Acts of the "Most Sanguinary Rage": Spousal Murder in Montreal, 1825-1850

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This study examines the 11 cases of wife murder (uxoricide) and 3 cases of husband murder (mariticide) identified in the judicial district of Montreal between 1825-1850, a period of considerable social flux. Through examination of judicial archives and primary sources, supplemented by comprehensive review of period newspapers, these cases allow us to examine the dynamics and causes that motivated spousal murders and offer insight into the motivations, means, and mechanics of investigation and prosecution of these crimes as well as the role of mercy and executive clemency. In so doing, it contributes to our understanding of family violence and the administration of criminal justice for an under-examined period in Canadian history. These gendered crimes reflect "traditional" male attempts to exert and maintain power dynamics and privilege through the use of ongoing violence, rather than the influence of romantic ideals and sexual jealousy reflected in other jurisdictions of the period, and rarely involved premeditated murder. Wives, in contrast, had motives that were altogether murkier, but their actions suggested they acted opportunistically to achieve their desired ends. Whatever the reasons that motivated them, these cases were set against a deeply-gendered backdrop of juridical processes and media coverage that reinforced traditional notions of gender and social mores, and in which the identity of female offenders and victims receded almost to the point of invisibility.

"DIABOLICAL ATTEMPT AT MURDER!" shouted headlines in Montreal in early-1833.[1] "ATTEMPT TO COMMIT MURDER!" trumpeted *The Canadian Courant*, describing an assault "which for heartless cruelty has scarcely a parallel in the criminal annals of our city."[2] Another paper recounted how the respectable and prosperous

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[1] MONTREAL HERALD, Mar. 25, 1833; VINDICATOR (Montreal), Mar. 26, 1833.
[2] CANADIAN COURANT (Montreal), Mar. 27, 1833.

Adolphus Dewey attacked his wife with a razor during a fit of "the most sanguinary rage," nearly splitting her windpipe in two.[3] Dewey's trial would snowball into one of the highest profile Canadian murder cases of the period.[4] During the span of six months, newspapers recounted the morbid details of a case that included the lingering death of a dutiful wife; Dewey's flight to the United States; and his capture, extradition, and trial ending in ignominious public execution. The crime, committed "under circumstances of peculiar atrocity and diabolical premeditation," led to a volume of press coverage that makes possible its reclamation in a manner uncommon for cases from this era.[5]

In a period before court reporters, analysis of these cases can generally only be done via primary sources. Due to lacunae in the sources themselves, robust trial narratives can be reconstructed only sporadically.[6] There are obvious problems of interpretation in using criminal justice records to reanimate details of domestic relationships.[7] Moreover, private

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[3] MONTREAL GAZETTE, Mar. 26, 1833.

[4] It resonated with the public and was covered in a number of U.S. newspapers. For examples of its longevity, *see, e.g.*, DONALD FYSON, MAGISTRATES, POLICE AND PEOPLE 284 (2006) (citing an 1835 deposition wherein a wife alleged her husband had threated her with "what Dewey did to his wife"; translation in text); 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, at 50 (1907) (noting 74 years later that the Dewey case was still "sometimes spoken of at the present day.").

[5] MONTREAL GAZETTE, Mar. 26, 1833.

[6] The main source for information is found in the provincial archives based in Montreal, housing collections of depositions filed before justices of the peace, as well as records of coroners' inquests, arrest warrants, criminal appeals, records of the Montreal Gaol, files of the Court of King's/Queen's Bench, and judicial notes. The appeals records found in the National Archives of Canada (Ottawa) are another invaluable resource. The period under examination was chosen largely to take best advantage of the surviving sources.

[7] Among them, criminal justice records focused on the final act that culminated in homicide rather than providing longitudinal information on the relationship. No testimony or evidence typically is available from the victim, and the words of those who did provide evidence is filtered through the transcription of an officer of the court, typically a justice of the peace, who not infrequently "translated" testimony into formulaic legal language, as only seldom were written accounts provided directly by any

prosecutors still had a role in the administration of justice, although this was less important in spousal homicides as the Crown instigated legal process in the absence of a complainant.[8] Despite their limitations, these sources are rich in details of legal process and what I designate "unconscious testimony": the unintentional conveyance of social mores, and unspoken or unquestioned assumptions. A comprehensive review of surviving newspapers further augments the provincial archives, capturing sentencing remarks and salient details that commonly did not survive in the judicial records, while offering insight as to how these cases were depicted.[9] These cases, supplemented by extra-

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of the parties. On occasion, testimony of Francophone witnesses was transcribed into English by Anglophone justices, which further obscured the original, authorial voice within the web of a "white male legal apparatus." For discussion of race and gender in spousal murder trials, *see generally* Barrington Walker, *Killing the Black Female Body: Black Womanhood, Black Patriarchy, and Spousal Murder in Two Ontario Criminal Trials, 1892-1984*, *in* SISTERS OR STRANGERS? IMMIGRANT, ETHNIC, AND RACIALIZED WOMEN IN CANADIAN HISTORY 89-107 (Marlene Epp et al. eds., 2004); *see also* BARRINGTON WALKER, RACE ON TRIAL: BLACK DEFENDANTS IN ONTARIO'S CRIMINAL COURTS, 1858-1958, at 100-14 (2010).

[8] For discussion of the dynamics of private prosecutions in Quebec, *see generally* FYSON, MAGISTRATES, *supra* note 4. Locating the true authorial voice is always problematic, given that information was commonly filtered through the justice's transcription. *See, e.g.*, MARY ANNE POUTANEN, BEYOND BRUTAL PASSIONS: PROSTITUTION IN EARLY NINETEENTH-CENTURY MONTREAL 23 (2015).

[9] Many scholars have noted the limitations of such sources in addition to their benefits: there are gaps in coverage of criminal trials, they are often sparse on detail, and they are replete with editorial biases that colored what information they conveyed and the manner in which they conveyed it. In Montreal, they were also deeply partisan publications that targeted narrow bands of readers along socio-economic, political, and ethnic lines, and of course were not written with a view to preserving information that might have been useful to historians. *See, e.g.*, CAROLYN A. CONLEY, THE UNWRITTEN LAW: CRIMINAL JUSTICE IN VICTORIAN KENT 14 (1991); Ruth Olson, *Rape—An 'Un-Victorian' Aspect of Life in Upper Canada*, 66 ONT. HIST. 75 (1976); Rosemary Gartner & Bill McCarthy, *The Social Distribution of Femicide in Urban Canada, 1921-1988*, 25 LAW & SOC'Y REV. 287, 298.

juridical texts, have much to offer in expanding our knowledge of criminal justice in pre-Confederation Canada.[10]

In recent years, historians have produced a rich body of historiography examining individual trials, recognizing their value in relation to the legal, cultural, and socioeconomic ethos of various nineteenth-century jurisdictions.[11] Historical inquiry into the phenomenon of murder in the Canadian family has remained sparse, however, and has generally focused on later periods.[12] Studies of family violence in general, while more numerous, rarely address homicides and likewise tend to focus on the same period.[13] This article will analyze the eleven identified cases of wife murder (uxoricide)

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[10] A similar point is made for a later period by Walker, *Killing the Black Female Body*, *supra* note 7, at 89.

[11] *See, e.g.*, Daniel A. Cohen, *The Murder of Maria Bickford: Fashion, Passion, and the Birth of a Consumer Culture*, 31 AM. STUD. 5 (1990); Robert A. Ferguson, *Story and Transcription in the Trial of John Brown*, 6 YALE J.L. & HUMAN. 37 (1994); Karen Halttunen, *'Domestic Differences': Competing Narratives of Womanhood in the Murder Trial of Lucretia Chapman*, *in* THE CULTURE OF SENTIMENT: RACE, GENDER, AND SENTIMENTALITY IN NINETEENTH CENTURY AMERICA 39 (Shirley Samuels, ed., 1992); Laura Hanft Korobkin, *The Maintenance of Mutual Confidence: Sentimental Strategies at the Adultery Trial of Henry Ward Beecher*, 7 YALE J.L & HUMAN. 1 (1995); Ian C. Pilarczyk, *'The Terrible Haystack Murder': The Moral Paradox of Hypocrisy, Prudery and Piety in Antebellum America*, 41 AM. J. LEG. HIST. 25 (1997).

[12] *See, e.g.*, Annalee Golz, *Murder Most Foul: Spousal Homicide in Ontario, 1870-1915*, *in* DISORDER IN THE COURT: TRIALS AND SEXUAL CONFLICT AT THE TURN OF THE CENTURY 344 (George E. Robb & Nancy Erber eds., 1999); Walker, Killing the Black Female Body and WALKER, RACE ON TRIAL, *supra* note 7; DAVID MURRAY, COLONIAL JUSTICE: JUSTICE, MORALITY, AND CRIME IN THE NIAGARA DISTRICT, 1791-1849 (2002); Karen Dubinsky & Franca Iacovetta, *Murder, Womanly Virtue, and Motherhood: The Case of Angela Napolitano, 1911-1922*, 72 CANADIAN HIST. REV. 504-31 (1991); Gartner & McCarthy, *supra* note 9.

[13] *See, e.g.*, Annalee E. Lepp, Dis/membering the Family: Marital Breakdown, Domestic Conflict, and Family Violence in Ontario, 1830-1920 (2001) (unpublished Ph.D. thesis, Queen's University) (on file with author); Kathryn Harvey, 'To Love, Honour and Obey': Wife-Battering in Working-Class Montreal, 1869-1879 (1991) (unpublished Ph.D. thesis, Université de Montréal) (on file with author); Lorna McLean, *'Deserving' Wives and 'Drunken' Husbands: Wife Beating, Marital Conduct, and the Law in Ontario, 1850-1910*, 35 SOC. HIST. 59 (2002); Joan Sangster, *The Meaning of Mercy: Wife Assault and*

and three cases of husband murder (mariticide) that were found for this period. In so doing, it will analyze the etiology of these acts as well as provide some comparison between the two groups. More specifically, this article will focus on the following questions: who were these murderous spouses, and how and why did they commit these crimes? How did the legal process address them? What were the results, and what role did clemency and mercy play? In asking these questions, these cases—despite their relatively small numbers—will disclose much about spousal homicide during this period.

I. Montreal: Demographics and History

Domestic homicides occurred against a backdrop of flux, as the province of Quebec, and Montreal itself, went through myriad demographic and other changes in the eighteenth and nineteenth centuries.[14] At the time of the English conquest, Quebec had 70,000 inhabitants, most of whom were Roman Catholics of French ethnicity.[15] The population grew rapidly, with Quebec reaching some 500,000 inhabitants by 1831 and doubling again within two decades.[16] There were also significant changes in the province's ethnic composition, as by 1851 the province was a quarter non-French-speaking, including many English-speaking Protestants.[17] Montreal reflected these changes even more

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Spousal Murder in Post-Second World War Canada, 97 CANADIAN HIST. REV., Dec. 2016, at 513-45.

[14] The colony was known as "Quebec" from 1763 to 1791, when under the aegis of the Constitutional Act it was altered to "Lower Canada." In 1840, it was changed to "Canada East" and renamed the "Province of Quebec" under Constitution Act, 1867, 30 & 31 Vict., c 3 (U.K.).

[15] For censuses from the founding of New France to 1871, *see* CENSUSES OF CANADA 1665 TO 1871 (Ottawa, I.B. Taylor 1873) (4 volumes). For discussion of population, *see* F. OUELLET, ECONOMIC AND SOCIAL HISTORY OF QUEBEC, 1760-1850 (1980); H.C. PENTLAND, LABOUR AND CAPITAL IN CANADA, 1650-1860, at 61-95 (1981).

[16] OUELLET, *supra* note 15, at 659; PENTLAND, *supra* note 15, at 64.

[17] P.-A. LINTEAU ET AL., QUEBEC: A HISTORY 1867-1929, at 40 (1983).

acutely: the city's population was 22,540 in 1825,[18] but within forty years it had ballooned to over 90,000, making it the largest city in pre-Confederation Canada.[19] One-third of Montreal's inhabitants were English-speaking immigrants in 1825, yet by 1832 English speakers constituted the majority.[20]

During this era Montreal was the country's preeminent commercial, transportation and manufacturing center, presided over by an affluent English-speaking elite.[21] After 1840 the transition from an agrarian economy accelerated, as canals, railroads, and industrial concerns were created and expanded.[22] A port city with a large military garrison, Montreal also had the issues typical of cities with sizeable transient populations of merchant and military personnel coupled with thousands of peripatetic day laborers and immigrants along with significant levels of sexual and other violence.[23] This period was marked by significant political transformation, which was precipitated by the Rebellions of 1837-1838 and ushered in reforms that culminated in the union of Upper and Lower

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[18] BLAINE BAKER ET AL., SOURCES IN THE LAW LIBRARY OF MCGILL UNIVERSITY FOR A RECONSTRUCTION OF THE LEGAL CULTURE OF QUEBEC, 1760-1890, at 9 (1987).
[19] *Id.; see also* POUTANEN, *supra* note 8, at 24-29.
[20] JEAN-CLAUDE ROBERT, ATLAS HISTORIQUE DE MONTRÉAL 79 (1994).
[21] BAKER, *supra* note 18, at 13. For Quebec's economic transformation during this period, *see generally* Jean-Claude Robert, Montréal, 1821-1871: Aspects de l'urbanisation (1977) (unpublished Ph.D. thesis, Université de Paris I) (on file with author); GERALD TULCHINSKY, THE RIVER BARONS; MONTREAL BUSINESSMEN AND THE GROWTH OF INDUSTRY AND TRANSPORTATION, 1837-1853 (1977); FERNAND HARVEY, REVOLUTION INDUSTRIELLE ET TRAVAILLEURS, UNE ENQÛETE SUR LES RAPPORTS ENTRE LE CAPITAL ET LE TRAVAIL AU QUÉBEC Á LA FIN DU 19E SIÈCLE (1978).
[22] BAKER, *supra* note 18, at 13-14; FYSON, *supra* 4, at 8. For discussion of Montreal's port and garrison culture, *see* POUTANEN, *supra* note 8, at 27.
[23] Women outnumbered men in Montreal during this period. D. Suzanne Cross, *'The Neglected Majority': The Changing Role of Women in Nineteenth-Century Montreal, in* THE CANADIAN CITY: ESSAYS IN URBAN AND SOCIAL HISTORY 255, 257-58 (Gilbert A. Stelter & Alan. F.J. Artibise eds., 1984). Halifax shared the commonalities of being a thriving port city with a large military garrison. *See* M.E. Wright, *Unnatural Mothers: Infanticide in Halifax, 1850-1875*, 2 N.S. HIST. REV. 7, 22 (1987).

Canada in 1840.[24] Social mores also were in flux, with growing opposition in British North America towards intemperance, changing conceptions of gender and marital roles, and the blurring of boundaries between the public and private spheres.[25] Many households mirrored the public contest between husbands and wives over the institution of marriage, with those tensions spilling over into the family, sometimes catastrophically.[26] These changes did not bring with them concerted efforts to address social issues such as child abuse and domestic violence, although public discussion of these issues did arise fitfully and occasionally. These decades did, however, provide fertile soil out of which these later social movements and discourses sprouted.[27]

II. Spousal Murder and the Law

The Quebec legal system had undergone a metamorphosis in the previous century. Following the conquest, English criminal law had supplanted the law of the *ancien régime* under the terms of the 1763 Royal Proclamation, leading to a hierarchy of courts

[24] BAKER, *supra* note 18, at 17-18; FYSON, MAGISTRATES, *supra* note 4, at 8-10.
[25] Nancy Christie, *A 'Painful Dependence': Female Begging Letters and the Familial Economy of Obligation, in* MAPPING THE MARGINS: THE FAMILY AND SOCIAL DISCIPLINE IN CANADA, 1700-1975, at 69 (Nancy Christie & Michael Gauvreau, eds., 2004).
[26] *See, e.g.*, Hendrik Hartog, *Lawyering, Husbands' Rights and 'the Unwritten Law' in Nineteenth-Century America,* 84 J. AM. HIST. 67 (1997) ("By the 1850s, many aspects of family law appeared uncertain and contested….[The husband] had lost some security of possession over his domestic domain. In the zero-sum game of marital struggles, wives had gained public legal rights and that necessarily meant losses of rights for husbands."); *see also* HARTOG, MAN AND WIFE IN AMERICA: A HISTORY 220 (2000).
[27] In addition, the nineteenth century saw great fluidity in the evolution of attitudes towards violence, conceptions of gender, and capital punishment. *See generally* Martin J. Wiener, *Judges v. Jurors: Courtroom Tensions in Murder Trials and the Law of Criminal Responsibilities in Nineteenth-Century England*, 17 LAW & HIST. REV. 467, 468 (1999).

closely mirroring that of England and governed by (and applying) English substantive and procedural law.[28]

The colony of New France had been established on rigid, legally-reinforced family and hierarchal relationships enshrined in the *Coutume de Paris*. Wives were subject to the *puissance paternelle* of their husbands, reflecting French emphasis on the "patriarchal family [as] the ideal social unit."[29] Courts in New France gave wide latitude to violent husbands, intervening only in cases deemed notorious or life-threatening. The rigidity of French practice was seemingly little different in post-conquest Quebec. The civil law in Lower Canada enshrined the rights of husbands over their wives and of parents over children, deeming acts prosecutable only if they resulted in permanent injury or risk of death.[30] Until the reforms that followed in the wake of the Rebellions of 1837-1838, the criminal law and justice system remained largely insulated from change. Justice remained localized, but by the 1840s police and the professional magistracy were the dominant

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[28] FYSON, MAGISTRATES, *supra* note 4, at 16; *see also* Douglas Hay, *The Meaning of the Criminal Law in Quebec, 1764-1774*, *in* CRIME AND CRIMINAL JUSTICE IN EUROPE AND CANADA 77 (Louis A. Knafla ed., 1981). For the structure and jurisdiction of courts, *see generally* DONALD FYSON, THE COURT STRUCTURE OF QUEBEC AND LOWER CANADA, 1764 TO 1860 (1997).

