected by the case of Mérante Schnider, where the cycle of abuse continued for years.[212] Schnider's claims surfaced after she moved away from home, perhaps a more common scenario than that of Joseph Massé, in which a relative exposed the incident.[213] The victims typically experienced abuse in their pre-adolescent years, a pattern also reflected in the cases.[214]

All cases, of course, represent only those that fell within the purview of the judicial system, and one cannot say that they are necessarily representative. No statement about the frequency of incest or violence against children can be proffered, nor can any conclusions be drawn about the correlation between incest, child abuse, and larger rates of family violence.[215] Disturbingly, it may well have been the case that families in which incest occurred were not otherwise unusual.[216] It is also possible that informal mechanisms were used before legal recourse was taken as a final desperate step, showing a preference for informal modes of adjudication that would keep family matters outside of the purview of public scrutiny and criminalization.[217] Incest also straddled two classes of victims – children and women – neither of which were seen during this period as full rights holders by a heavily gendered legal system. As Erickson noted for later in the century, "Canadians had only begun to deconstruct the foundation of patriarchy by acknowledging the rights of women; it had not yet completely acknowledged the rights of children."[218]

Conclusion

It could only have been the rare case of abuse that would have prompted a complaint, let alone a full-fledged prosecution. Children were most often seen and not heard within families of this period – but before the law they tended to be neither. In those infrequent instances when allegations of abusive conduct came before nineteenth-century Montreal courts, they were heard by jurists who tended to accord deference to the traditional patriarchal and authoritarian model of the paterfamilias. There were limits, however, to parental correction of children.

Cases during this period in Montreal were suggestive of flux. Replete with ambivalence and tension, rigidity and reprehension, they occurred against a backdrop in which parents were granted wide latitude, and children were not viewed as full rights-holders. Yet the existence of depositions, indictments, and accounts of trials for child abuse is evidence of some limitations to parental authority, however tentative. While legislatures had yet to promulgate laws designed to protect children from domestic violence, courts showed at least some inclination to apply the ordinary provisions of the criminal law to shield children. It is unlikely that Judith Couture, Betsey Kennedy, or Emilie Granger felt that they were constrained in their behaviour towards the children in their care until the coercive arm of the law interposed itself; it is equally unlikely that Isabel Belile ever contemplated the possibility of facing incarceration for threatening to kill her child. Yet these were not the only adults to face legal sanctions for harming children. Were children not faced with so many systemic disabilities, it is likely that other cases would have come before the courts.

Allegations of incest are most illustrative. Despite the fact that lawmakers had yet to enact legislation governing that offence, allegations of incest still surfaced. Myriad obstacles prevented prosecution of those acts, yet some cases were still squeezed into existing legal categories. Michael Coleman's intentions towards his stepdaughter left him vulnerable to prosecution for abduction; Joseph Massé was charged (however unsuccessfully) for unlawful carnal knowledge in a trial at which his young niece was not called to testify. These were halting steps, but steps they were.

That those cases happened at all is perhaps the best evidence that Montreal jurists were beginning to grapple with these tensions inherent in the traditional sanctity of family authority over children. By so doing, they tacitly began to recognize that the family premises could

be havens for child victimization as well as child protection. Such cases forced society to acknowledge issues its members would much rather have ignored: "Whereas reports of sexual misconduct may be occasions for a wide range of reactions – from humor to outrage – the details of the violence of one person to another evoke more immediate and visceral responses. There is no room for laughter in a courtroom when we hear verbatim the circumstances of a child being beaten to death, and the smile of the cynic is swallowed as grave after grave of murdered babies is, literally, or figuratively, opened. The fact that, as today, most violent crime occurred within families served to intensify this effect in an age which so vocally prided itself on its domestic solidarity."[219]

There was, as of yet, no societal movement to expose and address the plight of abused children during this period, and indeed attention directed at such issues was seen as unwelcome. Courts, however, were forums where domestic criminality and pathology could be addressed, forcing some measure of acknowledgment of their existence as well as their gravity. Had children had readier access to the courts, had more third parties acted as guardians and stewards on their behalf, had the notions of patriarchy not been so firmly entrenched, early nineteenth-century Montreal courts could well have grappled with those issues much more systematically.

Attempts at reconciling parental authority and child protection during this period were often uneasy and disjointed. Those attempts nonetheless reflect the fact that courts were, on at least some occasions, willing to act out of lockstep with prevailing social and legal precepts. It would not be until the 1870s and 1880s that a battery of legislative enactments instituted formal limits on parental power, and representatives of "the Cruelty" investigated child abuse by combing the alleys and tenements of Anglo-American urban centres. The notion that the law should protect children from the excesses of their guardians had, however tentatively, already stirred in the minds of Montreal jurists decades earlier.

NOTES

* I am greatly indebted to Blaine Baker and Donald Fyson for their constructive comments as well as those of the anonymous referees.

1 For discussion of the theatre-like atmosphere of local courts common to the period, see generally Peter King, *Crime, Justice, and Discretion in England, 1740–1820* (Oxford: Oxford University Press, 2000); King, "Law and Ideology: The Toronto Police Court, 1850–1880," in *Essays in the History of Canadian Law*, ed. David H. Flaherty (Toronto: Osgoode Society, 1983), 2:248; for Quebec, see Donald Fyson, *Magistrates, Police, and People: Everyday Criminal Justice in Quebec and Lower Canada, 1764–1837* (Toronto: University of Toronto Press, 2006), 310–53.

2 "I found the above named [Cordille] so bruised in her left arm at the elbow joint that it was impossible to notice whether it was broken and the right shoulder is still so swollen that I cannot decide at present the condition it is in. I also noticed several blows to the head and the body, those to the head could cause an abscess" (author's translation). Bibliothèque et Archives nationales du Québec, Centre d'archives de Montréal (hereinafter BAnQ-M), Files of the Court of Quarter Sessions (hereinafter QS[F]), *La Reine v. Emilie Granger* (27 June 1840) (affidavit of Simon Fraser, MD).

3 "If you do not tell your uncle that you fell down the stairs I will kill you" (author's translation). Ibid.

4 BAnQ-M, QS(F), *La Reine v. Emilie Granger femme de Toussaint Trudelle* (27 June 1840) (affidavit of Cordele Levesque dit Sansaucis) [*sic*] (detailing how her aunt had beaten her with a cane and broomstick, punched and kicked her, and broke her tooth with a spoon, among other violent acts). Such affidavits are valuable sources of victim's accounts, albeit filtered through the jurists who transcribed them. For discussion of locating the true authorial voice in these documents, see, for example, Ian C. Pilarczyk, "'So foul a deed': Infanticide in Montreal, 1825–1850," *Law & History Review* 30, no. 2 (May 2012): 577, and n5.

5 *Montreal Gazette*, 14 Nov. 1840. For description of the court system, see Donald Fyson, Evelyn Kolish, and Virginia Schweitzer, *The Court Structure of Quebec and Lower Canada, 1764 to 1860* (Montreal History Group: Montreal, 1997).

6 *Montreal Herald*, 16 Nov. 1840.

7 Ibid.

8 *Montreal Gazette*, 14 Nov. 1840.

9 Ibid. See also *Montreal Herald*, 16 Nov. 1840; BAnQ-M, QS(F), *La Reine v. Emilie Granger* (27 June 1840) (affidavit of Simon Fraser, MD).

10 *Montreal Transcript*, 14 Nov. 1840.

11 BAnQ-M, Register of the Court of King's Bench (hereinafter KB[R]), 35–6, *The Queen v. Emilie Granger* (12 Nov. 1840); ibid. (14 Nov. 1840).

12 See *Montreal Gazette*, 4 Dec. 1840; *Montreal Transcript*, 5 Dec. 1840.

13 See, for example, Carolyn A. Conley, *The Unwritten Law: Criminal Justice in Victorian Kent* (New York: Oxford University Press, 1991), 107.

14 This observation is mirrored by Greg T. Smith, "Expanding the Compass of Domestic Violence in the Hanoverian Metropolis," *Journal of Social History* 40, no. 1 (2007): 32.

15 This view of children as chattel was, of course, even more so for slave children. With respect to violence in the family, Doyle made a similar observation based on accounts culled from the archives of mid-Victorian English newspapers. Thomas Boyle, *Black Swine in the Sewers of Hampstead* (New York: Viking Books, 1989), 27. For a discussion of family violence, including child abuse, see generally Ian C. Pilarczyk, "'Justice in the premises': Family Violence and the Law in Montreal, 1825–1850" (DCL thesis, McGill University, 2003).

16 See Samuel X. Radbill, "Children in a World of Violence: A History of Child Abuse," in *The Battered Child*, ed. Ray E. Helfer and Ruth S. Kempe (Chicago: University of Chicago Press, 1987), 17.

17 *The Body of Liberties* (1641), article 83, which stated (transliterated into modern English), "If any parents shall … exercise any unnatural severity towards them, such children shall have free liberty to complain to authority for redress." Gleason L. Archer, *History of the Law* (Boston: Suffolk Law School Press, 1928), 427. See also Elizabeth Pleck, *Domestic Tyranny: The Making of Social Policy against Family Violence from Colonial Times to the Present* (New York: Oxford University Press, 1987), 22.

