

# Regulating Public Space in Early Nineteenth-Century Montreal: Vagrancy Laws and Gender in a Colonial Context

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*In the late eighteenth and early nineteenth century, Montreal's justices of the peace designed police regulations regarding vagrancy to include licensed begging as a form of social welfare for the respectable poor. Vagrant men and women deemed unworthy of state-sanctioned begging were apprehended and punished in the House of Correction or Common Gaol. City magistrates provided an opportunity for proper objects of charity to solicit alms while permitting some homeless vagrants, often women, to solicit shelter in prison. Women were economically dependent on male earnings, and single women were thus vulnerable to destitution. Gender was crucial to vagrancy laws, which acted as a form of moral regulation and had a concomitant impact on the lives of female vagrants. Men posed at least two threats: a moral one by their refusal to work and their perceived rejection of bourgeois notions of industry, sobriety, and discipline, and a physical threat exemplified by their potential for violence. In the wake of the Rebellions, harsh new laws thus reflected not only the British colonial views of dangerous Canadiens, but also the new bourgeois ideology that envisioned an orderly public space.*

*À la fin du XVIII<sup>e</sup> et au début du XIX<sup>e</sup> siècle, les juges de paix de Montréal ont formulé des règlements policiers sur le vagabondage afin de faire de la mendicité autorisée une forme d'assistance sociale pour le pauvre respectable. Les vagabonds, hommes et femmes, jugés indignes de pratiquer la mendicité sanctionnée par l'État, étaient appréhendés et punis dans la maison de correction ou la prison commune. Les magistrats de la ville permettaient aux mendiants en règle de quémander tout en permettant à certains vagabonds, souvent des femmes, de demander l'asile en prison. Les femmes dépendaient économiquement des hommes et les femmes seules étaient donc vulnérables au dénuement. Le sexe jouait un rôle crucial dans les lois sur le vagabondage, qui servaient de forme d'ordre moral et avaient un impact concomitant sur la vie des vagabondes. Les hommes faisaient planer au moins deux menaces : l'une, morale, à cause de leur refus de travailler et de leur rejet perçu des notions bourgeoises d'industrie, de sobriété et de discipline, et*

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*l'autre, physique, exemplifiée par leur violence potentielle. Dans le sillage des rébellions, les nouvelles lois, sévères, témoignaient donc non seulement du point de vue colonial qu'avaient les Britanniques des dangereux Canadiens, mais également de la nouvelle idéologie bourgeoise, disciple d'une place publique ordonnée.*

IN THE APRIL 1769 sitting of the court of Quarter Sessions, Montreal justices of the peace introduced the following vagrancy ordinance which, in effect, blended the regulations of licensing beggars of New France with vagrancy laws imported from England.

It is this Day Ordered by his Majesty's Justices of the Peace that no Beggars be Suffered to go Strolling about without a pass or Certificate either from the Reverend Doctor [*sic*] Delisle Rector of the Parish, or from the Parish Priests there being many imposters Lately Idling about and that no Person may be admitted to come from other Parishes and it is also ordered that no Children be suffered to run or go about the Streets begging as it may Incline them to Idleness to hinder which they are to be driven away and threatened to be chastized [*sic*] and this order is to be put in force and Published that all Persons may have no Cause of Ignorance thereof.<sup>1</sup>

Police regulations which established the rules on begging and vagrancy remained in effect from 1769, although it is unclear if city constables actually regulated vagabondage by enforcing begging ordinances. Justices designed comprehensive regulations pertaining to vagrancy and begging in 1802 when a House of Correction was established in the city. By the mid-1830s licensed begging as a practice disappeared. Having initiated in the late eighteenth century a system which permitted some vagrants to beg, by the 1830s the law only dealt with vagrants and did not sanction any public loitering on the streets.

Vagrancy laws and their application were revised and adapted to fit a colonial context and changed over time and in relationship to local conditions. The broad interpretation of vagrancy and its relationship to ethnicity, class, and gender meant that a wide range of female and male activities were construed as illicit and subject to state intervention. The laws governing vagrancy and the role that gender played in their enforcement in early-nineteenth-century Montreal has received very little attention in Quebec historiography.<sup>2</sup> Thus, a study of the regulation of vagrancy reveals the interaction between gender, law, and a developing state apparatus which signified a move away from a moral economy of regulation to direct state intervention in the lives of the poor. It provides an example in which the imperial power through its laws

1 Archives nationales du Québec à Montréal (hereafter ANQM), TL32 S1 SS11, *Register of the Quarter Sessions of the Peace* (hereafter *QSR*), April 10, 1769.

2 Outside of my own work, " 'To Indulge Their Carnal Appetites': Prostitution in Early Nineteenth-Century Montreal, 1810–1842" (PhD thesis, Université de Montréal, 1996), there is Tamara Myers's dissertation, "Criminal Women and Bad Girls: Regulation and Punishment in Montreal, 1890–1930" (McGill University, 1996), and Marcela Aranguiz's recently published MA thesis, "Vagabonds et sans abris à Montréal : perception et prise en charge de l'errance 1840–1925", collection "Études et documents", *RCHTC*, no. 12 (2000).

permitted a measure of colonial independence in determining ordinances to deal with certain features of Lower Canada.

While historians in general agree that British criminal law, introduced to Quebec in 1763 following the Conquest, was adopted in its entirety, there has been some debate around the extent to which penal laws changed in their adaption to the colonial situation.<sup>3</sup> Many historians have disregarded the implication of an article in the penal code whereby English criminal law did not apply to offences of a local nature. Justices of the peace had the power to make regulations respecting the police.<sup>4</sup> Police regulations evoked a series

3 Louis Knafla and Terry Chapman argue that it was virtually impossible for English criminal justice to replace the French legal system of New France. Rather, Lower Canada's criminal justice system combined French civil law, British martial law, and English common law, although English criminal law held sway. Louis Knafla and Terry Chapman, "Criminal Justice in Canada: A Comparative Study of the Maritimes and Lower Canada, 1760–1812", *Osgoode Hall Law Journal*, vol. 21, no. 2 (1983), pp. 257–271. While historians agree upon certain basic similarities between the English system and those of its colonies, the differences are important and need to be studied. Donald Fyson contends that, while it may be said that the criminal justice system established in Lower Canada resembled its counterpart in England, it did not entirely fit the colonial context of which those responsible for its establishment were fully aware. Rather, they installed a criminal justice system that more closely resembled that of Nova Scotia, where adaption of English criminal justice to the colonial context had already occurred. Donald Fyson, *Criminal Justice, Civil Society and the Local State: The Justices of the Peace in the District of Montreal, 1764–1830* (Montreal: Université de Montréal, 1995), pp. 38–39. In the colonial context, a number of factors influenced the reception and enforcement of laws, from the extraneous nature of the game and poor laws, to the disapproval of the public toward certain others and forms of punishment, to, as David Flaherty argues, what legislators understood about English law. Although he addresses Ontario, Flaherty's arguments can apply to the situation in Lower Canada. He points out that, regardless of its colonial status and imperial control, Upper Canada had in theory the freedom to shape its own laws and legal institutions according to the Canadian context. David Flaherty, "Writing Canadian Legal History: An Introduction" in Flaherty, ed., *Essays in the History of Canadian Law* (Toronto: University of Toronto Press, 1981), pp. 23–24. And while Quebec historians such as André Morel and Jean-Marie Fecteau acknowledge that most changes to the criminal law were made through colonial legislation, they contend that these changes were minimal. Fyson takes issue with them, arguing that between 1764 and 1830 over 100 ordinances and acts were passed which defined new offences under the jurisdiction of the justices of the peace (*Criminal Justice, Civil Society*, p. 41). Morel dismisses police ordinances as falling under the category of criminal or penal law and argues that no fundamental change occurred until 1840. André Morel, "La réception du droit criminel anglais au Québec (1760–1892)", *Revue juridique Thémis*, vol. 13, no. 2–3 (1976), p. 473. Fecteau essentially makes the same point, although he does acknowledge that important changes occurred after 1820. Jean-Marie Fecteau, *Un nouvel ordre des choses : la pauvreté, le crime, l'État au Québec, de la fin du XVIII<sup>e</sup> siècle à 1840* (Montreal: VLB Éditeur, 1989), p. 111.