[29] Peter N. Moogk, *Les Petits Sauvages: The Children of Eighteenth-Century New France*, *in* CHILDHOOD AND FAMILY IN CANADIAN HISTORY 21 (Joy Parr ed., 1982). For a contemporary history of New France, *see* PIERRE FRANÇOIS-XAVIER DE CHARLEVOIX, HISTOIRE ET DESCRIPTION GÉNÉRALE DE LA NOUVELLE-FRANCE, (Paris, Nyon fils 1744); for a more recent overview, THE FRENCH TRADITION IN NORTH AMERICA (Yves-François Zoltvany ed., 1969). Private complaints were accessible to wives who sought "*séparation de corps*" ("separation of bodies") from husbands on grounds such as brutality, profligacy, or mental aberration. Moogk, *id*. at 23.

[30] MARIE-AIMÉE CLICHÉ, ABUSE OR PUNISHMENT? VIOLENCE TOWARDS CHILDREN IN QUEBEC FAMILIES 1850-1969, at 40-41 (trans. W. Donald Wilson, 2007); Moogk, *supra* note 29, at 22-23. This was similar to English law of the period. *Id.* at 16 n.12. These concepts were also reflected in prominent legal treatises. *See, e.g.*, HENRY DES RIVIÈRES BEAUBIEN, TRAITÉ SUL LES LOIS CIVILES DU BAS CANADA (Montreal, Duvernay 1832). Further legal reform, reflected in the Civil Code of 1866, occurred after this period.

forms of social and legal control. Legal attempts to address violence against spouses generally occurred from the mid-century onwards; it was not until 1853 that Parliament enacted "The Act for the Better Prevention of Aggravated Assaults upon Women and Children."[31] A conservative social structure remained firmly embedded in the fabric of Quebec throughout this period.

This is not to say that Montreal courts did not take domestic violence seriously, for it is clear they were accessible forums for allegations of spousal abuse and dealt with hundreds of such complaints.[32] As was noted of later nineteenth-century Toronto, "[i]ntimate 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."[33] One of the primary social movements of this era, the temperance movement, vividly depicted the nexus between alcoholism and domestic violence.[34]

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[31] 16 Vict. c. 30 (1853) (U.K.) (providing for six months' imprisonment or fine up to £20 for attacks on females and on males under fourteen that resulted in bodily harm). While not addressing family violence per se, it did help facilitate prosecutions for violence against women. Its role against child abuse was much more limited. For discussion of the judicial response to violence against children during this period, *see* Ian C. Pilarczyk, *'To Shudder At the Bare Recital of those Acts'*: *Child Abuse, the Family, and Montreal Courts in the Early-Nineteenth Century*, *in* 11 ESSAYS IN CANADIAN LEGAL HISTORY: QUEBEC AND THE CANADAS 370-426 (G. Blaine Baker & Donald Fyson, eds., 2013).

[32] Ian C. Pilarczyk, 'Justice in the Premises:' Family Violence and the Law in Montreal, 1825-1850, at 214-361 (2003) (unpublished D.C.L. thesis, McGill University) (on file with author) (571 cases identified for the period 1825-1850). Complaints against wives were approximately 15% of this total.

[33] Grey T. Smith, *Expanding the Compass of Domestic Violence in the Hanoverian Metropolis*, 41 J. SOC. HIST. 31, 48 (2007).

[34] It was silent on the issue of gender constructs and power dynamics, however. For the nexus between alcoholism and spousal violence in Montreal, *see* Pilarczyk, Justice, *supra* note 32, at 214-361 (spousal battery), 362-445 (spousal murder); and *see generally* Harvey, *supra* note 13.

Family violence was simultaneously ubiquitous and shadowy, and the specter of violence cast its pall over many households. The number of wives who suffered in secret was likely significant, given gendered privilege and power dynamics that militated against exposure and prosecution. Cases such as that of Dewey, however, differed in one important aspect: they involved no "mere" assault, but rather premeditated homicide. While fairly rare in terms of actual incidence, domestic homicide loomed large in the popular consciousness, garnering robust press coverage as well as concerted attention from authorities. The underlying social forces, however, were seldom examined.[35]

Analysis of spousal murders shows deep gender division, as will be discussed, but gendering was implicated in the very offense of homicide itself as the legal regime governing it was markedly different for wives. While all homicides were capital offenses, the murder of a husband was a distinct crime known as "petit treason" or "petty treason"—a form of homicide that struck at the very heart of social cohesion. Viewed as among the most villainous of offenses, it took two forms: high treason, a crime against the Crown; and petit treason, a crime against one's lord, which included husbands.[36] The charge required showing premeditation or malice aforethought; if the homicide resulted

[35] Similar observations hold true for other forms of domestic violence, such as child abuse. *See* Pilarczyk, *To Shudder*, *supra* note 31.

[36] 2 WLLIAM S. HOLDWORTH, A HISTORY OF ENGLISH LAW 449-50 (1923) (observing that this offense was "an interesting survival of the old Anglo-Saxon idea that treason is a form of treachery."). *See also* S. A. M. Gavigan, *Petit Treason in Eighteenth Century England: Women's Inequality Before the Law*, 3 CANADIAN J. WOMEN & L. 335, 345 (1989/1990); ARTHUR RACKHAM CLEVELAND, WOMEN UNDER THE ENGLISH LAW, FROM THE LANDING OF THE SAXONS TO THE PRESENT TIME 95 (London, Hurst & Blackett 1896) (noting that petit treason was limited to specific circumstances, such as when a "servant slayeth his master, or a wife her husband, or when a man secular or religious slayeth his prelate, to whom he oweth faith and obedience.").

from sudden passion or self-defense, the appropriate charge was manslaughter.[37] Petit treason was an extension of the law related to married women, as a wife was deemed to become a *fem[m]e covert* with her legal identity subsumed under that of her husband.[38] Like all forms of treason, petit treason was more ignominiously punished than other offenses.[39] A common prosecutorial strategy was to charge an accused with petit treason as well as murder, as juries were often loath to convict given the nature of the punishment.[40] Levying both charges in an indictment provided evidentiary advantages for prosecutors, as conviction for petit treason required the testimony of two witnesses to

[37] Gavigan, *supra* note 36, at 348-49.
[38] *Id.* at 341. Wives were not the only persons subject to that charge, as the crime also encompassed children who murdered their fathers. *See, e.g.*, Domina Regina v. Romuald Brault *dite* Pominville (KB Jan. 19, 1842) (Can.), *in* BIBLIOTHÈQUE ET ARCHIVES NATIONALES DU QUÉBEC, CENTRE D'ARCHIVES DE MONTRÉAL [hereinafter BANQ-M], Files of the Court of Kings Bench [hereinafter KB(F)] (son charged with petit treason for killing his father found not guilty by reason of insanity). *See also* MONTREAL GAZETTE, Apr. 3, 1842.
[39] The traditional punishment was drawing-and-quartering. *See generally* 2 F. POLLOCK & F. W. MAITLAND, THE HISTORY OF ENGLISH LAW 500-01 (2d ed. 1978); CLEVELAND, *supra* note 36, at 95. For women convicted of any form of treason, the usual punishment was burning at the stake, and that remained the law in England until 1790. *See* Gavigan, *supra* note 36, at 365-436; Ruth Campbell, *Sentence of Death by Burning for Women*, 5 J. LEG. HIST. 44, 44 (1984); MAEVE DOGGETT, MARRIAGE, WIFE-BEATING AND THE LAW IN VICTORIAN ENGLAND 50 (1992); Anna Clark, *Humanity or Justice? Wifebeating and the Law in the Eighteenth and Nineteenth Centuries*, *in* REGULATING WOMANHOOD: HISTORICAL ESSAYS ON MARRIAGE, MOTHERHOOD AND SEXUALITY 188 (Carol Smart ed., 1992); CLEVELAND, *supra* note 36, at 176.
[40] *Cf.* Gavigan, *supra* note 36, at 350 (noting that a late-eighteenth-century English case established that murder was an included offence in a charge of petit treason).

the crime, unlike homicide.[41] The offense was repealed in Upper Canada in 1833,[42] with similar changes in Lower Canada in 1842.[43]

Under the law of this period, a conviction for homicide left judges with no discretion, as clemency was the prerogative of the executive.[44] Manslaughter, in contrast, was not capital.[45] Defendants were generally found guilty of manslaughter due to extenuating circumstances or the absence of a crucial element required to sustain a murder charge, such as premeditation or malice. Manslaughter predictably resulted in a wide disparity in sentencing: one defendant was sentenced to a year's imprisonment in the House of Corrections, while another—for homicide committed under circumstances considered to be particularly heinous—was sentenced to life.[46] Gloz, for a later period in Ontario,

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[41] *See generally* Gavigan, *id.* For an example where that heightened evidentiary burden resulted in acquittal on a charge of petit treason, *see* the case of Elizabeth Ravarie *dite* Francoeur, *see infra* pp. 47-49. The crime was repealed in the U.K. in 1828. Offenses Against the Person Act 1828, 9 Geo. 4 c 31, § 2 (U.K.). *See also* DOGGETT, *supra* note 39, at 49; Gavigan, *supra* note 36, at 367; Campbell, *supra* note 39, at 44.

[42] F. MURRAY GREENWOOD & BEVERLEY BOISSERY, UNCERTAIN JUSTICE: CANADIAN WOMEN AND CAPITAL PUNISHMENT, 1754-1953, at 98 (2001).

[43] An Act for Consolidating and Amending the Statutes in this Province Relative to Offences Against the Person 1841, 4 & 5 Vict. c 27, § 2 (Lower Can.). That Act superseded 41 Geo. 3 c.9 (1801) (Lower Can.) (legislation governing punishment for murder and treason).

[44] *Id.* For discussion, *see infra* pp. 59-64.

[45] A contemporary legal manual defined manslaughter as: "(1) such killing of a man as happens either on a sudden quarrel, or in the commission of an unlawful act, without any deliberate intention of doing any mischief at all. 1 Haw. 76. (2) The difference between murder and manslaughter is, that murder is committed upon malice aforethought, and manslaughter without malice aforethought upon a sudden occasion only. 3 Inst. 55." W.C. KEELE, THE PROVINCIAL JUSTICE, OR MAGISTRATE'S MANUAL, BEING A COMPLETE DIGEST OF THE CRIMINAL LAWS OF CANADA, AND A COMPENDIOUS AND GENERAL VIEW OF THE PROVINCIAL LAW OF UPPER CANADA, WITH PRACTICAL FORMS, FOR THE USE OF THE MAGISTRACY 324 (Toronto, H. & W. Roswell 1843). Under 4 & 5 Vict. c 27, § 7 (1841) (Lower Can.), it was punishable by a minimum of seven years' imprisonment and a maximum of life imprisonment in the Provincial Penitentiary; or "imprisonment elsewhere for no more than two years, and such fine as court shall award."

[46] *See* cases of John Barker (1 year) and James Goodwin (life).

remarked that "manslaughter was a crime gendered male," and this held true here as well, as no wife was charged with that crime during this period.[47]

III. Gender and Spousal Murder

Homicides differed insofar as the circumstances surrounding each one were unique.[48] However, they also shared a number of commonalities. Spousal murder, like violence in general, was marked by significant gender constructs. Domestic homicides were largely the purview of men, who made up 79% of the perpetrators of spousal homicides for this period. Certainly these were the most dramatic examples of violence, but it is sobering to observe that most uxoricides were not substantively different from the "ordinary" violence endured by many wives except in terms of lethality. Wife murder was a relatively rare, albeit still regular, feature of Montreal life during this period, yet husbands assaulted wives in great numbers, and, to a lesser extent, some wives traded in the same currency as husbands.

In his study of homicide in Quebec City and Montreal, Donald Fyson remarks that "[d]espite a significant shift in attitudes towards crime and punishment in the first half of the nineteenth century, echoing similar changes elsewhere, murder in particular continued to be regarded as an absolutely heinous crime."[49] This crime was in a downward trend

[47] Golz, *supra* note 12, at 168.
[48] DAVID PHILIPS, CRIME AND AUTHORITY IN VICTORIAN ENGLAND: THE BLACK COUNTRY, 1835-1860, at 256 (1977).
[49] Donald Fyson, Men Killing Men: Homicide in Quebec, 1760-1860, at 2 (2010) (unpublished paper, Social Science History Association) (on file with author). I am indebted to the author for his permission to cite to this work.

similar to many western jurisdictions in the nineteenth century, and remained comparable to levels found in jurisdictions such as England, France and

Table 1: Prosecutions of wife murder, 1825-1850

Year	Offence	Disposition	Sentence
1830	Murder	convicted	death (executed)
1833	Murder	convicted	death (executed)
1833	Murder	fled jurisdiction	--
1837	Murder	convicted manslaughter	1 year imprisonment
1840	Murder	convicted	death (transported for life)
1842	Murder	convicted assault with intent to murder	3 years' imprisonment with 1 month per year in solitary confinement
1842	Murder	convicted murder, recommended to mercy	death (transported for 14 years)
1848	Murder	convicted manslaughter	life imprisonment
1848	Murder	acquitted	n/a
1850	Murder	acquitted	n/a
1850	Manslaughter	acquitted	n/a

Table 2: Prosecutions of husband murder, 1825-1850

Year	Offense	Disposition	Sentence

1827	Petit treason	acquitted	n/a
1840	Petit treason	convicted manslaughter	2 years' imprisonment
1847	Murder	acquitted	n/a

Massachusetts with a range of 1.0 to 1.5 per 100,000 during the 1830s-1850s.[50] As he notes, "[d]espite the common perception of Canada as a peaceable kingdom, Quebec City and Montreal were in fact quite violent little cities…"[51] Fyson's research also points to the intrinsically gendered nature of homicide, with men representing 93% of perpetrators and 77% of victims, while at least half of all homicides involving mixed genders were spousal homicides.[52] Indeed, while contemporary beliefs in the sanctity of the domestic sphere might have lent credence to the belief that murders were committed by strangers skulking in the shadows, it was instead members of the immediate family who posed the greater risk of harm by turning households into arenas of violence and death.[53] Then, as now, when women were murdered it was frequently at the hands of their partners.[54]

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[50] *Id.* at 5; *id.* at 5 n.12.
[51] *Id.* at 6; *id.* at 6 n.15.
[52] *Id.* at 7.
[53] *See, e.g.*, DAVID TAYLOR, CRIME, POLICING, AND PUNISHMENT IN ENGLAND, 1750-1914, at 29 (1998) ("Belief in the sanctity and safety of the family made it attractive to believe in the unknown murderer from outside, but he (and to a much lesser extent she) was a less common figure whose alleged existence shored up domestic ideology rather than illuminated the nature of this particular crime."). *See also* Roger Lane, *Urban Homicide in the Nineteenth Century: Some Lessons for the Twentieth*, *in* HISTORY AND CRIME: IMPLICATIONS FOR CRIMINAL JUSTICE POLICY 106 (James A. Inciardi & Charles E. Faupel eds., 1980) (stating that 22% of homicides in Philadelphia between 1839 and 1901 involved family members). Wiener's study noted that nearly 56% of murders in England and Wales between 1835 and 1905 were spouse murders. Wiener, *supra* note 27, at 468.
[54] In 2001, for example, 32.2% of female murder victims in the United States were killed by their spouses or boyfriends. U.S. DEP'T OF JUSTICE, FED. BUREAU OF INVESTIGATION,

Tables 1 and 2 reflect the cases of spousal homicides identified for this period: eleven involving wife murder and three involving husband murder, resulting in thirteen criminal proceedings. Relative to the documented cases of wife abuse, not to mention the untold others of which the criminal justice system never took cognizance, the number of uxoricides appears small. A number of suppositions may be advanced in explanation, including that perpetrators lacked ready access to firearms and that some form of community intervention may have prevented acts of violence from escalating into homicide.[55] Despite the gravity of the offenses and the breadth of the sources, this list is not necessarily exhaustive: one suspect in 1833 fled to the United States before his arrest, and had it not been immortalized in newspapers the case likely would be lost.[56] Other potential prosecutions did not survive the inquest stage, as was often the case in Quebec and other jurisdictions.[57] Primitive forensic techniques and spotty law enforcement meant

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CRIME IN THE UNITED STATES 2001, at 22 (2002) 22. In Canada, that figure was more than 50%. MYRNA DAWSON, EXAMINATION OF DECLINING INTIMATE PARTNER HOMICIDE RATES: A LITERATURE REVIEW 8 (2001). For a historical account, *see generally* Gartner & McCarthy, *supra* note 9.

