

*'There Is No Killing Like That Which Destroys the Heart':  
Spousal Murder in Early Nineteenth Century Montreal*

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He did not wear his scarlet coat,  
For blood and wine are red,  
And blood and wine were on his hands  
When they found him with the dead,  
The poor dead woman whom he loved,  
And murdered in her bed.<sup>1</sup>

Oscar Wilde's 1897 poem, "The Ballad of Reading Gaol," is a work of poetic paradox that is an apt metaphor for the phenomenon of family violence in nineteenth century Montreal. A poem that depicts the last days of a wife murderer sentenced to death, the account of that "monstrous parricide" nonetheless is a sympathetic -- if saccharine -- account of a man who murdered the woman he professed to love. Rife with allegory about the dehumanizing effects of incarceration, the hands of inexorable justice appear no less bloody than those of the condemned murderers who were subjected to the law's ultimate sanction. In Wilde's words, which repeated so often as to become a cliché, "each man kills the thing he loves." It is strange to think of the person one loves in terms that objectify; it is stranger still to contemplate a love that kills, in whatever manner, the object of its affections.

It is perhaps equally strange, but no less accurate, to observe that the family remains one of the most dangerous places in society. One simply cannot study the

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<sup>1</sup> Oscar Wilde, *The Ballad of Reading Gaol* (New York: Brentano's, 1904) 1.

modern family or its antecedents without also studying domestic violence. This article is an attempt to contribute to historical knowledge of that issue in an under-examined context, namely the nineteenth century Canadian family, by examining the criminal justice system's response to family violence in Montreal during the period 1825 to 1850. Part I analyzes prosecutions brought against husbands charged with killing their wives, while Part II examines the issue of husband murder. In so doing, this article will outline similarities and differences between those two groups of murderous spouses.

## I.

“DIABOLICAL ATTEMPT AT MURDER!” cried the headlines of *The Montreal Herald* and *The Vindicator* in early-1833.<sup>2</sup> “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.”<sup>3</sup> The brutal assault by Adolphus Dewey on his wife would eventually snowball into one of the highest profile murder trials in nineteenth century Montreal.<sup>4</sup> During the span of six months, local and international newspapers alike recounted the morbid details of a case that included the lingering death of a loving wife, the flight of her husband to the United States, and his

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<sup>2</sup> *The Montreal Herald* (25 March 1833); *The Vindicator* (26 March 1833) (citing *The Herald*).

<sup>3</sup> *The Canadian Courant* (27 March 1833).

<sup>4</sup> Indeed, Douglas Borthwick noted in his 1907 work, published nearly seventy-five years later, that the Dewey case was “sometimes spoken of at the present day.” J. Douglas Borthwick, *From Darkness to Light, History of the Eight Prisons Which Have Been, Or Are Now, in Montreal, From A.D. 1760 To A.D. 1907—Civil and Military* (The Gazette Printing Company: Montreal, 1907) [hereinafter Borthwick, *Darkness*].

eventual capture and extradition that culminated in a public execution. Indeed, there was much about the Dewey case that was unusual. His trial was unprecedented during the period for the extent of the media coverage it elicited, due in part to the crime having been committed, as one newspaper averred, “under circumstances of peculiar atrocity and diabolical premeditation.”<sup>5</sup> Dewey’s attack was also extraordinary in that it resulted in the death of his unborn baby as well as his unsuspecting spouse. The volume of press coverage allows reclamation of his case to an unusual degree, including the events leading up to his apprehension, witnesses’ testimony at his trial, the Court’s sentencing remarks, and Dewey’s last words as he stood on the gallows.

By all accounts, Dewey was a handsome and respectable twenty-three-year-old who operated a successful dry goods store on St. Paul Street in downtown Montreal.<sup>6</sup> During the summer of 1832 he began courting Euphrosine Martineau, a young woman from a well-connected local family. The two were married in January of 1834, with her father’s blessing. While it appeared to be a good match, thereafter Martineau’s family subsequently became aware that she lived unhappily due to Dewey’s controlling nature and violent temper. Despairing of her husband’s behaviour, Martineau sought refuge

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<sup>5</sup> *The Montreal Gazette* (26 March 1833).

<sup>6</sup> The presence of a defendant who was solidly middle class was not unusual in spousal murder cases. While not enough is known about the social class of most of those defendants, many of them were from the respectable classes. Compare Annalee Golz, “Murder Most Foul: Spousal Homicides in Ontario, 1870-1915” in George E. Robb & Nancy Erber, eds., *Disorder in the Court: Trials and Sexual Conflict at the Turn of the Century* (New York: New York University Press, 1999) 167 (in spousal murder cases forty-two percent of husbands were middle class or professionals, and forty-six percent of wives were married to prosperous farmers). See also Annalee E. Lepp, “Dis/membering the Family: Marital Breakdown, Domestic Conflict, and Family Violence in Ontario, 1830-1920” (Queen’s University, Ph.D. thesis, 2001) 530.

first with her uncle and then with her father. After appearing suitably contrite, Dewey was eventually allowed to visit her at her father's house.

While Martineau's forgiving nature facilitated a *rapprochement* between the couple, it ultimately proved to be her undoing. Consenting to attend mass with Dewey one Sunday in late-March, her husband prevailed upon her to make a short detour to his shop after the conclusion of the service, ostensibly to view some new merchandise. Contrary to his usual practice, he had obtained the key to the premises from his clerk the night before. After closing the door behind them, he suddenly seized an axe and attacked Martineau. Dewey, enraged that she managed to fend off the full effects of his blows, then with "the most sanguinary rage...drew a razor from his pocket and inflicted four dreadful wounds on her neck, throat, and breast, one of which nearly divided the windpipe."<sup>7</sup> His bloody work concluded, Dewey locked the shop door and mounted a cariole he had hired to take him to Champlain, New York. Martineau, however, was not dead – she regained consciousness and, with what must have been nearly superhuman effort, crawled to the back door, unbolted it, and made her way to the property of a neighbouring shopkeeper named Roy. Roy summoned medical treatment, and her wounds were sewn-up in his living room by two local surgeons. When Martineau was deemed safe to move, she was taken to her father's home in the St. Laurent suburbs.

Despite hopes for her recovery, she succumbed to her grievous injuries ten days later. *The Montreal Gazette* of 2 April performed its "painful duty" in reporting

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<sup>7</sup> *The Montreal Gazette* (26 March 1833).

Martineau's death, noting that "her constitution sank under the effects of the brutal and sanguinary assault of her ferocious husband, whose turpitude was also increased by the additional and unnatural crime of *infanticide*."<sup>8</sup> Another paper offered an equally fervent albeit more decorous account: "[w]hat renders the foul deed if possible more fiendish, is the fact, that Mrs. Dewey was in that situation, which of all others calls for the tender attention of a husband."<sup>9</sup> A day later, it was reported that a man matching Dewey's description had been arrested in Plattsburgh, New York, followed by more newspaper accounts of the extradition proceedings and Dewey's return to Montreal under police guard.<sup>10</sup>

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<sup>8</sup> *The Montreal Gazette* (2 April 1833) (emphasis in original). Medically speaking, infanticide involved the destruction of a baby in utero, or ex utero. Legally speaking, however, 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 of that nuance 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* (Toronto: Hart & Rawlinson, 1878, 2<sup>nd</sup> edition) 48. For discussion of infanticide prosecutions, see generally Ian C. Pilarczyk, "'Justice in the Premises': Family Violence and the Law in Montreal, 1825-1850" (McGill, Ph.D. thesis, 2003).

The *Montreal Gazette* account also noted that by virtue of the ever-forgiving Martineau's entreaties, "no steps were taken to pursue the murderous fugitive during her lifetime." That inaction reflects the deeply-entrenched notion of a private prosecutor's discretion in pursuing, or refusing to pursue, justice. Not surprisingly, that prerogative was deemed to have lapsed following her death. The *Gazette* went on to express hope that the "unnatural monster" would be apprehended to face the full fury of the law.

<sup>9</sup> *The Canadian Courant* (3 April 1833)

<sup>10</sup> See *The Montreal Gazette* (4 April 1833) (report of his arrest); *ibid.* (9 April 1833) (extradition proceedings); *ibid.* (16 April 1833) (Dewey lodged in Montreal jail). See also *The Canadian Courant* (3 April 1833) (report of wife's death and Dewey's arrest in Plattsburgh); *The Montreal Herald* (15 April 1833) (account of his being lodged in Montreal jail after extradition; he purportedly requested the presence of his priest, two lawyers, and his sister). His apprehension was facilitated by newspapers that offered descriptions of the fugitive to aid in his capture, such as *The Montreal Herald* (1 April 1833) (describing him as "a good looking young

Dewey's trial began at 9 a.m. on Friday, 16 August 1833, and concluded at 4 p.m. the next day.<sup>11</sup> As the *Gazette* observed, "[n]o trial which we can remember has excited more public interest in Montreal."<sup>12</sup> A competing periodical stated that his trial "discloses 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..."<sup>13</sup> A large crowd clamoured for admittance to the courtroom, but it was already filled and many potential spectators were disappointed. Dewey was dressed in mourning clothes, a fact that must have appeared morbidly ironic, if not downright shameless, to many of those in attendance.

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man, about 22 or 23 years of age, 5 feet 8 or 9 inches high, with very light coloured hair...[who] stands very erect.").

<sup>11</sup> This account of his trial has been synthesized from seven newspaper accounts: *The Montreal Gazette* (19 August 1833); *The Montreal Herald* (19 August 1833); *L'Ami du Peuple* (21 August 1833); *La Minerve* (19 August, 22 August, & 26 August 1833); and *The Canadian Courant* (21 August 1833). Those accounts differ in detail, particularly where 'verbatim' transcriptions or translations of statements are concerned, but generally they are in accord.

<sup>12</sup> *The Montreal Gazette* (17 August 1833). The *Gazette* reminded its readers that it would spare no effort in providing coverage of the trial, but also took the opportunity to cast aspersions on one of its competitors, noting dryly that:

The principle of gratifying a morbid curiosity upon such occasions, by detailing every gesture, look and action, of the unfortunate culprit, we, at this stage of the proceeding at least, must decline. It is an unfair and premature exterior criterion of the probable guilt or innocence of the parties, and is more suitable to a journal, we believe the only one in this city, distinguished for the profundity of its pathos, and the acknowledged sublimity of its bathos.

<sup>13</sup> *The Canadian Courant* (21 August 1833).

The indictment charging him with the fatal deed contained six counts, reflecting the redundant cataloguing of injuries common to early nineteenth century indictments.<sup>14</sup> Unlike other defendants charged with capital crimes during this period who were fortunate to secure counsel at the last moment at the court's behest, Dewey retained the services of *three* attorneys: William Walker; Charles Mondolet; and C. S. Cherrier. Arrayed against Dewey's impressive legal talent were the Attorney General and the Solicitor General for Lower Canada.

During the course of the proceedings, nearly two dozen witnesses were called. There were few surprises during the trial, although there were moments of drama. When the axe with which Dewey had attacked his wife was introduced into evidence, speckled with blood and bearing the bloodstained outlines of his hand, members of the audience recoiled visibly. As one newspaper reporter was to describe the moment, "[t]he production of this horrible instrument all spotted with blood produced a thrill of horror throughout the vast assemblage."<sup>15</sup>

Two more legally-pertinent aspects of the evidence deserve mention. The first was the testimony of the attending physician, to whom Martineau had allegedly

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<sup>14</sup> 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. Dewey was charged in a six-count indictment with having caused Martineau's death by: inflicting a blow from an axe on the left side of her head near the temple; inflicting a similar wound on the right side of her head near the temple; inflicting a similar wound on the left side of her head above the ear; inflicting those three wounds combined; inflicting several wounds on her throat with a razor; and inflicting several wounds on the back of her neck with a razor. See *The Montreal Gazette* (19 August 1833); *L'Ami du Peuple* (21 August 1833); *The Canadian Courant* (21 August 1833).

<sup>15</sup> *The Montreal Herald* (19 August 1833).

recounted the details of her husband's attack. The defense strongly contested the admission of such evidence under the equivalent of the 'dying declaration' exception to the hearsay rule of evidence, arguing that Martineau did not have an apprehension of her impending death, but rather was buoyed by the hopes of those around her that she would survive. Twice the physician's testimony was interrupted by defense assertions that an insufficient foundation had been laid to admit that hearsay testimony, but the Court viewed the fact that Martineau had received the Last Rites as tipping the scales in favour of the testimony's inclusion.

Eventually, the Court ruled that it had been sufficiently shown that Martineau had the requisite state of mind to allow the testimony to be admitted, and Martineau's account of her husband's assault was therefore recounted to the jury, albeit filtered through the words of the testifying physician. No doubt his account of Dewey's words to his wife as he attacked her --"we have lived so long in difficulties, we must finish them here"-- resonated with the jury.<sup>16</sup>

Another damning piece of prosecution testimony was Dewey's lack of surprise at his arrest, and his alleged confession following his arrest in New York. Several prosecution witnesses, including a magistrate from Plattsburgh as well as the man who was responsible for filing the complaint against Dewey before the arresting magistrate, testified that he had confessed. Dewey's main defense was that he had suffered from a form of mental derangement immediately prior to the murder, and several witnesses

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<sup>16</sup> *L'Ami du Peuple* (21 August 1833). See also *The Montreal Gazette* (19 August 1833) and *The Montreal Herald* (19 August 1833) (English translation).



were sworn who presented anemic evidence that he had acted distracted, out of sorts, or agitated prior to the attack.

The Court, as well as the jury, was to find the defense's testimony unconvincing. In his charge to the jury, Chief Justice James Reid reiterated several main points of evidence: Dewey's mistreatment of his wife; the evidence pointing to his having attacked Martineau in his store; his flight to New York; his confession following his arrest; and the declarations made by his wife. Moreover, noted the Chief Justice, despite their efforts to the contrary no tangible evidence of mental derangement had been presented by the defense. The jury deliberated for fifteen minutes before finding Dewey guilty of murder.

Receiving the verdict, Chief Justice Reid asked Dewey if there was any reason that a sentence of death should not be entered against him. Rising to his feet, Dewey began to address the Court in English, but at the whispered suggestion of an audience member switched to his native French tongue. Dewey took that opportunity to rant about the evidence presented against him, characterising the testimony of various prosecution witnesses as base perjuries. Chief Justice Reid interrupted, chiding Dewey about the futility of contesting the jury's findings at that stage in the proceedings. Dewey responded by curtly stating that he welcomed death, and that he had nothing else of importance to say unless it were to expose witnesses whose testimony had been purchased "for the price of a glass of wine or rum."<sup>17</sup>

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<sup>17</sup> *The Montreal Herald* (19 August 1833).

Dewey's outburst did not sway the Court. Donning the black cap that was customary when imposing a sentence of death, Chief Justice Reid delivered an impressive and impassioned speech:

It has never yet fallen to our lot to address a prisoner, under circumstances so truly afflicting and heart-rending as those which mark your case, nor to see before us the cool and deliberate assassin of an innocent and unoffending wife, 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--a deed, which filled with painful horror and astonishment the entire population of this Province, and made the most remote and obscure inhabitant of our forests to shudder--Scarcely 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, and full of love and confidence, 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, thus hurrying an amiable and unoffending wife to an early grave, carrying with her to the just tribunal of her God, the most terrific marks of the murderous violence of her husband....<sup>18</sup>

The Chief Justice's sentencing remarks reflected the time-honoured tradition of offering a highly-ritualized, emotionally-charged final judgment. Judges' actions were replete with meaning and spectacle, and every aspect of the pomp and procedure common to the higher courts was designed to lend public awe to the administration of justice. Nowhere was this more evident than in the imposition of the death sentence. The death

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<sup>18</sup> *Ibid.* Modifications and corrections to texts of affidavits, newspaper account, and other primary sources have not been made except where they contribute to ease of comprehension, so as to allow the texts to reflect as much as possible the voices of the parties.

sentence served, in Douglas Hay's words, as the "climatic emotional point of the criminal law--the moment of terror around which the system revolved."<sup>19</sup>

The imagery in Reid's statement--such as the religious imagery found in the allusions to altars and the "sacrifice" of a loving wife "led like a lamb to the slaughter" due to Dewey's "hidden and dark passion"--were common elements in sentencing remarks.<sup>20</sup> Such sentences were designed to bring home the full enormity of the criminal's actions against God, country and the law, and to show the terrible majesty of the law as it extracted its price for violation of its tenets. Reid's statements also emphasized that Dewey's only remaining hope was to seek forgiveness from his offended Maker and thereby save his soul, because his mortal body was forfeit. For his act of "murderous violence," Dewey was to be "taken to the gaol from whence you came, and from thence to the place of execution, on Monday next...and that you be there hanged by the neck until you be dead, and that afterwards your body be dissected and anatomized."<sup>21</sup> He was respited by the Court's order until 30 August.