4 The 1802 Quebec statute details: "that the Justices in their General Quarter Sessions of the Peace, for the District of Quebec, Montreal and Three Rivers, respectively, shall be and they hereby are authorized and empowered, from time to time, to frame such Rules and Orders, and with such Fines and penalties for the breach thereof, as shall be judged requisite and proper, for the Regulation of the Police of the respective Cities of Quebec and Montreal and town of Three Rivers; and also, from time to time, to alter and amend the same, and all such Rules and Orders, when so framed or so altered or amended, shall before having effect, be submitted to the inspection and revisal of the Justices of the Court of King's Bench, in the said Districts, respectively, who are hereby authorized and required in Term and during the [s]itting of the said Courts, to confirm or reflect the same, and when so framed and confirmed, and duly published as herein after provided, shall be binding and obligatory upon all and every person or persons, within the City or Town, where they are intended to have operation." 42 George III, c. 8 (1802).

of new offences which made up a large part of the business brought before the magistrates.<sup>5</sup> These regulatory edicts were not, as Donald Fyson shows, a duplication of English provisions.<sup>6</sup> Rather, the laws mirrored how a community viewed particular problems, at the very least from the perspective of the colonial elite, and what recourse could be taken to resolve them. Vagrancy was one such social nuisance demarcated in police regulations.

The political crisis of the rebellions of 1837 and 1838 and its aftermath resulted in the suspension of democratic government, which was replaced by a Special Council, its membership appointed by the Governor and made up of Britain's most loyal Lower Canadian citizens. The Patriots were violently crushed, militarily by a combined force of British regular soldiers and volunteer militias and legally when the right to habeas corpus was denied to them. The Special Council enacted a flurry of hastily designed, home-grown edicts which reflected its fear of popular resistance. This added to its perceived need to protect property and to reinforce bourgeois ideologies around temperance, discipline, and work. Brian Young argues that, in the decade following the armed insurrection, the Special Council's proclamations effectively altered the social relations of "family, childhood, marriage, community, work, and region". Legislation dismantled the seigneurial system and coalesced around the reorganization of Montreal's police force, the rewriting of police regulations, especially concerning vagrancy ordinances, and the emergence of a central, bureaucratized state. All of this had profound implications for vagrants and their use of public space, the construction of institutions such as asylums for the poor and insane, the development of municipalities, and the establishment of an education system directed at the children of the popular classes. Essentially, the Special Council created an institutional framework that would be endorsed by a domestic political class and its responsible government and by a distancing of the colonial office in the internal affairs of British North America.<sup>7</sup>

The period from 1810 to 1842 thus coincided with monumental turmoil and crisis in state formation. The persistence of older forms of state and legal apparatuses juxtaposed with transformations in work, social dislocation in the countryside, epidemics, changes in demography by way of immigration, and the growing presence of the army converged to create the most intense political crisis since the Conquest. The fragility of everyday life meant that the popular classes were more vulnerable to seasonal unemployment and underemployment with the concomitant struggle to provide food and shelter at ever-rising costs. Their employment of the streets as extensions of their households and as places to work and to socialize and their resistance to any attempts to restrict this access made them a problem for the law in the first

5 Fyson, *Criminal Justice, Civil Society*, p. 40.

6 *Ibid.*, pp. 51–62.

7 Brian Young, "Positive Law, Positive State: Class Realignment and the Transformation of Lower Canada, 1815–1866" in Allan Greer and Ian Radforth, eds., *Colonial Leviathan: State Formulation in Mid-Nineteenth-Century Canada* (Toronto: University of Toronto Press, 1992), pp. 52–54.

place.<sup>8</sup> To bring order to a city potentially at war, the state singled out, among others, vagrants and their use of public space for leisure and work.

Vagrancy cases were judged by one or more justices of the peace in Petty Sessions, a tribunal that dealt with minor misdemeanours, punishable by fine or imprisonment.<sup>9</sup> The subsequent documents of this court, which provide the evidence for this study, are a window onto the street activities of women and men. I have examined all of the dossiers, along with police ledgers, prison registers, and local newspapers, involving women who were charged with vagrancy, with being loose, idle, and disorderly, and with being common prostitutes between 1810 and 1842. Male vagrants have not been examined with the same rigour. For those, I have consulted court depositions. Nevertheless, this source illuminates aspects of their relationships with the criminal justice system at the same time as it reveals some of the ways in which Montreal women and men used the streets to perform activities of daily living. These judicial records demonstrate how their use of public space was sanctioned or condemned by the state.

### Who Were These Vagrants?

Between 1810 and 1842, the Montreal police charged women with at least 2,528 incidents of vagrancy. While these women were involved in a variety of activities at the time of their arrest, approximately two-thirds of the cases applied to women who were working in the city's sex trade, either soliciting or providing sexual services. The remaining third were apprehended for such acts as committing petty larceny, loitering in the streets and green spaces, using obscene language, making threats and assaults, being homeless, intoxicated, or insane, and occasionally cross-dressing.

Men were charged with at least 1,369 incidents of vagrancy over the same period.<sup>10</sup> The majority of these charges were alcohol-related and involved episodes of drunkenness, obstructing sidewalks, disturbing the peace, and exhibiting aggressive behaviour ranging from swearing to fisticuffs. Similar life circumstances as their female counterparts, specifically unemployment and homelessness, resulted in accusations of vagrancy. Police also used vagrancy statutes to charge men whom they suspected of having committed criminal acts such as larceny, harbouring stolen goods, carrying tools used for break and enter, and assault and battery.

Most of the female vagrants were non-francophone, usually Irish, arrested once or twice (which accounts for a third of the arrests), and single. Some

8 For more on the impact of laws on gender, see Mary Anne Poutanen, "The Homeless, the Whore, the Drunkard, and the Disorderly: Contours of Female Vagrancy in the Montreal Courts, 1810–1842" in Kathryn McPherson, Cecilia Morgan, and Nancy M. Forestell, eds., *Gendered Pasts: Historical Essays in Femininity and Masculinity in Canada* (Toronto: Oxford University Press, 1999).

9 Donald Fyson, *The Court Structure of Quebec and Lower Canada, 1764 to 1860* (Montreal: Montreal History Group, 1994), p. 59.

10 This number is probably higher since I consulted only the court depositions and did not include incidents of vagrancy from the police and prison ledgers.

were migrants from the countryside; many more were immigrants from Ireland who, upon arrival in the new world, faced limited employment opportunities. They utilized the street to do whatever was necessary to survive from begging to working in the sex trade. Most of these women disappeared from the criminal justice system when presented with alternative possibilities.

Male vagrants had a similar profile. Two-thirds of them were non-franco-phone, usually Irish, and arrested once or twice. As for women vagrants, these demographic characteristics changed over the period, mirroring the same transformations which had been taking place in Montreal: a doubling of the population and a shift in the dominant ethnic proportions so that by 1832 anglophones comprised the majority in the city.<sup>11</sup> In the period from 1810 to 1829, 60 per cent of the men charged with vagrancy were *Canadiens*; by the 1830s until the end of the period under study, the ethnic proportions shifted and non-francophones made up two-thirds of the total of those who were apprehended for vagrancy offences. Where men and women differed significantly was in their rates of recidivism. Ninety per cent (880) of the men charged with one or two episodes of vagrancy represented nearly three-quarters (72 per cent) of the arrests. Only a tenth were arrested three or more times, accumulating slightly more than a quarter of the arrests.

A small number of women were repeatedly arrested for vagrancy-related offences. That is to say, a quarter of the women (233 or 24 per cent) accounted for two-thirds of the arrests (1,724 incidents of 68 per cent). Some had turned to street prostitution to provide for themselves and their children, and in so doing garnered a multitude of arrests over a short period of time. Others suffered from chronic alcoholism and homelessness. These women were well known to the police and subject to repeated incarceration, in large part, as Constance Backhouse argues, due to their reputation as street prostitutes.<sup>12</sup> The differences between male and female recidivism rates speak to the state's preoccupation with moral regulation, specifically with female sexual behaviour. The woman alone, as Jeffrey Adler suggests, acted outside the control of husbands and fathers.<sup>13</sup> The police's pursuit of these women marked a move away from community to state regulation. Montreal policemen stepped into a patriarchal role aimed at controlling these wayward "daughters". Similar harassment has been noted in Halifax. Judith Fingard's study of a group of "notorious" women shows that their high visibility in the public streets left them vulnerable to repeated police persecution.<sup>14</sup>

11 Jean-Claude Robert, *Atlas historique de Montréal* (Montreal: Art Global/Libre Expression, 1994), p. 79.

12 Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto: Women's Press, 1991), p. 230.

