

The Contours of Canadian Urban Justice, 1830-1875

Greg Marquis

Volume 15, numéro 3, february 1987

URI : <https://id.erudit.org/iderudit/1018020ar>

DOI : <https://doi.org/10.7202/1018020ar>

[Aller au sommaire du numéro](#)

Éditeur(s)

Urban History Review / Revue d'histoire urbaine

ISSN

0703-0428 (imprimé)

1918-5138 (numérique)

[Découvrir la revue](#)

Citer cette note

Marquis, G. (1987). The Contours of Canadian Urban Justice, 1830-1875. *Urban History Review / Revue d'histoire urbaine*, 15(3), 269-273.
<https://doi.org/10.7202/1018020ar>

Résumé de l'article

Cet article relate trois grandes étapes dans l'évolution de deux processus étroitement reliés, l'administration civique canadienne et la justice urbaine au 19^e siècle. Les cours de première instance, administrées à l'origine par des juges de paix assignés par la Couronne et soumis à sa tutelle, ont été transformées, à l'époque des incorporations municipales, en cours civiles sous la juridiction des maires et des élus municipaux. Finalement, les villes adoptent un système permanent de rémunération des magistrats nommés par le gouvernement, mettant ainsi fin à la tradition d'une magistrature urbaine non-qualifiée et réduisant les prérogatives judiciaires du bureau du maire.

La justice urbaine, le plus important service municipal au milieu du 19^e siècle, a été en grande partie négligée par les historiens canadiens. Des études ultérieures permettront d'examiner la nature de la police et des cours et aussi, d'une façon prometteuse, d'explorer la question de la popularité relative des institutions locales de justice.

Research Notes/Notes de recherches

The Contours of Canadian Urban Justice, 1830-1875*

Greg Marquis

Résumé/Abstract

Cet article relate trois grandes étapes dans l'évolution de deux processus étroitement reliés, l'administration civique canadienne et la justice urbaine au 19e siècle. Les cours de première instance, administrées à l'origine par des juges de paix assignés par la Couronne et soumis à sa tutelle, ont été transformées, à l'époque des incorporations municipales, en cours civiles sous la juridiction des maires et des élus municipaux. Finalement, les villes adoptent un système permanent de rémunération des magistrats nommés par le gouvernement, mettant ainsi fin à la tradition d'une magistrature urbaine non-qualifiée et réduisant les prérogatives judiciaires du bureau du maire.

La justice urbaine, le plus important service municipal au milieu du 19e siècle, a été en grande partie négligée par les historiens canadiens. Des études ultérieures permettront d'examiner la nature de la police et des cours et aussi, d'une façon prometteuse, d'explorer la question de la popularité relative des institutions locales de justice.

This article traces three broad stages in the evolution of two closely-related processes, nineteenth-century Canadian civic government and urban justice. Lower courts, originally administered by Crown-appointed paternalist justices of the peace, were transformed in the era of municipal incorporation into civic courts under mayors and aldermen elected by property holders. Eventually cities adopted permanent government-appointed stipendiary magistrates, ending the tradition of the urban lay magistracy and curtailing the judicial prerogatives of the office of mayor.

Urban justice, the most important mid-nineteenth century municipal service, has been largely neglected by Canadian historians. Future studies will continue to examine the class nature of police and the courts and hopefully also explore the question of relative popularity of the local institutions of justice.

Despite the wide range of themes explored in Canadian urban history in the past fifteen years, a neglected area is the development and role of the local institutions of justice.¹ The comparatively late interest in Canadian criminal justice topics is related partly to the perception of law as an abstraction, best left to the attentions of legal historians. Yet the administration of justice in nineteenth-century Canada was inextricably interwoven with the form of local government.

This paper, an integration of original research and the growing body of literature on criminal justice, argues that the maintenance of civic courts, combined with police, was the cornerstone of Canadian urban government in the second-third of the nineteenth century. The focus is on the administrative reforms that transformed urban justice from a voluntary, *ad hoc* response to a more bureaucratic and professional system.