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<sup>19</sup> Douglas Hay, "Property, Authority and the Criminal Law" in Douglas Hay & E.P. Thompson, eds., *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (London: Allen Lane, 1975) 28.

<sup>20</sup> Hay, *ibid.* at 29, has noted that:

In its ritual, its judgements and its channelling of emotion the criminal law echoed many of the most powerful psychic components of religion. The judge might...emulate the priest in his role of human agent, helpless but submissive before the demands of his deity. But the judge could play the role of deity as well, both the god of wrath and the merciful arbiter of men's fates.

<sup>21</sup> *The Montreal Herald* (19 August 1833); *The Montreal Gazette* (19 August 1833); *The Canadian Courant* (21 August 1833). His body was to be delivered to the medical faculty of the University of McGill College, as McGill University was then known.

The day before Dewey was to “pay the forfeit of his life to the insulted laws of his country,” he was described as resigned to his fate and reconciled with his God.<sup>22</sup> The evidence seems to support that conclusion, as when he left his cell on the morning of 31 August 1833 he handed his astonished jailer a double-bladed knife. Dewey had somehow managed to conceal the weapon during his incarceration, despite the hourly checks that were conducted on death row inmates.<sup>23</sup> At ten a.m. Dewey mounted the scaffold before a crowd of thousands gathered in the jail yard at the Champ de Mars, with several newspapers noting that no execution in Montreal had ever attracted such an audience. With a deportment described as “firm, resolute and manly, without any approximation to hardihood, or heroic effrontery,” he delivered his last words following the prayer and benediction offered by the priest in attendance.<sup>24</sup>

Like the sentencing statements made by presiding justices, the last words uttered by condemned felons were a prominent part of the law’s ritual. With their final breaths, it was expected that condemned felons would take full responsibility for their transgressions. By acknowledging the heinous nature of the offense they had committed, and the just nature of the penalty they were to endure, convicted murderers were performing their part in the law’s ‘passion play.’ Dewey performed his final rôle

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<sup>22</sup> *The Montreal Gazette* (29 August 1833).

<sup>23</sup> *Ibid.* In referring to the constant surveillance of death-row inmates, Wilde wrote, “[Yet every man] does not sit with silent men/Who watch him night and day/Who watch him when he tries to weep/And when he tries to pray/Who watch him lest himself should rob/The prison of its prey.” Wilde, *supra* note 1 at 4.

<sup>24</sup> *The Montreal Gazette* (31 August 1833).

perfectly: taking the unusual step of transcribing four copies of his speech to be distributed to the local press, he delivered his speech from memory notwithstanding the obvious pressure of the situation. Dewey fully acknowledged the enormity of the wrong he had committed, 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."<sup>25</sup> Admitting that his crime was a transgression against society at-large, and not merely against his victim, Dewey's speech implored the public for forgiveness:

I ask for your forgiveness, and the forgiveness of the entire city for the scandal of which I am the author; I also ask the forgiveness of all those which I may have hurt or harmed; also for the way in which I behaved in front of the Court at the time of my sentencing. I hereby admit having lacked charity towards some: I ask their forgiveness also; for my part I wholeheartedly forgive everyone for the harm they may have caused me.<sup>26</sup>

Dewey's speech reflected the public nature of his iniquity, and his acknowledgement that casting aspersions on the veracity of the witnesses against him violated accepted tenets of behaviour. Dewey had breached the social compact not once, but twice: most egregiously by murdering his wife; but also by having the effrontery to assassinate the character of the citizens who played a part in bringing him to justice.

Faced with the belief that he would soon be held accountable before the throne of his God, Dewey regretfully noted that had he followed the precepts of the Roman Catholic religion in which he had been raised, he would not have ended his days on a

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<sup>25</sup> *La Minerve* (2 September 1833) (author's translation).

<sup>26</sup> *Ibid* (author's translation).

scaffold. He was prepared to offer his life in partial atonement for the terrible wrongs he had committed, and asked for the public's prayers for his soul. He concluded "merciful Jesus, Jesus, save me." A moment later, in the parlance of the time, he was launched into eternity.<sup>27</sup> Dewey's ritualized exit from this world was far from painless.<sup>28</sup> The unusually severe death throes he suffered were attributed to his "great lightness of body."<sup>29</sup> Dewey's execution thus served justice by also serving as a moralistic tale, illustrating the terrible penalty for violating society's laws.<sup>30</sup>

The spectre of violence cast its pall over many households in nineteenth century Montreal. The case of Adolphus Dewey, however, crossed the threshold in one important respect: what was involved was not merely assault and battery--an offence seemingly committed against wives so often as to be commonplace--but rather a case of premeditated homicide. While countless instances of domestic battery remained hidden

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<sup>27</sup> *L'Ami du Peuple* (31 August 1833). See also *The Montreal Gazette* (31 August 1833) (English translation). For another account of his execution, see *La Minerve* (2 September 1833). His execution was noted in typically terse style in the records of the Montreal jail. Archives nationales du Québec à Montréal [hereinafter A.N.Q.M.], Records of the Montreal Gaol [hereinafter MG] no. 3288 (13 April 1833) (noting that Adolphus Dewey was sentenced to be hanged on 30 August 1833 and was "discharged by death."). For discussion of public executions, see generally Peter King, *Crime, Justice, and Discretion in England 1740-1820* (Oxford: Oxford University Press, 2000) 340-352; V.A.C. Gatrell, *The Hanging Tree, Executions and the English People 1770-1868* (Oxford University Press: Oxford, 1994).

<sup>28</sup> 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.Tor.L.J.* 401 (1992) at 418.

<sup>29</sup> *The Montreal Gazette* (31 August 1833).

<sup>30</sup> As Wilde wrote, "For man's grim justice goes its way/And will not swerve aside:/It slays the weak, it slays the strong/It has a deadly stride:/With iron heel it slays the strong/The monstrous parricide!" Wilde, *supra* note 1 at 22.

from public notice, spousal murder was different. As Pleck has observed, “[m]urder is the one form of disharmony in the home that least escapes the notice of authorities....”<sup>31</sup> And while Victorian beliefs in the sanctity of the domestic sphere might have led credence to the belief that most such murders were committed by strangers skulking in the shadows, it was members of the immediate family who tended to pose the greatest risk of harm.<sup>32</sup> Then, as now, women were the most likely victims of lethal violence in the family, and when they died of murder it was often at their spouse’s or partner’s hands.<sup>33</sup> For spouses, like children, the family premises were sometimes a killing ground rather than a sanctuary.

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<sup>31</sup> Elizabeth Pleck, *Domestic Tyranny: The Making of Social Policy Against Family Violence From Colonial Times to the Present* (New York: Oxford University Press, 1987) 19; Lepp, *supra* note 6 at 443. As Golz has stated spousal murder was the “most heinous violation of the marriage contract and gravest transgression of the gendered obligations assigned to each spouse.” Golz, *supra* note 6 at 344.

<sup>32</sup> Compare David Taylor, *Crime, Policing and Punishment in England, 1750-1914* (New York: St. Martin’s Press, 1998) 29:

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 Jane A. Inciardi & Charles E. Faupels, eds., *History and Crime: Implications for Criminal Justice Policy* (Beverly Hills: Sage Publications, 1980) 106 (stating that twenty-two percent of homicides in Philadelphia between 1839 and 1901 involved family members). Wiener’s study noted that nearly fifty-six percent of murders in England and Wales between 1835 and 1905 were spouse murders. See Martin J. Wiener, “Judges v. Jurors: Courtroom Tensions in Murder Trials and the Law of Criminal Responsibility in Nineteenth Century England,” 17 *Law & Hist. Rev.* (1997) 467 at 468.

<sup>33</sup> In 2001, for example, 32.2% of female murder victims in the United States were killed by their spouses or boyfriends. *Crime in the United States, 2001* (Washington: Federal Bureau of Investigation, U.S. Department of Justice, 2002) 22. In Canada, that figure was more than 50%.

Dewey's attack may have been unusual in the judicial annals, but homicide was a foreseeable consequence of spousal brutality. In the heat of an argument, involving a spouse with little concern about the other's bodily integrity, murder could be just a step (or a kick, push, or blow) away. As one scholar has categorized it, homicide may be seen as a form of "successful assault."<sup>34</sup> A sarcastic retort, physical resistance, a handy kitchen or farm implement, drunkenness, or any number of other factors could serve as an accelerant in a volatile situation, turning an 'ordinary' assault into something more lethal.<sup>35</sup> The wife murderer of Wilde's poem, found with "The poor dead women whom he loved/And murdered in her bed," had many real-life counterparts.<sup>36</sup>

Still, relative to the apparent frequency of violence against wives, wife murder (or "uxoricide") was rare. A variety of suppositions may be advanced to explain that fact, including a lack of ready access to firearms and community intervention.<sup>37</sup> As the

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Myrna Dawson, *Examination of Declining Intimate Partner Homicide Rates: A Literature Review* (Ottawa: Research and Statistics Division, Department of Justice Canada) 8.

<sup>34</sup> Lane, *supra* note 32 at 91 (quoting James Q. Wilson).

<sup>35</sup> Compare Pleck, *supra* note 31 at 222-223 (noting that husbands who murdered their wives tended to follow previous patterns of behaviour, but escalated its level). See also Carolyn A. Conley, *The Unwritten Law: Criminal Justice in Victorian Kent* (New York: Oxford University Press, 1991) 73; Lepp, *supra* note 6 at 525-526.

<sup>36</sup> Wilde, *supra* note 1 at 1.

<sup>37</sup> In discussing one case of uxoricide found in her study of late-nineteenth century domestic violence in Montreal, Harvey stated that:

The 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.



century progressed, however, spousal murder was to become an ever-greater component of family homicides.<sup>38</sup> For the years 1825 to 1850, eleven cases of wife murder were identified for Montreal, as shown in *Figure I*. Despite the gravity of those charges and the breadth of the primary sources, there can be no guarantee that this list is complete. Newspapers are full of accounts of crimes, including murder, that are inexplicably and frustratingly missing from official sources.<sup>39</sup> One incident in 1833 does not appear in the archives for the reason that the suspect avoided prosecution by fleeing to the United States.<sup>40</sup>

Other potential prosecutions did not survive the process of coroners' inquests, as was often the case in Quebec and other jurisdictions.<sup>41</sup> Primitive investigative and

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Kathryn Harvey, "'To Love, Honour and Obey': Wife-Battering in Working-Class Montreal, 1869-1879" (Université de Montréal), Ph.D. thesis, 1991) 138.

<sup>38</sup> See generally Pleck, *supra* note 31 at 222. Conley, *supra* note 35 at 80-81 also has observed that by the late 1860s, the sentences imposed for domestic homicides became more severe.

<sup>39</sup> Compare Jeffrey S. Adler, "'My Mother-in-Law is To Blame, But I'll Walk On Her Neck Yet': Homicide in Late Nineteenth-Century Chicago," 31 *J.Soc. Hist.* 253 (1997) at 254; Lane, *supra* note 32 at 93.

<sup>40</sup> See *infra* at 39 (case of Taylor).

<sup>41</sup> That was more likely the case in instances of non-familial violence. For discussion of the role of coroners in that process, see generally Lane, *supra* note 32 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 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

enforcement techniques meant that many murderers were never apprehended, even though relatives and neighbours probably ensured that most spousal murders were reported and pursued.<sup>42</sup> Studies of other nineteenth century jurisdictions have likewise suggested that the number of husbands who murdered their wives was fairly small.<sup>43</sup> The conviction rate, however, was a clear majority, as at least seven out of ten known uxoricides resulted in conviction: forty percent on the full charge; and thirty percent on a lesser charge.<sup>44</sup>

*Prosecutions for Uxoricide, 1825-1850*

Year	Offense	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

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homicide....[For example] the fact that both hands were found tied behind the back was no sure key to a “homicide” verdict....

<sup>42</sup> For discussion of third party intervention in instances of domestic violence in nineteenth century Montreal, see generally Pilarczyk, *supra* note 8.

<sup>43</sup> Compare David Peterson del Mar, *What Trouble I Have Seen: A History of Violence Against Wives* (Cambridge: Harvard University Press, 1996) 23-24 (noting that in Oregon in 1850 to 1866, three husbands killed their wives). See also Lepp, *supra* note 6 at 443-526 (106 suspected wife murders in Ontario between 1830 and 1920).

<sup>44</sup> *Contra* Lane, *supra* note 1058 at 94 (noting that “prosecutors even during the last decade of the century never succeeded in convicting as many as half of those for whom indictments were drawn” on a charge of spousal murder in Philadelphia.)

			confinement
1842	Murder	convicted	death (transported for 14 years)
1848	Murder	convicted manslaughter	life imprisonment
1848	Murder	acquitted	--
1850	Manslaughter	acquitted	--
1851*	Murder	acquitted	--

\* offense occurred in 1850

*Figure I.*

Unlike the atypical scenario seen in the Dewey murder case where his actions were clearly premeditated, a wife's death usually ensued from an altercation that suddenly escalated into severe violence, or from a beating that had unanticipated lethal consequences. However, the fact that a history of abuse tended to precede the last lethal dispute means that one can characterise those murders as foreseeable despite the fact that most husbands did not intend to bring about their wives' death.<sup>45</sup> Interestingly, while there was usually a history of ongoing violence, no evidence was found that any of the husbands charged with killing their wives had been charged with prior incidents of domestic battery. Perhaps legal intervention, as halting as it was during that period, saved some wives' lives.

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<sup>45</sup> Compare Adler, *supra* note 39 at 259. Unlike cases found by Adler in late- nineteenth century Chicago, 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 generally found herein. Compare Adler, *ibid.* at 260-261.

One such example is that of James Dunsheath from the Township of Hatley who, in 1840, was prosecuted for having brutally kicked his wife and dragged her out of doors in the dead of winter. She sought refuge at a neighbour's house but died a few hours later of internal injuries. He was arrested immediately afterwards and lodged in the Sherbrooke jail, then the Trois-Rivières jail, while jurisdictional issues were argued. The wheels of justice turned slowly to a resolution of that issue, and by the time a decision was made that Montreal was the appropriate venue for his trial, nearly two years had elapsed. The evidence presented by the Crown against Dunsheath was deemed "very conclusive," according to one truncated newspaper account, and the jury returned a verdict of guilty after only a few minutes' deliberation. He was sentenced to hang on 9 October.<sup>46</sup>

The ninth of October was planned as a busy day for executions. The gallows erected in front of the new jail in order to carry "the awful sentence of the law into effect," were intended not only for Dunsheath but also for two other felons. The sentences of the other two were suspended, while Dunsheath was respited for a week.<sup>47</sup>

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<sup>46</sup> A.N.Q.M., Registers of the Court of King's Bench [hereinafter KB(R)] p.74, *Queen v. James Dunsheath* (8 September 1840) (indictment withdrawn); p76, *ibid.* (verdict). See also *The Montreal Gazette* (10 September 1840) (sentence). Defense counsel moved to set aside the verdict on the grounds that a juror was asleep during part of the prosecution's case, but the motion was denied. KB(R) p.96, *ibid.* (10 September 1840).

<sup>47</sup> See *The Montreal Gazette* (10 October 1840).