13 Jeffrey S. Adler, "Streetwalkers, Degraded Outcasts, and Good-for-Nothing Huzzies: Women and the Dangerous Class in Antebellum St. Louis", *Journal of Social History*, vol. 25, no. 4 (1992), pp. 74–75.

14 Judith Fingard, *The Dark Side of Life in Victorian Halifax* (Porter's Lake, N.S.: Pottersfield Press, 1989), p. 106.

Men, on the other hand, posed a more complex threat: a moral one, by their refusal to work and their perceived rejection of bourgeois ideology predicated on industry, sobriety, and discipline; and a physical one, symbolized by their potential for aggression. In court depositions, plaintiffs embellished their accusations with descriptions of past episodes of aggressive behaviour which were clearly unrelated to the actual incident that had resulted in vagrancy charges. These narratives were effective in reinforcing the plausible danger that vagrant men posed to society. An extensive literature exists on the representation of stranger tramps as a dangerous class.<sup>15</sup> The state viewed gangs of disreputable, idle men as scheming to commit some criminal act like burglary or, worse, to conspire against the authority of the state. These fears had a particular resonance in the events leading up to the Rebellions and their immediate aftermath.

### Public Discourses and Vagrancy

By the late eighteenth century, Montreal reformers — *canadien* and English-speaking physicians, lawyers, philanthropists, businessmen, and landowners whom Jean-Marie Fecteau calls the city's "notables" or "elites"<sup>16</sup> — had already identified vagrancy as a problem in their city. In 1787 merchants, reporting to a committee on commerce and the police, complained about the number of vagrants who "infest the streets of town". They believed that, since neither a poorhouse to accommodate real objects of charity nor a workhouse to confine "vagrant imposters" existed, the magistrates could do little

15 According to tramp historiography, the vagrant or unemployed male became a visible problem in North America in the mid-nineteenth century, threatening a disordered working class. See Paul T. Ringenbach, *Tramps and Reformers, 1873–1916: The Discovery of Unemployment in New York* (Westport, Conn.: Greenwood Press, 1973); Jeffrey S. Adler, "Vagging the Demons and Scoundrels: Vagrancy and the Growth of St. Louis, 1830–1861", *Journal of Urban History*, vol. 13, no. 1 (November 1986). In the mind of "respectable" society, vagabonds comprised a central component of the dangerous classes — destitute as they were — that warranted repression with laws and a modern police force. The use of the law to curb vagrants' activity (or inactivity in the case of work) confirmed the idea that bourgeois society used the strong arm of the law to control and maintain a docile work force. Gender played an important part in tramp historiography in the 1970s and early 1980s insofar as it only addressed the history of men; the focus on men who refused to work paralleled the 1970s labour history that centred almost solely on male workers. While a class analysis makes sense in a study of vagrancy, it is equally important to tease out the role that gender plays in the history of vagrancy. Sidney Harring, *Policing a Class Society: The Experience of American Cities, 1865–1915* (New Brunswick, N.J.: Rutgers University Press, 1983); James Pitsula, "The Treatment of Tramps in Late Nineteenth Century Toronto", *Historical Papers* (1980), pp. 116–132; Eric H. Monkkonen, "A Disorderly People? Urban Order in the Nineteenth and Twentieth Centuries", *Journal of American History*, no. 68 (December 1981); Lionel Rose, *Vagrant Underworld in Britain, 1815–1985* (London: Routledge, 1988); Gilles Vandal, "The Nineteenth-Century Municipal Responses to the Problem of Poverty: New Orleans' Free Lodgers, 1850–1880, as a Case Study", *Journal of Urban History*, vol. 19, no. 1 (1992); David Bright, "Loafers Are Not Going to Subsist Upon Public Credulence: Vagrancy and the Law in Calgary, 1900–1914", *Labour/ Le travail*, no. 36 (1995).

16 Fecteau, *Un nouvel ordre des choses*, p. 141.

to alleviate the problem.<sup>17</sup> Similarly, Quebec City justices of the peace argued in 1766 and again in 1784 that the city needed to establish a house of correction to confine “all idle, vagrants and disorderly people who by evil example corrupt the manners of their fellow citizens”.<sup>18</sup> Without such an institution, the justices could not control vagrancy since the penalty in the English statutes was confinement in the House of Correction. At the turn of the century, these complaints took on racial and xenophobic tones when grand jurors of the 1803 September sitting of the Court of King’s Bench maintained that the state had to intervene in dealing with Montreal vagrants, “as well white as black”, by designing legislation to rid the city of and “to further prevent these improper and dangerous foreigners from entering or remaining amongst us from other countries”.<sup>19</sup>

By the nineteenth century, while the problem of vagrancy continued to dominate much of the discourse about public space, reformers broadened their criticism to attack popular-class morality and the public nature of everyday life. They endeavoured to impose order on what they perceived as an intractable population who contested their view of bourgeois respectability and indirectly their position of power. This assault upon the traditional uses of public space had several consequences. First, it challenged the realities of the urban landscape which teemed with men and women of all social groups who conducted business, socialized, and loitered in the streets. Public space served as an extension of popular-class households and as an important venue for women’s household work. In Penelope Corfield’s words, all manner of events happened in public spaces: men and women worked, played, loved, and died there.<sup>20</sup> Traveller R. H. Bonnycastle described the hustle and bustle of 1841 Montreal street activity:

In this city, one is amused by seeing the never changing lineaments, the long queue, the bonnet-rouge, and the incessant garrulity, of Jean Baptiste, mingling with the sober demeanour, the equally unchanging feature, and the national plaid, of the Highlander; whilst the untutored sons of labour, from the green isle of the ocean, are here as thoughtless, as ragged, and as numerous, as at Quebec. Amongst all these, the shrewd and calculating citizen from the neighbouring republic drives his hard bargains with all his wonted zeal and industry, amid the fumes of Jamaica and gin-sling. These remarks apply, of course, to the streets only.<sup>21</sup>

17 National Archives of Canada (hereafter NAC), RG 1 E 1, *Executive Council, Minute Books, 1764–1867*, January 23, 1787.

18 NAC, RG 4 A1, April 2, 1766; ANQM, TL32 S1 SS1, *Documents of the Quarter Sessions of the Peace* (hereafter *QSD*), December 7, 1784.

19 ANQM, TL30 S1 SS11, *Register of the King’s Bench and Oyer and Terminer* (hereafter *KBR*), September 1803.

20 Penelope J. Corfield, “Walking the City Streets: The Urban Odyssey in Eighteenth-Century England”, *Journal of Urban History*, vol. 16, no. 2 (February 1990), p. 159.

21 R. H. Bonnycastle, *The Canadas in 1841* (Wakefield, 1968), pp. 76–77.



Secondly, it created conflict between the popular classes who lived large parts of their lives in public space and those whose interests lay in the *embourgeoisement* of the public: that is, the creation of public space that was regulated, illuminated, and respectable and that permitted and encouraged bourgeois women and their children to traverse it without encountering pandemonium and notorious persons. The editors of the *Montreal Herald* advocated the systematic lighting of city streets, arguing that it would “encourage ladies to make evening promenades and occasional visits to friends”.<sup>22</sup> It was no accident that St. Paul Street, where the city’s elite had established commercial enterprises, was illuminated first. Mark J. Bouman’s examination of lighting practices in the nineteenth-century European and American cities of Sheffield, Bochum, and Minneapolis shows that urban areas inhabited by the bourgeoisie, but where they did not feel safe, were lighted first, and localities where they were unlikely to enter were illuminated last.<sup>23</sup> Street lighting served, as M. J. D. Roberts propounds, to make visible what had been hidden, thus making it easier for police to collect proof of disreputable behaviour on one hand and to increase surveillance over the potentially disruptive habits of the urban poor on the other.<sup>24</sup> These same street lamps provided a dimension of safety to streetwalkers that ironically may have encouraged them further to solicit clientele garrisoned in the Quebec Barracks near St. Paul Street.

Thirdly, it brought certain public behaviour under the scrutiny and censor of the state and signalled a move away from the communal and customary to the legal.<sup>25</sup> For example, as justices of the peace fixed their regulatory gaze upon the Sunday comportment of idle young boys and nude male bathers,<sup>26</sup>

22 *Montreal Herald*, November 9, 1811.

23 Mark J. Bouman, “Luxury and Control: The Urbanity of Street Lighting in Nineteenth-Century Cities”, *Journal of Urban History*, vol. 14, no. 1 (November 1987), p. 28.

