

Abstract

The judicial response to family violence in Montreal during the period 1825 to 1850 was marked by paradox and flux. The criminal justice system, driven by private prosecutors, limited the ability of some victims to seek the law's protection, but it allowed others to exercise considerable discretion and influence over the pursuit of justice. The legal response to the crimes of infanticide, child abuse, domestic violence, and spousal murder was equally contradictory. Infanticide may have been depicted as a horrific crime, but the call for justice was never strong. Western societies became increasingly sensitive to the notion that parents should be held accountable for causing injury to children, but a belief in the sanctity of the family was still paramount. When child abuse cases did come before courts, children were often accorded the same legal remedies by courts as were adult victims. Similarly, while the issue of family violence was not then a widespread societal concern, and while the notion that a wife was subordinate to her husband remained a prominent part of early-Victorian life, hundreds of abused wives prosecuted their husbands for assault. Those cases reflect not only that abused wives were contesting their partner's use of violence, but also that courts were willing to intervene. Spousal murder cases were further evidence of contradiction: women were subject to heightened legal penalties for killing their partners, but their gender also insulated them from the full severity of the law.

In a period before the sweeping public movements that developed in the last several decades of the nineteenth century, courts were forced to grapple with family violence because private prosecutors brought those issues before them. In their willingness to hear cases involving infanticide, child abuse, domestic violence, and spousal murder, courts made public some of Victorian Montreal's darkest secrets. While the privately-driven system of justice was slowly to erode over the intervening decades, that erosion was to coincide with the rise of public crusades against child-cruelty, domestic violence, and other social issues. The visibility of family violence likely fuelled, and in turn was fuelled by, those social movements.