Three stages of urban justice are discernable: the era of Crown-appointed justices of the peace who also administered local affairs; police and city courts conducted by officers

of municipal corporations; and police courts under permanent salaried magistrates. The pattern was general, allowing variations from province to province.² Most of the major cities of British North America experimented with 'civic justice,' courts conducted by mayors and aldermen, before adopting permanent magistrates. In the same period civic government was transformed from its initial negative role of regulating public behaviour and arbitrating disputes to a more positive provision of services and promotion of economic development. Boosterism, however limited, became the primary concern of late Victorian city politics.³

Paternalistic Justice

Early nineteenth century Canadian towns and cities, with one exception, were unincorporated communities administered by government-appointed justices of the peace and a handful of officials with limited duties, such as fenceviewers, hog reeves and assessors. The magistracy, empowered by the Crown to enforce the peace, was generally appointed from the ranks of the elite and functioned on a reactive, part-time basis.

Magistrates not only examined and tried the bulk of criminal offenders and debtors, they often performed primitive police duties with the assistance of town constables, part-time officers who were usually artisans or shopkeepers.⁴ The administrative duties of magistrates sitting in district or county quarters sessions ranged from determining taxation rates to regulating markets, reflecting the wide interpretation of the term 'police.' Most petty criminal proceedings and small debt litigation were handled by a small number of active justices of the peace who were awarded fees for each conviction. Magistrates also supervised early-nineteenth century police forces which were usually limited to traditional part-time town constables, night watchmen or special officers hired on a seasonal basis.⁵ In larger centres the general practice was the appointment of a senior justice of the peace as semi-permanent 'police magistrate' in charge of the police court. Police magistrates, who were assisted by other justices, were often trained barristers but they did not keep records of convictions, fines and fees. Halifax maintained a regular police office with a paid magistrate as early as 1815; in 1826 the magistracy of the town of York appointed a permanent police clerk to assist magistrates stationed in the police office on a rotating basis. Facilities in small centres were less ostentatious: most criminal convictions in mid-century Queen's County, P.E.I. were registered by a handful of Charlottetown merchant-magistrates who held trials at their places of business. A similar situation existed in Portland's civil court of the 1860s, where the magistrate presided in the backroom of his dry goods store.⁶

The style of justice dispensed by magistrates can be described as paternalist because lawbreakers generally did not face impersonal professional judges but rather men of substance — merchants, landowners, office holders and

employers. Justices of the peace were appointed on the basis of their social standing, political connections and wealth; as a New Brunswick journalist recalled, "It was something then to be a magistrate."⁷ With property came the obligations of service, including trying petty offenders, sending debtors to jail, informally settling disputes and personally intervening to quell disturbances. Paternalist relations were not built entirely on deference, as the many assaults and examples of resistance to magisterial authority attest.⁸ Bryan Palmer, in an interpretation heavily indebted to British and European analyses, describes pre-industrial Canadian paternalism as both a "self-conscious creation of the merchants, independent commodity producers and landed gentry" and a "negotiated acceptance by the various plebian subjects of the producing class."⁹ Applying a rigid theory of paternalist relations to the more fluid class system of British North America may be overly ambitious, but it is clear that community authority was highly personalized, operated on the principle of mutual obligations and combined harshness with benevolence.

Civic Justice

The struggle for responsible government in the 1840s, a subject that weaned entire generations of Canadian historians, was paralleled by a less-celebrated but equally-significant municipal revolution that established the principles of local autonomy and self-taxation by property-holders. It was no coincidence that radical and reform movements of the 1830s and 1840s, inspired by the British Chartists and American republicanism, criticized legal and urban administration by magistrates. Depictions of "jobbing" or "trading justices" such as Sam Slick's 'Justice Shallow' were common in colonial social criticism. Charlottetown's justices of the peace were accused of conducting hidden tribunals for the purpose of self-enrichment, displaying favouritism in recommending liquor licenses and prosecuting petty offenders, and failing to enforce statutes for local regulation out of laziness or timidity. Community regulation by part-time officials with business and family obligations suited the village, reformers in many centres argued, but not progressive towns and cities of the British Empire.¹⁰