18 Pleck, *Domestic Tyranny*, 48.

19 Ibid. Pleck also surveyed period childrearing literature, noting that Anglo-American attitudes towards corporal punishment became milder as the century wore on; as she posited, this "gradually shifting stance towards childrearing practices constituted a kind of private reform movement against family violence" (34).

20 Radbill, "Children in a World of Violence," 13; Hugh Cunningham, *Children and Childhood in Western Society since 1500* (London: Longman, 1995), 147.

21 Cunningham, *Children*, 134.

22 Renée Joyal, *Les enfants, la société et l'État au Québec, 1608–1989* (Montréal: Cahiers du Québec, HMH, 1999).

23 Michael Grossberg, *Governing the Hearth, Law and the Family in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1985), 10.

24 Ibid., 144. France passed the Child Labour Law in 1841, the first concerted effort in that country to protect children from the carnage wrought by the industrial revolution.

25 Ibid., 141.

26 Radbill, "Children in a World of Violence," 7; George K. Behlmer, *Child Abuse and Moral Reform in England, 1870–1908* (Stanford: Stanford University Press, 1982), 7–9; Lionel Rose, *The Erosion of Childhood: Child Oppression in Britain, 1860–1918* (London: Routledge, 1991), 28; Linda A. Pollock, *Parent–Child Relations from 1500 to 1900* (Cambridge: Cambridge University Press, 1983), 62. For discussion of labour law related to servants during this period, including minors, see generally Ian C. Pilarczyk, "'Too well used by his master': Judicial Enforcement of Servants' Rights in Montreal, 1830–1845," *McGill Law Journal* 46 (2001): 491–529; Pilarczyk, "The Law of Servants and the Servants of Law: Enforcing Masters' Rights in Montreal, 1830–1845," *McGill Law Journal* 46 (2001): 779–836.

27 Behlmer, *Child Abuse*, 46–7.

28 See, for example, Pleck, *Domestic Tyranny*, 48 ("Causing permanent injury to a child was always considered wrong, but before the Civil War there was no palpable interest in defining what cruelty to children was"); Rose, *Erosion of Childhood*, 233; Behlmer, *Child Abuse*, 6 (noting that in the United Kingdom, parents could "lawfully" or "reasonably" chastise a child, but these terms were not defined); Nancy Hathaway Steenburg, *Children and the Criminal Law in Connecticut, 1635–1855: Changing Perceptions of Childhood* (Routledge: New York, 2005), 159 (no unanimity on definition of "excessive" punishment). Roth, in the context of New England, noted, "Older children could be neglected, starved, imprisoned, tortured, raped and beaten with impunity, as long as parents and guardians were careful not to leave marks of violence on the face, neck, or hands and as long as potential informants … did not live in the same house." Randolph Roth, "Child Murder in New England," *Social Science History* 25, no. 1 (Spring 2001): 102. See also Smith, "Expanding the Compass," 40 (stating it was rare to find prosecutions for child abuse).

29 See, for example, Pollock, *Forgotten Children*, 95 (parents "could not treat children exactly as they pleased, even if no specific law applied"). Pollock also noted that the manner of newspaper coverage and the fact the majority of defendants were convicted indicated that society condemned it before legislation was passed in the last decades of the century.

30 Cunningham, *Childhood*, 140. As one social critic wrote in 1833, "It is notorious that the health of the negro slave, of the adult felon, of the horse, of the ass, of the hare, of the rabbit, of the partridge, of the pheasant, of the cabbage, and of the strawberry, is protected by law; but at the same time, the Children of the Poor are unprotected by the law." Ibid., citing Richard Oastler.

31 Conley, *Unwritten Law*, 105, quoting Harold Perkins.

32 Monica Flegel, *Conceptualizing Cruelty to Children in Nineteenth-Century England* (London: Ashgate Publishing, 2013), 39.

33 The law was intended primarily to protect work animals and usually resulted in a fine or incarceration if not paid. See, for example, BAnQ-M, Registers of the Montreal Police Court (hereinafter MP) p. 276, *Domina Regina v. Edouard Nadeau* (11 Aug. 1840) (fifteen days in House of Corrections for "illtreating a horse"); MP p.2 6, *Domina Regina v. Augustin Perrault* (19 July 1842) (one week imprisonment for "cruelty to a horse and overloading"). See also 2 Vict. c. 2 (1839) (L.C.) (statute prohibiting cruelty to animals). For an article referencing animal abuse, see *Montreal Weekly Pilot*, 15 Oct 1846: "Cruelty to animals is one of the distinguishing vices of the lowest and basest of the people. Wherever it is found, it is a certain mark of ignorance and meanness – an intrinsic mark, which all the external advantages of wealth, splendour, and nobility, cannot obliterate."

34 Pollock, *Forgotten Children*, 95.

35 Cunningham, *Childhood*, 134.

36 14 & 15 Vict. c. 11 (1851) (U.K.). See Rose, *Erosion of Childhood*, 42 and 234; Behlmer, *Child Abuse*, 305.

37 16 Vict. c. 30 (1853) (U.K.). It provided for a prison term of six months or a fine of up to £20 for attacks on females and on males under fourteen that resulted in bodily harm.

38 Behlmer, *Child Abuse*, 12. Rose likewise noted the lack of utility of the legislation in addressing child abuse by parents. Rose, *Erosion of Childhood*, 233.

39 That act, known as *The Poor Law Amendment Act*, allowed for Boards of Guardians to initiate legal proceedings against parents for neglect. Behlmer, *Child Abuse*, 80. It superseded the *Poor Law Act* of 1834 that required parents to support children as a way of preventing them from being public burdens, but by all accounts it was a failure. Rose, *Erosion of Childhood*, 234.

40 22 Vict. c. 27 (1858) (P.C.)

41 Peter N. Moogk, "Les Petits Sauvages: The Children of Eighteenth-Century New France," in *Childhood and Family in Canadian History*, ed. Joy Parr (Toronto: McClelland & Stewart, 1982), 21. For a contemporary history of New France, see Pierre François-Xavier de Charlevoix, *Histoire et description générale de la Nouvelle-France*, 6 vols. (Paris: Nyon fils, 1744); for a more recent overview, see, for example, Yves-François Zoltvany, ed., *The French Tradition in North America* (New York: Harper & Row, 1969).

42 Moogk, "Les Petits Sauvages," 23.

43 Janet Noel, *Canada Dry: Temperance Crusades before Confederation* (Toronto: University of Toronto Press, 1995), 92.

44 Marie-Aimée Cliche, *Maltraiter ou punir? La violence envers les enfants dans les familles québécoises, 1850–1969* (Montreal: Boreal, 2007), 51; Moogk, "Les Petits Sauvages," 22–3. Cliche notes this was similar to the English criminal law in this regard, 16n12. These concepts were also reflected in prominent legal treatises of the time. For a leading treatise, see, for example, Henry Des Rivières Beaubien, *Traité sur les lois civiles du Bas Canada* (Montreal: Duvernay, 1832).

45 Moogk, "Les Petits Sauvages," 22. Article 242 set out a child's duty to honour and respect his parents; Article 243 stipulated he remained subject to parental (particularly paternal) authority until the age of majority or emancipation; and Article 245 allowed for the "right of reasonable and moderate correction."

46 Cliche, *Maltraiter ou punir?*, 36.

47 Many of the early institutions were private or religious, such as the Grey Nuns (who took in foundlings) in the mid-eighteenth-century, or the Sisters of Miséricorde founded in 1848 (who took in orphans and assisted unwed mothers). By the 1860s Quebec established schools of industry, reform schools, and orphanages. See, for example, Reneé Joyal, *Les enfants, la société et l'État au Québec, 1608–1989* (Montreal: Hurtubise HMH, 1999), 48–52; Marta Danylewycz, *Taking the Veil* (Toronto: McClelland & Stewart, 1987), esp. 72–109. For a description of the demographic, economic, and other changes that Quebec underwent during this period, including the rise of institutions, see Pilarczyk, "'So foul a deed,'" 581–7. Legislative action was focused mainly on the issue of delinquency, with two laws passed in 1857 establishing a separate prison for juveniles and providing for simplified judicial proceedings for youth charged with simple larceny. 20 Vict. c. 28 (1857) (L.C.) (reformatory for juvenile delinquents); 20 Vict. c. 29 (1857) (L.C.) (proceedings for juveniles charged with simple larceny). See also Joyal, *Les enfants*, 43. For discussion of the treatment of delinquency in Quebec, see generally Sylvie Ménard, *Des enfants sous surveillance: la rééducation des jeunes délinquants au Québec (1840–1950)* (Montreal: VLB, 2003).

48 See, for example, Rose, *Erosion of Childhood*, 233 (noting that conservative jurists in the United Kingdom were reluctant to punish parents for conduct that fell short of causing death).