[55] In commenting on a case of uxoricide found in her study of late nineteenth-century domestic violence in Montreal, Harvey stated that: "[t]he fact that it is the only case of a woman beaten to death suggest(s) that formal and informal mechanisms of control generally succeeded in preventing this most extreme form of abuse. Another possible explanation is that most attacks happened in the home and were not premeditated. In the absence of a really lethal weapon ... the damage most men could inflict with their fists fell short of murder." Harvey, *supra* note 13, at 138.

[56] Newspapers are full of accounts of crimes, including occasional murders, that are inexplicably and frustratingly missing from official sources. *See, e.g.*, JEFFREY S. ADLER, FIRST IN VIOLENCE, DEEPEST IN DIRT: HOMICIDE IN CHICAGO, 1875-1920, at 254 (2006); Lane, *Urban Homicide*, *supra* note 53, at 93. For the "missing" case, see *infra* p. 24 (case of Taylor).

[57] That was more likely the case in instances of non-familial violence. For discussion of the role of coroners in that process, see Lane, *supra* note 53, at 95 ("From the viewpoint of the coroner himself, neither the time nor the effort involved made 'homicide' findings as rewarding as the 'suicide' or 'accident' alternatives. And from a wider, functional viewpoint, the society as a whole presumably had no wish to be reminded of the

some murders went undetected, even though relatives and neighbors ensured crimes were usually reported and investigated. Studies of other jurisdictions have likewise suggested that the number of husbands who murdered their wives was fairly small.[58]

IV. Means, Motives and Social Mores

Husbands and wives killed each other in demonstrably different ways and for different reasons, reflecting the gendered nature of these crimes. The spouse who premeditated his crime, like Dewey, was an anomaly.[59] A wife's death typically ensued from an altercation that escalated into severe violence or from a beating that had unanticipated lethal results. Homicides such as these might not have been intentional, but were nonetheless *foreseeable*. In conflicts involving a husband with little respect for a spouse's bodily integrity, murder could be just a step—or a kick, push, or blow—away. A sarcastic retort, physical resistance, willfulness, a handy kitchen implement, drunkenness, or myriad other factors could lead to tragedy. Indeed, as one scholar has posited, domestic homicides may be viewed as a form of "successful assault."[60] Wives usually were

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existence of problems its institutions were unable to solve. In the absence of a 'smoking gun' or its equivalent, then, and an obvious and easily arrested suspect, there was considerable indirect pressure at the inquest for verdicts other than homicide....").

[58] *Cf.* DAVID PETERSON DEL MAR, WHAT TROUBLE I HAVE SEEN: A HISTORY OF VIOLENCE AGAINST WIVES 23-24 (1996) (noting that in Oregon in 1850 to 1866, 3 husbands killed wives); Lepp, *supra* note 13, at 443-526 (106 suspected wife murders in Ontario between 1830 and 1920); MURRAY, *supra* note 12, at 156 (at least 5 men in Upper Canada convicted of killing wives in 1820-1840).

[59] *See, e.g.*, ADLER, *supra* note 56, at 259 (describing premeditated murder as the "culmination of long-festering disputes"). Unlike cases found by Adler, other signs of premeditation, including the uttering of public threats, legal separations, the use of firearms, and the settling of financial matters prior to the act, were not found here. *Cf. id.* at 260-61. *See also* ADLER, *id.* at 871 (noting men did not premeditate spousal murder).

[60] Lane, *supra* note 53, at 91 (quoting James Q. Wilson).

victimized for years before exploding into murderous violence, while husbands typically escalated familiar patterns of violence.[61]

As shown in *Table 3*, men were most likely to use fists and feet to commit mayhem, with wives frequently meeting their demise in the kitchens and bedrooms of their own homes by injuries such as having their skulls fractured by repeated punches,[62] or dying from "inflammation of the lungs" as a result of being pummeled on the chest.[63]

Table 3: Spousal homicides in Montreal, 1825-1850, by means

Gender	Means	Number	% of total
Male	physical violence (blows and kicks)	5	35.7%
	blade (razor/ knife)	2	14.2%
	household object (poker)	1	7.1%
	Drowning	1	7.1%
	exposure/neglect	1	7.1%
	Unknown	1	7.1%

[61] *See, e.g.*, ELIZABETH PLECK, DOMESTIC TYRANNY: THE MAKING OF AMERICAN SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT 223-24 (2004); CONLEY, *supra* note 9, at 73; Lepp, *supra* note 13, at 525-26; Randolph Roth, *Spousal Murder in Northern New England, 1776-1865*, *in* OVER THE THRESHOLD: INTIMATE VIOLENCE IN EARLY AMERICA 71-73 (Christine Daniels & Michael Kennedy, eds., 1999); PATRICK WILSON, MURDERESS: A STORY OF WOMEN EXECUTED IN BRITAIN SINCE 1843, at 25 (1971).

[62] Case of John Charlton.

[63] L'AURORE (Montreal), Nov. 21, 1848 (author's translation); LA MINERVE (Montreal), Nov. 20, 1848.

Female	household object (axe, chisel)	2	14.2%
	Strangulation	1	7.1%

One husband kicked his wife to death in the parlor of a neighbor's house.[64] Another kicked and then dragged his wife outdoors in the dead of winter, where she succumbed to internal injuries.[65] The use of weapons was infrequent, as spouses rarely had ready access to such instruments or had premeditated their use, and firearms were entirely absent.[66] Adolphus Dewey, unusually, ensured he was equipped with a razor and axe, both of which were common household items. Hugh Cameron bludgeoned his wife with a poker,[67] while Henry Norman stabbed his in the back with a kitchen knife.[68] With respect to the manner of dispatch favored by wives, it has historically been assumed that women tended to favor poisoning, either to compensate for their lack of physical strength or in keeping with their supposed inclination to crimes of cunning.[69] Assumptions about the

[64] MONTREAL GAZETTE, Apr. 3, 1833; L'AMI DU PEUPLE (Montreal), Apr. 3, 1833 (case of Taylor). No evidence of his apprehension was found.
[65] Case of James Dunsheath.
[66] *Cf.* RANDOLPH ROTH, AMERICAN HOMICIDE 252 (2009) (few spousal homicides involved firearms in Antebellum USA).
[67] *See infra* pp. 21 and 22-23.
[68] Domina Regina v. Henry Norman (KB Aug. 26, 1842) (Can.), *in* BANQ-M, KB(F)] (affidavit of Martha Brown). Similar observations were made in other jurisdictions. *See, e.g.*, ROTH, AMERICAN HOMICIDE, *supra* note 66, at 256-57.
[69] For the use of poisons in mariticides, *see generally* FRANK A. ANDERSON, A DANCE WITH DEATH, CANADIAN WOMEN ON THE GALLOWS, 1754-1954, at 1-32 (1996); MARY HARTMAN, VICTORIAN MURDERESSES, A TRUE HISTORY OF THIRTEEN RESPECTABLE FRENCH AND ENGLISH WOMEN ACCUSED OF UNSPEAKABLE CRIMES 10-50 (1977); JUDITH KNLEMAN, TWISTING IN THE WIND, THE MURDERESS AND THE ENGLISH PRESS 71-84, 93-100, 113-20 (1998); Golz, *supra* note 12, at 167; Lepp, *supra* note 13, at 533-36. Lepp found that 10 out of 101 husbands used poison, and 10 out of 26 wives did so in Ontario during 1830-1920; *id.* at 530.

frequent use of poisoning are not borne out in this study, notwithstanding the difficulties associated with extrapolating from a small pool of cases and the surreptitious nature of the crime. This is not to say that no cases alleging the use of poison were found, however; in two instances it was alleged but neither case proceeded to trial, at least in Montreal.[70] What is suggested is that, given differentials in size and strength, some wives evidently did what they could to improve the odds, employing stealth and opportunity to accomplish the desired result.[71] A judicious use of instruments (including tools of the trade used by their husbands) and the element of surprise were their hallmarks: strangling a sleeping husband with the string of his nightcap[72] or striking a spouse with an axe as he knelt in prayer.[73] Even the most opaque of these, the 1847 death of Robert Cowan, involved being stabbed with his chisel, and whether accidental or purposeful it nonetheless mirrors the same modus operandi.[74]

Why, then, did wives kill? Elizabeth Ravarie *dite* Francoeur's crime occurred against a backdrop of endemic bickering and violent arguments, a scenario shared with most uxoricides. As she explained: "[E]ver since I have been married to my husband we have been quarrelling. I never had time to leave the house[;] he called me a whore….I was not

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[70] *See* BANQ-M, Records of the Montreal Gaol [hereinafter MG] (Feb. 9, 1839) (Josephine Destimauville committed for having "aided to assasinate (sic) and murder her husband Achille Taché;"; bailed February 26th by the Court of Queen's Bench) and MG (Feb. 9, 1839) (Aurelie Prevost *dite* Tremblay committed for having "attempted to poison and assasinate (sic) and of having administered poison to Achille Taché;" released March 22nd and sent to Quebec by order of Attorney General). *See also* BANQ-M, MG (July 17, 1848) (Lucye Beaulne committed for being an "accomplice in administering poison to her husband;" bailed July 24th). These were not included in this study.
[71] *See, e.g.*, ADLER, *supra* note 56, at 871 (noting men did not premeditate spousal murders).
[72] Case of Mary Hunter.
[73] Case of Elizabeth Ravarie *dite* Francoeur.
[74] Case of Deborah Cowan.

even allowed to sing[,] he said I sang bad songs and wanted to throw me out…."[75] The testimony at trial further disclosed the spouses had a volatile relationship, that Ravarie likewise had a propensity for violence, and that she socialized with a group of people of whom her husband disapproved.[76] In contrast, Mary Hunter was thought to suffer from mental infirmity, which the evidence appeared to support, and there was no history of quarrels.[77] Deborah Cowan had no discernible motive—at least none that the Crown was able to determine—and the homicide was explainable by misadventure at least as easily as by malice.[78]

The reasons for a husband's "sanguinary rage" were more easily quantifiable: they were part of a pattern of ongoing arguments, the climax of ongoing domestic abuse, or triggered by transgressions that contested his authority.[79] This violence was often witnessed by neighbors, friends, and family. Adolphus Dewey was sober, industrious, and respectable, yet "from the first period of their union, frequently ill-treated his newly

[75] The account is jumbled, with little punctuation and few internal markers of time, but she denied the assault. "[W]hen I went to leave the house, the axe was next to him[;] I cannot say for certain that he grabbed the axe to do something to me or whether the axe fell into his hands when opening the door, after he refused to let me into the house[,] saying that I was going to kill him[,] I stayed around the house for roughly three hours, barefoot, someone had to go get my shoes as I was freezing, after that I went to embrace him and he said stay away I don't want you to embrace me and that he would be just as happy with my absence as with my presence...." Domina Regina v. Elizabeth Ravarie *dite* Francoeur (KB May 11, 1839), *in* BANQ-M, KB(F) (voluntary examination) (author's translation).
[76] MONTREAL HERALD, Nov. 19, 1840.
[77] Case of Mary Hunter, *see infra* pp. 43-46.
[78] Case of Deborah Cowan, *see infra* pp. 49-52.
[79] ADLER, *supra* note 66, at 266 (citing provocations such as neglecting housework, contesting husband's authority, leaving their husbands, etc.). Unlike other jurisdictions, separation or divorce did not seem to be a precipitating factor in any of the cases studied herein. *Cf.* Roth, *Spousal Murder*, *supra* note 61, at 82.

married wife."[80] Alexis Boyer's elderly mother vainly interposed herself between her enraged son and his wife and was badly injured in the process.[81] Hugh Cameron's teenaged son witnessed his parents "quarrel and wrangle together" in bed, prompting Cameron to begin "beating [the] deceased merily (sic) with his hand" and then escalating to a wooden poker.[82]

Table 4: Spousal homicides in Montreal, 1825-1850, by motive

Gender	Motive	Number	% of total
Male	recurrent fights	6	42.9%
	contesting authority/ undutiful spouse	3	21.4%
	Unknown	2	14.3%
Female	recurrent fights	1	7.1%
	mental disorder	1	7.1%
	Unknown	1	7.1%

Third parties may often have witnessed or otherwise suspected the violence, but seldom did they intercede. Dewey's wife fled to her family's house, but this was unusual. Marital disputes were considered beyond the pale of public purview. Therefore, Henry Norman could unapologetically tell a guest who expressed disapprobation of his conduct by

[80] MONTREAL GAZETTE, Mar. 16, 1833. For further discussion of Dewey, *see supra* pp. 1-2 and *infra* pp. 36-41.
[81] Case of Alexis Boyer.
[82] The Queen v. Hugh Cameron (KB Mar. 1, 1842), *in* BANQ-M, KB(F) (affidavit of John Cameron).

asking “what had I to do with their quarrels....he would treat her as he liked,” which apparently included beating and stabbing her.[83] Generally, intervention, when it did come, was fitful and sometimes futile, as third parties often preferred to not cross ferocious or intemperate husbands.[84] Hugh Cameron had a well-established reputation in his parish for brutality prior to beating his wife to death in 1842.[85] The night of the fatal incident, the son sought assistance from neighbors—all of whom refused—and was obliged to go to town to summon help. The three men who accompanied him arrived too late to save Cameron’s wife, instead conveying him to the jail.[86] Alexis Boyer's wife, terrified at the imminent return of her raging, drunken husband, pleaded with a neighbor to stay the night—even offering her a loaf of bread as an inducement—but the neighbor agreed only to stay for a meal. As they ate together, the wife’s words were prescient: “this will be the last soup I will sup.”[87]

While a history of systemic violence appeared not infrequently in trial documents, in none of these cases was any evidence adduced of prior prosecution. Henry Norman, for example, was accused of striking his wife with a hammer a fortnight before their final, fatal altercation but was not prosecuted at the time.[88] It is perhaps true that legal

[83] MONTREAL GAZETTE, Mar. 16, 1833 (Dewey); MONTREAL GAZETTE, Oct. 15, 1836 (Barker); Dominus Rex v. Henry Norman (QB Aug. 26, 1843), *in* BANQ-M, KB(F) (testimony of James Badgley).
[84] For discussion, *see generally* Pilarczyk, Justice, *supra* note 32; ADLER, *supra* note 56, at 259-60.
[85] The Queen v. Hugh Cameron (KB Mar. 1, 1842), *in* BANQ-M, KB(F) (affidavits of John Cameron, Thomas Figsby and Hamilton Forrest).
[86] The Queen v. Hugh Cameron (KB Mar. 1, 1842), *in* BANQ-M, KB(F) (affidavit of John Cameron).
[87] CANADIAN COURANT (Montreal), Mar. 5, 1831 (testimony of Josette Bisaillon).
[88] Dominus Rex v. Henry Norman (KB Aug. 26, 1842), *in* BANQ-M, KB(F) (deposition of Frances Simmonds).

intervention, as halting and sporadic as it was, saved some wives' lives, and, conversely, wives who did not benefit from earlier intervention were more likely to perish. In fully half of these cases there was a pattern of fighting between the spouses with both engaging in violence, such as John Barker and his wife, who drank and fought together before her death in 1837.[89]