24 M. J. D. Roberts, “Public and Private in Early Nineteenth-Century London: The Vagrant Act of 1822 and its Enforcement”, *Social History*, vol. 13, no. 3 (October 1988), pp. 276–277, 281.

25 *Ibid.*, p. 290.

26 At the end of the eighteenth century, justices of the peace, in response to a petition by “respectable inhabitants”, had ordered the dispersion of idle boys who assembled together on the Place d’armes instead of attending church services on Sunday. They directed two constables, armed with staves, to be sent to Place d’armes on Sundays to scatter these boys (*QSR*, April 30, 1799). Ten years later, police regulations ordered that all idle youth who assembled together between 9 a.m. and 5 p.m. on Sundays and other holy days to play games in any public area of the city, instead of attending church, could be detained and fined 10 shillings. If they were minors or apprentices, then the onus was on the parents or master to pay the fine (*QSR*, 1810). Obviously, idle youths had found a way around the first restriction by gathering elsewhere in the city. The justices responded by co-opting any customary neighbourhood surveillance of its youthful members by outlawing male juvenile idleness anywhere in the city. Public bathing came under similar scrutiny. In 1806 grand jurors complained of boys and men who bathed nude in the river between the Barracks and Mr. Blondeau’s wharf. This behaviour was, in their opinion, an affront to the sensitivities of the city’s ladies and a bad example to its youth. By 1817 those caught river bathing between the Grey Nuns’ house at Point St. Charles and Mr. Molson’s Brewery below St. Mary Suburb were subject to a fine of 5 shillings (*Montreal Herald*, April 19, 1817). When these nude bathers found other locales to wash, such as the Lachine Canal, they were once again subjected to new police regulations when the canal became a popular “promenade de la bonne Société” (*QSR*, July 19, 1836).

traditional community surveillance was appropriated by the state at the urging of the elite. It also served to regulate spontaneous public behaviour, suggests Donald Fyson, which did not sit well with the elite's view of a well-ordered society.<sup>27</sup> Thus Montrealers were forbidden from throwing snowballs at any time in public space during winter and from playing games in the streets or holding balls or dances in their homes on Sunday.

City notables were most vitriolic in their attack on prostitutes, vagrants, beggars, and drunkards, linking issues of regulation and morality to gender. This preoccupation with the poor, especially street prostitutes, Maria Luddy contends, speaks to the elite's anxiety about how public space was used and about its moral contamination.<sup>28</sup> Female vagrants used public space, like propertyless New Yorkers in the 1820s and 1830s, to eke a living by "peddling, prostitution, foraging, gambling, and theft".<sup>29</sup> Historian Barbara Hobson found that in many nineteenth-century American cities the police crackdown on street prostitution dealt with two simultaneous problems. First, it addressed the fear that an anonymous, transient population made the nineteenth-century American city appear unsafe. Secondly, urban reformers demanded "order and decorum" in the streets by attacking immorality, idleness, and drunkenness.<sup>30</sup> It was precisely in this period that temperance organizations appeared for the first time in Montreal in the late 1820s and gained momentum through the 1830s and 1840s. With a decidedly religious bent, temperance campaigners associated drink with poverty, crime, and disease. City notables specifically targeted brothels, tipping houses, and taverns which served as meeting places for the disreputable and unregulated public.

Male vagrants in particular symbolized an antagonistic impediment to bourgeois respectability and its ethic of work. The refusal to labour was insufferable to city notables who placed so much importance on the tenets of industry, discipline, and sobriety. The case of labourer John Whitehead exemplifies the link between vagrancy and unemployment, alcohol abuse, and criminal intent. John Mathewson, who owned a soap and candle factory, complained to a justice of the peace that Whitehead had entered his office and demanded money "in charity", which he refused due to Whitehead's drunken state. Whitehead, out of desperation or malevolence, threatened that "if he did not get what he demanded then he would steal".<sup>31</sup> Similarly, elites felt considerable consternation and suspicion about the stranger who suddenly appeared in the city, loitering about the streets and public spaces instead of working. The

27 Fyson, *Criminal Justice, Civil Society*, p. 56.

28 Maria Luddy, "'Abandoned Women and Bad Characters': Prostitution in Nineteenth-Century Ireland", *Women's History Review*, vol. 6, no. 4 (1997), p. 485.

29 Elizabeth Blackmar, *Manhattan for Rent, 1785-1850* (Ithaca, N.Y.: Cornell University Press, 1989), p. 151.

30 Barbara Meil Hobson, *Uneasy Virtue: The Politics of Prostitution and the American Reform Tradition* (New York: Basic Books, 1987), p. 12.

31 *QSD*, August 31, 1838.

**Table 1** Number of Vagrant Arrests, 1810–1842 (multi-year groupings)

Years	Women	Men
1810–1829	407 (16.0%)	112 (8.2%)
1830–1836	469 (19.0%)	129 (9.4%)
1837–1842	1,652 (65.0%)	1,128 (82.4%)
Total	2,528	1,369

*Source:* Data collected from judicial dossiers of the Court of Quarter Sessions, Police Books, and Prison Registers.

case of ex-soldier Benjamin Battersby, whom police arrested for stealing three shawls from Toussaint Trudeau's shop, addressed all of these disquieting features: the unemployed stranger who moved through public space with illicit aims. Battersby admitted to having recently arrived from Trois-Rivières, where he had made his living by begging.<sup>32</sup>

Vagrants, especially men, also posed a physical threat to the authorities' attempt to govern public space. The image of the explosive violent male vagrant is represented in an incident that took place at the fish market involving two vagrants, Joseph McQuarters and James Smith. They were arrested after brutally assaulting an elderly pedlar by the name of Joseph St. Hilario [*sic*].<sup>33</sup> This threat reached a climax in 1837 and 1838 when the region became embroiled in armed insurrection. The state responded by reorganizing and enlarging its police force and by targeting specific behaviours such as prostitution and male drunkenness. In the opinion of city notables who served as grand jurors, alcohol abuse was a major contributor to the demoralization of the public, by causing incidents of disturbing the public peace and by drawing Montrealers to unregulated public houses such as taverns, tipling houses, and brothels where they gambled, drank excessively, argued, and fought. The grand jurors called upon the city constabulary, which seemed incapable of ridding the city of these meeting places, to regulate them so that virtuous citizens would not be offended by their presence.<sup>34</sup> The ensuing police crack-down resulted in significantly elevated levels of arrests of vagrants. Table 1 shows that, from 1810 to the end of the period, male vagrancy arrests increased tenfold; female vagrancy arrests increased fourfold. The considerable rise in arrests of men in the years of the Rebellions and immediately following speaks to the threat which they represented to the state in this period of armed insurrection. Furthermore, concerns about social dislocation in agriculture, with its concomitant increase in migration from the

<sup>32</sup> *QSD*, August 28, 1810.

<sup>33</sup> *QSD*, May 17, 1825.

<sup>34</sup> *QSR*, October 30, 1837.

countryside to the city, and rising levels of immigration coalesced around fears of revolution. With the reorganization of the police force in 1838, more constables were hired, resulting in an intensification of the surveillance of public space.

In addition to demanding new methods to maintain social order, reformers also encouraged the “upper and middling classes” to support the establishment of Sunday schools and charities that ministered to the respectable poor, to donate firewood during the winter, and to intervene directly with offers of goods or work to deserving families. Proper objects of charity were defined in a *Montreal Herald* newspaper article:

The widow, the orphan, the destitute parent, whose children were crying to him for bread which he had not to give; the friendless stranger, a victim of disease, either in his own person or those dependent on him; describes them all. All these have been cases of real distress; not one in a hundred, objects of casual charity. The relief administered has been in the most frugal manner possible.<sup>35</sup>

Peter le Rivier [*sic*] and his family were designated true objects of charity when the circumstances of his misfortune appeared in a newspaper article along with an appeal for assistance. In July 1812 this unemployed tailor’s wife died giving birth to triplets. When two of the three infants survived, le Rivier became solely responsible for the care of his eight children. The oldest 14-year-old girl, had been blind since her second birthday.<sup>36</sup>

This model of community aid contrasted sharply with homelessness that Montrealers judged improper. Reformers had little if anything to offer the homeless. By labelling men and women disreputable, these city notables essentially barred vagrants from any form of benevolence. Consequently, they had to devise their own survival strategies in the face of such a hostile environment. The death of Mary Kelly in October 1821 is a poignant reminder of the magnitude of this narrow vision. Being impoverished, homeless, and separated from her husband, who was in prison, Mary Kelly took refuge with a vagrant man in his hut at the beach “so imperfectly constructed as to be pervious to wind and rain and hardly to deserve the name of a shelter”. The newspaper editors reporting this death were more outraged by her immoral behaviour, living with a man not her husband, than the fact that she had died from hypothermia and malnutrition, her “corpse reduced to the last degree of meagreness and emaciation”.<sup>37</sup> Preoccupied with what they considered indecent public behaviour and charlatans taking advantage of the generosity of others, city notables appealed to their colleagues at court to help them impose their view of respectability on an errant public.