49 See generally Pilarczyk, "Law of Servants."

50 See generally Pilarczyk, "'Too well used by his master'"; see also 524n103 for a local legislative provision that governed "misusage, defect of sufficient and wholesome provisions, or for cruelty or other ill-treatment." Greg Smith likewise notes examples of suits filed against masters in eigh-

teenth-century London. Smith, "Hanoverian Metropolis," 43 (discussing suits against masters), and 42–6 (discussing violence against servants and apprentices).

51 See Pilarczyk, "'Justice,'" 214–361 (discussing 571 cases identified for the period 1825–50). Complaints against wives constituted approximately 15 per cent of the total.

52 Smith, "Hanoverian Metropolis," 48.

53 See, for example, David Peterson del Mar, *What Trouble I Have Seen: A History of Violence against Wives* (Cambridge, MA: Harvard University Press, 1996), 57 (noting greater tolerance for violence directed at children than spouses in nineteenth-century Oregon).

54 For the nexus between alcoholism and spousal violence in Montreal, see generally Pilarczyk, "'Justice,'" 214–361 (spousal battery), and 362–445 (spousal murder); Kathryn Harvey, "'To love, honour, and obey': Wife-Battering in Working-Class Montreal, 1869–1879," *Urban History Review* 19 (1990): 128.

55 See, for example Noel, *Canada Dry*, 92: "Those cruel fathers (still accompanied in the 1830s and 1840s by a smaller phalanx of unfeeling mothers) who beat their children and sold their little girls' clothes and shoes during the winter for whiskey were a staple of temperance literature of that day. They may be less exaggerated than modern readers would suppose."

Noel also notes that readers of temperance tracts were exposed to progressive ideals of "gentle child-rearing" (93). For specific discussion of the Montreal experience with temperance during this period, see 55–62. For a historical overview in Canada, see, for example, Cheryl Krasnick Warsh, ed., *Drink in Canada, Historical Essays* (Montreal and Kingston: McGill-Queen's University Press, 1993).

56 Cliche, *Maltraiter ou punir?*, 17.

57 As Smith has noted for eighteenth-century London, "patriarchal authority in the household, combined with economic, social and legal barriers to prosecution conspired to foreclose on potentially successful prosecutions before they even came to light." Smith, "Hanoverian Metropolis," 32. For reference to the role of the Roman Catholic Church in reinforcing patriarchal relationships, see generally Marie-Aimée Cliche, "Un secret bien gardé: l'inceste dans la société traditionnelle québécoise, 1858–1938," *Revue d'histoire de l'Amerique française* 50, no. 2 (1996). The Montreal court of this period was a highly localized, court-driven system, in which private prosecutors initiated a considerable amount of the business heard before the courts, particularly where assaults were concerned. See generally Fyson, *Magistrates*. For discussion of privately driven criminal justice, see, for example, Allen Steinberg, *The Transformation of Criminal Justice, Philadelphia, 1800–1880* (Chapel Hill: University of North Carolina Press, 1989); David Philips, *Crime and Authority in Victorian England* (London: Croom Helm, 1977); Peter King, *Crime, Justice, and Discretion in England 1740–1820* (Oxford: University Press, 2000).

58 *Montreal Gazette*, 15 Oct. 1829.

59 Pilarczyk, "'So foul a deed,'" 583–8 and 629 (for abandonment); ibid. in general for infanticide. An early exception was Connecticut, which passed a law in 1838 regarding child abandonment and neglect. Steenburg, *Children and the Criminal Law*, 158–9.

60 *L'Ami du Peuple*, 27 Nov. 1839: "Police Station, Station A. Sunday Nov. 24: A miserable woman was picked up in the street in a state of complete drunkenness, with a small child in her arms. The child was sent to the house of one of his close relatives … Tuesday the 26th, Station B: a young child was found at one in the morning, barefoot, in the street, and it was soon discovered to be that of Mr and Mrs Davidson, who had escaped during one of the regular and disorderly disputes of his parents. The poor child would have surely perished without the prompt help that was given by the police. The father and the mother were lodged at the Station until the following morning. May this slight correction inspire them to peace in the future" (author's translation).

When brought before the police magistrate on charge of "ill-treating their child," these parents were "admonished and discharged." BAnQ-M, MP, *Domina Regina v. James Davidson* (26 Nov. 1839); MP, *Domina Regina v. Mary Davidson* (26 Nov. 1839).

61 *Montreal Gazette*, 31 Mar. 1835 (case of *Pierre Gauvin v. Sophie Mailloux*). The mother was sentenced to one year in prison and to provide a surety of £100, as recorded in *Montreal Gazette*, 4 Apr. 1835. This case was not counted, as it occurred in Quebec City.

62 *Vindicator*, 13 Jan. 1829, citing the *Christian Register*. For similar accounts of the murder and starvation of children in mid-nineteenth-century England, compare Boyle, *Black Swine*, 27–34.

63 *La Minerve*, 2 May 1844 ("for having cruelly battered her child aged eight years"; author's translation); see also *Montreal Gazette*, 2 May 1844 (case of Clot/Clet Goulette). Many such cases were simply discontinued. Overlapping sources assist in capturing information that would otherwise be lost, but the absence of documentation on cases referred to in newspapers is a recurrent issue. See, for example, Jeffrey S. Adler, "'My mother-in-law is to blame, but I'll walk on her neck yet': Homicide in Late Nineteenth-Century Chicago," *Journal of Social History* 31 (1997): 254 (referring to

"maddening references" in newspapers to homicides that are absent from official records); Roger Lane, "Urban Homicide in the Nineteenth Century: Some Lessons for the Twentieth," in *History and Crime: Implications for Criminal Justice Policy*, ed. Jane A. Inciardi and Charles E. Faupels (Beverly Hills: Sage Publications, 1980), 93.

64 Conley, *Unwritten Law*, 100 (also noting that non-intervention reflected "the more practical concern that rate-payers not have to support the children of idle reprobates"). As George Behlmer has observed in his work on the public response to child abuse in later nineteenth-century England, "That few children appear to have been assaulted is natural; the young either could not or dared not prefer charges against adult males." Behlmer, *Child Abuse*, 13.

65 Conley, *Unwritten Law*, 104.

66 There may have been some informal mechanics for intervention, including the role of parish priests, who may have uncovered instances of domestic violence. See n189 (noting Mérante Schnider disclosed incest to her priest in the confessional, although there is no evidence of his response).

67 See, for example, A.H. Williams and N.K. Griffin, "100 Years of Lost Opportunity: Missed Descriptions of Child Abuse in the 19th Century and Beyond," *Child Abuse & Neglect* 32, no. 10 (Oct. 2008): 920.

68 Rose, *Erosion of Childhood*, 237.

69 Ibid. This rule did not apply to acts of violence committed against one spouse by the other, at least in Montreal. See Pilarczyk, "'Justice,'" 239. In the United Kingdom, this remained the law until the *Prevention of Cruelty to Children Act* in 1889. Adam Kuper, *Incest and Influence: The Private Life of Bourgeois England* (Cambridge, MA: Harvard University Press: 2009), 81.

70 Conley, *Unwritten Law*, 105. It is likely that evidence of child abuse could be gleaned from the registers of Montreal charitable institutions, potentially a fruitful line of scholarly inquiry.

71 Smith, "Hanoverian Metropolis," 35.

72 For discussion of policing in Quebec, see, for example, Fyson, *Magistrates*, 136–83.

73 See *Vindicator*, 12 June 1829 (case of McCluskey).

74 See *Montreal Register*, 8 June 1848 (citing *Montreal Herald*) (case of McLean).

75 BAnQ-M, MP, *Domina Regina v. Mary McShewen* (22 Apr. 1839).

76 BAnQ-M, MP, *Domina Regina v. James Davidson*, and *Domina Regina v. Mary Ann Davidson* (26 Nov. 1839) (charge of "illtreating their child"); Library and Archives Canada (LAC), Records of the Montreal Police, General Register of Prisoners, vol. 33 (hereinafter MP[GR]) (John Paylor arrested 19 Jan. 1841). These cases, and others like them, mirror spousal violence cases

during the same period, as well as some cases brought by masters against recalcitrant servants. See Pilarczyk, "'Justice,'" 310–11 (discussion of spousal abuse cases before the Police Court); Pilarczyk, "Law of Servants," 793 (admonishment of servants in desertion suits). While reprimanding an abusive adult was obviously of limited efficacy, this response foreshadowed that of later decades following the advent of child protection agencies. In the 1870s and 1880s, as inspectors from "the Cruelty" investigated cases of child abuse and neglect, the usual response of inspectors was likewise to issue an admonition. See, for example, Behlmer, *Child Abuse*, 52 .

77 A surety for good conduct, also referred to as being "bound to the peace," required that a defendant keep the peace (either in general or towards specified individuals, or both) for a particular period of time or forfeit a specified sum of money to the Crown. Failure to post such a bond would result in imprisonment, as would failure to abide by its terms. Montreal sureties were typically for three months to two years, with six months or a year being the norm. Sureties were an ancient element of English criminal justice and were frequently employed in early colonial American spousal violence cases. Pleck, *Domestic Tyranny*, 27. Sureties could therefore be seen as a primitive form of restraining order and were a popular tool in family violence cases. A surety to attend court, usually referred to as a "recognizance," bound the defendant to keep the peace until her scheduled court date and also specified the sum to be forfeited in case of default; it was also used to guarantee the presence of private prosecutors and material witnesses. For discussion of recognizances, see, for example, David Philips, *Crime and Authority in Victorian England* (London: Croom Helm, 1977), 99–100; Fyson, *Magistrates*, 239–40.