Contesting a husband's authority also frequently engendered murderous violence, as reflected in nearly a quarter of these uxoricides. A soldier with the Royal Canadian Rifles berated his wife as "you might have had your children dressed and been at church like any other woman; instead of that I don't see that breakfast is ready," before striking several blows to her head. A fellow soldier asserted that he had "looked upon the affair as a mere squabble"—an example of the undercurrent of patriarchal privilege that runs throughout these stories—but the outcome was grave as she died two days later.[90]Another husband, enraged by his wife's insubordination in refusing to leave for home with him after an evening of socializing, kicked her to death in a neighbor's sitting room. Not only did the neighbor not intervene, but he assisted in making a coffin for her the following morning![91] This ethos of privilege surfaced in "unconscious" ways in the press, as well: Jean-Baptiste Pilleau *dit* Sanschagrin was acquitted in 1849 despite a coroner's finding that his wife had died from repeated blows she had received at her husband's hands. The newspaper editor remained "unaware of what caused this excessive

[89] MONTREAL GAZETTE, Oct. 15, 1836.
[90] MONTREAL GAZETTE, Oct. 23, 1850 (case of John Charlton). Some witnesses testified that his wife attacked him with a knife, injuring his face, although they disagreed as to whether she had done so in self-defense.
[91] MONTREAL GAZETTE, Apr. 3, 1833; L'AMI DU PEUPLE (Montreal), Apr. 3, 1833 (case of Taylor). He fled to the United States before he could be arrested.

brutality," thereby implying that lesser levels of physical correction would have been permissible rather than questioning the violence itself.[92]

Alcohol abuse was a central factor in the majority of these domestic homicides, as liquor proved to be a potent accelerant. Frequently at least one spouse had imbibed prior to lethal altercations.[93] In an article entitled "The Drunken Husband" appearing in *The Montreal Gazette*, the wretchedness that often typified the household of an alcoholic was documented. Seen through the eyes of a long-suffering wife, her husband—the "ardent lover" and "enraptured father" of years past—succumbs to the ravages of alcoholism and becomes a "sunken being, who has nothing for her but the sot's disgusting brutality." Faced with penury and abuse, she despairs that "there is no killing like that which destroys the heart...."[94] While intended metaphorically, that phrase rings with particular poignancy in the context of the early nineteenth-century Montreal family. It might have been the case, as one of Hugh Cameron's acquaintances stated, that "with the exception of being under the influence of liquor [he] was a very peaceable man," but his wife surely found that to be little solace given his frequent binges, culminating in her fatal bludgeoning in 1843.[95] His wife's drunkenness was seen as a provocation that resulted in

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[92] L'AURORE (Montreal), Nov. 21, 1848 (author's translation); *see also* LA MINERVE (Montreal), Nov. 20, 1848. For examples of such 'unconscious testimony' in an early nineteenth-century American murder trial, *see* Pilarczyk, *Haystack Murder*, *supra* note 11.

[93] For the nexus between alcohol and spousal homicides, *see* Golz, *supra* note 12, at 168-81; ADLER, *supra* note 56, at 267-68. As stated in MONTREAL TRANSCRIPT, Nov. 8, 1836: "The crime of drunkenness...lies not in drinking liquor, nor in feeling merry, but in rendering ourselves liable to commit theft without covetousness, adultery without love, and murder without malice."

[94] MONTREAL GAZETTE, May 1, 1834.

[95] The Queen v. Hugh Cameron (QB Mar. 1, 1843), *in* BANQ-M, KB(F) (affidavit of Thomas Crane).

his death sentence being commuted, as it was shown that she was a chronic inebriate who pawned household items to pay for drink.[96] A similar saga played itself out with Deborah Cowan, who, faced with their impecunious lifestyle, chided her husband, "Robert, How is it you're home without money? [Y]ou could find it to drink."[97] None of the three defendants in the mariticide cases, however, were alleged to have abused alcohol.

Period courts were often lenient towards spouses who committed homicide while drunk, although this was not without contemporary critics.[98] Alexis Boyer continued the festivities after celebrating a neighbor's wedding by returning home in a drunken rage and subjecting his wife to a barrage of kicks and blows. The aftermath was chronicled by several newspapers, one of which observed that "[i]t is again our lot to detail the destruction of a human being by another, while labouring under intoxication, and that too by one who was bound by ties of the strongest nature to protect and support the victim of

[96] MONTREAL TRANSCRIPT, Mar. 9, 1843 (testimony of John Cameron); Queen v. John Cameron (QB Mar. 8, 1843), *in* BANQ-M, REGISTERS OF THE COURT OF KING'S BENCH [hereinafter KB(R)] 52 (verdict).

[97] MONTREAL GAZETTE, Aug. 14, 1847 (testimony of Isabella Barry).

[98] Commenting on an 1850 trial, one editor wrote "John Munro, tried at the late Criminal Term at Quebec for the murder of his wife, was acquitted, because when he committed the deed he was in a state of delirium tremens, produced by his habits of intoxication. That he killed his wife, was an unquestioned fact; but he was a drunken fellow and drunk himself (mad?)—and so he was acquitted. He has since been discharged from gaol, and let loose upon society. He may get drunk again—relapse into the same state—and murder some one else; but if it can be proved that the deed was done, not during the fit of intoxication, but under the influence of the madness that followed, acquittal will again ensue! Some provision ought to be made for such cases. The drunkard should be punished for the crimes committed in his drunkenness—the madman should be taken care of, and prevented from doing further mischief. He should not be suffered to be at large." MONTREAL WKLY. PILOT, Nov. 30, 1850. The rise of temperance movements in the UK addressing, among other things, intoxication-as-defense is chronicled in Wiener, *supra* note 27, at 490-97.

his ferocity."[99] Another account, its words a marriage of religious imagery and carnage, concluded that "[i]ntemperance [has] sacrificed another victim on its blood-stained altar."[100] Precisely who was the victim—Boyer or his wife—was unclear. John Barker was heard by neighbors to reproach his wife with "severe language" and concluded from her cries that she was being badly beaten. When the cries ceased the neighbors complacently (and conveniently) assumed the couple had retired for the night. In reality, she lay dying on the floor.[101] A lack of evidence pointing to homicidal intent, coupled with mutual intoxication, account for the token sentence he received.[102] Drunkenness on the part of the husband could provide mitigation, and provocation on the part of the wife, but both reduced his culpability in the eyes of the law.

In only one instance was wife murder not due to an eruption of violence but rather to a sustained failure to provide the necessities of life. In this catalogue of horrors, the death of Ellen Goodwin of exposure and neglect was among the most chilling. While atypical, it reflects the same thread of gendered privilege that runs throughout these accounts. James Goodwin was charged with murder in the winter of 1848 for causing his wife's

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[99] MONTREAL GAZETTE, Oct. 4, 1830; *see also* CANADIAN COURANT (Montreal), Apr. 9, 1831 (referencing Boyer's background). For similar accounts, *see* Roth, *Spousal Murder, supra* note 61, at 80-83 (detailing attacks on intercessors by drunken husbands).

[100] CANADIAN COURANT (Montreal), Apr. 9, 1831. The paper used it as a vehicle to rail against intemperance. *See also* CANADIAN COURANT (Montreal), Oct. 2, 1830, containing that paper's initial account of Boyer's crime under the heading "AWFUL CONSEQUENCE OF INTEMPERANCE."

[101] Case of John Barker. *See* MONTREAL TRANSCRIPT, Oct. 11, 1836; L'AMI DU PEUPLE (Montreal), Oct. 12, 1836. MONTREAL GAZETTE, Oct. 15, 1836, likewise noted that the two were "much addicted to the use of ardent spirits" and they both had been intoxicated at the time of the assault. He was sentenced to one year imprisonment.

[102] MONTREAL GAZETTE, Mar. 4, 1837 (stating "it [was] a matter of doubt whether these injuries might not have been received by accident or carelessness, or have been inflicted by the prisoner without the slightest intention or idea of producing death.").

death by having "turned her out of his house and prevented her from returning, obliging her to inhabit a pig-pen, neglecting to give her sufficient food, clothing, and fire." His gravamen was that she left home for extended periods and fraternized with shanty men and other disreputable characters. Even when confronted by the parish priest he remained unmoved, asserting that she was there of her own accord and that her conduct "deprive[d] her of any claim upon him."[103] Ellen was found dead at the end of February, emaciated, frost-bitten, half naked, and frozen to the ground. James resisted initial attempts to thaw her body for an autopsy, saying "he had sworn she should never enter his house, dead or alive; and, that he would keep his word."[104] At trial Ellen's sister and daughters provided evidence for the defense, echoing the sentiment that she had been dissolute, undutiful, and undeserving. This narrative held sway with the jury as they quickly returned a verdict of manslaughter rather than murder.[105] Cases such as these reflect the powerful effect that a wife's reputation could have on the administration of justice. A husband's duty to provide for his wife was a fundamental social tenet, but equally important was her obligation to be worthy of it. A dissipated or disobedient wife's life simply held less value. In contrast with the experience amply documented in other jurisdictions (most notably the United States), these cases did not exhibit the cultural shift common in the 1830s onwards, in which spousal homicides increasingly were triggered by sexual jealousy, betrayal, or passion. Montreal homicides may appear "retrograde" in

[103] MONTREAL GAZETTE, Feb. 4, 1848. He had even offered to pay for her clothes and upkeep, but was rebuffed. It is striking that this was as far as potential intervention progressed.
[104] *Id.* (testimony of John Alexander Sturgeon, M.D.)
[105] Queen v. James Goodwin (QB Feb. 3, 1848), *in* BANQ-M, KB(R) 216. *See also* THE PILOT (Montreal), Feb. 4, 1848; LA MINERVE (Montreal), Feb. 7, 1848.

comparison, as husbands used violence to maintain traditional gender-based power differentials rather than responding to infidelity, sexual rivalry, or the like.[106]

V. Demographics

With respect to demographics, it can be observed that all of these doomed marriages were identified as intra-ethnic. French-Canadian spouses killed French-Canadian partners, and Anglo-Canadians did the same.[107] This comports with Fyson's findings that most Quebec homicides of the period were similarly intra-ethnic.[108] Moreover, Anglo-Canadians composed a majority of all murderous spouses, even in the earlier years of this period when Montreal still had a French-Canadian majority. As set out in *Table 5*, they constituted seven out of eleven husbands (63.6%) and two of three wives (66.7%) charged with murder, or 64.3% of the overall total. Despite being based on a small pool of cases, this mirrors findings in a broader study of Quebec homicides spanning this period.[109] It is perhaps the case that various social pressures, including urbanization and

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[106] *See, e.g.*, Dawn Keetley, *From Anger to Jealousy: Explaining Domestic Homicide in Antebellum America*, 42. J. SOC. HIST. 269 (2008); Dawn Keetley, *A Husband's Jealousy: Antebellum Murder Trials and Caroline Lee Hentz's Ernest Linwood*, 19 LEGACY 26 (2002); Sean T. Moore, *Justifiable Provocation': Violence against Women in Essex County, New York, 1799-1860*, 35 J. SOC. HIST. 88, 896 n.38 (2002); ROTH, AMERICAN HOMICIDE, *supra* note 66, at 250-96; PLECK, *supra* note 61, at 222; Golz, *Murder Most Foul*, *supra* note 12 (noting that in spousal murders in late nineteenth-century Ontario "sexual betrayal" was a common motive).

[107] The more inclusive "Anglo-American" is used, because in the absence of further information it is not always possible to accurately identify the ethnicity of one of the parties. For example, James Dunsheath's surname is often thought to be an Anglicized version of the Irish name "Dunshee," but he was not identified as Irish. Some identifications were aided by the Quebec civil law tradition of retention of women's maiden names after marriage. *See, e.g.*, POUTANEN, *supra* note 8, at 22-23.

[108] Fyson, *Men Killing Men*, *supra* note 49, at 9.

[109] Fyson noted that for Quebec of 1815-1860, French-Canadians constituted 75% or more of the overall population but only 31% of men charged with murder. Among the reasons he identifies are the role of military personnel in homicides and the geographical

"competition" prompted by waves of English-speaking immigrants, help account for this. Perhaps, too, the traditional boundaries of marriage were breaking down more explicitly—and violently—for Anglo-Canadians.[110] While religion and ethnicity were areas of violent schism in Montreal during this period, little direct evidence of that was found Quebec generally.[111] The sole exception was found within the voluntary examination of Elizabeth Ravarie *dite* Francoeur, who attested that she "was not allowed to read [her] prayer books which [her husband] said were bad books and threatened to toss [them] into the fire" and that on the day of her arrest he had opened the front door, made the sign of the cross, and said "the devil is in the house" before throwing her out of the front door.[112] One is tempted to conclude that she struck him from behind while he was praying not only because of the opportunity it afforded, but perhaps also for the symbolism of the moment.

In terms of socio-economic background, the male perpetrators and victims in this group were generally farmers and tradesmen.[113] While some were clearly more than just subsistence farmers (Alexis Boyer, for example, was described as "prosperous"), several lived ordinary agrarian lives scattered throughout the judicial district of Montreal. As set

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concentration of British inhabitants in urban centers where violence was more endemic. *Id.* at 8-9. Similar results were found by Golz, *supra* note 12, at 167.

[110] *See* Golz, *supra* note 12, at 180 (noting that in Ontario "the 'vice of drink' condensed various Anglo-Protestant middle-class anxieties associated with industrialization, urbanization, the shifting racial/ethnic composition of the province due to steadily increasing non-Anglo-Celtic immigration rates, and the general breakdown of marriage and familial relations.")

[111] *See, e.g.*, Elinor Kyte Senior, *The Influence of the British Garrison on the Development of the Montreal Police, 1832 to 1853, in* R.C. MACLEOD, LAWFUL AUTHORITY (1988).

[112] Domina Regina v. Elizabeth Ravarie *dite* Francoeur (KB May 11, 1839), *in* BANQ-M, KB(F) (voluntary examination).

[113] Unsurprisingly, none of the three women were identified as having an occupation.

out in *Table 6*, others represented a miscellany of skilled trades (e.g., ship carpenter, cobbler, retired gardener). Despite the "garrison culture" prevalent in Montreal of the period, only one soldier was identified, a member of the

Table 5: Spousal homicides in Montreal, 1825-1850, by ethnicity

Gender	Ethnicity of perpetrator	Ethnicity of victim	No.	% of category total	% of overall total
Male	Anglo-Canadian	Anglo-Canadian	7	63.6%	50.0%
	French-Canadian	French-Canadian	4	36.4%	28.6%
Female	Anglo-Canadian	Anglo-Canadian	2	66.7%	14.3%
	French-Canadian	French-Canadian	1	33.3%	7.1%

Royal Canadian Rifles.[114] Adolphus Dewey was of the most respectable class, as he was a dry goods merchant whose father had been a physician and who married into a well-connected and wealthy family.[115] While 36% were not identified, no members of the professional classes were found, but nor were any day laborers, canal workers, vagrants, or members of the urban poor.

With respect to the victims, the records rarely allow us to discern more than their names, most acutely in the case of wives. We can say that Boyer's wife, Frances

[114] Case of John Charlton. For discussion of soldiers involved in homicides, see Fyson, *Men Killing Men*, *supra* note 49, at 8.
[115] *Cf.* Golz, *supra* note 12, at 167 (42% of spousal murder cases involved middle-class defendants or professionals; and 46% of wives were married to prosperous farmers); Lepp, *supra* note 13, at 530.

Daigneau, was the daughter of a respectable farmer from St. Pierre, had been married for four years and bore four children, and was twenty-three at the time of her death.[116] We know that Julienne Filion, wife of Jean Martin, Jr., had been married for seven months and was pregnant.[117] John Barker's wife, Mary Fitzpatrick, was mother to three children before her life was extinguished in their home near the Merritt shipyard.[118] Even in Dewey's case, despite the volume of press coverage, little is known about his wife other than that Euphrosine Martineau was young, from a prominent local family, and that she succumbed to her wounds at her father's house.[119] In the case of others, their biographies shrink to the point of near-invisibility, reflecting the tendency of a gendered system to focus on the men who murdered rather than the women who were slain.[120]

Table 6: Occupations of male offenders and victims, 1825-1850

Occupation	**Number**	**% of total**
Skilled tradesman	3	21.4%
Farmer	3	21.4%
Trader	1	7.1%
Soldier	1	7.1%

[116] MONTREAL GAZETTE, Oct. 4, 1830.
[117] MONTREAL GAZETTE, Mar. 26, 1851.
[118] MONTREAL GAZETTE, Oct. 11, 1836; L'AMI DU PEUPLE (Montreal), Oct. 12, 1836.
[119] MONTREAL GAZETTE, Apr. 2, 1833; CANADIAN COURANT (Montreal), Mar. 27, 1833.
[120] A similar observation was made by Walker in her study on race and murder trials in the last decade of nineteenth-century Ontario ("the criminal cases give us a brief and veiled glimpse of the lives of these women….Their identities, however, are obscured by and inextricably wrapped up with a white patriarchal legal apparatus that was most concerned with the men who murdered them."). Walker, *Killing the Black Female Body*, *supra* note 7, at 100.