Dunsheath, however, was not so fortunate. Escaping the imposition of the death penalty, he was transported for life to New South Wales.<sup>48</sup>

The circumstances leading up to Dunsheath's assault on his wife are unknown. However, it is apparent from other cases that a husband's rage was typically triggered by perceived transgressions on the part of his wife, most often trivial. One husband in 1833 was alleged to have murdered his wife after a night of mutual drinking and card playing with a neighbour after she refused to go home with him because she wanted to continue the revelry.<sup>49</sup> A soldier fractured his wife's skull in 1850 following her failure to provide him with breakfast at the barracks.<sup>50</sup> Hugh Cameron attacked his wife for "provoking" him while both were drunk.<sup>51</sup>

The methods by which wives perished at their husband's hands differed dramatically, and no particular type of modal killing is discernable for the period. Indeed, in many ways, each homicide was unique.<sup>52</sup> Adolphus Dewey dispatched his wife by slashing her throat with a razor in an attack that he had clearly planned beforehand. Most often, however, the attacks did not involve weapons, although the

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<sup>48</sup> National Archives of Canada [hereinafter N.A.C.], Applications for Pardons [hereinafter AP] p.10709-12 (warrant to Sheriff to deliver Dunsheath for transportation) (17 October 1840); p. 10713-17 (Attorney General's warrant to convey Dunsheath to England) (17 October 1840); p. 10718-22 (reprieve) (17 October 1840). See also Borthwick, *supra* note 4 at 265.

<sup>49</sup> See *The Montreal Gazette* (4 April 1833) (case of Taylor). See *infra* at 39.

<sup>50</sup> See *The Montreal Gazette* (23 October 1850) (case of John Charlton). See *infra* at 35.

<sup>51</sup> For discussion, see *infra* at 25 & 42-43.

<sup>52</sup> Compare Philips, *supra* note 28 at 256.

results were equally tragic. Several wives were murdered by being beaten, stamped upon, and kicked with hob-nailed boots. In only one instance was an uxoricide not due to an eruption of violence, but rather to a sustained failure to provide the necessities of life. In this Victorian catalogue of horrors, the death of Ellen Goodwin in a pig-stye adjacent to her home was among the most terrible, exhibiting a callousness that remains shocking even to contemporary sensibilities.<sup>53</sup>

Spousal homicides were indictment-driven offenses, and the role of private prosecutors was less central than in child abuse or domestic battery cases. Given that those were acts of extreme violence that occurred within the confines of the family, it is not surprising that close relatives often played a pivotal role in the prosecution of murderous husbands. For example, one defendant was convicted largely on his mother's testimony before a police magistrate.<sup>54</sup> Hugh Cameron was convicted in 1843 principally as the result of the inculpatory testimony of his thirteen year-old son.<sup>55</sup>

A common theme was the role of intoxicants in spousal violence. Alcohol proved to be a potent accelerant in already volatile relationships, and frequently at least one, if not both, of the spouses had imbibed prior to the deadly altercation having taken place.<sup>56</sup> In an article entitled "The Drunken Husband" appearing in an 1834 issue of *The*

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<sup>53</sup> See *infra* at 30-32 (case of James Goodwin).

<sup>54</sup> See *infra* at 22-25 (case of Alexis Boyer).

<sup>55</sup> See *The Montreal Register* (9 March 1843); *La Minerve* (9 March 1843).

<sup>56</sup> As *The Montreal Transcript* (8 November 1836) observed, "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." For the

*Montreal Gazette*, the misery, wretchedness, and brutality that often characterized the household of the alcoholic was documented. Seen through the eyes of a long-suffering wife, the man she married--the "ardent lover" and "enraptured father" of years past--slowly succumbed to the ravages of alcohol, devolving into a "sunken being, who has nothing for her but the sot's disgusting brutality." Faced with penury, abuse, and despondency, she was heard to despair that "there is no killing like that which destroys the heart..."<sup>57</sup> While intended metaphorically, that phrase rings with particular poignancy in the context of the nineteenth century family. In households marred by violence, as many were, it was foreseeable that brutality could have lethal consequences. The experience of the drunken wife murderer in Wilde's poem, for example, was hardly unique.<sup>58</sup>

One such case occurred on a Tuesday evening in late-September of 1830. Alexis Boyer, a Laprairie farmer described as being of "comparatively affluent circumstances," had been drinking at a neighbour's wedding party in Laprairie. On returning home, an argument ensued between him and his wife Hyacinthe, the daughter of a respectable farmer from the same parish, to whom he had been married for four years. Boyer flew into a drunken rage and attacked his twenty-three year-old spouse with his fists and feet. His eighty-year-old mother desperately interposed herself between the couple,

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relationship between drunkenness and spousal homicides, see generally Golz, *supra* note 6 at 168-181.

<sup>57</sup> *The Montreal Gazette* (1 May 1834).

<sup>58</sup> Wilde, *supra* note 1 at 1.

suffering severe injury herself as she tried vainly to shield her daughter-in-law from Boyer's wrath. Hyacinthe did not survive her husband's savage assault and, following a coroner's inquest, a verdict of wilful murder was found against him.<sup>59</sup>

Boyer's trial five months later was greeted with considerable interest, as were most cases involving spousal murder. *The Montreal Gazette* accounted for that fact by making the debatable assertion that it was based on "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."<sup>60</sup> The principal witness was Boyer's elderly mother, whose presence caused a stir in the courtroom, but her addled and contradictory testimony on both direct and cross-examination threatened to undermine the Crown's case. The Attorney General therefore called on the magistrate who had taken down her initial deposition to substantiate its contents, and read into evidence her account of the tragedy "at the time when her memory might be

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<sup>59</sup> See *The Montreal Gazette* (4 October 1830). The paper prefaced its account of that murder by observing 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 his ferocity.

See also *The Canadian Courant* (9 April 1831) (referencing Boyer's background).

<sup>60</sup> *The Montreal Gazette* (8 March 1831); *The Canadian Courant* (5 March 1831). For more concise accounts in the French Canadian press, see *La Minerve* (3 March 1831) (account of trial in progress); *ibid.* (7 March 1831) (conviction); *ibid.* (14 March 1831) (execution date set). Golz, *supra* note 6 at 165, has observed that those homicides were seen as "relatively isolated acts for which explanations must be found."



expected to be clearer, and before her mind was probably weakened by the contemplation of the misfortunes and crimes of her son.”<sup>61</sup>

Another particularly effecting witness was a neighbour of the deceased, who averred that Boyer and his wife went out to a wedding earlier that day; the neighbour baby-sat the children at the Boyer household in their absence. Hyacinthe returned from the party without Boyer, claiming that he was drunk. When the neighbour started to leave the house, Hyacinthe burst into tears, saying that she was afraid her husband would harm her when he returned. Hyacinthe pleaded with the neighbour to stay the night--even offering her a loaf of bread as an inducement--but to no avail, although the neighbour stayed to have soup. As they ate together, Hyacinthe turned to her and said, in words that were to be eerily prescient, “this will be the last soup I will sup.”<sup>62</sup>

The jury deliberated for an hour before finding Boyer guilty of murder. Justice George Pyke was said to appear “deeply affected” as he delivered the death sentence while “an awful stillness pervaded the densely crowded audience.”<sup>63</sup> Boyer’s execution was ordered to occur in three days, but the Court respited the sentence until 8 April. In the interim Boyer petitioned for clemency, but was rebuffed.<sup>64</sup>

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<sup>61</sup> *The Canadian Courant* (5 March 1831) (testimony of Josette Bertrand).

<sup>62</sup> *Ibid.* (testimony of Josette Bisailon).

<sup>63</sup> *Ibid.* See also Borthwick, *supra* note 4 at 261 (noting Boyer’s conviction and execution); A.N.Q.M., KB(R), *The King v. Alexis Boyer* (3 March 1831) (verdict and sentence). Unfortunately, an account of the sentencing remarks has not survived. For accounts of judges being visibly moved as they imposed sentence, see Hay, *supra* note 19 at 29-30.

<sup>64</sup> For discussion of Boyer’s unsuccessful petition for clemency, see *infra* at 40-41. See also *La Minerve* (7 April 1831).

Boyer's appointment to suffer the "awful penalty of the law" was witnessed by hundreds of spectators who huddled against the driving rain. Sniffed *The Montreal Gazette*, "[a]s is too common on such occasions a large proportion of those present were females."<sup>65</sup> In his last words, the text of which has not survived, Boyer admitted to being guilty of having abused his wife on the night in question but adamantly denied being responsible for her death, claiming she died "by falling in fits."<sup>66</sup> His final words having concluded, the hangman dutifully did the law's bidding. As was common in a day before the trapdoor was in widespread use, the crowd watched in morbid fascination as Boyer writhed in the hangman's noose for several minutes before expiring.<sup>67</sup> One newspaper married religious imagery with references to murder and drunkenness, concluding that "[t]hus has Intemperance sacrificed another victim on its blood-stained altar."<sup>68</sup>

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<sup>65</sup> See *The Montreal Gazette* (9 April 1831).

<sup>66</sup> *The Canadian Courant* (9 April 1831). See also *The Montreal Gazette*, *ibid.*; *The Vindicator* (8 April 1831); *La Minerve* (11 April 1831).

<sup>67</sup> See *The Canadian Courant* (9 April 1831). Boyer's death struggles prompted the paper to protest against hanging:

If the bloody and revengeful system of capital punishment will be continued (for which we fearlessly assert man has no Divine authority), why is not some less barbarous method than hanging adopted? Life may be instantly destroyed by decapitation, or by inflicting a deep wound in the brain. Would not this be merciful, compared with the protracted tortures and convulsive agonies often accompanying strangulation?

<sup>68</sup> *Ibid.* The *Courant* also used the Boyer case as a vehicle to rail against intemperance, arguing that if he had been teetotaler he would have been unlikely to have suffered such a fate. See also *The Canadian Courant* (2 October 1830), containing that paper's initial account of Boyer's crime under the heading "AWFUL CONSEQUENCE OF INTEMPERANCE."

Indeed, intemperance was a common factor in many wife murders. It might have been the case, as one of Hugh Cameron's acquaintances put it, that "with the exception of being under the influence of liquor [he] was a very peaceable man," but that was surely of little solace to his wife given his frequent binges.<sup>69</sup> During one such episode in March 1842, in which Cameron's wife was also drunk, he bludgeoned her to death with a wooden poker. His wife's drunkenness, however, was seen as a provocation that resulted in his sentence being commuted to fourteen years' imprisonment, as it was shown that she was an alcoholic who pawned household objects to pay for drink.<sup>70</sup> Indeed, being under the influence of alcohol was sometimes seen as a mitigating factor in the trials of wife murderers. Such an outcome resulted in a Quebec City trial in 1850, prompting the following critique by the *Montreal Weekly Pilot*:

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

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<sup>69</sup> A.N.Q.M., Files of the Court of King's Bench [hereinafter KB(F)], *The Queen v. Hugh Cameron* (1 March 1843) (affidavit of Thomas Crane). For further discussion of that case, see *infra* at 42-43.

<sup>70</sup> See *The Montreal Transcript* (11 March 1843) (testimony of John Cameron). The jury had recommended Cameron to mercy. A.N.Q.M., KB(R) p.52, *Queen v. John Cameron* (8 March 1843) (verdict).

should be taken care of, and prevented from doing further mischief. He should not be suffered to be at large.<sup>71</sup>

In the Munro case, the defense was based on the effects of *delirium tremens* rather than the fact of intoxication itself, but the centrality of drunkenness to parricides cannot be overstated. As will be discussed, intoxication could, and often did, provide a mitigating factor for defendants charged with such crimes. Even in cases where alcohol may not have played a part, wives who were murdered at their husband's hands often had been victims of chronic and systematic abuse. Adolphus Dewey may have been sober, industrious and respectable, but he nevertheless brutalized his wife during the three months of their married life. The violent tendencies of spouses, especially husbands, were frequently well known to family and members of the community. In some instances, relatives or neighbours provided assistance and refuge, however futile that protection ultimately proved.<sup>72</sup> Dewey's wife sought sanctuary with her uncle and then with her father, but was killed when she agreed to accompany her husband to church.

Indeed, wives most in need of third-party intervention were often the least likely to receive it. Husbands who had reputations for being ferocious and unpredictable were typically given a wide berth. Hugh Cameron's son saw his parents "quarrel and

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<sup>71</sup> *The Montreal Weekly Pilot* (30 November 1850). That case was not counted as it was tried in the judicial district of Quebec City. For an English example, see A. James Hammerton, *Cruelty and Companionship, Conflict in Nineteenth-Century Married Life* (London & New York: Routledge, 1992) 35 (citing an 1888 case in which a husband kicked his wife to death while she was drunk; her drunkenness was seen as a provocation that lessened his culpability to manslaughter rather than murder).

<sup>72</sup> For discussion, see generally Pilarczyk, *supra* note 8.

wrangle together” while they were in bed. Cameron then began “beating [the] deceased merely with his hand not sufficient to cause any bodily injury” but then struck her several times with a wooden poker. The son and his sister sought assistance from their neighbours, all of whom refused to intervene due to their fear of Cameron. Cameron’s son was obliged to go to town to secure assistance, and brought back with him three men (including a shoemaker named Thomas Figsby who later served as a juror) who ascertained that Cameron’s wife was dead, and conveyed him to the local jail.<sup>73</sup>

According to several deponents who subsequently filed complaints against Cameron, he had a reputation in the Parish for extreme brutality towards his wife.<sup>74</sup>

When the criminal system took cognizance of wife murder, the conviction rate, either for the offense charged or a lesser charge, was high. Out of eleven cases, only two cases resulted in acquittal; in another instance the defendant fled the jurisdiction. Four out of the ten defendants charged with murder were found guilty of the full offense. Of those, two defendants (twenty percent of the total) were executed in the 1830s. The following decade, two defendants were sentenced to death but transported to New South Wales, and one was sentenced to life in prison for manslaughter. That sequential progression was not coincidental, but rather mirrored a growing popular revulsion towards imposing capital punishment. Montreal courts may have imposed the death

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<sup>73</sup> See A.N.Q.M., KB(F), *The Queen v. Hugh Cameron* (1 March 1842) (affidavit of John Cameron).

<sup>74</sup> See A.N.Q.M., KB(F), *The Queen v. Hugh Cameron* (1 March 1842) (affidavits of John Cameron, Thomas Figsby and Hamilton Forrest).

sentence even less frequently than in other jurisdictions. For example, Carolyn Conley in her study of Kent County in England for the period 1869 to 1880 noted that while only twenty-three percent of those convicted of killing a spouse were executed, all those convicted of killing an employer or superior officer suffered death.<sup>75</sup>

In cases where husbands were convicted of lesser offenses than murder, such as manslaughter, sentences were typically short. For much of the century, the common law distinction between murder and manslaughter remained ambiguous, although that distinction had important consequences as murder was a capital felony. In general, defendants were found guilty of manslaughter due to extenuating circumstances or to the absence of a crucial element required to constitute the legal offense of murder, namely premeditation or malice.<sup>76</sup> In England, Parliament began to address that

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<sup>75</sup> See Conley, *supra* note 35 at 60.

<sup>76</sup> 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 or 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 Law of Canada, and a Compendious and General View of the Provincial Law of Upper Canada, with Practical Forms, for the Use of the Magistracy* (Toronto: H. & W. Roswell, 1843) 324. Under 4 & 5 Victoria c. 27 s.7 (1841) (L.C.), 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." As Taylor stated, lack of premeditation was commonly alleged in wife murders, while mental aberration was commonly asserted in infanticide cases. See Taylor, *supra* note 32 at 29.

ambiguity in 1857, eventually arriving at the consensus that manslaughter involved a lack of intent to kill or an immediate response to a provocation.<sup>77</sup>

Two defendants during the period were convicted of manslaughter after having been charged with murder, although their sentences differed significantly. The first of those accused, a ship's carpenter named John Barker who lived with his wife and several children near the Merritt ship-yard, was charged in 1836 with having kicked his wife to death.<sup>78</sup> Neighbours had heard him reproach his wife with "severe language" on the Sunday evening in question, and concluded from her cries that she was being badly beaten. Both spouses were known to be habitual inebriates, and their neighbours had long since become accustomed to the sounds of fighting in the household. When the noise stopped, the neighbours complacently assumed that the couple had gone to bed. In reality, Barker's wife lay dying on the floor.<sup>79</sup>

That trial, like most such cases, endangered great public interest, and was observed by an overflow crowd (described by one newspaper as "very anxious") before the Court of King's Bench five months later. At trial, Barker's counsel mounted a

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<sup>77</sup> See generally Conley, *supra* note 35 at 45-46. Conley also noted that "intent," "provocation," and "immediate" were terms that were not legislatively defined. For the present-day definition of manslaughter, see Henry Campbell Black, *Black's Law Dictionary* (St. Paul: West Publishing Company, 1991, 6<sup>th</sup> ed.) 664.