78 BAnQ-M, QS(F), *Domina Regina v. Henry Driscoll, Esquire* (29 Apr. 1840) (arrest warrant).

79 BAnQ-M, QS(F), *Henry Driscoll, Esquire v. Betsey Kennedy* (15 May 1840) (affidavit of Henry Driscoll). He also noted he "entertains a just apprehension that, unless … [she] be bound to refrain from so molesting him by bringing the said children to his house as aforesaid in bad weather and in slight cloathing [*sic*], the said children may receive injury to their health and possibly die."

80 BAnQ-M, QS(F), *Domina Regina v. Betsey Kennedy* (15 May 1840) (arrest warrant). According to the language of the warrant, she was arrested for "molesting Henry Driscoll ... by knocking violently at his door, and by abuse and violent language, endeavouring to extort money from him."

81 BAnQ-M, QS(F), *Domina Regina v. Elizabeth Kennedy* (8 July 1841) (affidavit of Joseph Guilbault).

82 Justices of the peace and other jurists occasionally presided over matters in which they had an interest. For discussion of conflicts of interest related to justices of the peace, see Fyson, *Magistrates*, 97–9; for an example in the context of master-servant law, see Pilarczyk, "Law of Servants," 824–5.

83 BAnQ-M, QS(F), *Domina Regina v. Elizabeth Kennedy* (16 Sept. 1841). It is, of course, possible that this was an oversight on Driscoll's part, but given the dynamic between the two and Driscoll's familiarity with the law, this may also have been an attempt to essentially keep the surety open-ended.

84 See Pilarczyk, "'Justice,'" 285–8. Many complaints that included violence against children therefore were not examined in this study, such as the case of Mary Whitely prosecuted for assaulting her neighbour and aunt and resisting the police. The complaint also alleged she had assaulted her young son and breached the peace. BAnQ-M, QS(F), *Domina Regina v. Mary Whitely* (3 Apr. 1841).

85 Most Montreal cases involved children being accidentally run over by carriages in the streets or other instances of misadventure, although in a minority it was due to intentional violence. For examples of child murder in nineteenth-century England, see Patrick Wilson, *Murderess: A Story of the Women Executed in Britain since 1843* (London: Michael Joseph, 1971), 150–4 and 186–9. For Montreal infanticide cases, see generally Pilarczyk, "'So foul a deed.'"

86 Judith Knelman, *Twisting in the Wind: The Murderess and the English Press* (Toronto: University of Toronto Press, 1998), 124.

87 See ibid., 144 (noting that murder of children was an extension of a culture that permitted infanticide).

88 As Knelman noted, "The truth was, however, that the reprieve of a child murderer sent a less threatening message than the reprieve of a husband murderer. Excuses could be accepted for the murder of a child, but the murder of a husband under any circumstances was not to be condoned." Ibid., 142.

89 See also ibid., 144 (noting increasing press coverage of child murders as the century progressed). But see Adler, "'My mother-in-law,'" 261 (noting that in nineteenth-century Chicago, child homicides "increased significantly as the nineteenth century drew to a close. During the late 1870s, police files included no cases in which parents killed their children. By the early 1880s, however, such homicides constituted nearly six percent of all homicides in the city").

90 Roth, "Child Murder in New England," 103.

91 Marie-Aimée Cliche, *Fous, ivres ou méchants? Les parents meurtriers au Québec, 1775–1965* (Montreal: Boreal, 2011), 15.

92 *Vindicator*, 15 June 1830. She was unnamed in this account.

93 See, for example, BAnQ-M, QS(F), *Dominus Rex v. Elizabeth Birch* (30 June 1830) (affidavit of James Ross) (stating he has "never seen her behave with rigour or harshness towards any one of her children" and "hath never perceived … any disposition to cruelty or violence in the smallest degree").

94 Ibid.

95 Ibid. (affidavit of David Martin). This did appear, on its face, to be a bizarre form of discipline, but Martin did not question it. He did, however, emphasize that her son "neither shrieked, nor struggled, nor, in any manner, seemed to suffer pain, nor to be suspended, nor to be bound too tight by the said cord."

96 See, for example, *Montreal Gazette*, 15 July 1830; see also *Montreal Gazette*, 19 July 1830. *Canadian Courant* of 21 July 1831 stated, "We some time ago mentioned the committal to the Gaol of this city, of a woman named Elizabeth Birch, charged with attempting to strangle and wound her children, we have been since informed that the charge is unfounded, and originated in the fears of some of her neighbours who saw her correcting one of her children for some delinquency, and we have now the pleasure to state that such affidavits have been laid before the judges as have led to her being admitted to bail."

Montreal Gazette, 19 July 1830, asserted that Birch had never been charged with attempted murder of her children, but that her neighbour's depositions "tended only to represent her as keeping a disorderly house, which was by them deemed a nuisance," although this is in conflict with other surviving accounts and the judicial record.

97 The most complete account is found in two period newspapers. See *Vindicator*, 20 Jan. 1829: "Horrible Occurrence – A woman, named Judith Couture, wife of Pierre Guilot, of La Presentation, was committed to the jail of this city yesterday, for having cut the throats of five of her own children, one whom, only, has died, by the accounts given to us, the unfortunate woman labored under fits of insanity, in consequence of the death of her husband, during which she became depressed in mind and affected with the dreadful notion that it would be necessary to commit some horrible murders in order to ensure her salvation." See also *La Minerve*, 22 Jan. 1829.

98 BAnQ-M., MG no. 466 (Judith Couture committed 19 Jan. 1829, bailed 27 Jan. 1829 by Judge Pyke – likely suggesting she was released on a recognizance pending trial). See also J. Douglas Borthwick, *History of the Montreal Prison from A.D. 1784 to A.D. 1886* (Montreal: A. Feriard, 1886), 261; J. Douglas Borthwick, *From Darkness to Light: History of the Eight Prisons*

Which Have Been, or Are Now, in Montreal, from A.D. 1760 to A.D. 1907 – Civil and Military (Montreal: Gazette Printing, 1907), 49; Frank W. Anderson, *A Dance with Death: Canadian Women on the Gallows, 1754–1954* (Saskatoon: Fifth House Publishers, 1996), 109–10; F. Murray Greenwood and Beverley Boissery, *Uncertain Justice: Canadian Women and Capital Punishment, 1754–1953* (Toronto: Osgoode Society, 2001), 231 and n31; Cliche, *Fous*, 59 (misidentifying her as "Julie J."). For a similar U.K. case from 1854, see Jill Newton Ainsley, "'Some mysterious agency': Women, Violent Crime, and the Insanity Acquittal in the Victorian Courtroom," *Canadian Journal of History* 35, no. 25 (Apr. 2000): 38 (mother slashed throats of six children and was acquitted by reason of insanity).

99 Compare Greenwood and Boissery, *Uncertain Justice*, 231 and n31. For discussion of the role of insanity in filicide trials, see generally Knelman, *Twisting in the Wind*, 137–44; Ainsley, "'Some mysterious agency,'" 39–40. Knelman further noted that courts and jurors baulked at extending leniency towards mothers accused of child murder based on insanity. Knelman, *Twisting in the Wind*, 137. However, there is also an element of truth in Knelman's observation that society could well afford to exercise mercy towards a child killer. In noting that the "two most notorious child murderesses of nineteenth-century England were not hanged," Knelman further observed, "Child murder was not a crime that incited public vengeance. These crimes were bizarre but were peculiar to their own unhappy situations. They were not perceived as threats to the general public." Ibid., 142. The further point has also been made by others that domestic homicides were rarely treated as murders. Conley, *Unwritten Law*, 59–60. She also noted, "Though not formally recognized in law, the relationship between the victim and the accused was crucial both in deciding whether to call a homicide a manslaughter or a murder, and in determining sentences." Ibid., 59. These responses may have allowed the system to convict female murderers while also denying their agency, as Ainsley observes. Ainsley, "'Some mysterious agency,'" 40.

100 See the case of Michael Coleman, nn196–202.

101 *Times and Daily Commercial Advertiser*, 15 Jan. 1844 (case of Betsey Kennedy).

102 Ibid., 19 Jan. 1844. The wound was "about an inch in length and as deep as the bone."

103 Ibid. This appears to be an excellent example of conventions regarding female propriety.

104 Ibid. The term was computed from the time of her sentencing on 15 Jan. 1844, not from the time at which she was first committed, which was 21 Nov. of the previous year. BAnQ-M, MG (Elizabeth Kennedy committed for "maliciously stabbing a child" on 21 Nov. 1843).

105 BAnQ-M, QS(F), *Queen v. Elizabeth Eveley* (4 Mar. 1842) (affidavit of Margaret Eveley); *Queen v. Elizabeth Eveley* (4 Mar. 1842) (affidavit of William Eveley).