The magistracy as a class was not hostile to reformers' demands that legislatures recognize the principle of ratepayer accountability and local control. In many communities magistrates were prominent supporters of local improvement in the form of municipal institutions. One example that captured their attention was British North America's only incorporated city in 1830, Saint John. As T.W. Acheson indicates in his superb study of colonial Saint John, the 1785 royal charter, "designed to maintain a dignified society and restrain democratic excess," was patterned after that of a seventeenth century English market town.¹¹ The mayor or chief magistrate, who remained a Crown officer until mid-century, was assisted in police court duties by aldermen who also presided at the court of common pleas, a

small debts tribunal. Saint John's example indicated that limited democratic selection of judges — Acheson estimates that by 1851 one-quarter of adult males were freemen eligible to vote in ward elections — hardly encouraged republican-style justice.¹²

When British North America's major centres incorporated, Montreal and Quebec in 1833, Toronto in 1834, Halifax in 1841 and Charlottetown in 1855, they adopted variations on the Saint John model with city courts under mayors and aldermen. Individual accounts of incorporation tend to stress local personalities and factors, such as sectarian violence, rising levels of crime, the threat of fire and disease or the political ambition of Reformers. A comparison of incorporation debates, whether in 1830s Toronto, 1840s Halifax or 1850s Charlottetown, indicates that municipal institutions were a standard administrative innovation, supported by coalitions of Liberals and Conservatives. Incorporation was a practical, not ideological, solution, similar to the introduction of permanent uniformed police, that transcended the details of local politics. Municipal self-government usually brought immediate or planned reorganization and expansion of police services and more stringent regulation of public behaviour through civic ordinances. Prior to its incorporation, for example, convictions for public drunkenness in Charlottetown were virtually unknown.¹³

How democratic was civic justice, or courts administered by mayors and aldermen? The election of radical William Lyon Mackenzie as Toronto's first mayor in 1834 suggests that municipal authority could be used by Reform-minded freeholders against the Tory elite, but for the most part police courts reflected the conservative values of respectable artisans and merchants. Two factors precluded democratic control: the election of mayor or chief magistrate by and from the city council and a narrow municipal franchise. Mayors were first directly elected in Montreal in 1852, Saint John in 1854, Charlottetown in 1855 and in Toronto in 1859. Charlottetown's 1855 constitution was one of the more radical: property-holders worth five pounds directly elected both mayor and aldermen who served as police magistrates.¹⁴ A restricted civic franchise underlined the fact that municipal politics was based on property and its protection. City charters were compromises designed not to offend the business elite and small freeholders who "disapproved of political power being entrusted to men unable to be their own masters."¹⁵ The result was that participation in municipal affairs was limited to men who had a 'stake in the community'; although the top echelons of the elite did not actively pursue municipal office, working-class input in local administration was minimal. The average offender was not tried before his peers but by officials recruited from and accountable to middle-class artisans and businessmen.¹⁶

Civic justice continued many elements of paternalist authority. The mid-century mayor was primarily a judicial

officer who tried petty offenders and directed the police force; aldermen assisted in the police court, supervised small debts tribunals and often enforced vestiges of paternalist authority in their wards. The network of patron-client relations that dominated mid-century community life, as critics pointed out, presented opportunities for conflicts of interest when elected officials were expected to sit in judgement of their political supporters or co-religionists. Aldermen and city councillors also intervened by securing the release of individuals from police stations and by remitting fines imposed on illegal liquor dealers.¹⁷

Stipendiary Magistrates

The third stage in the evolution of urban justice was the transfer of mayoral and aldermanic judicial powers to permanent salaried magistrates with the intention of introducing a degree of non-partisan professionalism to police courts. The reasons were mixed, but the innovation was popular in common law jurisdictions. Temperance supporters argued that magistrates elected by the middle and lower-middle class were still prone to dangerous democratic pressures; businessmen complained that the burdens of civic office discouraged men of talent from offering their leadership. With the support of the civic bourgeoisie, provincial governments appointed stipendiary magistrates for Kingston in 1847, Saint John in 1849, Toronto in 1851, Montreal in 1852, Halifax in 1867 and Charlottetown in 1875.¹⁸ The innovation was also designed to free civic politicians from judicial and in some cases police responsibilities so that they could more actively improve services and promote economic development. Stipendiary magistrates, who were often trained barristers, enjoyed a degree of relative autonomy, but remained sensitive to community feeling. With the expansion of summary justice in the post-Confederation period, police magistrates presided over the busiest and most important courts in the country. The traditional key to the mayor's prerogatives, judicial powers, virtually ended, making the 'chief magistrate' little more than chairman of the city council and civic figurehead. Police magistrates, for example, often assumed the mayor's traditional authority of swearing in special constables to meet emergencies such as riots. In the larger cities of Ontario and to a lesser extent in the Maritime provinces, stipendiary magistrates took an active role in police administration.¹⁹