<sup>78</sup> See *The Montreal Gazette* (11 October 1836) (citing *The Courier*); *L'Ami du Peuple* (12 October 1836) (case of John Barker).

<sup>79</sup> See *The Montreal Transcript* (11 October 1836); *L'Ami du Peuple* (12 October 1836). *The Montreal Gazette* (15 October 1836) likewise noted that the two were "much addicted to the use of ardent spirits," and also claimed that they had been intoxicated at the time of the altercation.

vigorous and skilled defense, and while the facts indicated that the wife's injuries were the cause of her death, defense counsel was able to raise sufficient doubt as to the defendant's culpability, or whether he had caused her injuries by accident or carelessness, that the jury returned a verdict of manslaughter after half an hour.<sup>80</sup> He was sentenced to one year's imprisonment, the shortest term of incarceration for any husband convicted of having killed his wife during the period.<sup>81</sup> The absence of a lethal weapon, as well as drunkenness on the part of both spouses, were factors likely responsible for the lenient sentence.

The other such instance, the case of James Goodwin, deserves mention for the defendant's extraordinary culpability. Goodwin was tried before the Queen's Bench during its February 1848 term, on indictment for having caused his wife's death between 1 December 1846 and 25 February 1847, 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."<sup>82</sup>

From the evidence, it appears that Goodwin and his wife had argued and that she had absented herself from home a few months earlier. On her return Goodwin refused to allow her to live in the house, instead banishing her to a contiguous pigpen where

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<sup>80</sup> A.N.Q.M., KB(R) p.132-133, *Dominus Rex v. John Barker* (3 March 1837). See also *The Montreal Gazette* (4 March 1837). For an account of the verdict, see *The Montreal Transcript* (4 March 1837); *L'Ami du Peuple* (4 March 1837).

<sup>81</sup> A.N.Q.M., KB(R) p.166, *Dominus Rex v. John Barker* (10 March 1837). See also *L'Ami du Peuple* (11 March 1837); *The Montreal Gazette* (11 March 1837).

<sup>82</sup> *The Montreal Gazette* (4 February 1848).



food was passed to her through a small aperture. The Parish priest, on hearing about Goodwin's treatment of his wife in December, confronted him about his inhumanity. Goodwin admitted that his wife was living in the pigpen, but maintained that she was there of her own accord and that her conduct "had been such as to deprive her of any claim upon him" but that he had no objection if others took care of her.

Ellen Goodwin remained in the pigstye until nearly the end of February, when she died of exposure. She was found in pathetic circumstances, emaciated and naked save for a cap, a piece of linen wrapped around her torso, rags on her feet, and a cloak thrown over her body. Her body was frozen, but Goodwin resisted initial attempts to thaw her body before his hearth so as to allow the coroner to conduct an autopsy, saying "he had sworn she should never enter his house, dead or alive; and, that he would keep his word."<sup>83</sup> Eventually, Goodwin consented, and the examination disclosed, among other things, that Ellen had lost the toes of one foot to frostbite, while the other leg ended in a stump.

Ellen's sister Mary attested that she had begun living in the pigpen in the first week of November, and twice had entered the house to obtain a drink or warm herself by the fire. On the first occasion, she was ordered out by Goodwin; on the second occasion she left of her own accord. Her family fed her three times a day, and Mary testified that Goodwin neither begrudged her food nor had ever used violence against her. Mary further maintained that Ellen admitted to having "wronged" Goodwin by

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<sup>83</sup> *Ibid.* (testimony of John Alexander Sturgeon, M.D.)

her behaviour, and that she remained in the pigpen of her own volition. Two of Ellen's daughters also testified, both claiming that she was of sound mind, was well-fed, and that their father had never ill-treated her. Other witnesses added more detail, alleging that for years prior to the events in issue Ellen had been a vagrant, deserting her home and travelling about with shantymen and others for months at a time. The defense's strategy was to show that Ellen had been a classic example of a woman of abandoned character--the implication being that she was therefore undeserving of her husband's protection. After the judge's summation of the evidence, the jury retired for about an hour before finding Goodwin guilty of manslaughter.<sup>84</sup>

The verdict did not appear to sit well with the Court. At the sentencing two weeks later, Justice Samuel Gale "severely commented on the enormity of the offence," and noted that the jury had been merciful in finding Goodwin guilty of manslaughter. It was a most "aggravated manslaughter" indeed, noted Gale, with "nothing...to mitigate it in the slightest degree." He sentenced Goodwin to life imprisonment in the provincial penitentiary, the maximum allowable penalty.<sup>85</sup>

In the other such cases, the convictions were for offenses other than manslaughter. Henry Norman was charged with murder and assault with intent to murder in 1842 following the death of his wife, Amelia. A neighbour, married to a

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<sup>84</sup> A.N.Q.M., KB(R) p.216, *Queen v. James Goodwin* (3 February 1848). See also *ibid*; *The Pilot* (4 February 1848).

<sup>85</sup> *The Montreal Gazette* (16 February 1848). See also *The Montreal Transcript* (17 February 1848) (stating that Goodwin, the "man who suffered his wife to die so horribly in a pigstye," was sentenced to life imprisonment, the "heaviest penalty the law could inflict.").

private in Her Majesty's Eighty-Fifth Regiment of Foot, resided across the hall from the couple. Around six p.m., as she tended the fire in the hallway, she heard the couple arguing. Suddenly, Amelia cried out, "Henry, my dear! Do not kill me!" She ran into the neighbour's room, bleeding, and was followed by her husband, who struck her a blow in the back with an object that appeared to be a knife. The neighbour's affidavit, in a curious linguistic juxtaposition, asserted that she "then begged of the said Norman not to kill his wife in deponent's room, but to take her back to his own room," perhaps subconsciously indicating her desire that the couple keep their arguments private.<sup>86</sup> Depositions by other neighbours, however, left no doubt that the argument and its aftermath was heard, if not witnessed, by many people. The city coroner deposed several neighbours during the inquest, all of whom attested to numerous arguments between the spouses, and who heard Amelia beseech her husband not to kill her on the night in question.<sup>87</sup> Another witness added that a fortnight earlier the defendant had struck his wife on the side with a hammer.<sup>88</sup>

The testimony of a labourer who also resided in the house reflects the sense of entitlement that Henry Norman felt in 'correcting' his wife. The defendant had invited James Badgley to dinner at his house, and on his arrival he was summoned into a room by Amelia, where she lay crying and bleeding heavily from the arms and back. As he

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<sup>86</sup> A.N.Q.M., KB(F), *Domina Regina v. Henry Norman* (26 August 1842) (affidavit of Martha Brown).

<sup>87</sup> See A.N.Q.M. KB(F), *ibid.* (undated) (deposition of witnesses in coroner's inquest) (testimony of Margaret Mitchel and Martha Cooper).

<sup>88</sup> See A.N.Q.M., KB(F), *ibid.* (26 August 1842) (testimony of Francis Simmonds).

peered in, she said "look how he has served me." Shocked, Badgley expressed sympathy and said that this should not have happened had he been present. Norman responded by asking Badgley "what had I to do with their quarrels...he would treat her as he liked."

Badgley's sense of outrage was mitigated by his reluctance to get involved. Declining to stay for dinner, his testimony nonetheless gave no indication that he attempted to aid Amelia, although he returned the following morning to borrow Norman's shoemaker knife. Norman responded that he had disposed of the knife, adding darkly, "I think I have done enough with it."<sup>89</sup> Clearly Norman had, as Amelia died two days later at the Montreal General Hospital.

Following the inquest, Norman was arrested on a coroner's warrant.<sup>90</sup> The evidence of the witnesses had left some ambiguity--none of them had actually seen a knife used, although several saw a knife handle in Norman's hand but could not be sure it had a blade attached to it, Amelia's wounds notwithstanding. An attending physician also testified at the inquest that shortly after Amelia's admission to the hospital, she began to suffer from *delirium tremens*. That affliction, he believed, was the ultimate cause

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<sup>89</sup> A.N.Q.M., KB(F), *ibid.* (26 August 1842) (testimony of James Badgley).

<sup>90</sup> See A.N.Q.M., KB(F), *ibid.* (26 August 1842?) (warrant of Joseph Jones, Coroner):

Henry Norman...late husband of the said Amelia Brooke not having the fear of God before his eyes but moved and seduced by the instigation of the devil on the eighteenth day of August instant in the year of our lord 1842 with force and arms...in and upon the said Amelia Brooke his said late wife in the piece of God and aforesaid lady the [Q]ueen then and there being feloniously wilfully and of his malice aforethought did make an assault....

of her death, although it was aggravated by the injuries she suffered.<sup>91</sup> While all witnesses testified that Norman was frequently drunk, only a single witness testified that she had seen Amelia drunk, and that on only one occasion. The true facts will never be known, and no account of the trial has survived. It is likely that allegations of Amelia's alcohol use surfaced in Norman's defense, however. Charged with murder and assault with intent to murder, he was convicted of the lesser charge.<sup>92</sup> He was sentenced to three years' imprisonment but, in an interesting twist, the Court required that Norman spend every August in solitary confinement. That peculiar provision was no doubt intended to give him pause to reflect on each anniversary of his dark deed.<sup>93</sup>

It has been remarked by some scholars that a preponderance of charges brought against husbands for killing their wives in the nineteenth century was for manslaughter

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<sup>91</sup> See A.N.Q.M., KB(F), *ibid.* (19 August 1842) (deposition of Olivier C. Bruneau, M.D.).

<sup>92</sup> A.N.Q.M., KB(R) p.75-76, *ibid.* (8 September 1842). See also *The Montreal Gazette* (10 September 1842); *The Montreal Transcript* (10 September 1842). The newspaper account of his trial that appeared in those two papers was cursory:

Henry Norman, for the murder of his wife, was tried and acquitted of the capital part of the offense. The indictment contained two counts, one of murder, and the other for assault with intent to murder. The Court, in charging the Jury, told them that the first count was not supported and that they therefore must render a verdict on the second count only. The Jury, after withdrawing a few minutes, returned a verdict of guilty of assault only, acquitting the prisoner of the capital part of the second count....Mr. Hart acted as Counsel for the prisoner.

<sup>93</sup> See A.N.Q.M., MG p.870, *Domina Regina v. Henry Norman* (26 August 1842) (Norman "sentenced to 3 years from 10 September with the month of August in each year to be allotted to solitary imprisonment."); KB(R) p.87, *Queen v. Henry Norman* (10 September 1842).

rather than murder.<sup>94</sup> In Montreal during the period 1825 to 1850, however, such acts nearly always precipitated an initial charge of murder, perhaps joined with a charge of assault with intent to murder as a way of taking all legal eventualities into account. In only one instance was a husband initially charged with the non-capital crime of manslaughter and, perhaps not coincidentally, that case ended in an acquittal. John Charlton, a soldier with the Royal Canadian Rifles stationed in Sorel, was arrested after he struck his wife while they were embroiled in a violent argument. The defendant confronted his wife over her domestic failings, saying “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.” The defendant struck her one or two blows to the head with his fist before the two were separated. Several witnesses testified that the defendant’s wife had attempted to attack him with a knife, injuring his face, although they disagreed as to whether she had picked up the knife before or after her husband struck her.

While one fellow soldier asserted that he had “looked upon the affair as a mere squabble,” its outcome was grave: the blows inflicted by her husband fractured the wife’s skull, and within two days she was dead.<sup>95</sup> After hearing the evidence, the jury acquitted Charlton of manslaughter. Several factors likely led the jury to acquit, including evidence of his generally peaceable nature, his wife’s possible use of a deadly weapon, and the belief that she had failed to fulfill her marital duties and was therefore

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<sup>94</sup> Compare Conley, *supra* note 35 at 59-60; Maeve E. Doggett, *Marriage, Wife-Beating and the Law in Victorian England* (London: Weidenfeld & Nicolson, 1992) 127.

<sup>95</sup> *The Montreal Gazette* (23 October 1850) (case of John Charlton).

rightly deserving of chastisement. A physician's testimony that the victim's death was due to mischance, as the same blow anywhere else on her skull would not have been lethal, would have provided further justification for the jury to acquit.<sup>96</sup>

The other alleged murder for which a husband was acquitted took place in late-1850. In the Parish of St. Jerome, the body of Jean Martin Jr.'s wife, Julienne Filion, was found in the middle of the day in a two-and-a-half foot deep well. In keeping with protocol, the Captain of Militia assembled a jury of inquest and, in the absence of any suspicion, the jury reached a finding of accidental death. Some time thereafter, inculpatory circumstances came to light, and a warrant was issued for his arrest. Martin was lodged in the local jail and, at the coroner's request, Filion's body was disinterred to conduct a *post mortem*. The corpse proved to be too badly decomposed to enable the coroner to determine the cause of death, however, thereby pre-empting discovery of a crucial piece of evidence.<sup>97</sup>

Martin was tried before the Court of Queen's Bench in March 1851, in a trial that was doubtlessly as confounding to the jury as it was to the Justices who presided at it.<sup>98</sup> Over a span of three days, the jurors wrestled with many seemingly unanswerable questions. Did Martin's wife die as a result of misadventure? If her death was intentional, was it at her own hands? Or was there a more sinister explanation? The

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<sup>96</sup> See *ibid*; *La Minerve* (28 October 1850); *The Pilot* (24 October 1850).

<sup>97</sup> See *The Montreal Gazette* (29 August 1850).

<sup>98</sup> For the account of his trial, see *The Montreal Gazette* (24 & 26 March 1851).

mystery of the death of Julienne Filion was perhaps best depicted by Justice Rolland's summation to the jury following the close of the defense's case:

[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.<sup>99</sup>

If the Dewey case had proven that a wife was not insulated from murder by virtue of having been recently married and by carrying her husband's child, that lesson had been lost on Justice Rolland. It was the place and timing of Filion's death that was inexplicable, not the possibility that her husband had murdered her under such circumstances.

As Justice Rolland phrased it, however, the issue for the jury was the cause of the victim's death. In considering whether her death was a natural one, he again made reference to Filion's pregnancy. Reiterating conventional wisdom regarding women in that situation, he stated:

[S]he was with child, and like all young women in that case, was subject to swoons. At any rate, she went to the well, and there was no reason to suppose she was taken there by force. Well, then, being there, she might have fainted; but 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.

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<sup>99</sup> *Ibid.* (26 March 1851).



“Then could she have committed suicide?”, asked Justice Rolland rhetorically. The judge apparently shared the prevailing view of women as creatures ruled by emotion and subject to the caprices of hysteria and melancholy, aggravated by conditions such as pregnancy. Filion had acted melancholic, noted Justice Rolland, “like most young women in her position.” But the thought that she had taken her own life was difficult to be believed, as “a case of suicide by a pregnant woman was hardly known.” Moreover, Filion was known to be a pious woman, and according to the Court’s logic, therefore not a candidate to commit the mortal sin of *felo de se*. On those occasions when women did drown themselves, added Rolland, they were most likely to do so for affairs of the heart. Under the facts, the judge expressed doubts that Filion had caused her own death.