Shop owner	1	7.1%
Unidentified	5	35.7%

VI. Trials: Evidence, Defense Counsel, Judges and Juries

Prior to the advent of court reporters, records typically contained truncated information on the outcome of inquests, grand juries, and trial proceedings, although depositions and related documents (where extant) provide more detailed information. Period newspapers sporadically allow for more robust reconstruction of these cases by adding details on jury summations, evidence, and defense strategy. In no instance is there a full complement of sources providing a comprehensive account of one trial, but what detail is reclaimable provides insight into the mechanics of period criminal justice.

Murder cases, unlike the private prosecutor-driven model common to other criminal cases, were prosecuted by the Crown through the Attorney General, Solicitor General, or both. Defendants after 1836 were allowed full use of defense counsel when charged with felonies.[121] If custom dictated that the court would appoint counsel in capital felonies, this was by no means guaranteed; and even when followed it was honored rather more in the breach, as the circumstances under which counsel was appointed could only rarely have given rise to a robust defense.[122] While little was generally said on the matter, one

[121] Fyson, *Men Killing Men, supra* note 49, at 2.

[122] *See, e.g.*, the case of Betsey Williams, charged with the capital crime of infanticide in 1840. A colored woman, she was not provided counsel and predictably was convicted and executed. Ian C. Pilarczyk, *'So Foul a Deed': Infanticide in Montreal, 1825-1850,* 30 LAW & HIST. REV. 575, 605-08 (2012). Inadequate preparation time to mount a defense was a recurrent problem, as illustrated by the case of Deborah Cowan, charged with murdering her husband in 1847. She was tried the day after being indicted, at which time

attorney supported a client's clemency petition by noting his lack of advance notice to prepare an adequate defense and emphasizing that "the humanity of the Court alone requested [him] to act in [Dunsheath's] behalf to prevent his being sacrificed without even the form of a trial."[123] Some defendants clearly did better than others with respect to representation, securing the services of as many as three lawyers.[124] Despite shortcomings, it is also evident that defense counsel made arguments and filed motions which, even if unsuccessful, were unlikely to be made by laypeople. Dunsheath's lawyer moved to set aside the verdict as a juror was asleep during part of the Crown's case,[125] while Dewey's cadre of defense lawyers contested the admission of the testimony of his wife's attending physician as not falling under the "dying declaration" exception to hearsay, on the grounds that she had no apprehension of her impending death.[126] Defense attorneys could certainly help shape the outcome of trials: James Goodwin's counsel "endeavoured by a variety of witnesses to prove that deceased was a woman of abandoned character; for this purpose he went back seventeen years" and this may well have accounted for the conviction on the lesser charge of manslaughter.[127] Judges had no

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counsel was appointed. For discussion of the right to counsel, *see, e.g.*, Wiener, *supra* note 27, at 474 n.22; FYSON, MAGISTRATES, *supra* note 4, at 245-49 (in lower courts); Pilarczyk, *id.*, at 607; *id.* at 607 n.141.

[123] *See* NATIONAL ARCHIVES OF CANADA [hereinafter N.A.C.], 24 APPEAL PETITIONS [hereinafter AP] 10717h-u ("Memorial on behalf of James Dunsheath", October 31, 1840). For further discussion, *see infra* p. 61-62.

[124] For example, Adolphus Dewey, Alexis Boyer, and Jean Martin had three each; Elizabeth Ravarie had two.

[125] Queen v. James Dunsheath (KB Sept. 10, 1840), *in* BANQ-M, KB(R) 96. The motion was denied.

[126] MONTREAL GAZETTE, Aug. 19, 1833; MONTREAL HERALD, Aug. 19, 1833 (English translation); L'AMI DU PEUPLE (Montreal), Aug. 21, 1833. After a lengthy discussion, this was denied on the grounds that she had received the last rites.

[127] MONTREAL GAZETTE, Feb. 4, 1848.

discretion in sentencing for capital crimes yet wielded considerable power. Besides ruling on evidentiary issues, judges could direct verdicts, and did, and in summations they could charge the jury in such a way that reinforced reasonable doubt.[128] Defendants themselves were silent as the right to testify in one's defense was not accorded under English law until 1898. For this reason, depositions and petitions provide the only opportunity to hear from defendants.[129]

Whatever the circumstances, proceedings "naturally excited the most intense interest, and the Court House was crowded to excess."[130] By way of explanation, in the context of another trial, the *Montreal Gazette* posited this was prompted by "the nature of the offence, as from its being (fortunately for the character of the country) an unusual circumstance to see a man placed on his trial for slaying the woman he had sworn to protect."[131] Indeed, such trials were not frequent but they remained compelling, and if they resonated with the public this was even more the case with executions.[132]

Trial testimony was typically provided by coroners, jurors who served on coroner's inquests, neighbors, and other witnesses. In a significant number of cases relatives played

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[128] *See, e.g.*, cases of Elizabeth Ravarie *dite* Francoeur (directing jury to verdict of murder or manslaughter, as petit treason charge not supported); Henry Norman (directing jury to verdict on assault with intent to murder).
[129] Pilarczyk, *So Foul a Deed*, *supra* note 122, at 607; *id.* at 607 n.142; *see also* PATRICK DEVLIN, THE CRIMINAL PROSECUTION IN ENGLAND 108 (1958); PHILIPS, *supra* note 48, at 106.
[130] CANADIAN COURANT (Montreal), Mar. 14, 1827 (trial of Mary Hunter).
[131] MONTREAL GAZETTE, Mar. 8, 1831; CANADIAN COURANT (Montreal), Mar. 5, 1831 (trial of Alexis Boyer). Golz, *supra* note 12, at 165, has observed that those homicides were seen as "relatively isolated acts for which explanations must be found."
[132] For example, accounts of Alexis Boyer's execution in 1831 depict hundreds of witnesses huddled together in the driving rain. Sniffed one editor, "[a]s is too common on such occasions a large proportion of those present were females." MONTREAL GAZETTE, Apr. 9, 1831.

a central role: one husband was convicted largely on the testimony of his elderly mother and another on the inculpatory evidence proffered by his teenage son.[133] Francoeur's attack prompted her husband to file a complaint alleging that she "suddenly struck him a blow to the right side of his head with an axe, inflicting a large wound." He dryly asserted he no longer felt safe living with her and requested, in the period legal vernacular, "justice in the premises."[134] Conversely, another defendant benefitted from the testimony of his sister-in-law and two daughters depicting his wife as dissolute and undutiful.[135] Dewey's wife survived her assault for a period of days but unusually filed no complaint or deposition, nor evidenced the desire to prosecute him.

Each trial is compelling in its own right, but a few allow for greater reclamation of the procedure, evidence, and narratives that underlay them. Dewey's trial in 1833 was, as previously mentioned, one of the highest-profile trials in the first half of the century. While the archival records are spotty, his trial was extensively covered in newspapers, which captured many details that would otherwise have been lost. Dewey was a respectable young merchant who began courting Euphrosine Martineau in the summer of 1832. He soon began exhibiting a tyrannical and violent temperament after their wedding in January 1833, and within two months Martineau sought sanctuary with her family. After exhibiting suitable signs of contrition, Dewey was allowed to visit. While Martineau's forgiving nature facilitated a reconciliation, it also proved her undoing. The two attended Mass in late March, after which Dewey convinced her to make a detour to

[133] Cases of Alexis Boyer and Hugh Cameron.
[134] Domina Regina v. Elizabeth Ravarie *dite* Francoeur (KB May 8, 1839), *in* BANQ-M, KB(F) (affidavit of Augustin *dit* Desloriers). This expression takes on a special poignancy when discussing domestic homicides.
[135] Case of James Goodwin.

his shop. Contrary to habit, he had obtained the key from his clerk the night before. Closing the door, he seized an axe and swung wildly at Martineau, who deflected the full force of his attack. Dewey drew a razor and slashed her repeatedly about the neck, throat, and chest, nearly severing her windpipe. Stepping over her slumping body, he then locked up the shop and mounted a cariole he had hired to take him to the vicinity of Champlain, New York.

Regaining consciousness, Martineau struggled to force the bolt of the backdoor and crawled to the property of an adjacent shopkeeper, who summoned assistance. Two surgeons worked feverishly to sew up her grievous wounds as she lay in the shopkeeper's living room.[136] She lingered for ten days before "her constitution sank under the effects of the brutal and sanguinary assault of her ferocious husband, whose turpitude was also encreased (sic) by the additional and unnatural crime of *infanticide*," the latter fact disclosed during autopsy.[137] Reflecting the deference accorded private prosecutors, at her

[136] MONTREAL GAZETTE, Mar. 26, 1833.
[137] MONTREAL GAZETTE, Apr. 2, 1833 (emphasis in original). As another paper obliquely stated, she "was in that situation, which of all others calls for the tender attention of a husband." CANADIAN COURANT (Montreal), Apr. 3, 1833. Medically, infanticide involved the destruction of a baby in utero or ex utero. Legally, no charge of infanticide could have been brought as the child had not been "fully delivered" of the mother and was therefore not considered a life-in-being. For contemporary discussion in medical jurisprudence, *see, e.g.*, WILLIAM BOYS, A PRACTICAL TREATISE ON THE OFFICE AND DUTIES OF CORONERS IN ONTARIO, WITH AN APPENDIX OF FORMS 48 (Toronto, Hart & Rawlinson 2d ed. 1878) 48. Fetal murder, while not a recognized felony, was historically a legal wrong punishable as trespass or other offense. For discussion of infanticide prosecutions, *see* Pilarczyk, *So Foul a Deed*, *supra* note 122.

request no efforts were made to apprehend Dewey until after her death.[138] He was promptly arrested in Plattsburgh, New York and extradited.[139]

Dewey's trial began at 9 a.m. on August 16th, 1833 and concluded at 4 p.m. the next day.[140] One periodical described it as "disclos[ing] a scene of blood and crime unparalleled in the history of this Colony," involving a husband "in the bloom of youth when the conjugal affections are warmest, destroying the life of his young bride who evinced every symptom of a boundless, deep and intense affection for her husband...."[141] The indictment against him contained six counts, reflecting the redundant cataloguing of injuries common to the period.[142] Dewey retained three attorneys; opposing this array of talent was a team no less formidable, consisting of the Attorney General and Solicitor General for Lower Canada. Nearly two dozen witnesses were called, and while there

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[138] MONTREAL GAZETTE, Apr. 2, 1833 (noting that, by virtue of Martineau's entreaties, "no steps were taken to pursue the murderous fugitive during her lifetime."). That prerogative unsurprisingly was deemed to have lapsed following her death. The paper went on to express hope that the "unnatural monster" would face the full fury of the law.
[139] MONTREAL GAZETTE, Apr. 4, 1833 (report of his arrest); *id.*, Apr. 9, 1833 (extradition proceedings); *id.*, Apr. 16, 1833 (Dewey lodged in Montreal jail). *See also* CANADIAN COURANT (Montreal), Apr. 3, 1833 (report of wife's death and Dewey's arrest in Plattsburgh); MONTREAL HERALD, Apr. 15, 1833 (account of his being lodged in jail after extradition). His apprehension was facilitated by newspapers that offered descriptions of the fugitive, such as MONTREAL HERALD, Apr. 1, 1833.
[140] This account of his trial has been synthesized from MONTREAL GAZETTE, Aug. 17 & 19, 1833; MONTREAL HERALD, Aug. 19, 1833; L'AMI DU PEUPLE (Montreal), Aug. 21, 1833; LA MINERVE (Montreal), Aug. 19, 22 & 26, 1833; and CANADIAN COURANT (Montreal), Aug. 21, 1833. Those accounts differ in detail, particularly where "verbatim" transcriptions or translations of statements are concerned, but generally are in accord about the facts of the case and the evidence and testimony presented.
[141] CANADIAN COURANT (Montreal), Aug. 21, 1833.
[142] Without any clear forensic indication of which blow or injury was the ultimate cause of death, charges were commonly repeated in indictments with slight variations to cover all possible causes. For the language of the indictment, *see* MONTREAL GAZETTE, Aug. 19, 1833; L'AMI DU PEUPLE (Montreal), Aug. 21, 1833; CANADIAN COURANT (Montreal), Aug. 21, 1833.

were few surprises, there was certainly drama, beginning with Dewey's entrance into court wearing mourning clothes, a choice of attire that must have appeared morbidly ironic. When the murder weapon was introduced into evidence, speckled with blood and bearing his bloodstained handprints, a "thrill of horror" rippled through the courtroom.[143] Over defense objections, the prosecution offered the testimony of the attending physician, to whom Martineau had recounted the details of her assault. No doubt Dewey's final words to his wife—"we have lived so long in difficulties, we must finish them here"—resonated with the jury.[144] Another inculpatory piece of evidence was his confession following his arrest and heard by several witnesses (including a New York magistrate), which, unusually, was not excluded.[145] Dewey's attorneys faced a steep challenge and attempted to portray him as having suffered some sort of mental derangement prior to the murder, although they offered no such evidence. While Justice James Reid's summation has not survived, it is known that he essentially reiterated the Crown's case, and the jury quickly returned a guilty verdict. Justice Reid then undertook the formality of asking Dewey whether there was any reason that a sentence of death should not be entered.

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[143] MONTREAL HERALD, Aug. 19, 1833.

[144] MONTREAL GAZETTE, Aug. 19, 1833; *see also* MONTREAL HERALD, Aug. 19, 1833 (English translation); L'AMI DU PEUPLE (Montreal), Aug. 21, 1833. This seems a curious remark given the brevity of their marriage.

[145] Judges displayed an institutionalized distrust of confessions anchored in the common law principle that "no man shall convict himself." Even the slightest indication they had been coerced or prompted by promises of leniency was deemed sufficient to warrant exclusion. *See* PETER KING, CRIME, ORDER AND DISCRETION IN ENGLAND, 1740-1820, at 225-26 (2000). In Montreal during this period, confessions were typically excluded, and there are frequent instances in which confessions did not prevent defendants from being acquitted. *See* Pilarczyk, *So Foul A Deed*, *supra* note 122, at 615 n.173 (citing examples in infanticide cases). It has likewise been shown in other jurisdictions that guilty pleas to capital felonies were discouraged. Wiener, *supra* note 27, at 473 n.15 (murder trials); *see also infra* p. 56 n.204 (cases of Claire Ford and Carrie Davis).

Dewey began to address the Court in English but, at the urging of an audience member, switched to his native French. Launching into a tirade, Dewey characterized the testimony of various witnesses as base perjuries. Justice Reid interrupted, chiding him about the futility of contesting the jury's findings at this stage of the proceeding, to which Dewey responded that he welcomed death.[146]

Justice Reid delivered a poignant sentencing speech concerning a crime "so horrible and appalling and of so deep a dye, that it is scarcely possible to find its parallel in the sad history of human depravity." It was nearly unthinkable, he continued, that "[s]carcely three months united to the young and affectionate woman of your choice, whom you had at the altar of the Most High sworn to protect, love, and cherish, when unconscious of your horrible design…she was from that altar, where she had been to worship, led by you like a lamb to the slaughter, and in the most brutal manner mutilated and sacrificed to some hidden and dark passion you had indulged…."[147] The justice emphasized that Dewey's only hope was to seek forgiveness from his offended Maker in hopes of saving his soul, as his mortal body was forfeit.[148] These remarks reflected the tradition of offering a solemn, almost liturgical, sentence in capital cases, lending awe to the administration of justice.[149] His execution was respited to August 30th in order to allow

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[146] MONTREAL HERALD, Aug. 19, 1833.
[147] *Id.*
[148] Dewey was sentenced to be "hanged by the neck until you be dead, and that afterwards your body be dissected and anatomized." MONTREAL HERALD, Aug. 19, 1833; MONTREAL GAZETTE, Aug. 19, 1833; CANADIAN COURANT (Montreal), Aug. 21, 1833. Dissection was much loathed by felons. *See, e.g.*, Peter Linebaugh, *The Tyburn Riot Against the Surgeons*, *in* ALBION'S FATAL TREE: CRIME AND SOCIETY IN EIGHTEENTH-CENTURY ENGLAND 65 (Douglas Hay & E.P. Thompson, eds., 1975).
[149] This was most obvious in the imposition of the death penalty, which served as the "climatic emotional point of the criminal law—the moment of terror around which the system revolved." Douglas Hay, *Property, Authority and the Criminal Law*, *in* HAY &

him to seek clemency, although there is no evidence that he availed himself of the opportunity.