Two themes have emerged from historians' discussions of police courts under stipendiary magistrates: the importance of conservative and class-biased ideology and the notion that the lower court, although one of the most visible institutions of a justice system that leaned heavily upon the working class, was to a certain extent a popular community institution.²⁰ Police courts, as with police forces, it appears, did more than control and punish behaviour threatening to the middle class; they arbitrated disputes within the working class and generally mediated urban life. Studies by Gene

Homel, Paul Craven, Thomas Thorner and Neil Watson, although not making explicit statements as to the harshness of police court justice, have as their underlying theme class or social control. Craven's innovative approach, based on the ideological importance of law, does take into account "magisterial benevolence," but concludes that the function of the Toronto police court was "to mark off the gulf between the respectable and the disreputable."²¹ In her study of nineteenth century seamen, Judith Fingad asserted that stipendiary magistrates, as compared to justices of the peace, "clearly favoured capital in its legal battles with labour."²² Yet stipendiary magistrates, harkening back to the paternalist tradition, were not always authoritarian or unpopular. Craven, as well as Michael Katz, Michael Doucet and M.J. Stern, in their quantitative study of the Hamilton criminal class, illustrate that the police court was resorted to by people of all classes and was an object of working class curiosity, both in the press and within the ranks of the 'great unwashed' who crowded into court to witness the magistrate's daily performance. Fingad offers similar observations in an article on Halifax recidivists or "jailbirds." Noting that life-long petty offenders regarded jail as a place of refuge and the magistrate as a familiar authority figure, Fingad goes so far as to describe the Halifax Police Court as a "peoples' court." Although the importance of social class in nineteenth century criminal justice cannot be discounted, there is room for further explorations along these lines.²³

In conclusion, nineteenth-century urban justice, whether dispensed by paternalist justices of the peace, 'democratic' mayors and aldermen or permanent professional magistrates, was viewed as a practical function of local government. It remains one of the urban services about which historians know the least. Documentation is one problem, particularly for quantitative analysis; in many cities lower court records were not instituted until the advent of stipendiary magistrates or were subsequently lost or destroyed by error, fire or intent. Nonetheless, criminal justice should emerge as the next growth field in Canadian urban and social history, thus case studies of lower court criminal prosecutions and civil litigation will doubtlessly ensue. The era of 'civic justice,' which despite the historic Canadian distrust of elected judges lasted in many cities for two decades, is worthy of detailed investigation. Subsequent interpretations will continue to address the themes described above, the interplay of class and authority and the relative popularity of local institutions of justice.

I would like to thank the Charlottetown Urban History Project, which enabled me to collect data on the Charlottetown police court. Peter Rider of the National Museum of Man and Douglas Baldwin of the University of Prince Edward Island were the project coordinators.