35 *Montreal Herald*, February 12, 1820.

36 *Ibid.*, April 25, 1812.

37 *Ibid.*, October 9, 1821.

The justices of the peace responded by designing police regulations that dealt with vagrancy, modifying them as needed, and by dispensing justice to those deemed improper. They relied upon legal custom, local conditions, and imported English manuals.<sup>38</sup> Magistrates were particularly responsive to the public's persistent condemnation of vagrancy. The same justices tried vagrancy cases, superintended the House of Correction, and gave permission to proper objects of charitable relief to solicit alms from "the well disposed in the City and Suburbs of Montreal".<sup>39</sup> Until the 1830s the magistrates recognized that some worthy but impoverished families needed licensing. At issue with this multiple role was that justices were in a position to punish those who needed help by refusing permission to beg to those they deemed disreputable.

### Vagrancy Laws

Police regulations in themselves did not demarcate who were considered vagrants, other than to refer to them as unlicensed beggars, the idle and disorderly, or simply vagrants. These broad regulations governing vagrancy allowed the police a certain degree of latitude when it came to applying them. The only other textual references to vagrancy were in a guide on criminal law written for law students. The author, Joseph-François Perrault, a Quebec City clerk of the peace and protonotary, looked to the English law work of Richard Burn to define vagrant.<sup>40</sup> He also outlined the grounds upon which an arrest could be made, who was responsible for apprehending a vagrant, how it was to be done, and what punishment could be meted out by the justices of the peace. Vagrants or *gens sans aveu* were, according to Perrault, "les Fainéants et Debauchés, les Gueux et Vagabonds".<sup>41</sup> His rather extensive definition included, among others, those who threatened to abandon or actually abandoned their families to the charge of the parish (a definition with a familiar "English Poor Laws" ring to it), those who returned to their parish without permission after having been expelled by two justices of the peace, the idle, beggars, street performers, Bohemians attired as Egyptians, those who played illegal games, unlicensed pedlars, the homeless, those caught carrying items used to commit burglary, and those who bore arms for criminal purposes. The term unlicensed beggar does not appear

38 Court officials most often used Richard Burn, *The Justice of the Peace and Parish Officer* (London, 1764), beginning with his 1764 publication as well as subsequent editions with revisions of the laws, which established guidelines for the court. Fyson, *Criminal Justice, Civil Society*, p. 147. The only available French edition was a translation of parts of the 1764 edition which was made in 1789 by Joseph Perrault. Years later in 1814 Perrault published a guide for law students to explain Lower Canadian criminal law using a question and answer format: *Questions et réponses sur le droit criminel du Bas Canada : dédiés aux étudiants en droit* (Quebec, 1814).

39 "Regulations concerning Vagrants" in *Rules and Regulations of Police, for the City and Suburbs of Montreal*, Article 1, Chapter VIII (Montreal, 1817).

40 For more on Joseph-François Perrault, see *Dictionary of Canadian Biography*, vol. 7, pp. 687–690.

41 Perrault, *Questions et réponses sur le droit criminel*, p. 126.

anywhere in Perrault's list, although it looms large in the police regulations designed by the local magistrates. On the other hand, Perrault included gypsies even though it is hard to imagine many bohemians dressed as Egyptians promenading in the streets of Montreal!

From a translation of Richard Burn, Perrault divided vagrants into three classes: idle and disorderly, rogues and vagabonds, and incorrigible rogues.<sup>42</sup> While all offended the public order, each class had a specific punishment. Idle and disorderly persons were to be confined in the House of Correction for one month. Rogues and vagabonds were to be whipped and imprisoned for up to six months. Incorrigible rogues were to be whipped and imprisoned for up to two years. Police were obligated, according to Perrault, to arrest all those who fell into any of these classes, to bring them before a justice of the peace, and to be compensated for each person they apprehended.<sup>43</sup> That a watchman or constable could arrest a vagrant without first obtaining a warrant from a magistrate signals that he had the power to act as both prosecutor and policeman.

The twists and turns of the story of state-sanctioned begging and its antithesis, unlicensed begging or vagrancy, show how these magistrates kept returning to the certification of beggars as a form of social welfare at the same time as they tried to respond to what was perceived as a growing problem of vagabondage. That licensed begging remained as law, even when the House of Correction opened in 1802, is particularly revealing. Prior to its inauguration, the justices of the peace were limited in how they could deal effectively with vagrancy, given that punishment could only be served in a house of correction, which was non-existent before 1802. Within the police regulation itself, the justices of the peace acknowledged that the ordinance was a response to a growing concern about unlicensed begging:

having increased of late so much in the City of Montreal as to become a great nuisance, as well as to be destructive of industry and good morals, especially to many of the rising generation; the Justices have therefore come to the Resolution of carrying into execution the laws in regard to vagrants under Idle and Disorderly persons, as soon as they shall there unto be enabled by the operation of the said Act in regard to Houses of Correction.<sup>44</sup>

The House of Correction, then, was established specifically to control illegal beggars and vagrants. The premise behind this institution was that, once vagrants, unlicensed beggars, and the incorrigible got a taste of hard labour in the House of Correction, they would either get as far away from Montreal as they could or they would give up their life of idleness to avoid further punishment in this institution.<sup>45</sup> Constables were expected to apprehend all

<sup>42</sup> Burn, *The Justice of the Peace*, pp. 103–104.

<sup>43</sup> Perrault, *Questions et réponses sur le droit criminel*, pp. 130–131.

<sup>44</sup> *QSR*, July 19, 1802.

<sup>45</sup> *Montreal Herald*, August 8, 1817.

vagrants or idle and disorderly persons with the qualification that anyone who had been furnished permission to solicit alms, distinguished by the letters P and M, cut in red or blue cloth and worn on the upper right hand sleeve of the person's clothing, was exempt. For those licensed to solicit alms publicly, of whom we know nothing since records do not exist,<sup>46</sup> a committee of magistrates furnished a 12-month certificate which could be renewed after the year or revoked at any time if a certified beggar showed cause by not exhibiting good behaviour.<sup>47</sup>

The House of Correction, as did the Common Gaol, served other purposes not contemplated by its early promoters. Like the Rockhead Prison in Halifax,<sup>48</sup> Montreal's carceral institutions provided social welfare to homeless women and men who resorted to this institution to obtain food, medical treatment, and shelter, thus thwarting its punitive purposes.<sup>49</sup> This is not to argue that the prison deserved the sarcastic pseudonym "Captain Holland's Hotel", as some claimed. Vagrant François Charbonneau died from hypothermia in the House of Correction in February 1827, due, in the opinion of the grand jurors, to the chronic deleterious condition of the institution as an "unfit receptacle of vice and misery".<sup>50</sup> Nevertheless, it was relatively easy for vagrants to gain admittance and was thus dependable. Little was

46 Certain municipal financial accounts show that constables were paid fees to assist the justices of the peace when they issued certificates to beggars. In 1811, for instance, Claude Tibault was compensated 5 shillings to attend the issuing of beggars' licences (McGill University Rare Books Room, MS 719, *Montreal, Municipal Administration, John Reid Fonds*, December 23, 1811). In 1826 town crier François Mathurin charged 13 shillings, 4 pence for publishing in the city and suburbs that new beggars' licences would be given out at the courthouse on December 27, 1826 (McGill University Rare Books Room, MS 469, *Montreal, Road Committee Fonds*, January 19, 1827). We know from lists of prisoners and court depositions who was not permitted to beg. Of the total number of men and women imprisoned in the House of Correction between 1822 and 1825, only two beggars were incarcerated and both were men. Of the 162 vagrants imprisoned, 132 were women and only 30 were men. These numbers suggest that the women were not considered unlicensed beggars but vagrants. The authorities were wary of the "woman alone" (*QSD*, 1826).

47 *QSR*, July 19, 1802.