The day before he was to "pay the forfeit of his life to the insulted laws of his country," Dewey was described as resigned to his fate and reconciled to his God.[150] Before a crush of thousands of spectators he delivered his final words after the prayer and benediction.[151] Dewey performed his final role with aplomb: transcribing four copies to be distributed to the local press, he flawlessly delivered his lengthy speech from memory, stating that "I will not leave this world without repairing, to the best of my ability, the mistakes I have made, after asking God's forgiveness from the bottom of my heart."[152] His final words: "merciful Jesus, Jesus, save me," before being launched into eternity.[153]

Perhaps a more representative example of spousal homicide was that of Henry Norman, tried in 1842. The couple was heard arguing when suddenly his wife, Amelia, cried out, "Henry, my dear! Do not kill me!" Amelia ran into a neighbor's room, bleeding, and was followed by her husband, who struck a blow to her back with what appeared to be a

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THOMPSON, *supra* note 148, at 28. The imagery in Reid's statement was typical (*see, e.g.*, *id.* at 29).

[150] The evidence seemed to support this, as en route to the scaffold, he handed his dumbfounded jailer a double-bladed knife that he had concealed. MONTREAL GAZETTE, Aug. 29, 1833.

[151] MONTREAL GAZETTE, Aug. 31, 1833 (colorfully describing his deportment as "firm, resolute and manly, without any approximation to hardihood, or heroic effrontery.").

[152] LA MINERVE (Montreal), Sept. 2, 1833 (author's translation).

[153] L'AMI DU PEUPLE (Montreal), Aug. 31, 1833); *see also* MONTREAL GAZETTE, Aug. 31, 1833 (English translation); LA MINERVE (Montreal), Sept. 2, 1833. His execution was noted in typically terse style in the records of the Montreal jail. BANQ-M, MG, at no. 3288 (Apr. 13, 1833) (noting Dewey was "discharged by death" as result of his execution). For discussion of public executions, *see* PETER KING, CRIME, JUSTICE AND DISCRETION 1740-1820, at 340-52 (2000). For description of the "religious and secular ritual" of executions in nineteenth-century Canada, *see* Jim Phillips, *The Operation of the Royal Pardon in Nova Scotia, 1749-1815*, 42 U. TORONTO L. REV. 401 (1992).

knife. A neighbor's affidavit, in a curious linguistic juxtaposition, asserted that she "begged of the said Norman not to kill his wife in deponent's room, but to take her back to his own room," perhaps reflecting an unconscious desire that the couple keep their arguments private or respect for the well-entrenched ethos of male as paterfamilias.[154] Other neighbors attested to frequent arguments and likewise heard Amelia beseech her husband not to kill her.[155] Norman's perceived right of dominion was even more starkly reflected in the deposition of James Badgley, a dinner guest. Upon his arrival he was summoned by Amelia, who lay crying and bleeding heavily from the arms and back. "[L]ook how he has served me," she implored. Badgley exclaimed that this atrocity would not have happened had he been present, but his indignation was outweighed by his reluctance to get involved. Declining to stay, he gave no indication that he had attempted to aid Amelia, nor did he apparently feel the need to defend his inaction. Returning the following morning to borrow a shoemaker's knife, Norman told him that he had disposed of it, hinting darkly, "I think I have done enough with it."[156] Clearly Norman had, as Amelia died two days later. The thread of gendered entitlement that runs through this account is striking: Norman's unwavering belief in his right to use violence, without fear of intervention or even explanation; Badgley's hollow act of chivalric intervention; even the neighbor's comments regarding the assault itself.

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[154] Domina Regina v. Henry Norman (KB Aug. 26, 1842), *in* BANQ-M, KB(F) (deposition of Martha Brown).
[155] Domina Regina v. Henry Norman (KB, n.d.), *in id.* (deposition of Margaret Mitchel and Martha Cooper at coroner's inquest).
[156] Domina Regina v. Henry Norman (KB Aug. 26, 1842), *in id.* (deposition of James Badgley).

Following the inquest, Norman was arrested on a coroner's warrant.[157] Several witnesses testified that Norman was often drunk, but only one claimed to have ever seen Amelia imbibe, and that only once. Strangely, her attending physician attested that, after her hospitalization, she suffered from delirium tremens, the affliction that he believed was the ultimate cause of death, albeit aggravated by her injuries.[158] Unfortunately, little else is known in the absence of surviving records, although Norman was convicted of assault with intent to murder after the judge directed the jury that the capital charge was not sustained.[159] Which element was not met is not clear, but it likely has to do with the ambiguity surrounding the ultimate cause of death.[160] Norman was sentenced to "3 years from 10 September with the month of August in each year to be allotted to solitary imprisonment," presumably to give him pause to reflect on each anniversary of his dark deed.[161]

The first of three instances in which a wife was charged with murdering her spouse occurred in 1827. Mary Hunter's trial for the strangulation of her husband reflected a contest of wills between the local leader of the militia, Captain Hagan, and a surgeon who also served as justice of the peace, Dr. Woods, the latter of whom attempted to insulate

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[157] Domina Regina v. Henry Norman (KB Aug. 26, 1842), *in id.* (deposition of Joseph Jones, Coroner).
[158] Domina Regina v. Henry Norman (KB Aug. 19, 1842), *in id.* (deposition of Olivier C. Bruneau, M.D.).
[159] Domina Regina v. Henry Norman (KB Sept. 8, 1842), *in* BANQ-M, KB(R) 75-76. *See also* MONTREAL GAZETTE, Sept. 10, 1842; MONTREAL TRANSCRIPT, Sept. 19, 1842. No other trial documents were found.
[160] Depositions also indicate that none of the witnesses were sure they had seen a knife in Norman's hand, only a knife handle. Despite the nature of her wounds and his own comments about the shoemaker's knife, this could nonetheless have aided the defense.
[161] *See* Domina Regina v. Henry Norman, (KB Aug. 26, 1842), *in* BANQ-M, MG 870; Queen v. Henry Norman (KB Sept. 10, 1842), *in id.*, KB(R) 87. This unique addendum to his sentence appeared to reflect the Court's disapproval of the otherwise lenient sentence.

her from prosecution, even counseling her to flee.[162] In his words, "I have been under the most painful necessity of committing an unfortunate woman Mrs. Mary Hunter for the murder of her husband William Hunter, from what I have observed (and I saw her about sixteen or twenty hours after the accident) it was done in fits of insanity and she still seems to labour under mental derangement. It is about a year since they were married and seem to have lived happily, her conduct heretofore…has been the most mild and exemplary."[163]

Dr. Woods, however, was not the only obstacle. One of the Hunter's neighbors deposed that it was his "candid opinion" that two of the Crown's witnesses intended to decamp from the province in order to avoid testifying.[164] Such allegations did not reassure Captain Hagan, and his frustrations grew over time due to what he described as Dr. Woods's "extraordinary kindness" to Hunter.[165] In his role as a minor judicial official, Captain Hagan diligently secured a dossier of witness statements.[166] One of these was

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[162] BANQ-M, MP(GR), at no. 705 (Mary Hunter, charged with "feloniously killing her husband," committed January 5th, 1827). The file contains an undated, unsigned letter detailing actions by Dr. Woods demonstrating his disinclination to aggressively prosecute Mary Hunter, including soliciting assistance to aid her escape. Rex v. Woods (KB), *in* BANQ-M, KB(F).

[163] Dominus Rex v. Mary Hunter (KB Jan. 4, 1827), *in* BANQ-M, KB(F) (letter from William Woods to Samuel Gale). A postscript added, "I think that the jailor should be informed that she is suspected of being insane that he may keep his eye on her and act accordingly."

[164] Dominus Rex v. Mary Hunter (KB Feb. 5, 1827), *in* BANQ-M, KB(F) (deposition of Owen Barry).

[165] Dominus Rex v. Mary Hunter (KB Feb. 20, 1827), *in* BANQ-M, KB(F) (letter from Captain Hugh Hagan).

[166] Dominus Rex v. Mary Hunter (KB Feb. 28, 1827), *in* BANQ-M, KB(F) (deposition of Mary Ashton) (stating that a "dark mark on his neck" caused her to suppose Hunter could have been strangled.); Dominus Rex v. Mary Hunter (KB Feb. 28, 1827), *in id.* (deposition of George Gardner) (appearance of the deceased's neck led him to believe he was "choaked (sic) by a rope placed round his neck."); Dominus Rex v. Mary Hunter

from a neighbor who hosted the couple on the evening of William's death and who attested that he "never observed anything but cordiality and good will" between the couple. On the night in question, Mary returned to his house and said "I wish you to come over, Billy is very bad." He saw William lying dead by the stove; his lips were swollen, bloody, and covered with froth, and his tongue protruded between his teeth. Reluctant to ascribe culpability to Mary, he nonetheless believed William had been strangled and admitted he found her statement that he always tied his nightcap tight around his neck to be unconvincing.[167]

Mary Hunter was tried in March 1827 for petit treason. She was likely represented, as witnesses were cross-examined.[168] The testimony appears to have largely mirrored that of the depositions, but it has a unique source: Justice Reid's bench book.[169] The principal witness at trial was the reluctant Dr. Woods, who affirmed that a good deal of force was necessary to cause such injuries and that after the inquest he had shared his suspicion with Mary that she was guilty of murder. Her reply was that "God was powerful and she had prayed to Him to assist her," a response that admitted conflicting interpretations. When asked if she had used a rope to strangle him, she allegedly replied in the affirmative, adding that she had incinerated the evidence. She had seemed indifferent, he claimed, to the events that had taken place. Dr. Woods added that he had told her that she

(KB Mar. 1, 1827), *in id.* (deposition of Patrick Murray); *see also* Dominus Rex v. Mary Hunter (KB Mar. 1, 1827), *in id.* (deposition of William Breakey).

[167] Dominus Rex v. Mary Hunter (KB Feb. 28, 1827), *in id.* (deposition of John Gordon).

[168] MONTREAL GAZETTE, Mar. 1, 1827 (true bill); CANADIAN COURANT (Montreal), Mar. 14, 1827 (trial).

[169] King v. Mary Hunter (KB Mar. 9, 1827), *in* N.A.C., BAR OF MONTREAL, JAMES REID PAPERS, CRIMINAL CASES [hereinafter REID]. The book contains his very summary notes of the evidence presented, motions, and other court business.

"had forfeited her life to the law of her country and that she would have been better off if she had effected her escape and that she might do so still," confirming assertions that he had encouraged her to flee, but she refused. As the doctor took her home, she broke into hysterical laughter and said it was not possible that William was dead, while at the funeral she was "in a stupor and insensible to the cold." While those actions might have been feigned, Dr. Woods believed that was not the case.[170] Reid's notes as to her mental competency merely record that she was shown to be a "childish woman, but [who] knew right from wrong" and that the defense demonstrated that she was of "weak intellect."[171]

The jury pondered the evidence for several days before requesting that Dr. Woods's testimony be read to them again and deliberated for a further ten minutes before acquitting her.[172] The court "expressed their cordial approbation" with the verdict.[173] We are left with no dispositive evidence of her culpability or mental competency, but it is worth reflecting that allegations of mental infirmity surfaced frequently when women

[170] This paper also recorded that his testimony aided the defense as "it evidenced that he was not strangled," leading them to observe that the jury "had a most serious task to perform," given a "number of concurring circumstances in the examination of the witnesses" as well as the evidence of her own confession. CANADIAN COURANT (Montreal), Mar. 14, 1827. This account seems at odds with Justice Reid's own notes and the depositions.
[171] King v. Mary Hunter (KB Mar. 9, 1827), *in* N.A.C., REID.
[172] King v. Mary Hunter (KB), *in* BANQ-M, KB(R) (February 1827 minutes book); King v. Mary Hunter (KB Mar. 10, 1827), *in* N.A.C., REID (verdict).
[173] CANADIAN COURANT (Montreal), Mar. 14, 1827. She was released the same day as the verdict was reached. *See* Dominus Rex v. Mary Hunter (KB Jan. 5, 1827), *in* BANQ-M, MG, at no.705. Woods's saga, unlike that of Mary, did not end there. Scarcely a year later, his obstructionism was again an issue, as proceedings were brought against him for "refusing to appear and give evidence at a Court of Criminal pleas" in a case against an unrelated defendant. Dominus Rex v. Dr. William Woods, J.P. (KB Mar. 3, 1828), *in* BANQ-M, KB(F) (trial of George Patrick for assault with intent to murder).

were charged with domestic violence—perhaps because it made their behavior more comprehensible.[174]

The one case of mariticide that resulted in conviction involved Elizabeth Ravarie *dite* Francoeur in 1840. Her case is a boon for historians, not only because so many of the related documents have survived, but also because it demonstrates the crime of petit treason in application. Moreover, Ravarie's husband, Augustin Legault Desloriers, survived the attack for five weeks and became the initial complainant against her.[175] Her trial was fixed for the March 1840 term but was postponed due to the absence of a material witness.[176] Following the postponement, Ravarie, who had been imprisoned for nearly a year by that time, successfully petitioned for bail.[177] She was tried more than one and a half years after the assault.[178] The testimony disclosed that the spouses had had a volatile relationship during their marriage, that Ravarie had a propensity for violence, and that she had socialized with a group of young people of whom her husband disapproved.

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[174] For discussion, *see* Pilarczyk, *Justice*, *supra* note 32, at 266-67, 333-37 (noting that violent wives were much more likely to be accused of being insane than violent husbands). For general discussion, *see* Wiener, *supra* note 27, at 497-504.
[175] *See supra* note 146.
[176] L'AMI DU PEUPLE (Montreal), Oct. 2 1839 (true bill); Queen v. Elizabeth Ravarie (KB Mar. 2, 1840), *in* BANQ-M, KB(R) 48; *see also* MONTREAL GAZETTE, Mar. 3, 1840.
[177] Petition of Elizabeth otherwise called Betsy Ravarie *dite* Francoeur (KB Mar. 21, 1840), *in* BANQ-M; KB(F). She maintained she was "altogether guiltless of the offence imputed to her" and that her lengthy imprisonment had caused her health to suffer. The Attorney General consented to bail in the amount of £500 with two sureties of £250 each. For the postponement, *see* Queen v. Elizabeth Ravarie (KB Mar. 2, 1840), *in* BANQ-M, KB(R) 48; *see also* MONTREAL GAZETTE, Mar. 3, 1840; Petition of Elizabeth, otherwise called Betsy Ravarie *dite* Francoeur (KB Mar. 21, 1840), *in* BANQ-M, KB(F) (petition). It is worth noting that her initial arrest did not happen until several weeks after the assault to the outrage of at least one commentator. *See* MONTREAL TRANSCRIPT, May 4, 1839.
[178] She was tried by the Court of Oyer and Terminer and General Gaol Delivery, an irregular criminal court made necessary by the backlog of cases and disruption precipitated by the Rebellions of 1837-1838. *See generally* FYSON, COURT STRUCTURE, *supra* note 28.

On the night of April 21st, 1839, she fractured his skull with an axe, after he had forbidden her from visiting a neighbor's house where a group of her friends were gathered. Following the assault, a neighbor fruitlessly attempted to broker a reconciliation. The neighbor ultimately served as the primary prosecution witness, testifying that Ravarie admitted to the crime during a conversation between the two.[179] Her husband lingered until May 27th, 1839 before succumbing to his head wound.

After the Crown rested its case, Ravarie's counsel began to present her defense. In what must have been a moment of high drama, Justice Pyke interrupted the proceedings. The justice emphasized that petit treason required inculpatory testimony of at least two lawful witnesses in the absence of a confession. Here, the Crown was only able to offer the testimony of one. As such, Pyke stated, the Crown could not prove the crime, and the defense would be presenting evidence at its peril, an admonition counsel heeded.[180] In sending the case directly to the jury, Pyke reiterated that they could find Ravarie guilty only of murder or manslaughter. The jury returned a verdict of the lesser offense, and she was sentenced to two years' hard labor in the House of Correction.[181] If the press was any

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[179] Identical accounts were found in MONTREAL GAZETTE, Nov. 19, 1840 and MONTREAL HERALD, Nov. 19, 1840. This clearly was not deemed hearsay.