NOTES

1. John Fierheller, "Approaches to the Study of Urban Crime: A Review Article," *Urban History Review/Revue d'histoire urbaine*, VIII (October 1979): 104-112; John Weaver, "Staying on the Straight and Narrow: Recent Books on Violence, Crime and the Question of Order in Nineteenth-Century America," *Labour/Le Travailleur*, 8/9 (Autumn/Spring 1981): 296-305; J.G. Woods, "Criminal Justice in Canada: A Brief Survey of the Work in Progress," *Criminal Justice History: An International Review*, IV (1983): 119-124.
2. Hamilton, for example, obtained a stipendiary magistrate with civic incorporation in 1846; Portland, New Brunswick, was served by a permanent magistrate in 1848, two decades before incorporation as a town. See: John Weaver, *Hamilton: An Illustrated History* (Toronto: James Lorimer, 1982), 69-70; G. Marquis, "The Police Force in Saint John, New Brunswick, 1860-1890," MA Thesis, University of New Brunswick, 1982.
3. Warren Magnusson, "Introduction: The Development of Canadian Urban Government," in *Urban Politics in Canada*, ed. W. Magnusson and A. Sancton (Toronto: University of Toronto Press, 1983), 5.
4. D.C. Harvey, "The Struggle for New England Township Government in Nova Scotia," *Canadian Historical Review*, XIV (1933): 17-20; J.H. Aitchison, "The Municipal Corporations Act of 1849," *Canadian Historical Review*, XXX (June 1949): 107-122.
5. Edith Firth ed., *The Town of York 1815-1834* (Toronto: The Champlain Society, 1966), xvii-xxii; Lucien Brault, *Ottawa Old and New* (Ottawa: Ottawa Historical Information Bulletin, 1946), 80-87; John I. Cooper, *Montreal: A Brief History* (Montreal: McGill-Queen's University Press, 1969), 25-29; Antonio Drolet, *La Ville de Quebec: Histoire Municipale III 1833-1867* (Quebec: Société d'Histoire de Quebec, 1967). The early association of magistrates and police forged historically important ties between Canadian police and the lower judiciary. See: Philip Stenning, *Police Boards and Commissions in Canada* (Toronto: University of Toronto Centre of Criminology, 1981).
6. Sandra Oxner, "The Evolution of the Lower Court of Nova Scotia," in *Law in a Colonial Society: The Nova Scotia Experience*, ed. P.B. Waite, S. Oxner, and Thomas Barnes (Toronto: Carswell, 1984), 59-79; Firth, *The Town of York*, xxi-xxii; *PEI Royal Gazette*, 1850-53; *Saint John Telegram*, 27 September 1862.
7. *Saint John Morning News*, 16 September 1859.
8. Michael Cross, "The Laws are Like Cobwebs': Popular Resistance to Authority in Mid-Century British North America," in Waite, *Law in a Colonial Society*, 103-123; Michael Doucet and John Weaver, "Town Fathers and the Community: The Roots of Community Power and Physical Form in Hamilton, Upper Canada, in the 1830s," *Urban History Review/Revue d'histoire urbaine*, XIII (October 1984): 75-90.
9. Palmer, *Working-Class Experience: The Rise and Reconstitution of Canadian Labour, 1800-1980* (Toronto: Butterworth and Co., 1983), 19. See also, H.C. Pentland, *Labour and Capital in Canada, 1650-1860* (Toronto: University of Toronto Press, 1981) and David Roberts, *Paternalism in Early Victorian England* (New Brunswick, N.J.: Rutgers University Press, 1979).
10. J. Murray Beck, *Joseph Howe, I: Conservative Reformer, 1804-1848* (Montreal: McGill-Queen's University Press, 1982), 128-157; Aitchison, "The Municipal Corporations Act," 110-113; *Charlottetown Examiner*, 18 May, 21 July 1850; *Haszard's Gazette*, 11 January 1853; *Islander*, 25 February 1853.
11. T.B. Akins, *History of Halifax City* (Halifax: Nova Scotia Historical Society, 1895), 80, 170-171. Acheson, *Saint John: The Making of a Colonial Urban Community* (Toronto: University of Toronto Press, 1985), 30-42. In 1784 Lieutenant-Governor Thomas Carleton predicted that the court system, presided over by the government-appointed mayor and recorder, would be the most important realization of the city charter. See: D.G. Bell, *Early Loyalist Saint John: The Origin of New Brunswick Politics* (Fredericton: New Ireland Press, 1983), 90.
12. Acheson, *Saint John*, 32.