48 Fingard, *The Dark Side of Life*, p. 57.

49 Prison daily life cannot be understood only in terms of the intentions of the policy makers, but was shaped, as Lucia Zedner contends, by the inmates and wardens. Nineteenth-century English prison records show that the relationship of the female prisoners and their keepers, along with the intruding world outside the prison walls brought into the institution by recidivist women who were incarcerated for only a few days at a time, constantly modified prison life and undermined prison discipline. Moreover, women who turned to the prisons for refuge subverted its punitive purpose entirely. Lucia Zedner, *Women, Crime, and Custody in Victorian England* (New York, 1991), pp. 4–5. In Montreal, an incident in 1821 demonstrates that even the House of Correction could not contain the women who were confined there from communicating with the world beyond the prison walls. Grand jurors protested the "scènes les plus scandaleuses se commettent journellement dans les fenêtres des celules [sic] de ces malheureuses creatures" in apartments that overlooked Notre Dame Street. They demanded either that the women be transferred to holding cells in the back of the building or at the very least that windows be kept closed. In this way, the city's youth and virtuous women would be protected from these offensive spectacles (*QSR*, July 19, 1821).

50 *KBR*, February 1827.

expected of them, they were familiar with the institution, the period of incarceration covered the coldest winter months, and they had the companionship of friends. Depositions show that homeless women and men committed or threatened to commit misdemeanours in order to be imprisoned over the winter. The police and magistrates were well aware of this strategy and often colluded with them.

As recidivist vagrants moved between community and prison, the division between “life inside and their own communities outside”, according to Lucia Zedner, became blurred.<sup>51</sup> In February 1820 high constable Jacob Marsten arrested Mary Weeks for being an idle and disorderly woman without any visible means of procuring a livelihood. On that basis he could rightfully charge her with vagrancy, since being idle, unemployed, and homeless constituted grounds for arrest under this statute. Marsten further asserted that, if he did not apprehend and imprison her, she would surely perish in the city streets.<sup>52</sup> When Weeks came before the presiding magistrate in Petty Sessions, her situation highlighted some of the problems associated with poverty and homelessness in an early-nineteenth-century city: the lack of resources at her disposal, the winter environment, and the multiple applications of the vagrancy laws. Since shelter during the coldest season of the year was a question of life or death, overnight lodging at the station house would not suffice. What she required was a stint in prison that would at the very least get her through the harshest winter months. The justice of the peace sentenced her to two months’ incarceration in the Common Gaol.<sup>53</sup> In this way, vagrancy laws served multiple purposes, including the means to provide social welfare to the homeless in this colonial city.

As members of the city’s elite, justices of the peace were attentive to the complaints of their peers who were preoccupied with women like Mary Weeks and with what they regarded as abuses of public space. At the same time, they came face to face in their courts with vagrants who had no place to go to escape the ravages of hunger, homelessness, and winter.<sup>54</sup> These

51 Zedner, *Women, Crime, and Custody*, p. 5.

52 *QSD*, February 26, 1820.

53 *QSR*, April 29, 1820.

54 Two letters to the editor of the *Montreal Herald* speak to the issue of winter temperatures and the critical need for shelter amongst the city’s homeless population. The writer of the first letter, appearing February 12, 1812, called for the state to establish a Poor House to look after the indigent population then living in the city streets: “The utility of such an asylum is acknowledged by every society of any extent in other countries, and from the rigor of our climate it would appear to every feeling mind, to be doubly requisite here.” The author went on to argue that such an institution could inculcate in these real objects of charity and their children “virtuous and industrial habits”, and that laws, in themselves, could not rid society of begging. The author of the second letter, dated December 11, 1819, suggested that Montreal’s unique climate called for solutions to homelessness not relevant to other geographic regions with more temperate weather: “the poor who dwell in this frigid zone, have to suffer, not only all the grieving pains and privations incident in a state of poverty in an excessively cold and merciless region, but that they have to endure these for a much greater length of time than others who inhabit more temperate climes.”



magistrates had to reconcile the criticisms of their neighbours, families, and business acquaintances with the realities of poverty and homelessness.

Begging was eventually outlawed in 1819 in anticipation that a House of Industry, which was about to open, could “loger et nourrir les vrais pauvres incapables de gagner leur vie”.<sup>55</sup> Justices of the peace ordered city constables to post 21 handbills around the city to inform the public that begging was illegal.<sup>56</sup> Initially, the penalty for anyone caught begging was one month’s imprisonment, but two years later the sentence had increased to three months in the Common Gaol. The wardens of the institution appealed to the public to stop giving alms to the poor when they solicited in the streets or door to door. The wardens encouraged Montrealers to donate any money earmarked for beggars to their institution entrusted with the care of the “industrious poor”.<sup>57</sup> When Mary Weeks was apprehended in 1820 for vagrancy, she could not apply for a licence to beg. Nor was she considered respectable, which disqualified her from admission to the House of Industry even though she was jobless and in need of refuge. Obviously, her dubious reputation followed from the fact that she was young, unmarried, and homeless. By 1821 this institution, which had originally succeeded in driving beggars off city streets, failed even to attract the industrious poor.<sup>58</sup> Once again, grand jurors complained that the streets were infested with beggars who refused to go to the House of Industry out of fear that they would never be released. For many of them, the House of Industry represented an object of terror.<sup>59</sup>

Within three years the House of Industry closed temporarily due to insufficient government funding, and once again the original licensing system of beggars was reinstated to provide a means for proper objects of charity to solicit alms without risk of being arrested for vagrancy. That same year some subscribers to the *Montreal Herald* demanded that city magistrates do something about the vagrants roaming about the city.<sup>60</sup> By publishing the vagrancy ordinances, the editors of the newspaper insinuated that the justices of the peace were being lax in their duties. However, the justices were well aware of the problem, having just petitioned the House of Assembly to build a new House of Correction to accommodate what the justices referred to as an infestation of vagrants who loitered about the city streets. In their opinion, the only way to get rid of this scourge was to confine vagrants at

55 *QSR*, January 19, 1821.

56 ANQM, P 20, Montréal ville de (Fonds), *Road Treasurer’s Receipts*, no. 56, October 11, 1819; no. 87, November 29, 1819.

57 *Montreal Gazette*, June 9, 1819.

58 *QSR*, January 19, 1821.

59 *Ibid.* The wardens of the House of Industry had a different perspective of the situation. In their petition to the House of Assembly requesting more funds, they argued that their institution not only reduced the number of beggars in the streets but served to dissuade a number of them from returning to their old ways. Viewing the rules of the House of Industry oppressive, they apparently sought work rather than risk readmission. *Journal of the Lower Canada House of Assembly*, February 15, 1823.

60 *Montreal Herald*, May 25, 1822.

hard labour in the House of Correction. Year after year, grand jurors, who designated this institution a “house of corruption” and the Common Gaol a “nursery of crime” or a “school of vice”, were particularly incensed that prisoners were not classified but able to mingle amongst themselves, corrupting those who were not yet deemed convicted offenders. Thus the present “temporary House of Correction” served as a bad influence on those arrested and confined for very minor infractions.<sup>61</sup> Nevertheless, the members of the House of Assembly turned down their request, citing insufficient funds,<sup>62</sup> which speaks to what Jean-Marie Fecteau describes as the “ambiguous role played by the state of diffuse attempts, half measures, and uncertain innovations”.<sup>63</sup> Two months later, in the April Quarter Sessions of the Peace, the justices brought in new police regulations with some changes. By licensing the respectable poor, magistrates would not be compelled to incarcerate them in such an abysmal place. This time, however, the licensed beggar had only six months to find employment, since the justices would not renew any licence after that time.<sup>64</sup>

In this way, begging was again both banned and permitted in accordance with ordinances made by Montreal justices of the peace. Consequently, when the high constable discovered Richard and William McGinnis begging without permission in August 1823, he promptly arrested them.<sup>65</sup> A telling incident that shed some light on the harsh public denunciation of vagrants occurred just a year before the new police regulations were instituted, when a soldier of the 37<sup>th</sup> Regiment was drummed through the principal streets of the city for being a vagabond.<sup>66</sup> That same year, in another dramatic and very public rebuke of a vagrant, the hangman carted Angélique Godin around the main streets of the city for being a common prostitute.<sup>67</sup> This old English method of punishing prostitutes served as a ritual of humiliation to make visible the offender who was carted through the neighbourhoods connected with her crime.<sup>68</sup>

61 *Journal of the Lower Canada House of Assembly*, January 23, 1822.

62 *Journal of the Lower Canada House of Assembly*, February 2, 1822.