Justice Rolland concluded by expounding at length on the evidence related to the husband’s conduct, including seeming inconsistencies in his testimony that he had not accompanied his wife to the well. On the other hand, the husband was also a pious man of good character--and “so young” 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.”<sup>100</sup> Again, the lesson taught by twenty-three-old Dewey, who lured his wife to her death following Divine Mass, apparently had been forgotten. With that edifying summation behind him, Rolland left the jury to their deliberations. They spent

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<sup>100</sup> *The Montreal Gazette* (26 March 1851).

less time deliberating than Rolland did in summarizing the testimony, acquitting the defendant almost immediately.<sup>101</sup>

Another prosecution for parricide involved Jean-Baptiste Pilleau *dit* Sanschagrín, who was arrested on a charge of having murdered his wife, following the issuance of a coroner's warrant in November of 1848:

Murder charge – Saturday last, a coroner's inquest was held in the parish of Longueuil, on the corpse of a woman named Marie Dilleur, wife of Jean-Baptiste Pilleau *dit* Sanschagrín. The autopsy was performed by Dr. Sabourin of Longueuil, the jury's verdict was that this woman's cause of death was inflammation of the lungs resulting from the blows she received to her chest. Since her husband was under serious suspicion, a warrant for his arrest was issued by Mr. Coursol, he was arrested yesterday afternoon and brought to the city under the Grand Constable's guard, he was sent to prison accused of murder for having caused his wife's death through the blows he dealt her. We are unaware of what caused this excessive brutality.<sup>102</sup>

While no affidavits, recognizances or other documents related to that case have survived, the newspaper references are not apocryphal: Sanschagrín was acquitted of murdering his wife on 9 February 1841 before the Court of Queen's Bench.<sup>103</sup>

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<sup>101</sup> A.N.Q.M., KB(R) p.150, *Queen v. Jean Martin fils* (24 March 1851). See also *ibid*; *The Pilot* (25 March 1851).

<sup>102</sup> *L'Aurore* (21 November 1848) (citing *La Minerve*) (author's translation). See also *La Minerve* (20 November 1848). Newspaper accounts such as this can be a good source of 'unconscious testimony' of contemporary mores and beliefs. Note that the newspaper account stated that "[w]e are unaware of what caused this excessive brutality"—not only implying that she was responsible, but that 'lesser' levels of brutality directed towards the wife would have been acceptable. For discussion of such unconscious testimony in Victorian murder trials, see generally Ian C. Pilarczyk, "The Terrible Haystack Murder: The Moral Paradox of Hypocrisy, Prudery and Piety in Antebellum America," 41 *Amer. J. Legal Hist.* 25 (1997).

<sup>103</sup> A.N.Q.M., KB(R) p.331-332, *Queen v. Jean Baptiste Pilleau otherwise called Sanschagrín* (9 February 1848). No other information on this case was found.

In another case in 1833, a husband avoided prosecution for causing his wife's death by fleeing the jurisdiction. After an evening of drinking and playing cards at a neighbour's house, the husband wished to depart for home but his wife refused. Enraged by that act of insubordination, he kicked her to death in the neighbour's parlour. Not only did the neighbour not intervene, but he and Taylor contrived to have a coffin made the following morning, which prompted uncomfortable questions. When Taylor's wife's disappearance became known, an arrest warrant was issued for his apprehension, but he had fled to the United States.<sup>104</sup> No record of his apprehension or prosecution was found.

In cases that did proceed to trial, the prospect of sending a man to the gallows was presumably a heavy burden for many jurors. When the facts seemed confused and admitted of various interpretations, and no clear motive presented itself--as was the case with the trial of Jean Martin, Jr., for example--juries displayed a natural tendency to acquit. Indeed, it was a common experience in many jurisdictions of-the-period that the possibility of capital punishment obfuscated matters rather than illuminating the dark recesses where crime lurked. Jurors were not alone in their reluctance to facilitate the imposition of the death penalty, and convicted murders faced the ultimate sanction with increasing infrequency as the century advanced. The mercy and majesty of the law were always apparent--never more so than when a capital crime had been committed--and it

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<sup>104</sup> *The Montreal Gazette* (4 April 1833); *L'Ami du Peuple* (3 April 1833) (case of Taylor).

was far from uncommon for convicted felons to petition the Governor General, as the Crown's representative, for clemency.<sup>105</sup>

Alexis Boyer used the intervening weeks between his sentencing and the date of his execution in 1830 to petition the Governor General for a reprieve as well as for a hearing by his defense counsel before the Court's justices, alleging that he had been falsely convicted and had "fallen a sacrifice to the opinions of prejudiced witnesses." He further claimed that he had been deprived of the benefit of his mother's exculpatory testimony by an "incorrect" decision of the Court, and that he would have been acquitted otherwise as "there was not the slightest shadow of Positive Proof, inculpating your Petitioner...." Boyer further claimed to have a sworn affidavit from a witness that would have corroborated his mother's testimony, but that this witness had been unknown to his attorney at the time of trial. Boyer ended his petition with an emotional plea, referring to his two young children "whose names must ever be stained with infamy and disgrace if Your Petitioner is brought to an Ignominious end," and once again asserting "his innocence of the Horrible Crime for which he has been convicted

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<sup>105</sup> For sources related to clemency, see Ann R. Higginbotham, "'Sin of the Age': Infanticide and Illegitimacy in Victorian London" 32 *Vict. Stud.* 319 (1989); King, *supra* note 27 at 297-333; Phillips, *supra* note 28; Hay, *supra* note 19 at 43-49; R. Chadwick, *Bureaucratic Mercy: The Home Office and the Treatment of Capital Cases in Victorian Britain* (New York: Garland, 1992).

and sentenced to undergo a Disgraceful death.”<sup>106</sup> As was previously mentioned, however, a disgraceful and anguishing death was to be his fate.<sup>107</sup>

Petitions for clemency such as that filed by Boyer are intrinsically valuable because of the light they shed on the administration of justice. They are among the few sources that offer insight into the process as seen from a defendant’s perspective, providing information about their perceptions of judicial fairness and evidentiary issues, as well as offering an alternative view of events. Furthermore, unlike affidavits and other judicial documents, clemency petitions were generally written by defendants. While it is not known how many of those defendants (or third parties on their behalf) sought clemency following their convictions, petitions were found for three of the four known cases in which they were made.

James Dunsheath, whose murder trial was delayed for two years due to jurisdictional issues, was one defendant who was reprieved from the gallows. Among the surviving records there is a “memorial” drafted on his behalf by his attorney. In it, Dunsheath’s counsel stated that the main Crown witness was a nine-year-old child who had offered testimony about events that had occurred nearly two years earlier, testimony that 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 alleged by

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<sup>106</sup> N.A.C., AP vol. 16, pp. 6582-6583 (“Petition of Alexis Boyer”) (26 March 1830).

<sup>107</sup> At least one newspaper took notice of his appeal. *La Minerve* (7 April 1831) observed 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.

his counsel was that Dunsheath's wife had fallen out of bed from a considerable height, and that a testifying physician could not rule out the possibility that she might have died from her fall onto the floor. Furthermore, Dunsheath's attorney claimed that one Crown witness was not a licensed physician at the time he participated in the autopsy, and emphasized that Dunsheath was at home when arrested, having made no effort to flee justice--the implication being that this was not the conduct of a guilty person.

Unusually, Dunsheath's counsel also emphasized his own shortcomings and lack of prior trial preparation, noting 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." Montreal courts during the period usually ensured that defendants had counsel in capital cases, mirroring general English practice of appointing them immediately prior to trial if the defendant had not secured representation on his or her own. One suspects that under such circumstances attorneys could only rarely hope to mount a truly efficacious defense.<sup>108</sup> To hear such sentiments espoused by a barrister himself was unusual. Dunsheath's counsel further observed in his petition that Dunsheath had appeared completely disinterested in the proceedings, and suggested that this was perhaps evidence of a mental defect.<sup>109</sup> In keeping with common practice in Montreal

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<sup>108</sup> Martin J. Wiener, "'Judges v. Jurors': Courtroom Tensions in Murder Trials and the Law of Criminal Responsibility in Nineteenth-Century England" *17 Law & Hist. Rev.* 467 (1999) at 474 note 22. That, of course, has modern parallels with the institution of court-appointed defense attorneys.

<sup>109</sup> See N.A.C., AP, vol. 24, p.10717h-u ("Memorial on behalf of James Dunsheath" (31 Oct 1840).

during the 1840s, Dunsheath was reprieved and transported for life to New South Wales.<sup>110</sup>

In 1843, Hugh Cameron likewise had been sentenced to death for the murder of his wife. He had been recommended to mercy by the jury due to “provocations” on the part of his wife, who was often inebriated, and his request for clemency resulted in his sentence being commuted to fourteen years in the Provincial Penitentiary.<sup>111</sup> Cameron’s drunkenness was seen as a mitigating factor that lessened his responsibility, while his wife’s drunkenness was seen as an aggravating factor that increased her own fatal culpability.<sup>112</sup>

John Barker, the ship carpenter convicted of manslaughter in 1837 for kicking his wife to death, likewise sought clemency. In a document described as obsequious even in comparison to most petitions, Barker pleaded for early release from his one-year prison

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<sup>110</sup> See N.A.C., AP, vol. 24, p.10709-10712 (“Attorney General’s draught of a warrant to the Sheriff of the District of Montreal to deliver James Dunsheath to be transported”) (17 October 1840); p.10706-10708 (“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”) (17 October 1840); p.10697-10705 (“Attorney General’s draught of a conditional pardon in favor of James Dunsheath”) (17 October 1840); 10713-10717 (“Attorney General’s draught of a warrant to receive and convey James Dunsheath to England”) (17 October 1840); p.10718- 10722 (“Attorney General’s draught of a Reprieve for James Dunsheath under sentence of death for Murder”) (17 October 1840). Some contemporary accounts suggest that felons might have come to regret being reprieved, given the harshness of penal life in Australia. See *The Montreal Gazette* (26 August 1842) (article detailing the horrors of transportation).

<sup>111</sup> *L’Aurore* (14 March 1843) (noting jury’s recommendation to mercy due to wife’s provocations); *ibid.* (6 April 1843); (noting clemency due to jury’s recommendation); *The Montreal Register* (6 April 1843) (noting commutation of sentence). Cameron’s petition was not located within the archives.

<sup>112</sup> Wiener, *supra* note 108 at 484-488. See also Lepp, *supra* note 6 at 537-548. As Wiener stated, by later in the century “a greater emphasis on self-control gradually brought drunkenness-as-defence into disrepute.” *Ibid.* at 481.

term. Stressing that his wife had been an alcoholic for several years, he maintained that for the three days previous to her death she had been seen lying outside the door of their house. Perhaps tellingly, however, he did not claim to have carried her inside. Barker averred that he had been away since the month of May 1835, returning only two weeks before her death the following October. In attempting to explain his wife's injuries, including eight broken ribs, Barker maintained that:

he never gave his wife any hard language tho she had given him sufficient reason for the few last days when on this unfortunate day your petitioner came home after being on some business and found his wife lying on the floar in the same state as aforementioned[;] he asked her where she had got the liquor to make herself so helpless and rose her from the floar; she attempted to walk but could not[;] she fell [and] she attempted a second time and succeeded in rising but only to receive the second fall which he believes might have been the occasion of her death which was with all the waight of her body against the edge of his toolchest laying not far from her....<sup>113</sup>

His initial petition having been denied, Barker reiterated his claims of innocence and emphasized the grave hardship his incarceration worked on his children in yet another petition dated four months later:

Your petitioner humbly begs leave to remind your Excellency that he was induced by absolute distress to petition your Excellency some time in April last for a mitigation of sentence giving your Excellency as near as possable the general facts connected with the unfortunate circumstance of his wife's Death[,] also his being the father of three helpless children the eldest not exceeding twelve years of age who are all dependent on their poor disconsolate parent for support, who in spite of all his endeavours has been since his confinement indebted in a great degree to his neighbours for the subsistance of his poor children who now joyn their unhappy parent in the prayer of this petition begging your Excellency

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<sup>113</sup> N.A.C., AP, vol. 21 p.9072 ("John Barker prays for remission of part of the time") (29 April 1837).



will condicend to give the aforementioned circumstances in his petition your...humain and gracious consideration....<sup>114</sup>

This application was also unsuccessful and Barker served the entirety of his sentence.<sup>115</sup>

Given the unusual brevity of his term of incarceration, it would have been highly unlikely that the Governor General would ever had considered shortening his sentence.

By the 1840s, it is clear that convicted wife murderers were more likely to be granted the Royal mercy than in previous decades. The files (which, it should be noted, appear far from complete) 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 clearly inimical to Victorian conceptions of a husband's obligation towards his wife, and was such an extreme example of malfeasance and 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, as the sheer ferocity and premeditation of his assault admitted of no ambiguity. Alexis Boyer's case, however, is not so clear. Using no weapons other than his 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 fate of James Dunsheath.

Cameron's sentence of transportation for fourteen years reflected that his wife's drunken conduct was deemed a sufficient provocation to mitigate his sentence. As for

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<sup>114</sup> N.A.C., AP, vol. 21 p.9063 ("John Barker, sentenced 12 months manslaughter of wife, prays to be released from gaol") (21 August 1837).

<sup>115</sup> N.A.C., MG(GC) (John Barker committed for twelve months from March 1837).

Barker, it is difficult to conceive that his twelve-month sentence would have been less harsh in subsequent years, although it is also possible that his case is slightly 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, would have likely left sufficient doubt as to his culpability in the minds of this, or a subsequent, jury. Any theories on why clemency was or was not granted in individual cases must be undertaken tentatively, particularly as more systemic considerations (such as the perceived need to provide exemplary punishment, or alternately to show mercy) undoubtedly could play a determinant role. While the period during which a defendant was tried before Montreal courts surely exerted some influence on the outcome, all those cases reflect Victorian norms common to the period.

## II.

Writing about female murderers in 1980 in her work *Women Who Kill*, Ann Jones concluded:

This year more women will kill their children than will be appointed to the judicial bench. More women will kill their husbands than will sit in the halls of Congress. A baby girl born tomorrow stands a chance of growing up to stick a kitchen knife into an assaultive husband, but her chances of becoming President are too slim to be statistically significant. The story of women who kill is the story of women.<sup>116</sup>

It may be an overstatement to say that studying murderous wives in nineteenth century Montreal is to study wives in general. Nevertheless, they remain an important

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<sup>116</sup> Ann Jones, *Women Who Kill* (New York: Fawcett Columbine, 1980) at *xvi*.

component of any discussion related to family violence.

In discussing cases of murderesses, three distinctions should be made. The first is the observation that women were less likely to engage in murderous violence than were men.<sup>117</sup> Victorian wives, like their modern-day counterparts, were more likely to be victims of spousal murder than perpetrators.<sup>118</sup> Notwithstanding that fact, some commentators have noted that women were charged with homicide at proportionately greater levels.<sup>119</sup> Each such instance was deeply unsettling to public sensibilities, as the wife who armed herself against her husband flew in the face of convention and the cult of Victorian womanhood. Secondly, women traditionally tended to commit private rather than public acts of mayhem; that is, they were much more likely to direct their rage against intimates rather than members of the public.<sup>120</sup>

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<sup>117</sup> Compare Mary S. Hartman, *Victorian Murderesses* (New York: Schocken Books, 1977) 5 (nineteenth century England and France).

<sup>118</sup> In 1995, thirty-eight percent of domestic homicides involved women killed by spouses and partners, in contrast to fifteen percent for men. See *Women in Canada: A Statistical Report* (Ottawa: Statistics Canada, 1995) at 103. Women committed fourteen percent of all homicides, and fourteen percent of all attempted murders. See *ibid.* at 101.

<sup>119</sup> See e.g. *ibid.* at 100; Hartman, *supra* note 117 at 5.

<sup>120</sup> See generally F. Murray Greenwood & Beverley Boissery, *Uncertain Justice: Canadian Women and Capital Punishment 1754-1953* (Toronto: Osgoode Society, 2001) 18; J.M. Beattie, *Attitudes Toward Crime and Punishment in Upper Canada, 1830-1850, A Documentary Study* (Working papers of the Centre of Criminology: Toronto, 1977) 201 (arguing that wives tended to kill people in their domestic circle or neighbours) [hereinafter *Attitudes*]. Some scholars have argued that while women were most often charged with killing intimates, children were their most likely victims rather than husbands or lovers. See e.g. Mary Beth Wasserlein Emmerichs, "Trials of Women for Homicide in Nineteenth-Century England," 5 *Women & Crim. Just.* 99 (1993) at 99-100. Emmerichs further noted that men were most often charged with killing strangers, wives or acquaintances. See *ibid.* at 100. For examples of women executed for killing their husbands, see Patrick Wilson, *Murderess: A Story of the Women Executed in Britain Since 1843* (London: Michael Joseph Limited, 1971) 21-25 & 136-142.