[180] *Id.* To clarify that fine point of law, the newspapers unusually included a footnote:

> Blackstone's Commentaries, vol. 4 page 324—In all cases of High Treason, Petit Treason, and Mis-prision of Treason, by Statute 1 Edward VI. C. 12 and 3 and 6 Edward VI c. 11, two lawful witnesses are required to convict a prisoner; unless he shall willingly by and without violence confess the same.

The requirement for two "witnesses" was taken literally, so that the deposition of her late husband did not count.

[181] Queen v. Elizabeth Ravarie (KB Nov. 17, 1840), *in* BANQ-M, KB(R) 53-54 (verdict); Queen v. Elizabeth Ravarie (KB Dec. 5, 1840), *in id.* at 117 (sentence). *See also* MONTREAL GAZETTE, Dec. 8, 1840; MONTREAL GAZETTE, Dec. 8, 1840; L'AURORE

indication, there was surprise at the verdict as the murder charge appeared fully supported.[182] Ravarie's case is nonetheless one where the fine points of the law were complemented by mercy. Despite the gendered crime of petit treason and its evidentiary peculiarities, she might well have been convicted of murder: a husband who survived to swear out a complaint, as well as a witness who had attempted to mediate between the spouses, was powerful evidence.

The last such case illustrating the challenges that faced some inquest and trial juries, and judges—and the interplay between them—is the case of Deborah Cowan. This trial also featured significant pre-trial publicity, much of which asserted she was wrongly accused. When news first appeared of her husband Robert Cochrane's death, it was initially characterized as an evident murder. *The Pilot*, under the heading "A Man Killed by his Wife," reported that Cochrane had "an altercation with his wife when she stabbed him in the abdomen with a chisel. The unfortunate man died in less than fifteen minutes."[183] Within a few days, press accounts appeared that were altogether more sympathetic. The *Gazette*'s account of the "recent catastrophe" observed:

> We have reason to believe…that the unfortunate man lived on the best terms with his wife, and that his death was purely accidental. If this be so, a poor woman, not merely

(Montreal), Nov. 22, 1840 (conviction); L'AURORE (Montreal), Dec. 7, 1840 (sentence). The summation and sentencing remarks have not survived.

[182] *See, e.g.*, MONTREAL TRANSCRIPT, Dec. 8, 1840; L'AURORE (Montreal), Nov. 22, 1840; L'AURORE (Montreal), Dec. 7, 1840.

[183] PILOT (Montreal), Mar. 9, 1847. It is worth noting that Montreal papers of the period usually did not have headlines for short news items like this. As the article also matter-of-factly stated, Deborah and two of their children were lodged in jail. *Id.; see also* MONTREAL TRANSCRIPT, Mar. 9, 1847. While shocking to modern sensibilities, this was a common practice where young children and their primary caregivers were concerned. Prison conditions were inimical to health by virtue of inadequate ventilation and heating, poor diet, dirt, and disease. For references to this practice in nineteenth-century Ontario, *see* JAMES EDMUND JONES, PIONEER CRIMES AND PUNISHMENTS IN TORONTO AND THE HOME DISTRICT 72-74 (1924).

> deprived of her husband, but labouring under the imputation of his murder, must be the object of everyone's sympathy. We do not think that, in such a case, the Jury did right in returning a verdict of "Wilful Murder". Unless there was some evidence more distinct than mere suspicion, they might have adjourned their verdict, or given a special one, merely alleging the fact of death under circumstances unknown....[184]

While noting that others had characterized the event as murder, the *Gazette* opined that it was likely accidental.[185] It was against that backdrop that a true bill for murder was found against her five months later, with the trial scheduled for the following day.[186] Reflecting the confusing public accounts that had appeared earlier, the Crown prosecutor opened his case by providing a remarkably balanced account of circumstanced that he conceded were "singular." He depicted a scene of domestic tranquility in which the couple took tea, talking normally with the children playing around them, when suddenly Robert rushed from the room exclaiming "I'm done for! The woman has stabbed me!" Even more striking, he emphasized, was that his wife did not render assistance, but a minute later came out and said "Oh Robert, sure I haven't harmed you?" As the prosecutor observed, "[i]t is a case requiring…the Jury to exercise their utmost powers of discrimination. It cannot, for a moment, be supposed that it was done in playfulness, or by accident, for, though a chisel is a sharp instrument, the depth of the wound forbids the supposition." Acknowledging the import of the jury's role, he also stressed that there were exculpatory circumstances that the jury had to weigh carefully.[187]

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[184] MONTREAL GAZETTE, Mar. 12, 1847; MONTREAL TRANSCRIPT, Mar. 9, 1847.
[185] PILOT (Montreal), Mar. 16, 1847. In this later edition, it added they "heard a good character of the women charged with murder. If innocent her case is a very hard one."
[186] MONTREAL GAZETTE, Aug. 11, 1847.
[187] MONTREAL GAZETTE, Aug. 14, 1847; MONTREAL TRANSCRIPT, Aug. 17, 1847.

The witness accounts differed in some aspects, but likewise suggested Cowan had made no effort to aid her husband after the incident. One attested that Cochrane's last words were "I am ruined for ever!" and "the woman has struck me with a knife." He also alleged Cowan came out after a short time, saying "What will I do? What will I do?" and merely stood looking at him as he lay dying.[188] Another neighbor recalled his last words differently: "I'm a gone man! I'm stabbed," followed by Cowan's cries of "Robert, Robert, what's happened?" and "Robert, sure I've done nothing to you?" The neighbor believed Cowan was blameless and added that she had never heard them quarrel.[189] Several other witnesses corroborated peaceful domesticity.

Medical testimony was offered by a former army physician who conducted the autopsy and found the wound had severed three arteries near Robert's groin. Showing the jury a section of the arteries that he had excised, he testified Cochrane was likely holding the chisel in his own hands. When cross-examined, he stated it was more likely caused by a self-imposed accidental blow than by a blow from another. The court, unusually, sought clarification on a number of points, eliciting testimony that it would take considerable force to cause the wound, but that Cochrane's falling down on the chisel or striking the table while holding it might have been responsible. This did little to advance the Crown's case. The only defense witness mentioned in the records was a priest who testified glowingly about Cowan's "utmost propriety of conduct" as a "kind and affectionate wife

[188] *Id.* (testimony of James Connel).
[189] *Id.* (testimony of Isabella Barry). MONTREAL TRANSCRIPT, Aug. 17, 1847 noted that the evidence of those witnesses indicated that Cochrane had made "some exclamations on the precise meaning of which there was a difference of opinion among the persons present."

and mother."[190] The ambiguous circumstances surrounding the incident, possibility of mischance, lack of a discernible motive, and Cowan's peaceable reputation likely provided the basis for the jury's acquittal.[191]

Some scholarship has shown that a preponderance of charges brought against husbands for killing their wives in the nineteenth century was for manslaughter rather than murder.[192] In Montreal, however, such acts precipitated an initial charge of murder (perhaps joined with a charge of assault with intent to murder) in all but one instance, and that case ended in an acquittal.[193] The case of Jean-Baptiste Pilleau *dit* Sanschagrin has survived almost exclusively in pithy newspaper accounts and therefore little detail can be reclaimed.[194] About the other, the case of Jean Martin, Jr., much more is known. Prompted by the discovery of Julienne Filion in a shallow well, the captain of militia assembled a jury of inquest that reached a finding of accidental death. Sometime thereafter, suspicious circumstances—mainly having to do with her husband's insistence that he had not accompanied her to the well, despite having been seen—precipitated a warrant for Martin's arrest. His wife was disinterred, but decomposition precluded a determination of the cause of death.[195] Martin was tried in March 1851 in a proceeding that proved every bit as confounding as the Cochrane case.[196] Over a span of three days,

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[190] MONTREAL GAZETTE, Aug. 17, 1847; MONTREAL TRANSCRIPT, Aug. 17, 1847.
[191] Queen v. Deborah Cowan (verdict), *in* A.N.Q.M., KB(R) (August 1846-August 1849) 185. The judge's summation has not survived.
[192] *See, e.g.*, CONLEY, *supra* note 9, at 59-60; DOGGETT, *supra* note 39, at 127.
[193] MONTREAL GAZETTE, Oct. 23, 1850; LA MINERVE (Montreal), Oct. 28, 1850; PILOT (Montreal), Oct. 24, 1850 (case of John Charlton).
[194] L'AURORE (Montreal), Nov. 21, 1848; LA MINERVE (Montreal), Nov. 20, 1848; Queen v. Jean Baptiste Pilleau otherwise called Sanschagrin (QB Feb. 9, 1849), *in* BANQ-M, KB(R) 331-32.
[195] MONTREAL GAZETTE, Aug. 29, 1850.
[196] For the account of his trial, *see* MONTREAL GAZETTE, Mar. 24 & 26, 1851.

the jurors wrestled with many seemingly unanswerable questions: did his wife die as a result of accident? If her death was intentional, was it at her own hands, or was there a more sinister explanation? The conundrum was vividly depicted in Justice Rolland's jury summation, one of the only to survive:

> [The jury] had heard all the evidence, and they could not help thinking with him, that this must certainly be considered as one of the most extraordinary cases which had occurred in the judicial history of the country—a case fit to excite indignation against the murderer, if murderer there were; or excite wonder, if [it] turned out that there were none. At 30 feet from the high road, in mid-day, a woman was said to have been done to death, in a shallow well, by a husband, to whom she had been married only seven months, and while she was bearing in her womb the child, of which he was about to become the father.[197]

If the Dewey case was proof that a wife was not immune to being murdered by her husband by virtue of being a pregnant newlywed, that lesson was lost on Justice Rolland: it was the place and timing of Filion's death that was curious, not that her husband might be culpable. In considering the possibility of accidental death, he emphasized that "like all [pregnant] women...[she] was subject to swoons." There was no evidence she had been forcibly taken to the well, and had she fainted "the cold water would...have probably restored her. She might have fallen into the well, however, in a fainting fit, and she might not have been restored by the water; but it seemed difficult to understand how, even if that were so, she could have fallen into so narrow a space." Could she then have committed suicide? The judge shared the prevailing view of women as subject to the caprices of hysteria and melancholy, aggravated by conditions such as pregnancy. While

[197] *Id.*, Mar. 26, 1851. Some of the testimony heard at trial could not have assisted in correctly identifying the cause of death; the testimony of Dr. Arnoldi, for example, included his statements that he "believes that persons who were drowned by acts of violence, would always have the mark of such violence on their face and this would be preserved after death."

she had acted melancholically, "like most young women in her position….a case of suicide by a pregnant woman was hardly known." Moreover, she was known to be pious and therefore unlikely to have committed the mortal sin of *felo de se.* When women did drown themselves, added Rolland, they were most likely to do so for affairs of the heart. Given the circumstances, he was certain she did not take her own life. Justice Rolland concluded by highlighting the evidence related to the defendant's conduct, including inconsistencies in the voluntary testimony he had given. This was offset by the fact that Martin was likewise a pious man of good character, young enough that it "seemed hardly possible for him to have arrived at the pitch of villainy necessary for the commission of such a crime as was imputed to him."[198] Again, the lesson offered by the twenty-three-year-old Dewey, who lured his wife to her death following Divine Mass, was forgotten. Following that edifying summation, the jury spent less time deliberating than the court did in summarizing before returning a not guilty verdict.[199] Whether justice was served in the Martin case will never be known, but Rolland's charge to the jury provides further example of gendered assumptions embedded throughout many of these narratives.

With respect to juries, little was said in the press about them, and were it not for reporting of verdicts one might overlook their existence altogether. Juries unsurprisingly consisted of white male property owners, primarily from urban centers. They were therefore homogenous except for ethnicity, as jury pools consisted of both English-speaking and French-speaking Canadians.[200] Juries formed part of the chain of clemency and

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[198] MONTREAL GAZETTE, Mar. 26, 1851.
[199] *Id.; see also* PILOT (Montreal), Mar. 25, 1851; Queen v. Jean Martin fils (QB Mar. 24, 1851), *in* BANQ-M, KB(R) 150.
[200] FYSON, MAGISTRATES, *supra* note 4, at 243-45. Not all juries were ethnically mixed: Charlton's jury, for example, had six English and six French-speaking jurors. *See*

patriarchy common to the period, showing mercy towards certain classes of criminals (notably infanticidal mothers), exonerating some defendants charged with crimes for which they probably deserved punishment, as well as convicting them of lesser offenses. Despite the fact that little was said about their structure or selection, occasional anecdotes surface that give one pause: surely the shoemaker, Thomas Figsby, one of the three men who responded to the altercation in which Hugh Cameron killed his wife and a witness at his trial, should not also have served as a juror?[201] Why could John Ashton provide evidence to the coroner's inquest examining the death of William Hunter, as one of the couple's neighbors, but also serve on the inquest jury itself?[202]

Of course, judges and jurors did not always agree on verdicts. James Goodwin's conviction for manslaughter for relegating his wife to a pigsty in the depth of a punishing Montreal winter, for example, did not sit well with the judge, who indicated his disapprobation with both the verdict and the crime. He "severely commented on the enormity of the offence," noting that, despite the verdict, it was a most "aggravated manslaughter" with "nothing…to mitigate it in the slightest degree." He sentenced Goodwin to life imprisonment.[203] Indeed, the prospect of sending a defendant to the

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MONTREAL GAZETTE, Oct. 23, 1850. In contrast, Jean Martin Jr.'s jury was entirely Francophone. *See* MONTREAL GAZETTE, Mar. 24, 1851.

[201] The Queen v. Hugh Cameron (KB Mar. 1, 1842), *in* BANQ-M, KB(F). This conflict of interest, with a juror who was also a witness, was apparently of no real note at the time. For his trial testimony, *see* MONTREAL TRANSCRIPT, Mar. 11, 1843.

[202] Dominus Rex v. Mary Hunter (KB Feb. 28 1827), *in* BANQ-M, KB(F) (deposition of John Ashton). He attested to finding an imprint on the decedent's neck that appeared to have been caused by a cord or rope, and that Dr. Woods told him Mary had confessed in the presence of another witness to having choked William with a rope and then disposing of it in the stove. It is unsurprising that he gave testimony to the inquest, but much more so that he also served on the jury.

[203] MONTREAL GAZETTE, Feb. 16, 1848; *see also* MONTREAL GAZETTE, Feb. 17, 1848 (stating that Goodwin, the "man who suffered his wife to die so horribly in a pig-stye

gallows was a heavy burden for jurors, who were prone to acquit defendants of capital crimes, and convicted murderers faced the ultimate sanction with increasing infrequency as the century advanced. Juries could also recommend mercy, which, while not binding, could assist defendants in receiving executive clemency after sentencing.[204] The mercy and majesty of the law were often apparent—never more so than when a capital crime had been committed—but mercy sometimes won out.

The extent to which mercy played a role in murder trials against wives cannot be detailed for this period. Only one such case resulted in conviction and that for manslaughter. Historically, a woman like Ravarie, who killed her spouse, was viewed with fear and revulsion, not only for breaching social mores, but for having defiled feminine ideals as well. Ironically, the incomprehension with which such acts were typically viewed may have benefited some defendants, as jurists were loath to believe that wives could commit such heinous acts in the absence of extreme provocation, mental illness, or the like. Indeed, many juries were reluctant to convict women of homicides, regardless of whether the victims were infants or spouses.[205] While the number of spousal murders committed

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[sic]" was sentenced to life imprisonment, the "heaviest penalty the law could inflict."). The judge's comment about it being an "aggravated manslaughter" is instructive. Having no legal meaning, it indicated his disapproval of the jury's finding. For discussion of mercy recommendations in cases of husband murder, *see* GREENWOOD & BOISSERY, *supra* note 42, at 95-97.

[204] *See, e.g.*, the case of Hugh Cameron, in which the jury recommended mercy due to his wife's provocations. L'AURORE (Montreal), Mar. 14, 1843 (noting jury recommendation); *id.*, Apr. 6, 1843 (noting clemency due to jury's recommendation); MONTREAL REGISTER, Apr. 6, 1843 (noting commutation of sentence). Cameron's petition was not found in the records of the NAC.