106 A threat of harm, coupled with intention and opportunity to commit it, was actionable as an assault; the threat itself was not considered actionable. See, for example, V. Francis Hilliard, *The Law of Torts or Private Wrongs*, 2nd ed. (Boston: Little, Brown, 1861), 197–8; C.G. Addison, *A Treatise on the Law of Torts* (New York: James Cockcroft, 1876), esp. 6–8.

107 BAnQ-M, MG, *Domina Regina v. Isabel Belile* (committed 1 Aug. 1846; discharged 10 Aug. 1846).

108 BAnQ-M, QS(F), *Queen v. Baptiste Poirier* (5 Nov. 1841) (affidavit of Nicholas Metillier) (for having "violently and cruelly battered and mistreated her daughter") (author's translation).

109 BAnQ-M, QS(F), *Queen v. Baptiste Poirier* (5 Nov. 1841) (trial notes). These charges were common in domestic violence cases; for the period 1825–50, fully 4 per cent of identified complaints against husbands, and 14 per cent of identified complaints against wives, were charged as threats. For discussion, see Pilarczyk, "'Justice,'" 265–6. For examples of similar cases in eighteenth-century London, see Greg Smith, "Hanoverian Metropolis," 36. As one scholar has commented, the "distinction between various forms of assault is less clear-cut than the legal definition would suggest. Much depended upon the discretion of the individual prosecutor and/or the police and magistrates involved in the case." David Taylor, *Crime, Policing and Punishment in England, 1750–1914* (New York: St Martin's, 1998), 43.

110 BAnQ-M, QS(F), *Queen v. Donald McCarthy* (5 Apr. 1841) (affidavit of James O'Neil). He was committed later the same year for being "drunk and beating his wife." LAC, Gaol Calendars of the Montreal Gaol, vol. 34 (hereinafter MG[GC]) (3 Oct. 1841) (committal of Donald McCarthy).

111 BAnQ-M, QS(F), *Queen v. John Miller* (16 Mar. 1843) (affidavit of Agnes Miller); see also *Queen v. John Miller* (16 Mar. 1843) (affidavit of Mary Smith) (likewise noting he made a "great noise in the house" while assaulting his daughter).

112 See Pilarczyk, "'Justice,'" 261, fig. 6.

113 2 Victoria (1) c. 2 (1838) (L.C.). Section 9 included behaviour "causing a disturbance or noise in the streets or highways by screaming, swearing or singing."

114 Even in earlier periods not covered by the Police Ordinance, this held

true. The 1829 case of the mother arrested for immersing her child in the river is reflective of this, as it is not obvious her actions met the standard definition of "breach of the peace." While an argument could be made that she committed a nuisance, it is evident that breach of the peace was also a catch-all offence. See, for example, n73 and accompanying text.

115 See, for example, Fyson, *Magistrates*, 281–2; Pilarczyk, "'Justice,'" 252–8; Smith, "Hanoverian Metropolis," 35.

116 Compare Knelman, *Twisting in the Wind*, 123 (noting that in Victorian England infants and children were the most common murder victims at women's hands); Conley, *Unwritten Law*, 107–8 (noting that women committed the majority of child assaults and homicides). Adler noted that in his study 69 per cent of child homicides were committed by women prior to 1890, but after the 1890s men accounted for 84 per cent of child homicides. Adler, "'My mother-in-law,'" 262.

117 Excluding cases involving incestuous acts or abduction, seventeen out of twenty-nine cases, or 58.6 per cent, were brought against female relatives. Compare *Family Violence in Canada: A Statistical Profile 2001* (Ottawa: Statistics Canada, 2001), 1 (indicating 60 per cent of alleged perpetrators of child abuse were mothers). However, many affidavits by abused wives provide "shadow evidence" of violence by fathers against their children, attesting to violence against children that was never prosecuted. See Pilarczyk, "'Justice,'" 285–8. In the context of marital violence, Hammerton claimed that "even the most drunken man chose his victims with care and calculation, rarely attacking his children, which would have brought more serious consequences." A. James Hammerton, *Cruelty and Companionship: Conflict in Nineteenth-Century Married Life* (London: Routledge, 1992), 46. I find this claim dubious for the reason, among others, that violence against children was less likely to be prosecuted than wife battery. Allusion to child abuse in other legal proceedings was noted in the context of divorce filings where "evidence of child abuse might surface in those cases only as an incidental detail." Smith, "Hanoverian Metropolis," 40.

118 BAnQ-M, QS(F), *Dominus Rex v. Mary Burk wife of William Freeman* (29 May 1830) (affidavit of William Bingham). Mothers were also responsible for the majority of filicides during this period. Cliche, *Fous*, 15–16, and 18, table 3. For the role of stepparents in filicides, see Cliche, *Maltraiter ou punir?*, 48.

119 BAnQ-M, QS(F), *Dominus Rex v. Margaret Cooper* (9 Jan. 1834) (affidavit of Jane Berry). Berry further attested that on "divers[e] occasions before and … since, she has been put in danger of her life on the part of the said Margaret Cooper." The domestic provided a corroborating affidavit.

BAnQ-M, QS(F), *Dominus Rex v. Margaret Cooper* (9 Jan. 1834) (affidavit of Ann Cowan a.k.a. Morrison included with affidavit of Jane Berry).

120 BAnQ-M, QS(F), *Dominus Rex v. Margaret Cooper* (23 Jan. 1834) (recognizance); BAnQ-M, QS(F), *Dominus Rex v. Margaret Cooper* (30 June 1834) (indictment, returned *ignoramus*). This is all the more surprising as there was a witness, but perhaps this offence was "overcharged" as assault with intent to murder, rather than as aggravated or simple assault. No record of the previous arrest was found.

121 BAnQ-M, QS(F), *Dominus Rex v. Ann Farmer* (26 Nov. 1836) (affidavit of William Lilly). She had been charged on at least three occasions with assaulting her husband. See Pilarczyk, "'Justice,'" 323–4.

122 BAnQ-M, QS(F), *Mary Groome v. Mary O'Brian* (14 Feb. 1843) (affidavit of Mary Groome).

123 BAnQ-M, QS(F), *Dominus Rex v. Abraham Bagnell* (23 Oct. 1832) (affidavit of William Bagnell); QS(F), *Dominus Rex v. Abraham Bagnell* (14 Nov. 1832) (surety of £150 pounds to appear at court and keep the peace towards his son). This was an unusually large amount for the period.

124 *Queen v. John Miller*, n111 (defendant "committed for want of bail"). For discussion of children who intervened, see, for example, Cliche, *Maltraiter ou punir?*, 47.

125 Compare Conley, *Unwritten Law*, 106.

126 BAnQ-M, KB(F), *Dominus Rex v. Jean Baptiste Roy* (27 Sept. 1836) (affidavit of Antoine Fleury); BAnQ-M, KB(F), *Dominus Rex v. Jean Baptiste Roy* (27 Sept. 1836) (affidavit of Matthew Sterns).

127 BAnQ-M, QS(F), *Dominus Rex v. Joseph Latour et Elmire Roy* (8 Aug. 1833) (affidavit of Etienne Legrenade).

128 BAnQ-M, QS(F), *Queen v. Rosa Clifford* (9 Sept. 1840) (affidavit of James Hameron); ibid. (affidavit of Catherine Hameron). As noted by Smith, misdemeanour could encompass a wide spectrum of offences. Smith, "Hanoverian Metropolis," 35–6.

129 For ethnicity in Quebec filicides, see Cliche, *Fous*, 17–18 (showing that for 1775–1965 perpetrators were mainly French Canadians). For ethnic divisions related to filicides in Chicago, see generally Adler, "'My mother-in-law.'"

130 Compare Smith, "Hanoverian Metropolis," 40 (out of ten sample cases of domestic child abuse, all involved female victims).

131 In London in the 1880s the British National Society for the Prevention of Cruelty to Children found that nearly 90 per cent of neglect cases implicated habitual inebriation of one or both parents, with the worst cases of child neglect involving mothers who were drunkards. Radbill, "Children

in a World of Violence," 8. In Liverpool SPCC cases in 1884–5, over 35 per cent were tied to alcohol abuse. Behlmer, *Child Abuse*, 72. For the conjunction of alcoholism and spousal violence during this period, see, for example, Pilarczyk, "'Justice,'" 317–24; Kathryn Harvey, "'To love, honour, and obey': Wife-Battering in Working-Class Montreal, 1869–1879," *Urban History Review* 19 (1999): 129; Cliche, *Maltraiter ou punir?*, 47–8.

132 *L'Ami du Peuple* (30 Nov. 1839) ("It is regrettable that no asylum exists where refuge could be given to children who are unfortunate enough to have been born to such mothers") (author's translation).

133 See *Pilot* (18 Mar. 1851), containing the following account, not counted in the statistics, as it falls beyond the period covered in this article: "Drunkenness – March 7 –Bridget Fury, the second offence, was charged with being drunk and abusive towards her little girl – a child of two-and-a-half years old. Sentenced to pay a fine and costs of 1/2/6, which not being paid, Mrs F. was committed to gaol, and her interesting child sent to the House of Industry. This same lady had been previously taken up on the night of the 5th January, when she was discovered by the Police, near the Catholic Church, in a state of drunken insensibility, and her unfortunate child sitting by her side, nearly frozen to death."