There was also an important legal distinction in cases of husband murder--for most of the period under examination that act constituted the crime of "petit treason" or "petty treason." Treason first became a statutory offense in England during the reign of Edward III.<sup>121</sup> That offense, traditionally viewed as one of the most villainous imaginable, took two forms: high treason, an offence against the Crown; and petit treason, an offence against one's lord.<sup>122</sup> Those were inherently crimes against the social order, disrupting balances of power and treacherously striking at the heart of hierarchal relationships based on fealty and responsibility. The offence of petit treason was limited to quite 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."<sup>123</sup>

In keeping with the view of treason as involving treachery, petit treason required a showing of the related element of premeditation or malice aforethought. If the murder was the result of sudden passion or self-defense, the appropriate charge was

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<sup>121</sup> *Statute of Treasons*, 25 Edward III, st. 5, c.2 (1351) (U.K.). Cleveland has noted that it was probably an offense under the common law before that time. See Arthur Rackham Cleveland, *Women Under the English Law, From the Landing of the Saxons to the Present Time* (London: Hurst & Blackett, 1896) 95.

<sup>122</sup> William S. Holdsworth, in *A History of English Law* (London: Methuen & Co, Ltd, 1923) vol. 2 at 449-450, observed that the offence of petit treason helped preserve "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" *Can. J. Women & Law* 335 (1989/1990) at 345; Cleveland, *supra* note 121 at 95.

<sup>123</sup> *Statute of Treasons*, *supra* note 121.

manslaughter.<sup>124</sup> It has been suggested that the law of petit treason was a “logical extension” of the law related to married women, as under the common law a wife was deemed to become a *fem[m]e covert* and lost her legal identity to her husband.<sup>125</sup> As such, their identities became merged into one, represented by the husband. However, wives were not the only persons subject to that charge, or even the only family members, as the crime also encompassed sons who murdered their fathers.<sup>126</sup>

Petit treason, like all forms of treason, was more ignominiously punished than other offenses. The traditional punishment for treason was drawing-and-quartering.<sup>127</sup> For women convicted of any form of treason, the applicable punishment was traditionally death by burning at the stake, and that remained the law in England from 1351 until 1790.<sup>128</sup> Common law jurists, among them the eminent William Blackstone,

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<sup>124</sup> See Gavigan, *supra* note 122 at 348-349.

<sup>125</sup> See *e.g. ibid.* at 341.

<sup>126</sup> See *e.g.*, A.N.Q.M., KB(F), *Domina Regina v. Romuald Brault dit Pominville* (19 January 1842) (son charged with petit treason for killing his father found not guilty by reason of insanity). See also *The Montreal Gazette* (3 April 1842).

<sup>127</sup> That ghastly form of execution involved drawing, hanging, disemboweling, and beheading, followed by quartering of the body. See generally F. Pollock and F. W. Maitland, *The History of English Law*, vol. 2 (Cambridge: Cambridge University Press, 1978, 2<sup>nd</sup> edition) 500-501; Cleveland, *supra* note 121 at 95. This mode of execution gradually gave way to hanging.

<sup>128</sup> “An Act for discontinuing the Judgment which has been required by Law to be given against Women convicted of certain Crimes and substituting another Judgment in lieu,” 30 George III c.48 (1790) (U.K.). See also Gavigan, *supra* note 122 at 365-366; Ruth Campbell, “Sentence of Death by Burning for Women,” 5 *J.Legal Hist.* 44. (1984) at 44; Maeve Doggett, *Marriage, Wife-Beating and the Law in Victorian England* (London: Weidenfeld & Nicolson, 1992) 50; Anna Clark, “Humanity or Justice? Wifebeating and the Law in the Eighteenth and Nineteenth Centuries” in Carol Smart, ed., *Regulating Womanhood, Historical Essays on Marriage, Motherhood and Sexuality* (London & New York: Routledge, 1992) 188; Cleveland, *ibid.* at 176.

postulated that this difference in penalty was prompted by societal conceptions of female modesty that militated against the spectacle of women's bodies being publicly mutilated.<sup>129</sup> While the benefit of strangulation was not an official part of the sentence, many women so condemned were mercifully garrotted before the fire was lit. Others, however, were all too alive as they were slowly consumed by the flames.<sup>130</sup>

The mode of punishment imposed on conviction may have been one factor that fueled the traditional prosecutorial strategy of charging an accused with petit treason as well as murder, as prosecutors and juries may have been loath to subject an accused to the possibility of such a barbarous death.<sup>131</sup> A late-eighteenth-century English case established that murder was an included offence in a charge of petit treason.<sup>132</sup> Reciting both charges in an indictment may also have provided evidentiary advantages for prosecutors, as the crime of petit treason required the testimony of two witnesses to the crime, an evidentiary hurdle not required to make out a charge of murder.<sup>133</sup> It was not until 1828 that the English Parliament reduced the crime of petty treason to that of

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<sup>129</sup> See generally Gavigan, *ibid.* at 336; Campbell, *ibid.* at 54; Cleveland, *ibid.* at 95. That explanation is unconvincing, as the form of execution was gruesome and, unless the condemned was strangled first, also excruciating. By the mid-1700s the punishment for men convicted of treason was hanging, a mode of punishment preferable to burning at the stake.

<sup>130</sup> See generally Campbell, *ibid.* at 44-45; Doggett, *supra* note 128 at 50; Gavigan, *ibid.* at 359-361; Jones, *supra* note 116 at 19.

<sup>131</sup> Compare Gavigan, *ibid.* at 350.

<sup>132</sup> *King v. Henrietta Radbourne*, (1787) 168 Eng. Rep. 330; 1 Leach 456 (cited in Gavigan, *ibid.*).

<sup>133</sup> See generally Gavigan, *ibid.* For an example of a Montreal case where that heightened evidentiary burden resulted in acquittal on a charge of petit treason, see *infra* at 60-65 (case of Elizabeth Ravarie dit Francoeur).

murder.<sup>134</sup> After that time, the procedure and concomitant penalty were identical to those of an ordinary murder prosecution. Petit treason was repealed in Upper Canada in 1833;<sup>135</sup> similar changes in the law took effect in Lower Canada in 1842, superseding a provincial statute passed in 1801.<sup>136</sup>

As reflected in *Figure II*, the number of cases of husband murder that came to the attention of Montreal authorities was small, amounting to three cases, comporting with the general experience of other jurisdictions.<sup>137</sup> Women accounted for three out of fourteen (21.4%) of identified cases alleging spousal homicide in Montreal during the years 1825 to 1850. As shown, only one such case resulted in conviction, and that on the lesser charge of manslaughter. Statistics for various English jurisdictions during the late-

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<sup>134</sup> “Offenses Against the Person Act,” 9 George IV c. 31 s.2 (1828) (U.K.). See also Doggett, *supra* note 128 at 49; Gavigan, *ibid.* at 367; Campbell, *supra* note 128 at 44. Campbell noted that usage of the term “petty treason” declined in popularity in England during the eighteenth century. See *ibid.* at 51.

<sup>135</sup> See Greenwood & Boissery, *supra* note 120 at 98.

<sup>136</sup> “An Act for Consolidating and Amending the Statutes in this Province Relative to Offences Against the Person,” 4 & 5 Vict. c. 27 s. II (1841) (L.C.):

And be it enacted, That every offence, which before the commencement of this Act would have amounted to Petit Treason, shall be deemed to be Murder only, and no greater offence; and all persons guilty in respect thereof, whether as principals or as accessories, shall be dealt with, indicted, tried and punished as principals and accessories in Murder.

That Act superseded 41 Geo. III c. 9 (1801) (L.C.) (legislation governing punishment for murder and treason).

<sup>137</sup> Compare Lepp, *supra* note 6 at 443 & 526 (twenty-six alleged husband murderers in Ontario between 1830 and 1920).

eighteenth to early-nineteenth century record a handful of convictions for that crime,<sup>138</sup> while Gavigan found fourteen cases of women convicted of petit treason in England from 1551 to 1763.<sup>139</sup> In cases of family homicide, the crime of husband murder was historically a poor runner-up to the crime of uxoricide.<sup>140</sup>

*Prosecutions of Wives for Murder, 1825-1850*

Year	Offense	Disposition	Sentence
1827	Petit treason	Acquitted	--
1840	Petit treason	Convicted of manslaughter	2 years' imprisonment
1847	Murder	Acquitted	--

*Figure II.*

The first of the Montreal defendants charged with petty treason was Mary Hunter, accused of having strangled her husband in 1827. That case is anomalous insofar as the surviving primary sources are concerned, as only one perfunctory account was found. Given the high degree of public interest that typically attended such cases,

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<sup>138</sup> Compare Gavigan, *supra* note 122 at 368 and notes 189-191.

<sup>139</sup> See *ibid.* at 373 (Appendix I). Compare *La Revue* (18 January 1845) (citing 159 wives accused of murdering or attempting to murder their husbands in France during 1844 to 1845).

<sup>140</sup> Compare Pleck, *supra* note 31 at 222 (noting that family murder usually involved male aggression against females, and that the most common variety was uxoricide, followed by husband murder); Wilson, *supra* note 120 at 23. Wiener has indicated that the ratio of wife killings to husband killings was four to one in early-nineteenth century England, rising to twelve to one in the 1890s. See Wiener, *supra* note 108 at 489 note 77. See also *Crime in the United States*, *supra* note 33 at 25 (stating that in 2001, 142 husbands were murdered by spouses, versus 600 wives).



that absence of coverage likely reflects gaps in surviving newspapers. Fortuitously, the file related to that case in the archives of the Court of King's Bench is voluminous and includes correspondence that provides important context relating to the circumstances leading up to Hunter's trial. In addition, Chief Justice Reid's bench book for that period has survived, which contains his transcriptions of the testimony of witnesses and thereby affords an additional source of information on the trial itself.

The case is also a fascinating one, insofar as the Crown had significant difficulty in prosecuting Hunter due to a lack of cooperation by several of the people involved. The case file contains a variety of correspondence indicating that some parties to the investigation were working at cross-purposes. One such letter was from Dr. William Woods, a surgeon who was also the Justice of the Peace who committed her. His letter not only evidences sympathy for Hunter, but also his belief that she was insane at the time of the crime. Indeed, Dr. Woods' reluctance to prosecute her was to cause considerable controversy. As he wrote to Samuel Gale, a prominent Montreal jurist, on 4 January 1827:

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 from what I can learn from the witnesses who are acquainted with her has been the most mild and exemplary. [B]y the first post Capt. Hagan will send in the verdict of the jury and coroner on the inquest and the depositions of witnesses. I shall likewise send in the names of the witnesses to be

summoned on the part of the crown. I have the honour to be sir your most ob't servant, William Woods J.P.<sup>141</sup>

Captain Hagan, the local Captain of the Militia, played a central role in this prosecution. It is clear, however, that he felt stymied by the uncooperative attitude of various protagonists in that case, most notable Dr. Woods. In a letter Hagan wrote four days later, he asserted that subsequent to the jury of inquest's verdict, Dr. Woods was in a room with Mary Hunter. When Hagan asked Dr. Woods what she had said, he told Hagan that she had admitted strangling her husband with a rope that she later burnt. Hagan closed his letter by emphasizing that he would be willing to testify to the above, and that the bearer of the letter (whose identity was not specified) could also provide "more satisfaction" if examined. In a postscript, Captain Hagan added, "[h]ave the goodness to examine the bearer closely." Apparently, Samuel Gale did so but was unimpressed, as an annotation was added in a different hand that read, "the bearer knew nothing except from hearsay. S.G."<sup>142</sup>

Dr. Woods, however, was not the only obstacle faced by those such as Captain Hagan who wanted to see justice done. One of the Hunter's neighbours deposed that it was his "candid opinion" that William Hunter (no relation) and his wife Margaret Kerney, two of the Crown's principal witnesses, were intending to flee the province in

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<sup>141</sup> A.N.Q.M., KB(F), *Dominus Rex v. Mary Hunter* (4 January 1827) (letter from William Woods, J.P.). 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."

<sup>142</sup> A.N.Q.M., KB(F), *Dominus Rex v. Mary Hunter* (8 January 1827) (letter from Hugh Hagan).

order to avoid testifying.<sup>143</sup> Allegations such as these would not have made Captain Hagan more assured about the prospects of successful prosecution, and his frustration was clearly to grow with time. In a letter dated 20 February 1827, he wrote:

From the period that this murder happened I assure you I have had a great deal of trouble & lost time in order to sift the bottom of it & to secure witnesses for the trial; add to which that as I could not place confidence in Doctor Woods to bring this unfortunate woman to justice from his kind treatment to her; I consulted Colonel Byrne in whom I could place every confidence & whom I have always found ready to interfere as a magistrate where the public good is concerned. I have this day bound myself and Mr. Beaudreau Notary Public to attend, but on Colonel Byrne, and mine going to bind over the rest, we were interrupted by Doctor Woods who came where we were and told some of the witnesses that he was to get summonses from you and that unless they were summoned they would not be paid, by this means some of them said they would not go till summoned, and to close this scene took wholly on himself to have them summoned for the 25<sup>th</sup> instant[,] therefore, Colonel Byrnes thought well to decline proceeding to take steps till he hears from you; if summonses be sent here we shall do our duty but I thought best to write in order to inform you that we dread Doctor Woods will...by any means keep back the trial, from his extraordinary kindness to that woman subsequent to the murder, a narrative of which you shall hear on my going to town.<sup>144</sup>

The “extraordinary kindness” shown by Dr. Woods obviously was seen by Captain Hagan as hampering the administration of justice. Captain Hagan, however, was trying to fulfill the responsibilities of his position, while Dr. Woods arguably had greater latitude to follow the dictates of his conscience.

In fulfilling his role as a minor judicial official, Captain Hagan diligently went about securing sworn statements from witnesses that could be used in building up a

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<sup>143</sup> See A.N.Q.M., KB(F), *Dominus Rex v. Mary Hunter* (5 February 1827) (deposition of Owen Barry).

<sup>144</sup> A.N.Q.M., KB(F), *Dominus Rex v. Mary Hunter* (20 February 1827) (letter from Captain Hugh Hagan).

dossier against Mary Hunter. Several of those depositions added little except the deponents' belief, based on their observation of the marks around William's neck, that he likely had been strangled.<sup>145</sup> A deposition by a juror present at the inquest stated that, during the examination of the body, Dr. Woods opened the victim's neck and "shewed for the satisfaction of the said jury, a large vein...filled up with dark coloured stagnated blood." The medical evidence, as well as the marks around his neck, led him to believe that William had been murdered.<sup>146</sup>

Several of the affidavits contain more information helpful in recreating the circumstances surrounding William's death. One such affidavit contains more second-hand information on what had transpired that fateful night. John Ashton had likewise served as one of the coroner's jurors, but was also a close neighbour of the Hunters. He claimed that the morning following William's death, Mary told him that the previous evening the two of them had returned home from the Gordons'. As William seemed ill, she gave him a glass of liquor, which made his condition worsen.

Shortly afterwards Mary returned to the Gordons' home to seek assistance, and when she arrived back at her own home after twenty minutes' absence she claimed that her husband was dead. As one of the jurors at the inquest, Ashton had examined the

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<sup>145</sup> See A.N.Q.M., KB(F), *Dominus Rex v. Mary Hunter* (28 February 1827) (deposition of Mary Ashton) (stating that she "knows nothing of the manner in which he came by his death" but that a "dark mark on his neck" caused her to suppose he could have been strangled.); *Dominus Rex v. Mary Hunter* (28 February 1827) (deposition of George Gardner) (appearance of the deceased's neck led him to believe he was "choaked by a rope placed round his neck."); *Dominus Rex v. Mary Hunter* (1 March 1827) (deposition of Patrick Murray).