[205] With respect to husband murders, Carolyn Strange noted that "[r]esidents of Toronto in the late nineteenth and early twentieth centuries might quite legitimately have assumed that women could get away with murder. In two highly publicized trials in that period, female defendants were acquitted on charges of murder in spite of the fact that both had confessed to the deed." Carolyn Strange, *Wounded Womanhood and Dead Men: Chivalry*

by wives was small, it indicates that gender-based leniency may also have played a part in much the same way as it was reflected in infanticide prosecutions. If so, it cannot be equated with egalitarianism, for not only did it perpetuate stereotypes but also served to obscure rather than disclose systemic inequality.[206]

Whether Jean-Baptiste Sanschagrin, John Charlton, and Jean Martin Jr.'s acquittals in the later years of this period are merely coincidental is not known. Not enough information has survived from the Sanschagrin case from which to extrapolate, and Charlton's and Martin's trials provided much in the way of reasonable doubt. In the absence of longitudinal studies of spousal homicide trials in Quebec for this period, this remains a question of conjecture. Moreover, as is typical with respect to early nineteenth-century criminal law, no clear correlation between charges of spousal murder and the rate of such incidents can necessarily be provided, for even cases of spousal homicide were lost to the court system between the time of the act's commission and the indictment stage. Problems of definition, including ambiguity surrounding the distinction between "murder" and "manslaughter," could only have served to hamper prosecution.[207] Where

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and the Trials of Claire Ford and Carrie Davis, *in* GENDER CONFLICTS: NEW ESSAYS IN WOMEN'S HISTORY 149 (France Iacovetta & Mariana Valverde eds., 1992); *see also* WILSON, *supra* note 61, at 24-25; Golz, *supra* note 12, at 168; Lepp, *supra* note 13, at 531. For observations related to how murderous mothers were treated during this period, *see* Pilarczyk, *So Foul A Deed*, *supra* note 122.

[206] Strange, *supra* note 205, at 151.

[207] *But see* PLECK, *supra* note 61, at 217 ("Family murder is the one form of family violence about which relatively reliable historical statistics exist....If thought of as 'successful assault,' the rate of domestic murder provides a rough indicator of the overall level of severe family violence."); *see also* Roth, *Spousal Murder*, *supra* note 61, at 67 and note 2 (murders attracted attention from many different people, and were noted in period newspapers, coroner's reports, court records, etc.). Spousal murders, compared to crimes such as infanticide, were much more likely to be uncovered. For difficulty in prosecuting infanticide cases, *see generally* Pilarczyk, *So Foul A Deed*, *supra* note 122.

family violence was concerned, however, the biggest obstacle to community intervention was respect for familial privacy. Spousal homicide might not have been tacitly accepted in the same manner as was domestic violence, but the difference was mainly a matter of degree. The murdering husband was depicted as monster, the murdering wife as aberrant, but both characterizations obscured the reality that such violence was often a linear progression, serving to artificially differentiate between the 'normal' closeted family, where the existence of discord was a badly-kept secret, and the 'anomalous' high-profile murders that led to the very public process of prosecution.

The lack of detail available in many trials of this period is not only the result of the ravages of time. Much information of interest to contemporary scholars would not have been deemed consequential to period jurists, and indeed these proceedings were quite summary by modern standards. The average spousal murder trial took considerably less than a year between the time of the crime and sentence.[208] Justice awaited Adolphus Dewey just over three months from the time of his fatal deed, including the two weeks between his sentence and execution; Henry Norman's was even shorter, as he committed his crime in August 1842 and was tried, convicted, and sentenced the following month.[209] On the other end of the spectrum, Elizabeth Ravarie's saga lasted nineteen months, from

[208] *See, e.g.*, Cowan's case (March-August 1847); Barker (October 1836-March 1837). As can be seen, much depended on the timing of the crime relative to the twice-yearly sittings of the criminal session of the Court of King's/Queen's Bench. In 1843 the name was belatedly changed to the Court of Queen's Bench, nearly six years after Victoria's ascension to the throne. *See generally* FYSON, COURT STRUCTURE, *supra* note 28, at 32-35.

[209] Dewey's crime occurred on May 26th, 1833, the trial took place August 16-17th with the sentence imposed immediately after the verdict, and his execution took place on August 30th, 1833. Norman was indicted on August 31st, 1842, and tried and convicted on September 9th, 1842.

the incident in April 1839 to her trial in November 1840 and her sentencing in December. The trials themselves lasted only two days or less, with most concluding the same day.[210] Jury deliberations were not a significant temporal element of these trials, on average taking less than an hour and often merely a few minutes.[211] It was the rare case that took longer—Mary Hunter's jury deliberated for the nearly-unheard-of period of twenty hours before acquittal.[212]

VII. Executive Clemency

Given the lack of discretion available to judges upon convictions for homicide, clemency was an integral part of the criminal justice process. Clemency allowed the Crown to ameliorate the worst excesses of a rigid penal system without requiring systemic changes in the administration of criminal justice. Following conviction, clemency could be obtained through appeal to the Governor General of Canada.[213] Convicted felons not infrequently applied for executive clemency, although they could also appeal non-capital convictions. After 1842, courts could refrain from immediately entering sentences of

[210] For example, Ravarie's trial (November 16-17, 1840), Dewey's trial (August 16-17, 1833),; Cowan (August 12, 1847), Barker (March 3rd, 1840).
[211] *See, e.g.*, trial of Alexis Boyer (less than one hour); James Goodwin (ditto); Adolphus Dewey (fifteen minutes); Henry Norman (a few minutes); Jean Martin, Jr. (five minutes).
[212] CANADIAN COURANT (Montreal), Mar. 14, 1827 (the duration was italicized in the original for emphasis). *See also* FYSON, MAGISTRATES, *supra* note 4, at 244 (stating deliberations seldom lasted for more than a day).
[213] For sources related to clemency in Canada and the United Kingdom, *see* FYSON, MAGISTRATES, *supra* note 4, at 266-71; KING, CRIME, ORDER AND DISCRETION, *supra* note 145, at 297-333; PHILIPS, CRIME AND AUTHORITY, *supra* note 48, HAY & THOMPSON, *supra* note 148, at 43-49; R. CHADWICK, BUREAUCRATIC MERCY: THE HOME OFFICE AND THE TREATMENT OF CAPITAL CASES IN VICTORIAN BRITAIN (1992); Carolyn Strange, *The Lottery of Death: Capital Punishment in Canada, 1867-1967*, 23 MAN. L.J. 594 (1996).

death upon conviction for capital crimes, which further facilitated the appeals process.[214] Surviving petitions for clemency add another dimension to our understanding of how the legal system responded to these cases, although they are much more helpful in conveying the defendant's arguments for clemency and only rarely include information that help us discern the Crown's motivations for denying or approving petitions. Any theories on why clemency was granted in individual cases must be undertaken tentatively, particularly as more systemic considerations (such as the perceived need to provide exemplary punishment or mercy) could play a determinant role. Moreover, historiography records that capital punishment was a complex tool of social order, reflective of discriminatory application, and also governed by a significant "randomized" element.[215] What is unassailably clear in every case, however, is that executive clemency was the final link in a "chain of discriminatory practices" within the confines of a gendered system that culminated in a final decision from the Governor General's office.[216]

Clemency petitions are among the only sources offering insight into how defendants viewed the juridical process and their perceptions of procedural fairness and evidentiary issues, and they provide an alternate narrative generally drafted by the defendants themselves. It is not known definitively how many defendants sought clemency, but petitions were found for three of four known cases in which they were filed. Two

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[214] Fyson, *Men Killing Men*, *supra* note 49, at 3.
[215] *See generally* Strange, *Lottery*, *supra* note 213, and at 596 ("patterns of severity were generally disfavourable to the poor, to men, and to those from identifiable racial and ethnic groups, but the drawing of lots on a case-by-case basis yielded surprises.").
[216] *Id.* These cases offer no opportunity to examine the role of gender in clemency, insofar as no woman was convicted of spousal murder during this period. As Strange notes, however, about 80% of women were granted clemency in Canada for 1867-1976. Strange, *id.*, at 607.

petitions were successful, both in the latter years of this period. Alexis Boyer used the intervening weeks between his sentencing and the date of his execution in 1830 to petition for a reprieve as well as for an appeal hearing, alleging that he had been falsely convicted and—with language that foreshadowed Dewey's sentencing—had "fallen a sacrifice to the opinions of prejudiced witnesses." He claimed that he had been unjustly deprived of his mother's exculpatory testimony (as she was a prosecution witness, it is difficult to discern what he meant here) and that he had newly-obtained witness testimony that would help exonerate him. He ended with an emotional plea, referencing his two young children "whose names must ever be stained with infamy and disgrace if Your Petitioner is brought to an Ignominious end," and asserting "his innocence of the Horrible Crime for which he has been convicted and sentenced to undergo a Disgraceful death."[217] A disgraceful death, however, remained his fate.[218]

The second of these, that of James Dunsheath, was aided by his attorney, who emphasized that the main Crown witness was a nine-year-old child who had testified about events that had occurred nearly two years earlier and must be "subjected to the suspicion of having been influenced by the efforts of enemies and the idle talk of others." Among other exculpatory facts, his counsel alleged that his Dunsheath's wife had fallen out of bed from a considerable height, and that a physician could not rule out the possibility that she might have died as a result of her fall. Furthermore, counsel argued

[217] N.A.C., 16 AP 6582-83 ("Petition of Alexis Boyer"), March 26, 1830 (capitalization in original).

[218] At least one newspaper took notice of his appeal. LA MINERVE (Montreal), Apr. 7, 1831, noted that "Boyer…has still not received the pardon that they said he was expecting; as such if he does not receive the pardon today or tomorrow, his harsh legal sentence will be carried out" (author's translation). His conviction and execution were noted by BORTHWICK, *supra* note 4, at 261.

that one Crown witness was not a licensed physician at the time of the autopsy and that Dunsheath had made no effort to flee justice. Unusually, his counsel also emphasized his own shortcomings, while suggesting Dunsheath's lack of interest in the proceedings was likely evidence of mental defect.[219] In keeping with common practice in the 1840s, Dunsheath was reprieved and transported for life to New South Wales.[220]

In 1843, Hugh Cameron's application was likewise successful. Aiding his case was the jury's recommendation of mercy; his petition resulted in his sentence being commuted to fourteen years' imprisonment.[221] John Barker, who received a one-year sentence for manslaughter, showed unusual tenacity in applying for clemency, filing at least two such petitions. Barker sought early release, stressing that his wife had been a long-time alcoholic who was seen lying outside the door of their house for three days prior to her death. Tellingly, however, he did not note any attempts on his part to revive her, nor had he brought her inside. In explaining his wife's injuries, which included eight broken ribs,

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[219] N.A.C., 24 AP 10717h-u ("Memorial on behalf of James Dunsheath"), October 31, 1840.

[220] N.A.C., 24 AP 10709-12 ("Attorney General's draught of a warrant to the Sheriff of the District of Montreal to deliver James Dunsheath to be transported"), October 17, 1840; *id.* at 10706-08 ("Attorney General's draught of a warrant to the Sheriff of the District of Montreal to detain James Dunsheath in pursuance of a conditional pardon"), October 17, 1840; *id.* at 10697-705 ("Attorney General's draught of a conditional pardon in favor of James Dunsheath"), October 17, 1840; *id.* at 10713-17 ("Attorney General's draught of a warrant to receive and convey James Dunsheath to England"), October 17, 1840; *id.* at 10718-22 ("Attorney General's draught of a Reprieve for James Dunsheath under sentence of death for Murder"), October 17, 1840. Some contemporary accounts suggest that felons might have come to regret being reprieved, given the harshness of penal life in Australia. *See, e.g.*, MONTREAL GAZETTE, Aug. 26, 1842 (detailing the horrors of transportation).

[221] L'AURORE (Montreal), Mar. 14, 1843 (noting jury's recommendation to mercy due to wife's provocations); *id.*, Apr. 6, 1843 (noting clemency due to jury's recommendation); MONTREAL REGISTER, Apr. 6, 1843 (noting commutation of sentence; Queen v. John Cameron, (KB Mar. 8, 1843), *in* BANQ-M, KB(R) 52 (verdict). Cameron's petition was not found within the records of the NAC.

Barker maintained that "he never gave his wife any hard language tho (sic) she had given him sufficient reason for the few last days" and that he found her lying on the floor in an intoxicated state, too drunk to walk. Upon her second attempt to get up, he averred, she fell "with all the waight (sic) of her body against the edge of his tool chest laying not far from her."[222] His petition unsuccessful, four months later he filed another supplication, citing his "three helpless children the eldest not exceeding twelve years of age who are all dependent on their poor disconsolate parent for support," and maintaining he was "indebted in a great degree to his neighbors for the subsistence of his poor children who now joyn (sic) their unhappy parent in the prayer of this petition…."[223] This was similarly unavailing.[224]

By the 1840s, it appears that convicted wife murderers were more likely to have been granted clemency than previously. The records contain little indication as to the rationale underlying the decisions, but certain conclusions are suggested. Goodwin's failure to provide his wife with the necessities of life was inimical to contemporary conceptions of a husband's duties and was such an extreme example of callousness that it was virtually inevitable he would receive the harshest possible sentence. Dewey, for his part, would have been unlikely to benefit from being tried a decade later due to the sheer ferocity and premeditation of his crime. Boyer's case, however, is more opaque; using no weapons other than fists and feet, and having assaulted his wife while drunk, it is very possible that he would have been transported rather than executed, as was the case with Dunsheath.

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[222] N.A.C., 24 AP 9072 ("John Barker prays for remission of part of the time"), April 29, 1837.
[223] N.A.C., 21 AP 9063 ("John Barker, sentenced 12 months manslaughter of wife, prays to be released from gaol"), August 21, 1837.
[224] N.A.C., MG(GC) (John Barker committed for twelve months from March 1837).

Cameron's sentence of fourteen years' transportation reflected that his spouse's drunkenness was a mitigating factor. As for Barker, it is difficult to conceive that his one-year sentence for kicking his wife to death would have been less harsh in subsequent years, although it is also possible that his case is aberrant. But what of Norman, sentenced to three years' imprisonment with one month per year in solitary confinement? The uncertainty as to whether he had used a knife, and the allegations that his wife's demise might have been due at least in part to chronic alcoholism, likely left doubt as to his culpability. While the period during which a defendant was tried before Montreal courts surely exerted some influence on the outcome, all those cases reflect social mores common to the era.

VIII. Conclusion

Despite the ubiquity of violence in many households of this era, spousal homicide remained an outlier. Even its contemporary study reflects this marginalization, as few studies of nineteenth-century Canadian domestic relations examine the phenomenon. Given this sparsity, these fourteen cases add to our knowledge of pre-Confederation domestic relations and family violence, indicating that, while they took place against a backdrop of socio-political flux during a formative period in Montreal's history, they nonetheless reinforce the view that spousal homicides were deeply gendered crimes reflective of a traditional ethos in which men had wide latitude in exercising and enforcing gender privilege. The accounts themselves also reflect the manner in which the

stories of victims were enveloped and obscured in what Nancy Christie has described as a "penumbra of patriarchy."[225]

Many of the factors common to domestic violence against wives in other nineteenth-century jurisdictions were also reflected here, including: the central role of alcohol, ongoing patterns of discord and family violence, the lack of premeditation on the part of husbands, and the general reluctance of third parties to intervene in cases of domestic abuse. While the small number of wives as murderers makes extrapolation difficult, their cases suggest a more opportunistic approach towards murder, using surprise and stealth to compensate for disadvantages in size and strength. All of these cases were intra-ethnic, consistent with the nature of homicides in general for Quebec of this period. Uxoricides also reflected the conservative nature of Quebec society in that they involved husbands' struggles to retain hegemonic dominion over the household rather than mirroring sexual jealousy and betrayal, as was increasingly the case in other jurisdictions.

The trials in which these cases were adjudicated—typically summary affairs in which the use of defense counsel was a privilege rather than a right, and in which the defendants stood mute—as well as the newspapers that covered these proceedings further reinforced and reflected gender norms in terms of the expectations of dutiful wives and husbands. These acts of violence, in which portrayals of traditional social mores related to gender norms were not contested and third parties seldom intervened, led to the predictable outcome that justice was reserved for a minority of household killings, namely those in which it was apparent that the culpable spouse had lethal intentions at the time of assault. In the context of the family there may have been "no killing like that which destroys the

[225] Christie, *supra* note 25, at 71.

heart," but it is equally clear that courts viewed the heart as providing a plethora of extenuating circumstances, provocations, and justifications. For some early-to-mid-Victorian spouses, a marriage license indeed amounted to a license to kill.[226]

[226] That statement mirrors sentiments expressed by Harriet Taylor Mill & John Stuart Mill, *found in* Clark, *supra* note 39, at 202 (citing MORNING CHRONICLE (London), Aug. 28, 1851.)