13. An important precedent for elected civic justice existed in Upper Canada's police boards elected by adult male rate-payers, which in the 1830s began to supplant the police duties of magistrates in Brockville, Kingston, Hamilton and other towns. See: John Weaver, Hamilton: *An Illustrated History* (Toronto: James Lorimer and Company, 1982), 38-39; Aitchison, "The Municipal Corporations Act," 121-122; Firth, *The Town of York*, xxii-xxv; Cooper, *Montreal*, 26-27; Beck, *Joseph Howe*, 227-228; George Betts, "Municipal Government and Politics," in *To Preserve and Defend: Essays on Kingston in the Nineteenth Century*, ed. Gerald Tulchinsky (Montreal: McGill-Queen's University Press, 1976), 227-244; *PEI Royal Gazette*, 1850-1853.
14. Paul Romney, "A Struggle for Authority: Toronto Society and Politics in 1834," in *Forging a Consensus: Historical Essays on Toronto*, ed. V.L. Russell (Toronto: University of Toronto Press, 1984), 19-25; J.M.S. Careless, *Toronto to 1918: An Illustrated History* (Toronto: James Lorimer, 1984), 142; "An Act to Incorporate the City of Charlottetown," *Acts of Prince Edward Island*. Selection of the Toronto mayoralty reverted to the city council in the late 1860s. In 1874 the mayor was again elected by ratepayers. In Saint John, the mayor remained a government appointee until mid-century. See: Acheson, *Saint John*, 194.
15. John Garner, *The Franchise and Politics in British North America, 1755-1867* (Toronto: University of Toronto Press, 1967), 37.
16. J.M. Beck, *The Government of Nova Scotia* (Toronto: University of Toronto Press, 1957), 138; W.D. Lighthall, "Municipal Government," in *Canada and Its Provinces XV, The Province of Quebec*, ed. A. Shortt and A. Doughty (Edinburgh: University of Edinburgh, 1914), 304-305.
17. Acheson, *Saint John*, 214-229; Paul Craven "Law and Ideology: The Toronto Police Court, 1850-1880," in *Essays in the History of Canadian Law II*, ed. D. Flaherty (Toronto: University of Toronto Press, 1982), 276; Gregory S. Kealey, "Orangemen and Corporation: The Politics of Class During the Union of the Canadas," in Russell, *Forging a Consensus*, 41-86.
18. Acheson, *Saint John*, 226-227; P. Blakely, *Glimpses of Halifax* (Halifax: Provincial Archives of Nova Scotia, 1949), 123; Paul Craven, "Law and Ideology," 259-263; J.C. Lamothe and La Violette et Massé, eds., *Histoire de la Cité de Montréal* (Montreal: Montreal Printing and Publishing Co. Ltd., 1903), 164-165; *Charlottetown Examiner*, 17 May, 19 September 1875. In Montreal, the stipendiary magistrate was called the Recorder, not to be confused with the recorders in other provinces who served as municipal legal advisers.
19. Gene Homel, "Denison's Court: Criminal Justice and the Police Court in Toronto, 1877-1921," *Ontario History*, LXXIII (September 1981): 171-184. For a comparison of the powers of stipendiary magistrates see, Saint John Public Library, Saint John Police Court Records, 1849-1851; *Report of the Montreal Recorder's Court, 1866* (Montreal: M. Longmore and Co. Printers, 1867), "Report of the Stipendiary Magistrate," *Charlottetown Corporation Reports*, 1878.
20. For a discussion of the shortcomings of the 'social control' theory that dominated 1970s criminal justice historiography, see, Michael Ignatieff, "State, Civil Society and Total Institutions: A Critique of Recent Social Histories of Punishment," in *Legality, Ideology and the State*, ed. David Sugarman (Toronto: Academic Press, 1983), 183-211.
21. Homel, "Denison's Court," 171-184; Craven, "The Law of Masters and Servants in Mid-Nineteenth Century Ontario" in D. Flaherty ed., *Essays in the History of Canadian Law I* (Toronto: University of Toronto Press, 1981), 175-211; "Law and Ideology," 283-296; Thomas Thorner and Neil B. Watson, "Keeper of the King's Peace: Colonel G.F. Sanders and the Calgary Police Magistrate's Court," *Urban History Review/Revue d'histoire urbaine*, XII (February 1984): 45-55.
22. Fingard, *Jack in Port: Sailortowns of Eastern Canada* (Toronto: University of Toronto Press, 1982), 188.
23. Katz et al., *The Social Transformation of Early Industrial Capitalism* (Cambridge: Harvard University Press, 1982), 201-241; Fingard, "Jailbirds in Mid-Victorian Halifax," in *Law in a Colonial Society*, 81-102. The author has found similar perceptions of the nineteenth-century Saint John and Charlottetown police courts.