63 Jean-Marie Fecteau, “Between the Old Order and Modern Times: Poverty, Criminality, and Power in Quebec, 1791–1840” in Jim Phillips, Tina Loo, and Susan Lewthwaite, eds., *Essays in the History of Canadian Law, Volume 5: Crime and Criminal Justice* (Toronto: University of Toronto Press, 1994), p. 305. This gap between the reformers’ discourse and the reality of everyday life was also exemplified in the inability of the supporters of the Magdalen Asylum to raise sufficient funds from the members of the House of Assembly or the public to keep open this institution for the reform of prostitutes. Nonetheless, reformers’ discourse served to redefine the tenets of respectability based on sobriety, discipline, and industry.

64 *QSR*, April 30, 1822.

65 NAC, RG 1 E15A, *Accounts of the High Constable*, August 6, 1823.

66 *Montreal Herald*, January 20, 1821.

67 *QSD*, January 19, 1821.

68 Laura Gowing, “Language, Power and the Law: Women’s Slander Litigation in Early Modern London” in Jenny Kermode and Gathine Walker, eds., *Women, Crime and the Courts in Early Modern England* (Chapel Hill: University of North Carolina Press, 1994), p. 33.

Women vagrants posed particular problems for the justices of the peace and their colleagues on the grand juries. First, grand jurors recommended in 1826 that female prisoners be kept in jail longer than their male counterparts in an effort to turn them away from their lives of idleness and to inculcate in them steady work habits. Only then could the prison superintendent provide them with references for domestic service, or they could return to their families of origin. In the opinion of the grand jurors, moral reform took longer.<sup>69</sup> Secondly, they demanded that recidivist prostitutes and vagrants be segregated from young female prisoners, so that vagrant women would not contaminate those with whom they came in contact. Members of the grand juries, who frequently argued for a classification of prisoners, especially juvenile offenders, never questioned the practice of arresting and imprisoning the city's youth for vagrancy. Moreover, the committees of justices responsible for begging licences refused to grant licences to children because, in their view, children who solicited alms would develop idle habits that ran counter to the elite's ideas about work. The paradox of their position was that children were charged with vagrancy and confined in the very institutions about which these magistrates had grave concerns. Amid growing anxiety over the rise in the number of idle boys, grand jurors endorsed the establishment of a House of Refuge for juvenile offenders<sup>70</sup> or the alternative that, at the very least, they be imprisoned away from hardened criminals.<sup>71</sup> When they discovered two young girls, aged nine and twelve, committed to the House of Correction with prostitutes, city notables in their capacity as grand jurors declared that this outrage could only be corrected by the establishment of a penitentiary. Youthful law-breakers should be sent to solitary confinement rather than to "the lowest School of Vice".<sup>72</sup> Thirdly, justices of the peace judged women harshly. The charge of indecent exposure is a case in point. When labourer and vagrant Joseph Laliberté publicly exposed himself by lowering his pants in front of Archange Dubé and Catherine Joannette at the old market, the magistrate ordered him to enter into a recognizance to keep the peace for six months.<sup>73</sup> Streetwalkers, on the other hand, who were charged with the same offence were more severely reprimanded. Police arrested and charged Caroline Parrant, Louise Tourangeau, Isabelle Perrault, and Marie Gagnier with being common prostitutes and vagrants for strolling in the city streets committing "acts of indecency".<sup>74</sup> For these licentious exploits, they were sentenced to two months in the Common Gaol. This gender discrimination was also evident in the treatment of women and men caught together engaged in sexual intercourse. Police usually arrested the woman but not the man, as in

69 *KBR*, August 1826.

70 *QSR*, April 30, 1839.

71 *QSR*, January 18, 1840.

72 *QSR*, July 19, 1843.

73 *QSD*, August 15, 1820.

74 *QSD*, November 11, 1831.

the case of watchman Antoine Gospel, who discovered François Neau and Betsey Dunn “en flagrant delit” in the old city. He apprehended Dunn, not Neau.<sup>75</sup> This is not to say that men who accompanied known prostitutes avoided arrest; reputation and circumstances determined the outcome. An extreme example was Benjamin Field, whom police arrested along with Jane Graham, Anthony Billow, and his two children, Joseph and Mary Field, as vagabonds and bawds.<sup>76</sup> Field’s dubious social standing resulted from his occupation as the district’s hangman, in addition to being a black American in the racist society of 1820 Montreal. This contrasts sharply with other officers of the state. Cases in point were policemen who, when caught associating with streetwalkers or discovered in brothels, lost their jobs but never their freedom.

Even as late as 1833 a provision for some beggars to apply for permission to solicit alms remained, although sometime after this date the practice seems to have stopped, because there is no evidence that magistrates continued to hand out begging licences. Men like Urbain Rasicot never qualified for such a licence despite their penchant to solicit alms. A homeless, unemployed man, considered by police as a rogue and vagabond, Rasicot was arrested one July evening after he first exhibited his ulcerated legs to parishioners as they entered the front door of the church and then disturbed mass with his fitful hollering.<sup>77</sup> By this time, the justices of the peace were no longer responsible for devising police regulations, which had become the responsibility of an elected municipal council. Moreover, the political unrest leading up to the Rebellions and their aftermath necessitated novel approaches to the regulation of public space.

Colonial administrators reacted to the crisis by suspending democratic government and by appointing a Special Council to govern the colony.<sup>78</sup> In

75 *QSD*, November 30, 1829.

76 *QSD*, May 10, 1820.

77 *QSD*, August 31, 1836.

78 Brian Young argues that the Special Council exercised a crucial role in the reshaping of state and institutional structures which saw a blend of new structures with the old pre-industrial relations and ideology. Brian Young, “Positive Law, Positive State: Class Realignment and the Transformation of Lower Canada, 1815–1866” in Greer and Radforth, eds., *Colonial Leviathan*, p. 50. Although the Special Council’s edicts had a significant impact on such structures as seigneurialism, the civil code, and land registry, we must be careful not to link all of the changes implemented by this legislative body to the birth of the modern state. The criminal justice system is a case in point. Contrary to Allan Greer’s contention that a professional police force was non-existent in Montreal before the immediate post-Rebellion period, Donald Fyson’s examination of the criminal justice system cautions us in viewing the Rebellions as a watershed in the nature and impact of the state in general and the criminal justice system in particular. Elements of the modern state were already present in the 1820s. Fyson, *Criminal Justice, Civil Society*, pp. 407–408. Certainly, the Special Council made possible, particularly in the case of policing, reforms that had been demanded by city notables in the decades leading up to the insurrection. However, we know little about the long-term effects of these changes on Montreal policing since it has hardly been studied. My own investigation shows that after 1841, when the police force was once again reduced in number, the level of arrests of individuals for offences related to prostitution declined.

1839 it initiated a series of changes that included the reorganization of the police forces in the cities of Montreal and Quebec and a set of guidelines to deal with loose, idle, and disorderly persons. Council members put into effect many of the suggestions from grand jury reports and newspaper editorials regarding the regulation of public space, vagrancy, and policing.

This Canadian ordinance, and the first to mention prostitutes specifically,<sup>79</sup> clearly established a link between persons deemed prostitutes and persons considered loose, idle, and disorderly, permitting the authorities to detain them more easily.<sup>80</sup> The framers of this police regulation were clear in who constituted loose, idle, and disorderly persons, blending some of the old definitions with new ones, from wilfully refusing to work, disturbing the public peace, and being drunk to indecent exposure. In the case of Mary Hannah, a police constable apprehended her as a loose, idle, and disorderly person when he caught her lying in Commissioners' Street indecently exposing herself to a soldier.<sup>81</sup> Loitering, incommoding passengers, lying in any field, highway, yard, or other place, using insulting language, and defacing public and private property also contravened public order and designated the person loose, idle, and disorderly.<sup>82</sup> The clause that permitted a policeman "to apprehend anyone he had just cause to suspect of any evil designs, and all persons not giving a satisfactory account of themselves",<sup>83</sup> in Nicholas Rogers's view, extended the social boundaries of vagrancy beyond the act itself and served as a barrier to prevent the progress of vicious habits.<sup>84</sup> The "indecent" Mary Hannah faced either two months' imprisonment in the Common Gaol or the same time of hard labour in the House of Correction according to this new ordinance. It was also at the discretion of a magistrate to bind over a loose, idle, and disorderly person in a recognizance to appear at the next court of Quarter Sessions of the Peace to answer to the charge.<sup>85</sup> What this 1839 statute did was to redefine vagrancy in different ways, moving from previous definitions that grew out of the Poor Laws, with their emphasis on which parish had to take responsibility for the poor and homeless, to those demanding that citizens be required to give an account of themselves when authorities

79 This statute permitted the police to apprehend "all common prostitutes or night walkers wandering in the fields, public streets or highways, not giving a satisfactory account of themselves" and "persons in the habit of frequenting houses of ill-fame, not giving a satisfactory account of themselves". *The Revised Acts and Ordinances of Lower Canada (1777–1841)* (Montreal, 1845), p. 166.