134 BAnQ-M, MG no. 988 (29 May 1830) (Mary Freeman discharged on 19 July 1830); *Dominus Rex v. Mary Burk wife of William Freeman* (29 May 1830) (affidavit of William Bingham).

135 BAnQ-M, QS(F), *Alex Sutherland v. Janet Shaw* (1 May 1838) (affidavit of Alexander Sutherland); ibid. (9 May 1838) (surety). Sutherland eventually removed his children to the country to sequester them away from their mother. BAnQ-M, QS(F), ibid. (20 July 1838) (affidavit of Alexander Sutherland).

136 *Queen v. John Miller* (affidavit of Mary Smith), n111. Alcoholism was also amply documented in spousal abuse cases. See Pilarczyk, "'Justice,'" 316–23. Some of the earliest and most strident criticism was directed at drunken fathers who brutalized their children. Cliche, *Maltraiter ou punir?*, 26 and n9.

137 BAnQ-M, QS(F), *Domina Regina v. Elisabeth Kennedy* (10 Mar. 1842) (affidavit of Stephen C. Sewell).

138 See nn101–4.

139 Pilarczyk, "'Justice,'" 335–6 (case of Ellen Clarke), not counted here, as the acts were treated as being against him alone. In domestic violence cases, three times as many wives as husbands were accused of lunacy and were eighteen times more likely to be so accused if viewed as a percentage of all domestic violence charges. This might have reflected, inter alia,

a popular face-saving strategy used by husbands. For discussion, see ibid., 267 and 333–8.

140 The definition of incest used in this chapter is the standard legal definition of "sexual intercourse or cohabitation between a man and a woman who are related to each other within the degrees wherein marriage is prohibited by law." *Black's Law Dictionary*, 522. Incest therefore involves both blood relatives and relatives through marriage or cohabitation. See Linda Gordon and Paul O'Keefe, "Incest as a Form of Family Violence: Evidence from Historical Case Records," *Journal of Marriage and the Family* (1984): 28 ("We considered sexual relations incestuous not only if the two people were kin but also if they occupied kinship roles – for example, stepfather and daughter"). As Kuper observed, the definition of what, or should have, constituted incest in England was historically quite uncertain. Kuper, *Incest and Influence*, 57. In the Canadian prairies, Erickson observed that "legal and political authorities adhered to a narrow definition of incest that limited it to cases of sexual violence that threatened to produce children of blood relationships." Lesley Erickson, *Westward Bound: Sex, Violence, the Law, and the Making of a Settler Society* (Vancouver: UBC Press, 2011), 197. The issue of incestuous marriage falls outside the scope of this chapter.

141 See generally Radbill, "Children in a World of Violence," 11. The issue of consent did create legal and social complications, as noted in the context of colonial Connecticut. See, for example, Steenburg, *Children*, 177–8.

142 See Gordon and O'Keefe, "Incest," 28 ("Historical cases … suggest that such incest is usually coercive, thus appropriately considered a form of family violence").

143 Erickson made a similar point about the late nineteenth and early twentieth centuries. Erickson, *Westward Bound*,193. It generally began to be seen as such in the waning decades of the nineteenth century. Kuper, *Incest and Influence*, 80.

144 See Anthony S. Wohl, "Sex and the Single Room: Incest among the Victorian Working Classes," in *The Victorian Family, Structure and Stresses*, ed. Anthony S. Wohl (London: Croom Helm, 1978), 200. Compare Lynn Sacco, *Unspeakable: Father-Daughter Incest in American History* (Baltimore: Johns Hopkins University Press, 2009), 23 (noting "vast numbers of newspaper articles detailing father-daughter incest").

145 Compare Wohl, "Sex and the Single Room," 212–13; Sacco, *Unspeakable*, 21 (the dearth of arrests and prosecutions for incest might lead to false conclusion that the crime occurred only rarely).

146 That observation holds true for a variety of sexual activities, most nota-

bly homosexual acts. As one scholar aptly put it, "Historians who study sexual behaviour and gender roles are all too familiar with the obstacles inherent in recovering from the past that which occurred in private." See Lorna Hutchinson, "Buggery Trials in Saint John, 1806: The Case of John M. Smith," *University of New Brunswick Law Journal* 40 (1991): 130. Incest was among the most under-reported crimes. Louise A. Jackson, *Child Sexual Abuse in Victorian England* (London: Routledge, 2000), 46; Cliche, "Un secret bien gardé," 202.

147 Compare Radbill, "Children in a World of Violence," 12; Jackson, *Child Sexual Abuse*, 43. But see Stephen Robertson, *Crimes against Children: Sexual Violence and Legal Culture in New York City, 1880–1960* (Chapel Hill: University of North Carolina Press, 2005), 43 (noting there was a late nineteenth-century tendency to see venereal disease in children as the result of "innocent infection" rather than having to grapple with the unpleasant issue of incest). For discussion of the myth of curing venereal disease by sleeping with a child virgin, see Roger Davidson, "'This pernicious delusion': Law, Medicine, and Child Sexual Abuse in Early-Twentieth-Century Scotland," *Journal of the History of Sexuality* 10 (2001): 62.

148 Steenburg, *Children*, 178–9; Sacco, *Unspeakable*, 32.

149 See, for example, Tamara Myers, *Caught: Montreal's Modern Girls and the Law, 1869–1945* (Toronto: University of Toronto Press, 2006), 194. There could also be other ramifications for victims. See, for example, Bibliothèque et Archives nationales du Québec, Centre d'archives de Québec, Register of the Quebec Prison (Mary Anne Paterson committed 18 August 1821 on conviction of "contempt in refusing to disclose the truth and give full evidence according to her knowledge in a case of an alleged assault upon her by William Paterson with an intent to ravish her"; discharged 26 September 1821). I am indebted to Donald Fyson for this.

150 See n69.

151 No doubt these obstacles have also dissuaded scholars from examining the early nineteenth century. For a rare work that nearly intersects with this period, see Marie- Cliche, "Un secret bien gardé." For discussion of other jurisdictions, see, for example, Dorothy E. Chunn, "Secrets and Lies: The Criminalization of Incest and the (Re)Formation of the 'Private' in British Columbia, 1890–1940," in *Regulating Lives: Historical Essays on the State, Society, the Individual and the Law*, ed. John McLaren, Robert Menzies, and Dorothy E. Chunn (Vancouver: UBC Press, 2002), 120; Linda Gordon, "Incest and Resistance: Patterns of Father-Daughter Incest, 1880–1930," *Social Problems* 33 (1986): 253–67; Patrizia Guarnieri, "'Dangerous girls,' Family Secrets, and Incest Law in Italy, 1861–1930," *International*

Journal of Law & Psychology 21 (1998): 369–83; Jackson, *Child Sexual Abuse*; Robertson, *Crimes against Children*.

152 Leviticus 18:6–18 (King James Version).

153 28 Henry VIII c. 27 (1536) (U.K.). Those laws were, in fact, less restrictive in scope than prohibitions enforced by the ecclesiastical courts. See generally Peter W. Bardaglio, *Reconstructing the Household: Families, Sex and the Law in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 1995), 41.

154 Ibid.

155 The sanctions were not severe, and enforcement was left to the "feeble coercion of the spiritual courts, according to the rules of canon law." Wohl, "Sex and the Single Room," 208 and n47 (citing B. Gavit, ed., *Blackstone's Commentaries on the Law* [1892] 778); see also Kuper, *Incest*, 52.

156 20 & 21 Vict. c. 85 (1857) (U.K.). The *Offences against the Person Act 1861* made it a crime to procure the defilement of a girl under twenty-one years of age, which was intended to address the parental practice of selling daughters to procurers, but did not govern incest itself. 24 & 25 Vict. c. 100 s. 42 (1861) (U.K.). See Rose, *Erosion of Childhood*, 234. Kuper, *Incest and Influence*, 57, points out that not only was there no crime of incest in the United Kingdom, but that the English were uncertain as to what properly did, or should have, constituted incest. It was not until the passage of the *Incest Act* of 1908, that incest was once again punishable in England as a criminal offence. 8 Edw. VII c. 45 (1908) (U.K.). That act encompassed the following familial relationships: parents and children; siblings; and grandfather and granddaughter. See generally Sybil Wolfram, "Eugenics and the Punishment of Incest Act 1908," *Criminal Law Review* (1983): 308. Wohl emphasized the obvious discomfort and timidity exhibited by members of Parliament when discussing that act. See "Sex and the Single Room," 201. The situation in England was in stark contrast to that in Scotland, where incest had been a capital offence for centuries and remained so until 1887. See generally Wohl, ibid., 208. In the American colonies, for instance, New Haven followed Levitical prohibitions and made incest a capital crime, while Massachusetts Bay mirrored English law and did not deem it a punishable offence. See generally Pleck, *Domestic Tyranny*, 25.

157 See generally Bardaglio, *Reconstructing the Household*, 40. Penalties ranged from one year incarceration and $1,000 fine in Florida, to life in prison in Louisiana.