<sup>146</sup> A.N.Q.M., KB(F), *Dominus Rex v. Mary Hunter* (1 March 1827) (deposition of William Breakey).

body and found an imprint on William's neck that appeared to have been caused by a small cord or rope. He further alleged that Dr. Woods told him that Mary had confessed in the presence of another witness, stating that she had choked William with a rope and then disposed of it in the stove. In light of those circumstances, Ashton deposed that he "verily believes that the said William Hunter, deceased, was so strangled and murdered by the said Mary Hunter."<sup>147</sup>

Another neighbour, John Gordon, had spent a pleasant evening with the Hunters at his home shortly before William's death. The four had shared tea and reduced rum, and all appeared to be in good spirits. Gordon further maintained that he had "never observed any thing but cordiality and good will" between the couple for all the time they lived as neighbours. Approximately two hours later, Mary returned to the house and said "I wish you to come over, Billy is very bad." He went to her house and saw William lying dead by the stove, fully clothed except for shoes and stockings and wearing a nightcap. His lips were swollen, bloody and covered with froth, and his tongue protruded between his teeth. At Mary's behest he fetched John O'Keefe, another neighbour, and the two then shaved and laid out William's body.

Gordon, for his part, seemed reluctant to ascribe responsibility for William's death to his wife, but was explicit that he believed William had been strangled; apparently he found Mary's statement that he always tied his nightcap tight around his

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<sup>147</sup> A.N.Q.M., KB(F), *Dominus Rex v. Mary Hunter* (28 February 1827) (deposition of John Ashton).

neck to be unconvincing.<sup>148</sup> O'Keefe's deposition comported with that of Gordon, but added that Mary told him that "she did not hang him and that deponent should cover [the body] over by putting on a dickey or half shirt to conceal it, adding that he had no particular friends in this country that wanted to see him." O'Keefe, in keeping with all of the other depositions, expressed his belief that Mary was a murderess.<sup>149</sup>

Another memorandum found in the files but without date or identifying information, purported to be a list of actions taken by Dr. Woods that demonstrated his disinclination to help prosecute Mary Hunter:

- 1<sup>st</sup>. That Doctor William Woods....on the 31<sup>st</sup> of December last the night of the inquest held on the deceased William Hunter did wish to get the concurrence of Captain H. Hagan to let Mary Hunter escape.
- 2<sup>nd</sup>. That he the said William Woods Esquire did speak to George Gardner to tell Mary Hunter to go away if she were guilty of the murder.
- 3<sup>rd</sup>. That the said Woods took Mary Hunter in his sleigh the next morning to his own house and kept her there two nights, after agreeing to put her into the custody of the Bailiff and carried along with him a quantity of tea and sugar belonging to the deceased as a remuneration for his services;
- 4<sup>th</sup>. That Woods slept the subsequent Saturday night in the house where the murder had been committed and from that carried along with him a quantity of butter[,] witness John O'Keefe.
- 5<sup>th</sup>. That Woods took charge of some cash which he said Mary Hunter had given him being all her wealth in money[,] witness H. Hagan.
- 6<sup>th</sup>. That the aforementioned Woods, did someday this week, tell some of the witnesses for the Crown that they were to attend at the Court house at five o'clock in the evening after which he brought them to Mr. O'Sullivan to be examined by him. Witness George Gardner, etc.

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<sup>148</sup> See A.N.Q.M., KB(F), *Dominus Rex v. Mary Hunter* (28 February 1827) (deposition of John Gordon) (stating that the "deponent thinks that the deceased was strangled which however is only his opinion from the appearance of the corpse.").

<sup>149</sup> See A.N.Q.M., KB(F), *Dominus Rex v. Mary Hunter* (26 February 1827) (deposition of John O'Keefe).

7<sup>th</sup>. That Woods did interfere with some of the witnesses while Colonel Byrne was about binding them over to attend the Court of King's Bench, and told them that they would be fools, were they to bind themselves over, asserting they would be paid for their attendance at Court. Witness John O'Keefe etc.

8<sup>th</sup>. That Woods, some days after preventing Colonel Byrne from doing his duty in binding over some of the witnesses, through Woods investigation, bound them over himself in order to save his reputation as it were.

9<sup>th</sup>. That Woods asserts that were this to be done over again he would do the same.<sup>150</sup>

Despite personal misgivings, Dr. Woods nevertheless committed Mary to prison on 5 January 1827.<sup>151</sup> A true bill was found against her, and she was remanded to stand trial.<sup>152</sup> On 9 March 1827 her trial commenced before the Court of King's Bench. The proceedings "naturally excited the most intense interest, and the Court House was crowded to excess."<sup>153</sup> There is no information on whether she was represented by legal counsel, although it is clear that witnesses were cross-examined. The testimony appears to have mirrored that found in the depositions. One witness was not represented in the depositions in the files of this case, although she testified at trial. The crux of her evidence as recorded by Justice Reid was her opinion that William had tied his nightcap on too tightly. On cross-examination Mrs. Gordon noted that the Hunters had "passed the evening at their house very happily and that there had been no indication of any discord." John O'Keefe reiterated that he was strongly of the opinion that William had

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<sup>150</sup> A.N.Q.M., KB(F), *Rex v. Woods* (undated & unsigned memorandum).

<sup>151</sup> See A.N.Q.M., MP(GR) no. 705 (Mary Hunter, charged with "feloniously killing her husband," committed 5 January 1827).

<sup>152</sup> See *The Montreal Gazette* (1 March 1827).

<sup>153</sup> *The Canadian Courant* (14 March 1827).

been strangled, as the injuries did not look self-inflicted nor did the body appear to be in a position that would suggest an accident.<sup>154</sup>

The principal witness at trial was Dr. Woods. He testified that a good deal of violence had to be applied to cause such injuries, and that after the inquest he had shared his suspicion with Mary that she had murdered her husband. Her reply was that “God was powerful and she had prayed to him to assist her,” a response that could be interpreted in different ways. When asked if she used a rope to strangle him she allegedly replied in the affirmative, adding that she had incinerated the evidence. She seemed indifferent, he claimed, to the events that had taken place. Dr. Woods testified that he told her that she “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,” at least confirming Captain Hagan’s assertions that the physician had attempted to avoid prosecution. She refused, however, saying she had done nothing wrong and would not leave her house. As the doctor took her home, she broke into hysterical laughter and said it was not possible that William was dead, promoting Dr. Woods to question whether she was pretending to be insane. At the funeral she steadfastly maintained that her husband still lived, and appeared to be “in a stupor and insensible to the cold.” While these actions might be feigned “to cover a crime,” as far as Dr. Woods could tell that was not the case.<sup>155</sup>

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<sup>154</sup> N.A.C., Bar of Montreal, James Reid Papers, Criminal Cases [hereinafter Reid], *King v. Mary Hunter* (9 March 1827).

<sup>155</sup> *Ibid.*



The parts of Dr. Woods' testimony recorded by Justice Reid would seem to have been damning insofar as Mary's guilt was concerned, but left open the possibility that she was mentally unbalanced. *The Canadian Courant*, however, had a different analysis of his testimony, stating that the "testimony of the Physician who examined the body of the deceased was in favor of the pannel at the Bar as it evidenced that he was not strangled." Given the truncated forms of Justice Reid's notes and that of *The Courant's* coverage, it is not possible to unqualifiedly establish what Dr. Wood actually said at trial. However, Reid's notes, coupled with Wood's deposition and correspondence, belie the *Courant's* assertion that he testified William Hunter had not been strangled. The paper went on to observe that the jury "had a most serious task to perform," as notwithstanding the doctor's testimony there were a "number of concurring circumstances in the examination of the witnesses," as well as the evidence of her own confession.<sup>156</sup> Obviously Mary's mental competency was at issue, although Reid's notes merely indicate that witnesses attested that she was a "childish woman, but knew right from wrong" and that the defence demonstrated that she was of "weak intellect."<sup>157</sup>

The jury grappled with the evidence for the nearly unheard-of period of twenty hours.<sup>158</sup> It then returned but the jurors were not agreed on a verdict, and requested that Wood's testimony be read to them again, which was done. They deliberated for a

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<sup>156</sup> *The Canadian Courant* (14 March 1827).

<sup>157</sup> N.A.C., Reid, *King v. Mary Hunter* (9 March 1827).

<sup>158</sup> See *The Canadian Courant* (14 March 1827) (figure italicized in original for emphasis).

further ten minutes before returning a verdict of acquittal.<sup>159</sup> While Reid's notes give no indication of his thoughts on this outcome, the sole newspaper article states that the Court "expressed their cordial approbation" with the verdict.<sup>160</sup> Mary Hunter was discharged from jail that same day, and thus ended her strange saga.<sup>161</sup> Whatever the import of Dr. Woods' testimony, he proved to be the bane of some of the law's servants, most notably Captain Hagan. Woods' saga, unlike that of Mary, did not end there. Scarcely a year later, his obstructionism was again to be 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 for assault with intent to murder.<sup>162</sup>

In 1847 another high-profile trial of a wife charged with killing her husband resulted in acquittal. The prosecution of Deborah Cowan featured several unusual facets, including considerable pre-trial publicity that suggested she was wrongly accused. When news spread about Robert Cochrane's death, initial accounts characterized it as an obvious murder. *The Pilot*, under the heading "A Man Killed by his Wife," stated that Cochrane had "an altercation with his wife when she stabbed him

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<sup>159</sup> *King v. Mary Hunter*, *supra* note 157; KB(R) (February 1827 minutes book), *King v. Mary Hunter* (10 March 1827) (verdict).

<sup>160</sup> *The Canadian Courant* (14 March 1827).

<sup>161</sup> See A.N.Q.M., MG no.705, *Dominus Rex v. Mary Hunter* (5 January 1827) (on conviction of having "feloniously killing her husband...March 10 discharged by [Court of King's Bench]").)

<sup>162</sup> A.N.Q.M., KB(F), *Dominus Rex v. Dr. William Woods, J.P.* (3 March 1828) (case brought by Thomas Cliff against George Patrick on charge of assault with intent to murder).

in the abdomen with a chisel. The unfortunate man died in less than fifteen minutes.”<sup>163</sup>

As the article also matter-of-factly stated, his wife Deborah Cowan and two of her children were all lodged in jail.<sup>164</sup> That latter fact was incidental to the case, yet it is shocking to modern sensibilities. Prison conditions would have been inimical to children’s health, by virtue of inadequate ventilation and heating, poor diet, and exposure to disease. One can only imagine the emotional pressure on Cowan as she awaited her trial, particularly so if she were blameless in her husband’s death.

As subsequent newspaper accounts would reveal, whether she was culpable in her husband’s death was by no means clear. *The Montreal Gazette*, citing *The [Morning] Courier*, published the following account about the “recent catastrophe in Griffintown”:

We have reason to believe that our contemporary is accurately informed, 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 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, which would not have prevented the committal of the guilty party, if there were one when evidence was obtained.<sup>165</sup>

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<sup>163</sup> *The Pilot* (9 March 1847).

<sup>164</sup> See *The Pilot* (9 March 1847); *The Montreal Transcript* (9 March 1847). For references to children being lodged in jail with relatives in nineteenth century Ontario, see James Edmund Jones, *Pioneer Crimes and Punishments in Toronto and the Home District* (Toronto: George N. Morang, 1924) 72-74.

<sup>165</sup> *The Montreal Gazette* (12 March 1847) (citing *The Courier*). One such heading prefaced an article in *The Montreal Transcript* of 9 March 1847.

*The Gazette*, for its part, noted that other newspapers had characterized the event as a “horrible murder” but opined that the death was accidental, underscoring that the couple had lived together happily. *The Pilot*, in a brief addendum several days later (which, confusingly, cited to *The Montreal Gazette*, which in turn cited to *The Courier*) stated that they “also heard a good character of the women charged with murder. If innocent her case is a very hard one.”<sup>166</sup> Those articles suggested that the jury of inquest’s finding of murder might have been hasty.

It was against that backdrop that on 10 August a true bill was found against Cowan for murder, and her trial was scheduled for the following day.<sup>167</sup> The Crown Prosecutor opened the trial by noting that the circumstances of the case were “singular” insofar as it involved death inflicted by a chisel. As he described the facts, the couple were at tea, talking normally with the children playing around them, when suddenly Cochrane rushed from the room exclaiming “I’m done for! The woman has stabbed me!” Even more striking, he told the jury, was that Deborah did not rush to assist him, but a minute later came out and said “Oh Robert, sure I haven’t harmed you?”--as if she had inflicted the mortal wound, but without intending to kill. As Driscoll observed:

It is a case requiring investigation, and for 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.

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<sup>166</sup> *The Pilot* (16 March 1847).

<sup>167</sup> See *The Montreal Gazette* (11 August 1847).

But Driscoll also noted that there were other circumstances incompatible with guilt, and he emphasized the jury's need to weigh those factors carefully.<sup>168</sup>

One of the alleged facts that confused the matter was a difference of opinion as to what Cochrane had exclaimed as he rushed out the room before collapsing. One neighbour remembered that he blurted out, "I am ruined for ever!" and "the woman has struck me with a knife." He also alleged Cowan came out after a minute or so, saying "What will I do? What will I do?" and merely stood looking at him as he lay dying on the floor.<sup>169</sup> Another neighbour at the scene recalled Cochrane's last words differently – "I'm a gone man! I'm stabbed." As she put wool in his wounds to try to stem the bleeding, Cowan came out and said "Robert, Robert, what's happened?" and "Robert, sure I've done nothing to you?" The neighbour believed Cowan had nothing to do with the homicide, and added that she had never heard them quarrel.<sup>170</sup> Several other witnesses corroborated that evidence.

A former Army physician named James Crawford conducted the post mortem on the body, and found a wound that had severed three arteries on the front of Cochrane's thigh near his groin. He showed the jury a section of the arteries that he had excised and placed in a jar of alcohol, indicating the damage caused by the chisel. Given that the

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<sup>168</sup> See *The Montreal Gazette* (14 August 1847); *The Montreal Transcript* (17 August 1847).

<sup>169</sup> *Ibid.* (testimony of James Connel).

<sup>170</sup> *Ibid.* (testimony of Isabella Barry). *The Montreal Transcript* of 17 August 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."

wound was horizontal and ran upwards, he testified that Cochrane was probably 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 itself sought clarification on a number of points, eliciting commentary to the effect 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 in his hand might have been responsible.

After the Crown rested, the defense counsel presented its case-in-chief. While they may have called more than one witness, the only witness mentioned in the records was Reverend Adamson, the couple's priest, who spoke in glowing terms about Cowan's character. She had always acted with the "utmost propriety of conduct," he noted, and was a "kind and affectionate wife and mother."<sup>171</sup> After the defense concluded its case, the jury quickly found Cowan not guilty and she was discharged.<sup>172</sup> The ambiguity of the injury sustained by Cochrane, as well as the circumstances surrounding the incident and lack of any discernable motive, probably led the jury to conclude that the injury, if not self-inflicted, was more likely due to misadventure than to malice.

The third such prosecution for husband murder was that of Elizabeth Ravarie *dit* Francoeur, who in 1840 was arrested for having killed her husband, Augustin Legault Desloriers, a farmer in the Seignory of Soulanges. What makes that case intriguing is the

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<sup>171</sup> *The Montreal Gazette, ibid; The Montreal Transcript, ibid.*

<sup>172</sup> A.N.Q.M., KB(R) (August 1846-August 1849) p.185, *Queen v. Deborah Cowan* (verdict).

fact that Ravarie's husband survived for several weeks after the assault. The highly unusual consequence of his survival was that Desloriers had occasion to swear a complaint against his wife before a local Justice of the Peace, thus supplying historians with his account of the events leading up to the attack and facilitating her conviction.