80 See the work of Constance Backhouse, *Petticoats and Prejudice*, pp. 233–234, and of Jane B. Price, "'Raised in Rockhead. Died in the Poorhouse': Female Petty Criminals in Halifax, 1864–1890" in Philip Girard and Jim Phillips, eds., *Essays in the History of Canadian Law, Volume 3: Nova Scotia* (Toronto: University of Toronto Press, 1990), pp. 202–204.

81 *QSD*, May 10, 1841.

82 *The Revised Acts and Ordinances*, p. 166.

83 *Ibid.*, p. 165.

84 Nicholas Rogers, "Policing the Poor in Eighteenth-Century London: The Vagrancy Laws and Their Administration", *Histoire sociale/Social History*, vol. 24, no. 47 (May 1991), p. 145.

85 *Governor and Special Council of Lower Canada Ordinances*, vol. 1–3, 2 Vic., c. 2, June 28, 1838.

demanded it. In practice, this statute brought women and men into the criminal justice system as vagrants who before 1839 would not have been considered as such. Drunkenness is a case in point. Before 1838 intoxicated Montrealers were seldom arrested. After 1838 it was the largest public order offence in the newly created Police Court.<sup>86</sup>

### **The Consequences of Vagrancy Laws on Public Behaviour**

Vagrancy statutes equipped policemen with the tools to arrest greater numbers of women and men over the period who exhibited an expanding range of state-defined “refractory” comportment. Part of a broad movement to regulate public space, this assault on certain public behaviour had significant consequences for women vagrants since they were engaged in a complex range of activities in public space in early-nineteenth-century Montreal. As I have argued elsewhere, the streets had provided women with few social or economic resources some means of survival, through peddling, theft, bartering with neighbours, or selling sex.<sup>87</sup> While men shared similar experiences with their female counterparts, some elements of those experiences clearly differed. Any attempt on the part of the state to curtail or redefine public behaviour increasingly encroached on people’s use of the street. Consequently, as the city’s police force was restructured to regulate more effectively bourgeois notions of “appropriate” public activity, it reconfigured women’s and men’s street behaviour differentially. The police were particularly diligent in efforts to rid the streets of prostitutes. No alternative form of street behaviour or means to make a living was made available to women. Public space became increasingly a male domain, a process that culminated in a division between “public and private” by the end of the century.<sup>88</sup>

Male and female vagrants responded to this attack on public space by trying to avoid arrest or by using the laws to prosecute others and to seek refuge at the police station or in prison. To elude the police, they formed relationships with other vagrants and travelled together to more remote areas that surrounded the city. There they sought shelter in farm buildings, searched for food in the orchards and fields of nearby farms, even milked cows. In the city, they found refuge in abandoned houses, took bread from unattended carts and food from market stalls, and traded goods they had stolen for quick money with local fences who worked out of taverns near the wharves, pawnshops, and some of the city’s brothels. In any event, when they were unsuccessful in finding refuge, many turned to the local police to demand overnight lodging. When they needed more long-term shelter, food, and medical care, vagrants turned to the prison. If their request for lodging in prison was denied, they

86 ANQM, *Registers of the Police Court*, vol. 1–6 (June 1838–January 1842).

87 See Poutanen, “The Homeless, the Whore, the Drunkard, and the Disorderly”.

88 *Ibid.*, pp. 46–47.

committed misdemeanours or threatened to do so to ensure incarceration over the winter months. The deaths of some of these women, like Elizabeth Thomson, who died in a boat of hypothermia and alcohol intoxication,<sup>89</sup> or Martha Beers, who also froze to death in a canal boat a few days after being released from prison in February 1842,<sup>90</sup> underscore the difficulty of surviving the streets of Montreal. The irreverent treatment of Thomson was striking. While legal and religious authorities quibbled over who had responsibility for her body, she lay at the site for a day and a half. Refused a Christian burial, Elizabeth Thomson was eventually interred in a nearby field by three Montrealers who took it upon themselves to bury her.<sup>91</sup>

### Conclusion

In the late eighteenth and early nineteenth centuries, Montreal's justices of the peace designed police regulations regarding vagrancy to include licensed begging as a form of social welfare for the respectable poor. For those deemed unworthy of state-sanctioned begging, vagrant men and women felt the full force of the law by being apprehended and punished in the House of Correction or Common Gaol. City magistrates provided an opportunity for proper objects of charity to solicit alms at the same time as they permitted some homeless vagrants, often women, to solicit shelter, food, and medical treatment in prison, albeit in appalling conditions. Gender was crucial to vagrancy laws, as a form of moral regulation and concomitant impact on the lives of female vagrants. In pre-industrial Montreal, women were economically dependent upon male earnings and vulnerable to destitution because of limited employment opportunities.<sup>92</sup> Since single, widowed, and abandoned

89 *Montreal Herald*, November 2, 1816.

90 NAC, RG 4 B 14, *Police Registers*, vol. 54, February 20, 1842.

91 *Montreal Herald*, November 2, 1816.

92 Urban women sought work as day servants, wet nurses, babysitters, and seamstresses, took in laundry, ironing, and boarders, hired themselves out as char women, or sold foodstuffs as pedlars and basket women. Strategies to earn cash combined long-standing rural and urban traditions, according to Bettina Bradbury, with the realities of nineteenth-century urban life. Bettina Bradbury, *Working Families: Age, Gender, and Daily Survival in Industrializing Montreal* (Toronto: McClelland & Stewart, 1993), p. 166. In Upper Canada in the same period, Jane Errington found that urban women's labour was crucial to the family's survival. When extra wages were required, especially during periods of unemployment and underemployment, "married women often sewed, took in washing, became a char, took in a few lodgers, or marketed other 'homemaking' skills on a part time basis." Elizabeth Jane Errington, *Wives and Mothers, School Mistresses and Scullery Maids: Working Women in Upper Canada, 1790–1840* (Montreal and Kingston: McGill-Queen's University Press, 1995), p. 187. The situation for single women migrants and immigrants could be quite different. Many did not have their own households but might become part of another through employment in domestic service, as apprentices, or through a variety of jobs such as sewers, dairy maids, bar maids, and wet nurses. But for the majority of single women who no longer lived at home, domestic service was the major source of employment. Others turned to prostitution. See Mary Anne Poutanen, "To Indulge Their Carnal Appetites': Prostitution in Early Nineteenth-Century Montreal, 1810–1842" (PhD thesis, Université de Montréal, 1996), pp. 23–24.

women had to eke out a living any way that they could, access to public space was crucial to their survival. It also left them vulnerable to arrest. Men, on the other hand, posed at least two different threats: a moral one by their refusal to work and their perceived rejection of bourgeois notions of industry, sobriety, and discipline; and a physical threat exemplified by their potential for violence. Their embodiment of danger had a particular resonance for the authorities who feared revolution during the Rebellions and their aftermath so much so that the level of arrests of male vagrants increased tenfold in this period. Thus they were subjected to intense policing of their public behaviour.

Over the period under study, justices of the peace reworked vagrancy regulations to reflect the city's changing demographic and economic conditions. They began with common law notions of vagrancy which they cobbled together with the feudal practice of licensed begging in New France and refined from the 1780s to the 1830s. In the wake of the Rebellions, the Special Council established harsh new laws that reflected both the British colonial views of dangerous *Canadiens* and the reformers' views of the popular classes who needed to be contained. In other words, these laws were not just a manifestation of British imperial and post-Rebellion colonialism, but also reflected the new bourgeois ideology.

While the focus here has been on vagrancy laws and the changing nature of local conditions, we must carefully consider the relationship between vagrancy ordinances, their application, and their impact on the individuals who were charged with this misdemeanour. These laws had multiple meanings for class and gender and served different, sometimes conflicting purposes from those the framers had in mind. When we seek to understand the interplay between the structure of the law and the practice of the law in the writing of a community's legal and social history, we unravel the effect of laws on the lives of its citizens.