158 Ibid., 39–40. Generally only the man was subject to sanction. Ibid., 45.

159 Ibid.

160 Ibid., 48.

161 Ibid., 39.

162 Ibid., 40. Linda Gordon's samplings of case records from the 1880s in Boston show 10 per cent contained references to incestuous conduct. See generally Linda Gordon, *Heroes of Their Own Lives: The Politics of Family Violence* (New York: Viking Penguin Books, 1988), 56. Child advocates knew that child sexual abuse was most prevalent within the family and that the father was the most common assailant, observations that continue to ring true today. See ibid., 61. According to 1995 statistics from the FBI, children under the age of twelve were nearly three times more likely to be victims of family rape than were all victims of rape. See "The Structure of Family Violence: An Analysis of Selected Incidents," Federal Bureau of Investigation, http://www.fbi.gov/about-us/cjis/ucr/nibrs/nibrs_famvio95.pdf.

163 Conley, *Unwritten Law*, 23, described it as "legally permissible but socially abhorrent behaviour." Bardaglio, *Reconstructing the Household*, 44, stated that the "criminalization of incest took place in America long before England, perhaps due to separation of church and state." Strictly speaking, that observation is inaccurate, as it overlooks the existence of incest as a statutory criminal offence in the time of Henry VIII.

164 Wohl, "Sex and the Single Room," 211.

165 Bardaglio, *Reconstructing the Household*, 39. For eroticism related to children, see generally J.R. Kincaid, *Child-Loving: The Erotic Child and Victorian Culture* (New York: Routledge, 1992).

166 Linda Gordon noted, "One of the most complicated and painful aspects of incestuous sex is that it cannot be said to be motivated only by hostility or to be experienced simply as abuse." Gordon, *Heroes*, 209.

167 Compare Karen Dubinsky, *Improper Advances: Rape and Heterosexual Conflict in Ontario, 1880–1929* (Chicago: University of Chicago Press, 1993) 62; Jackson, *Child Sexual Abuse*, 43 (noting that incest was the sexual offence least likely to be resolved through courts); Steenburg, *Children*, 182.

168 Chunn, "Secrets and Lies," 120. In Nova Scotia, it was a misdemeanour punishable by no more than two years' imprisonment (141n2).

169 Erickson, *Westward Bound*, 193.

170 See, for example, Chunn, "Secrets and Lies," 124 (thirty-two cases in BC, 1885–1940); Joan Sangster, *Regulating Girls and Women: Sexuality, the Family and the Law in Ontario, 1920–1960* (Toronto: University of Toronto Press, 2001), 26 (twenty-five cases in Peterborough County, ON, 1890–1929); Carolyn Strange, "Patriarchy Modified: The Criminal Prosecution of Rape in York County, Ontario, 1880–1930," in *Essays in the History of Canadian Law*, vol. 5, *Crime and Criminal Justice*, ed. Jim Phillips, Tina Loo, and Susan Lewthwaite (Toronto: Osgoode Society for Canadian Legal History and University of Toronto Press, 1995), 229–30 (eight cases for incestuous rape in York County, ON, 1880–1930).

171 Dubinsky observed that "incest and infanticide cases brought to light massive evidence of sexual exploitation in families." Dubinsky, *Improper Advances*, 61.

172 See generally Rose, *Erosion of Childhood*, 234; see also Wohl, "Sex and the Single Room," 210. For the early nineteenth-century Connecticut experience, see Steenburg, *Children*, esp. 179–82. For an example of a sexual assault provision, see 4 & 5 Vict. c. 27 s.17 (1841) (L.C.): "And be it enacted, That if any person shall unlawfully and carnally know and abuse any Girl under the age of ten years, every such offender shall be guilty of Felony; and being convicted thereof, shall suffer death as a Felon; and if any person shall unlawfully and carnally know and abuse any Girl, being above the age of ten years and under the age of twelve years, every such offender shall be guilty of a Misdemeanor, and being convicted thereof, shall be liable to be imprisoned for such term as the Court shall award."

173 Jacques Crémazie, *Les lois criminelles anglaises* (Quebec: Fréchette, 1842). For a brief discussion of incest, see Serge Gagnon, *Plaisir d'amour et crainte de Dieu: sexualité et confession au Bas-Canada* (Quebec: Presses de l'Université Laval, 1990), esp. 102, 146. One of the few period references was in the instructions sent to governors, as Donald Fyson has brought to my attention, which includes incest in the list of crimes to be suppressed, although it likely referred to incestuous marriage.

174 4 & 5 Vict. c. 27 (1841) (L.C.). Crémazie, in his treatise, set out that under the age of ten, consent was not an issue; under twelve, the child could consent but the defendant could not depend on that fact in his defence. Crémazie, *Les lois criminelles anglaises*, 83–4.

175 See Erickson, *Westward Bound*, 194–6, for such biases in the context of incest suits. The victim's testimony could be introduced if she was deemed to understand the consequences of an oath, with her testimony weighed according to her intelligence and the circumstances of the case. Crémazie, *Les lois criminelles anglaises*. See also Sacco, *Unspeakable*, 36 (harsh penalties and a higher burden of proof discouraged prosecutions).

176 See, for example the 1845 Kingston case in which a grand jury returned a "no bill" for rape in a case of incest because of the "absence of that violent resistance which the law requires as a constituent of that crime." Ruth A. Olsen, "Rape: An 'Un-Victorian' Aspect of Life in Upper Canada," *Ontario History* 68 (1976): 78 (citing the *Kingston Chronicle* of 12 Nov.

1845). Connor references the same account, adding that the grand jury "lament[ed] the lack of any law applying to such circumstances." Patrick J. Connor, "'The law should be her protector': The Criminal Prosecution of Rape in Upper Canada, 1791–1850," in *Sex without Consent: Rape and Sexual Coercion in America*, ed. Merril D. Smith (New York: New York University Press, 2001), 130n29. There were also other obstacles; incest charges, like rape, often required witness corroboration. Cliche, *Un secret*, 206–7; Chunn, "Secrets and Lies," 125. For discussion of the factors that militated against rape convictions in Montreal of the period, see Sandy Ramos, "'A most detestable crime': Gender Identities and Sexual Violence in the District of Montreal, 1803–1843," *Journal of the Canadian Historical Association* 12, no.1 (2001): 27–48.

177 Ramos identifies only three cases of rape by a family member for the period 1803–43 in Montreal but provides no details or identifying information on the cases found that would aid in comparison. Ramos, "'Most detestable crime,'" 41; see also Cliche, *Un secret*, 205, and table 1 (one case each in Montreal for the periods 1850–9 and 1860–9). Compare Chunn, "Secrets and Lies," n22 (thirty-two incest cases in British Columbia for 1890–1940); Robertson, *Crimes against Children*, 239, table 3 (sampling of cases in New York City 1886–1911 show no incest cases prior to 1911); Pollock, *Forgotten Children*, 92 and n8 (nineteen incest cases for 1785–1860).

178 *Pilot* (6 Nov. 1846) (death sentence passed on Joseph Roberts, citing *Three Rivers Gazette*). Given that rape charges were likewise notoriously difficult to prosecute, it is unknown to what extent the incestuous nature of the crime affected his sentence. The case was not included in analysis, as it fell outside the judicial District of Montreal. For discussion of newspaper reporting of American cases, see generally Sacco, *Unspeakable*. Rape cases during this period were seldom reported in newspapers, and then usually only obliquely. See, for example, Connor, "'The law should be her protector,'" 105.

179 See Pilarczyk, "'So foul a deed,'" 627. Interestingly, the familial relationship between them was mentioned only in passing. For an Upper Canada case in 1840 in which a father and daughter were convicted of killing their newborn, see Anderson, *Dance with Death*, 186.

180 BAnQ-M, KB(F), *Dominus Rex v. René Lavoie* (5 Mar. 1832) (affidavit of François Hinse); KB(F); ibid. (affidavit of Marie Hinse).

181 Sacco similarly notes that newspapers sometimes mentioned incest only as it was a factor in another legal proceeding. Sacco, *Unspeakable*, 24.

182 In talking about child sexual assault, "historical records have been passed down to us in a piecemeal and haphazard fashion … Furthermore, the questions we now ask of historical sources might not fit with legal or contemporary categories." Jackson, *Child Sexual Abuse*, 18.

183 *Montreal Gazette*, 21 Aug. 1826 (citing *Montreal Herald*).

184 BAnQ-M, KB(R), *King v. Joseph Massé* (7 Sept. 1826); see also *Montreal Gazette*, 7 Sept. 1826; *Canadian Courant*, 9 Sept. 1826.

185 The question of the reliability of child witnesses was to doom many cases in other jurisdictions. See, for example, Steenburg, *Children*, 180–2; Sacco, *Unspeakable*, 36.

186 *King v. Joseph Massé* (7 Sept. 1826); see also *Montreal Gazette*, 7 Sept. 1826; and *Canadian Courant*, 9 Sept. 1826. This phenomenon recurred frequently as judges showed considerable distrust of confessions. In the context of infanticide prosecutions, see Pilarczyk, "'So foul a deed,'" 615 and n173.

