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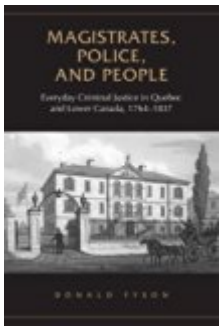
Donald Fyson. *Magistrates, Police and People: Everyday Criminal Justice in Quebec and Lower Canada, 1764-1837.* Toronto: University of Toronto Press, 2006. xvi + 467 pp. $65.00, cloth, ISBN 978-0-8020-9223-6.



Reviewed by Lisa Helps

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Donald Fyson's *Magistrates, Police, and People: Everyday Criminal Justice in Quebec and Lower Canada, 1764-1837* certainly deserves both the awards and accolades it has recently received.[1] While the book purports to be an in-depth study of the relationship between law and society between the Conquest of Quebec and the Rebellions of Upper and Lower Canada, its historiographical reach and import stretch back beyond the Conquest and forward past the Rebellions. Indeed, Fyson's major contribution to the historiography of Quebec and Lower Canada is his rejection of the conventional periodization; he argues against the rupture-stasis thesis which posits that after the Conquest there were drastic changes in both the content and application of everyday criminal justice. Accepted accounts maintain that the Canadien majority was dominated and oppressed by the imposed and--until the Rebellions--static legal system of the colonizer. The picture, Fyson asserts, was much more complicated than the traditional version. Using what he calls an approach of "empathetic reconstruction" he delves into these complexities with alacrity and grace (p. 12).

Drawing on quantitative and qualitative sources (rather than performing a discourse analysis) and taking a collective rather than individual approach, the book opens with an examination of structural factors. In the first few chapters Fyson examines the extent to which British justice was imposed on a conquered French colony, dissects the process by which men were made into justices, scrutinizes the aggregate character of the magistracy, and outlines early policing practices.

Challenging both accepted historiography and equally, it seems, contemporary opinion, Fyson demonstrates that the criminal justice system in his period of study was not made up of incompetent, primarily British magistrates unfamiliar with the law and incapable of enforcing it. Rather, he charts the percentage of active Francophone magistrates in the District of Montreal as well as the proportion of Francophone justices hearing complaints, committing to jail, and holding seats on the Quarter Sessions bench--all key aspects of a justice's work. His evidence shows overwhelmingly that, aside from the late 1790s and the late 1820s, Francophone justices played an important

role in the delivery of everyday justice. On the question of competence, Fyson details the types of knowledge and resources to which magistrates would have had access, and convincingly concludes that justices "were not bumbling amateurs with little education and even less knowledge of the law" (p. 135). Fyson makes a similar, and similarly compelling, argument in the chapter "The Police before the Police." Here he first struggles with the question of definition, asserting the importance--as he does throughout the book--of continuity and change. He defines bailiffs, militia officers, and citizen constables not by their organizational structure or salaried status but by their state-sanctioned ability to intervene "between the criminal justice system of the state and members of society at large" (p. 140). With a quick wave of his quantitative wand he allays historiographical and contemporary assertions about ineffective policing in a pre-modern state. "There was quite evidently some policing going on," he maintains, "at least from the perspective of the 10,000-odd people confined in the Montreal goal on criminal charges between 1811 and 1836, the 8,500 in the Quebec gaol," thousands more in houses of correction as well as those who were arrested and brought before justices (pp. 137-138).

As a way of testing his hypothesis about the effectiveness of everyday criminal justice, Fyson examines the system from the perspective of those who experienced it. Here the issue of power is his primary concern. So much so, in fact, that it surprises me slightly that the adage "social power," which he goes to great lengths to analyze and explore, did not make it into the title of the book. The strength of Fyson's analysis of power is that he does not theorize power but rather demonstrates the intricacies of its workings and its circulations.

Contesting the three classic views of the criminal justice system in Quebec and Lower Canada (that it was consensual, conflictual, or marginal), Fyson asserts that the system could serve as a source of social power for a wide variety of groups in the colony, from battered wives to local elites. Those who otherwise lacked power sometimes used the system as a source of protection; those in more powerful positions could use the criminal justice system to serve their social interests. However, these seemingly straightforward assertions lead him to no simplistic conclusion. Indeed, working against the historiographical grain, he illustrates that even though there were structural inequalities embedded in the criminal justice system, the system itself was not a means of class, race, and gender domination, but rather was wielded as a source of power by those same people against whom it was structurally biased. His analysis of women's complaints in this regard is the strongest. Finally, he argues that although people accessed everyday criminal justice as a source of power when it served them to do so, this did not necessarily reflect a belief in the legitimacy of the law.

A final important contribution of ***Magistrates, Police, and People*** is its engagement with the topic of state formation. Fyson maintains that the march toward the modern, liberal democratic state was more of a clumsy two-step and that this process began earlier than most historians have acknowledged. In Montreal and Quebec he points to the increasing bureaucracy involved in the dispensation of everyday criminal justice well before the Rebellions. Through the rise of bureaucracy in the early decades of the nineteenth century, he posits, the state was increasingly able to "impose itself on the people" (p. 312). However, he asserts that there were actually two criminal justice systems: one in town and one in country. Whereas bureaucracy was an urban phenomenon, in rural Quebec and Lower Canada the spread of access to criminal justice itself was the major transformation that took place in his period of study. And it is here, I argue, that Fyson makes an important intervention into the relationship between knowledge dispersal/gathering and state formation. A key component of state making from the perspec-

tive of histories of modern state formation is the centralization of power and knowledge. Bruce Curtis's work on the census is the most explicit in this regard.[2] In considering the formation of the local pre-Rebellion state, Fyson blurs this picture considerably and identifies an interesting reversal. By examining the local face of the state, he reveals that the *dispersion* of power and knowledge was an integral process of state formation. It seems to me that following this line of thought could lead historians of the state, in particular those who approach it from below, along a number of interesting paths.

Notes

[1]. The book was awarded both the 2006 Canadian Law and Society Association Book Prize (English) and the 2006 Clio Award, Quebec Region, from the Canadian Historical Association. It received honorable mention for the following awards: 2006 Sir John A. Macdonald Prize of the Canadian Historical Association and the 2006 James Willard Hurst Prize-Law and Society Association.

[2]. Bruce Curtis, *The Politics of Population: State Formation, Statistics and the Census of Canada, 1840-1875* (Toronto: University of Toronto Press, 2000).