According to Desloriers' affidavit, on 20 April 1839 at approximately eight o'clock in the evening, the couple was alone at home after she had returned from a neighbour's party.<sup>173</sup> While he was lying on the floor, she admonished him to say his prayers. As he knelt on the floor to pray, he noticed that she appeared agitated. While he continued to pray, she "suddenly struck him a blow to the right side of his head with an axe, inflicting a large wound." As he attempted to raise himself from the floor he found Francoeur poised to strike him again, but was able to wrest the axe away from her. Desloriers called for help from two men nearby, and those bystanders helped him inside and applied pressure to stop the bleeding, during which time his wife made no attempt to approach him. In light of those facts, he dryly deposed, he no longer felt safe living with her and requested "justice in the premises."<sup>174</sup>

While the wound was not perceived to be immediately life-threatening, Dr. Lay, Desloriers' attending physician, was uncertain about the prognosis for his recovery. As his rather equivocal note reads:

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<sup>173</sup> There was some confusion over the date of the attack, the husband alleging it was 20 April, the prosecutor at trial claiming it was 21 April, while Francoeur's deposition gave a date of 22 April, the latter of which coincides with the information provided in Dr. Lay's affidavit.

<sup>174</sup> A.N.Q.M., KB(F), *Domina Regina v. Elizabeth Ravarie dite Francoeur* (8 May 1839) (affidavit of Augustin dit Desloriers).

I have attended Augustin Legault said Deslauriers for a wound in the head being a slight fracture of the skull since...about thirty hours after the wound was inflicted[;] [I ] examined the wound at the time and found it very dangerous, the man was then in his perfect senses[;] I have attended him since, and hope his life is not in danger but at [present] I cannot pronounced him out of danger [as] should any inflammation arise his life would be in great danger I therefore cannot say he is not in danger.<sup>175</sup>

The same day that Dr. Lay attested to Desloriers' condition, his wife underwent a lengthy voluntary examination before John Simpson, Esquire. Several weeks had elapsed before Francoeur was arrested, much to the chagrin of at least one newspaper.<sup>176</sup> Francoeur's affidavit, sworn to after her arrest, was a disjointed four-page account uninterrupted by punctuation and containing few internal markers of time. As a consequence, it is not always clear when the events alluded to occurred. Despite those handicaps, Francoeur's affidavit, like that of her husband, provides an invaluable portal into her case. Francoeur's account leaves little doubt that she viewed their marriage as severely troubled:

[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 even allowed to sing[,] he said I sang bad songs and wanted to throw me out....I was not allowed to read my prayer books which he said were bad books and threatened to toss into the fire....<sup>177</sup>

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<sup>175</sup> A.N.Q.M., KB(F), *ibid.* (11 May 1839) (deposition of J.J. Lay, M.D.).

<sup>176</sup> *The Montreal Transcript* (4 May 1839) ("Yet strange to say, although this occurred on the night of April 21<sup>st</sup>, the woman was residing with her father and mother at Coteau du Lac on May 2d, without any steps having been taken to bring her to justice.").

<sup>177</sup> A.N.Q.M., KB(F), *Domina Regina v. Elizabeth Ravarie dit Francoeur* (11 May 1839) (voluntary examination of Elizabeth Ravarie dite Francoeur) (author's translation).



Desloriers' husband was deeply disapproving of Ravarie's lifestyle, accusing her of being sexually dissipated. While her affidavit does not provide a clear time-line, she apparently averred that on the day of the incident her husband arrived home, opened the front door and made the sign of the cross, saying that "the devil is in the house." He then "grabbed me and threw me out of the door three times, the last time he threw me to the ground in the mud."<sup>178</sup>

While Ravarie did allege that her husband threw his shoes at her that evening, and had slapped her before throwing her out of the house, her account barely addressed the substance of the charges against her. Indeed, her version of events is not clear, although she denied having attacked her husband with the axe in question:

[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....<sup>179</sup>

Although Desloriers appeared to be on the path to recovery, he succumbed to his injuries on 27 May, five weeks after the assault. Francoeur was then charged with petit treason and a grand jury found a true bill against her during the fall term of the Court of Queen's Bench.<sup>180</sup> Her trial was fixed for the March 1840 term, but was postponed due

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<sup>178</sup> *Ibid.* (author's translation).

<sup>179</sup> *Ibid.*

<sup>180</sup> See *L'Ami du Peuple* (2 October 1839).

to the absence of a material witness.<sup>181</sup> Following the postponement, Ravarie--who had been imprisoned for nearly a year by that time--petitioned the Court for a writ of *habeas corpus* securing her release on bail:

[Y]our petitioner is detained in the common goal of the said district charged with the crime of Petit Treason. That she is altogether guiltless of the offence imputed to her. That she has been confined upon the said charge since the spring of the year 1839 and has in consequence suffered materially in her health. That she was desirous of being brought to trial in the cause of the last criminal session of the said court--that a day was in fact fixed for the trial, but on the application of her Majesty's Attorney General founded upon the alleged absence of a supposed witness [the trial was postponed]....That your petitioner conceiving that under all the circumstances that she ought to be enlarged upon bail humbly prays that your Honors will be pleased to award to her a writ of Habeas Corpus addressed to the Keeper of the Common Gaol.<sup>182</sup>

The Attorney General, according to a notation found on that petition, consented to her being bailed in the amount of £500 with two sureties of £250 each.<sup>183</sup>

Ravarie was finally tried before the Court of Oyer and Terminer and General Gaol Delivery, an irregular court of criminal jurisdiction, on 16 November 1840--more than one and a half years after the assault had taken place. She was represented by no less than two defense attorneys, while Henry Driscoll, Esquire, Q.C., appeared for the Crown. The witnesses' testimony disclosed that the two spouses had a volatile relationship during their short marriage. Ravarie was known to have had a propensity for violence, and frequently socialized with a group of young men and women of whom

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<sup>181</sup> A.N.Q.M., KB(R) p.48, *Queen v. Elizabeth Ravarie* (2 March 1840). See also *The Montreal Gazette* (3 March 1840).

<sup>182</sup> A.N.Q.M.; KB(F), *Petition of Elizabeth otherwise called Betsy Ravarie dit Francoeur* (21 March 1840).

<sup>183</sup> *Ibid.*

her husband disapproved. In fact, the evening of the incident, her husband had apparently forbidden Ravarie from visiting a neighbour's house where a group of her friends were gathered. While Desloriers was recuperating from his injuries, a neighbour was called on to act as mediator to "effect a reconciliation between them," an undertaking that unsurprisingly proved futile. That neighbour was the only prosecution witness, as he had heard Ravarie confessing the details of the assault during a conversation between the two spouses.<sup>184</sup>

After the Crown rested its case, based largely on the testimony of that neighbour, Ravarie's counsel rose to present her defense. In what must have been a moment of high drama, Justice Pyke interrupted the proceedings. Under the existing law, the Justice explained, the crime of petit treason--like all forms of treason--required the inculpatory testimony of at least two witnesses in the absence of a defendant's confession. In the instant trial, he continued, the Crown had offered the testimony of only one witness, and therefore could not prove the offense as charged. As such, Pyke stated, the defense would be presenting their evidence at their peril.<sup>185</sup>

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<sup>184</sup> Identical accounts were found in *The Montreal Gazette* (19 November 1840) and *The Montreal Herald* (19 November 1840). The Court of Oyer and Terminer and General Gaol Delivery was convened in 1840 in order to deal with the backlog of criminal cases due to the suspension of civilian courts during the Rebellions of 1837-1838.

<sup>185</sup> See *The Gazette* and *The Herald*, *ibid.* To clarify that fine point of law, the newspapers went so far as to include the following legal footnote:

Blackstone's Commentaries, vol. 4 page 324--In all cases of High Treason, Petit Treason, and Mis-prison 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 defense followed the Justice's admonition and rested its case, probably assuming that the disadvantages of not defending against the allegations were outweighed by the possibility of unwittingly strengthening the Crown's case. In sending the case to the jury, Justice Pyke reiterated that they could not find Ravarie guilty of petit treason under the facts as presented, but only of murder or manslaughter. The jury withdrew for a short time before returning a verdict of guilt on the lesser charge of manslaughter. The Court sentenced Ravarie to two years in the House of Correction. Unfortunately, no account of the Justice's sentencing remarks has survived.<sup>186</sup>

If the popular press is any indication, there was considerable surprise and perhaps even dismay at the jury's verdict.<sup>187</sup> Perhaps members of the public felt that the murder charge was fully supported. Regardless, the Francoeur case was an instance where the complexities of the common law were an important factor shaping the ultimate outcome, although the fine points of the law were complimented by mercy on the judge and jury's part.<sup>188</sup> If not for the technical requirements of a finding of petit treason, or if she had been charged with murder rather than petit treason, one would assume Francoeur would likely have been convicted under the facts as presented. After

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<sup>186</sup> A.N.Q.M., KB(R) p.53-54, *Queen v. Elizabeth Ravarie* (17 November 1840) (verdict); p.117, *ibid.* (5 December 1840) (sentence). See also *The Montreal Gazette* (8 December 1840); *The Montreal Transcript* (8 December 1840); *L'Aurore* (22 November 1840) (conviction); *L'Aurore* (7 December 1840) (sentence).

<sup>187</sup> See *The Montreal Transcript* (8 December 1840); *L'Aurore* (22 November 1840); *L'Aurore* (7 December 1840), all of which italicized the verdict of "manslaughter" in their accounts.

<sup>188</sup> For discussion of mercy recommendations in cases of husband murder, see Greenwood & Boissery, *supra* note 120 at 95-97.

all, a husband who survived long enough to swear out a complaint, as well as a witness who had attempted to broker a reconciliation between the two estranged spouses, was powerful evidence for the prosecution. Why Francoeur had not been indicted for murder, in place of or in conjunction with the charge of petit treason, is not known.

The number of cases found for this period is too small to allow for meaningful extrapolation, but commentators have shown that wives usually were victimized for years before exploding into murderous violence, while husbands typically escalated familiar patterns of violence.<sup>189</sup> Historically, a woman like Ravarie who was found to have killed a family member (that is, other than a newborn) was viewed with revulsion, not only for breaching the social compact, but also for having defiled the ideal of femininity. Ironically, however, the incomprehension with which such acts were typically viewed may have benefited some Victorian defendants, as judges and jurors alike were often loath to believe that wives could commit such heinous acts – such unladylike conduct was inexplicable in the absence of some other explanation, such as extreme provocation, mental illness, or the like. Many juries were reluctant to convict women of homicides, regardless of whether the victims were infants or spouses.<sup>190</sup>

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<sup>189</sup> See Pleck, *supra* note 316 at 222-223. See also Wilson, *supra* note 120 at 25 (citing great provocation in cases of husband murder).

<sup>190</sup> With respect to husband murders, Carolyn Strange noted:

Residents 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.

While the sample size of Montreal spousal murders committed by wives is small, it indicates that gender-based leniency or 'chivalric justice' also played a part in Montreal during this period, in much the same way as it surfaced in infanticide prosecutions. This notion of 'chivalric justice' appears to have been deeply-entrenched in many jurisdictions during this century, but should not be confused with evidence of egalitarianism. Not only did it perpetuate stereotypes, but it also served to obscure systemic inequality rather than ameliorate it.<sup>191</sup>

It was also commonly assumed that when women did commit murder, they tended to use untraditional methods such as poisoning, either to compensate for their lack of physical strength or in keeping with their supposed inclination to crimes of stealth.<sup>192</sup> Mary Hartman in her study of Victorian murderesses indicated that twenty-nine out of the forty-three had used poison in the commission of their crimes.<sup>193</sup>

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Carolyn Strange, "Wounded Womanhood and Dead Men: Chivalry and the Trials of Claire Ford and Carrie Davis" in France Iacovetta & Mariana Valverde, eds., *Gender Conflicts: New Essays in Women's History* (Toronto: University of Toronto, 1992) 149 at 149 [hereinafter *Womanhood*]. See also Wilson, *ibid.* at 24-25; Golz, *supra* note 6 at 168; Lepp, *supra* note 6 at 531.

<sup>191</sup> Strange, *Womanhood*, *ibid.* at 151.

<sup>192</sup> For the use of poisons by husband murderers, see generally Frank W. Anderson, *A Dance With Death, Canadian Women on the Gallows 1754-1954* (Saskatoon & Calgary: Fifth House Publishers, 1996) 1-32; Hartman, *supra* note 117 at 10-50; Judith Knelman, *Twisting in the Wind, The Murderess and the English Press* (Toronto: University of Toronto Press, 1998) 71-84, 93-100, and 113-120; Golz, *supra* note 6 at 167; Lepp, *supra* note 6 at 533-536.

<sup>193</sup> See Hartman, *ibid.* at 6. Wilson pointed to seven out of sixty-eight women in his study as being poisoners. See Wilson, *supra* note 120 at 24. See also Lepp, *ibid.* at 530 (ten out of 101 husbands used poison, and ten out of twenty-six wives did so in 1830 to 1920 Ontario).

Contemporary Canadian accounts of husband poisonings were not unknown.<sup>194</sup>

However, assumptions about the frequent use of poisons as murder weapons are not borne out by Montreal cases of this period, notwithstanding the difficulties associated with a sample so limited in size, or the surreptitious nature of the crime.<sup>195</sup> That is not to say that evidence of cases alleging poisoning was not found. For this period, references to two such cases were located, both of which alleged that the wives had accomplices, although neither case appeared to go to trial. The first of those cases, in 1839, involved allegations that the suspect had “aided to assassinate and murder her husband...”, while her accomplice was charged with having “attempted to poison and assassinate and of having administered poison” to the victim in question.<sup>196</sup> The second such instance, in 1848, reveals that a wife was charged with being an “accomplice in

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<sup>194</sup> See *The Montreal Gazette* (19 May 1847):

At Bytown, on the 3<sup>rd</sup> instant, Margaret Dooley was indicted for attempting the murder of her husband by poison, which it was insinuated was supplied to her by a paramour named Hart. She had been sixteen years married to her husband, and he and their daughter and the husband’s sister were the principal witnesses against her. The Jury did not consider the evidence of any poison having been administered conclusive, and acquitted her.

<sup>195</sup> Compare Beattie, *Criminality*, *supra* note 120 at 83:

Nor is it apparent that when women in the eighteenth century resorted to murder...they turned naturally to devious methods, as has been suggested of their modern counterparts, or they favoured weapons, like poison, that compensated for their lack of physical strength.

<sup>196</sup> A.N.Q.M., MG (9 February 1839) (Josephine Destimauville committed for having “aided to assassinate and murder her husband Achille Taché;”; bailed 26 February by the Court of King’s Bench); (9 February 1839) (Aurelie Prevost dit Tremblay committed for having “attempted to poison and assassinate and of having administered poison to Achille Taché;” released 22 March and sent to Quebec by order of Attorney General).

administering poison to her husband” but was bailed ten days later; no record was found of her putative accomplice.<sup>197</sup>

As is typical in respect to nineteenth century criminal law, no clear correlation between charges of spousal murder and the rate of such incidents can be provided. 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 of such cases.<sup>198</sup> Where family violence was concerned, however, the biggest obstacle to community intervention was (and remains) respect for familial privacy. Spousal homicide might not have been tacitly accepted in the same manner as was domestic violence at large, but that was mainly a matter of degree. The murdering husband was depicted as a monster, while the murdering wife was viewed as an aberration. Those characterizations prevented society from recognizing that such violence was often a linear progression, serving to differentiate between the ‘normal’ closeted family where the existence of domestic discord was a badly kept secret, and the ‘anomalous’ high-profile murders that led to the very public process of prosecution.

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<sup>197</sup> A.N.Q.M., MG (17 July 1848) (Lucye Beaulne committed for being an “accomplice in administering poison to her husband;” bailed 24 July).

<sup>198</sup> But see Pleck, *supra* note 31 at 217:

Family murder is the one form of family violence about which relatively reliable historical statistics exist. Of all the types of family violence, it is always recognized as a serious crime. If thought of as ‘successful assault,’ the rate of domestic murder provides a rough indicator of the overall level of severe family violence.



Given the ubiquity of violence in many Victorian households, it should be no surprise that justice was reserved for a minority of household killings, namely those in which it was apparent that the culpable spouse had intended to cause mortality. In the context of the family there may have been “no killing like that which destroys the heart,’ but 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 amounted to a license to kill.<sup>199</sup>

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<sup>199</sup> That statement mirrors sentiments expressed by Harriet Taylor Mill and John Stuart Mill in *The Morning Chronicle* (28 August 1851) (cited in Clark, *supra* note 128 at 202.).