187 Dubinsky, *Improper Advances*, 58.

188 Ibid., 61. For the conjunction between incest and infanticide cases, see ibid., 60–2.

189 BAnQ-M, KB(F), *Domina Regina v. Jean Baptiste Schnider* (15 Oct. 1842) (affidavit of Mérante Schnider): "That time the said Jean Baptiste Schnider tried to know [her] carnally but did not succeed as a result of her young age" (author's translation). She alleged that prior to entering service she had confessed the abuse to her priest, but she did not specify in her affidavit what his response was to her allegations. She likely entered into domestic service at least partially to escape her situation.

190 As has been noted, "neither marriage nor adulthood necessarily freed women from sexual obligations to their fathers." Dubinsky, *Improper Advances*, 59.

191 BAnQ-M, KB(F), *Domina Regina v. Jean Baptiste Schnider* (13 Oct. 1842) (affidavit of Marie Muir). As Muir's affidavit was dated two days earlier, Muir might have initiated the proceedings.

192 BAnQ-M, KB(F), *La Reine v. Jean Baptiste Schnider* (15 Oct. 1842) (voluntary examination of Jean Baptiste Schnider for having "illegally, feloniously and against the will of Mérante Schnider, his daughter, violated … and enjoyed her carnally") (author's translation).

193 In late nineteenth-century Ontario, while there were statutes that proscribed incest, defendants were frequently charged with rape because that offence allowed for more severe penalties. See Strange, "Patriarchy Modified," 230. More often than not, rape prosecutions failed. See generally Olsen, "Rape"; Dubinsky, *Improper Advances*; Strange, "Patriarchy Modified"; Constance Backhouse, "Nineteenth-Century Canadian Rape Law 1800–1892," in Flaherty, *Essays*, 2:200. Some scholars have noted child rape was taken more seriously and had higher convictions rates.

See, for example, Dubinsky, *Improper Advances*, 23; Connor, "'The law should be her protector,'" 109 and 111.

194 See generally Ramos, "Detestable Crime"; Erickson, *Westward Bound*, 194; Sacco, *Unspeakable*, 35.

195 Myers, *Caught*, 201.

196 Abduction, defined as the "unlawful taking or detention of any female for purposes of marriage, concubinage, or prostitution," was an ancient common law crime. *Black's Law Dictionary*, 3. This charge sometimes masked consensual acts, as noted in Dubinsky, *Improper Advances*, 81–4.

197 BAnQ-M, MG (commitment of Michael Coleman on 18 July 1849, discharged 1 May 1850 "by being sent to Provincial Penitentiary").

198 *Montreal Gazette*, 20 Mar. 1850.

199 Ibid.

200 BAnQ-M, KB(R) (Mar. 1850–Oct. 1857) p.46, *Queen v. Michael Coleman* (18 Mar. 1850). See also *Pilot*, 19 Mar. 1850; *La Minerve*, 21 Mar. 1850.

201 *Montreal Gazette*, 1 Apr. 1850. A.N.Q.M., KB(R) (Mar. 1850–Oct. 1856) p. 46, *Queen v. Michael Coleman* (26 Mar. 1850).

202 *Montreal Gazette*, 1 Apr. 1850; *La Minerve*, 1 Apr. 1850 ("Michael Coleman, enlèvement d'une fille au-dessous de 16 ans, 3 ans au pénitentiare"); *Pilot*, 3 Apr. 1850; BAnQ-M., KB(R) (Mar. 1850–Oct. 1856) p.59, *Queen v. Michael Coleman* (31 Mar. 1850) (motion denied); p.66–7; ibid. (31 Mar. 1850) (sentence).

203 BAnQ-M, MG (John Young committed 12 Apr. 1838 for incest; bailed 10 Sept. 1838 by Court of Queen's Bench).

204 For discussion of the fluidity inherent in charges related to infanticide, for example, see Pilarczyk, "'So foul a deed,'" 629–30.

205 Referencing Toronto, Carolyn Strange noted that "the language [juries, judges, and the press] used to describe incest was filled with the same terms of pollution and disgust reserved for portrayals of interracial rape, homosexual offences, bestiality, and child molestation." Strange, *Patriarchy*, 229–30. Jackson likewise points to a "common vocabulary" used to describe sexual abusers; Jackson, *Child Sexual Abuse*, 32. Broder emphasizes the veiled references used when discussing such taboo subjects in the late Victorian period and the "limited vocabulary" used to talk about rape or incest in an attempt to "articulate the unspeakable." Sherri Broder, *Tramps, Unfit Mothers and Neglected Children: Negotiating the Family in Nineteenth-Century Philadelphia* (Philadelphia: University of Pennsylvania Press, 2002), 119.

206 Erickson makes a similar point; Erickson, *Westward Bound*, 196. Even in later decades, as Joan Sangster has noted, Children's Aid Societies and

social reformers focused on child neglect and physical abuse rather than incest. See generally Joan Sangster, "Masking and Unmasking the Sexual Abuse of Children: Perceptions of Violence against Children in the 'Bad Lands' of Ontario, 1916–1930," *Journal of Family History* 25, no. 4 (Oct. 2000): 504–26.

207 Myers, *Caught*, 202. "Incest was seen to be disrupting the social order, not because it was an expression of the power differential between daughters (who had little) and fathers (who were bestowed ultimate control in the family) but because it challenged the sanctity of the family as the fundamental social unit upon which society was built."

208 Compare Strange, *Patriarchy*, 230 (citing the figure that six out of eight men in Ontario charged with that offence during the period 1880 to 1929 were found guilty, although she also noted that the number of incest prosecutions was "miniscule"). Strange went on to state that offences "against fundamental taboos seemed to call for extraordinary responses from the criminal justice system." Jackson, in contrast, found very low conviction rates. See generally Jackson, *Child Sexual Abuse*, 165. Compare Erickson, *Westward Bound*, 193 (forty-two out of seventy-one convicted). Donald Fyson identified one case during this period in the Quebec City gaol register in which a defendant was sent to the penitentiary for incest in 1844. As he notes, those records are not transparent, as they rarely mention the victims by name. I am indebted to him for this example.

209 Gordon and O'Keefe likewise noted that the preponderance of perpetrators were male. See Gordon and O'Keefe, *"Incest,"* 28; see also Cliche, *Un secret*, 201 and table 4; Gordon, *Incest and Resistance*, 253 (98 per cent of incest cases committed by male relatives); Chunn, *Secrets*, 124.

210 The case of John Young contains no information on the family relationship. See n203. Compare Dubinsky, *Improper Advances*, 58 (noting that one-third of sexual assaults against children committed by household members were perpetrated by uncles, stepbrothers and cousins, while the remainder were committed by fathers, stepfathers, and adoptive fathers); Cliche, *Un secret*, 210 and table 4 (more than two-thirds were fathers, but also included other male relatives); Gordon, *Incest and Resistance*, 253 (offenders were usually fathers were but also included stepfather, older brother and uncles).

211 Almost all the children involved in Gordon and O'Keefe's study were female.

212 By way of comparison, Gordon and O'Keefe's survey indicates that 38 per cent of the incestuous relationships continued for three or more years; 29 per cent for one to three years; 5 per cent for less than twelve months;

17 per cent took place on several occasions; and 10 per cent occurred once. See Gordon and O'Keefe, "Incest," 29. See also Dubinsky, *Improper Advances*, 59 (stating that father-daughter incest was typically sustained over a period of months or even years); Sacco, "Unspeakable, 37 (ditto). Compare Cliche, "Un secret," 211 and table 5 (most two years' or less but ranged up to thirteen years); Chunn, *Secrets*, 127 (noting they were virtually always premeditated and planned).

213 Compare Gordon and O'Keefe, "Incest," 29 (stating, "In our cases the incestuous relations were terminated either by the girl's moving away from the household, by discovery by some outside authority or, least frequently, as a result of discovery by another family member").

214 Myers, *Caught*, 193.

215 Compare Jackson, *Child Sexual Abuse*, 28 ("[Those cases] represent only those family violence cases that have come to the attention of social-control forces. These cases bear an indeterminate relation to the actual incidence of family violence, and we can make no judgements about that problem in the population at large"). Jackson likewise noted the impossibility of drawing simple conclusions regarding causation, given the variety of people and processes involved in such prosecutions (21).

216 See, for example, Dubinsky, *Improper Advances*, 62 ("One is struck by the sheer ordinariness of most families in which incest was reported. Sexual abuse does not, of course, characterize all Canadian families, but privacy and the ideology of the moral sanctity of the family do").

217 Jackson, *Child Sexual Abuse*, 50, suggests that defendants who were prosecuted may have been too violent to be dealt with through more conventional means, pointing to the high correlation rates between incest cases that also referenced drunkenness, wife beating, and child abuse.

218 Erickson also observed that for a "society and a justice system struggling to come to terms with feminist critiques of a patriarchal legal structure and culture it is revealing that few cases of child beating came before the courts in this period." Erickson, *Westward Bound*, 199–200.

219 Boyle, *Black Swine*, 27.